

THE OVER REPRESENTATION OF MEN AT THE TOP OF CITY LAW FIRMS

POWER, CULTURE, STRUCTURE AND THE PARADOX OF TIME

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of Doctor of Philosophy

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Abstract

Despite the growing importance attributed to the development of a more representative legal system in England and Wales by the legal community, men remain significantly over represented in large City law firms. A puzzling aspect of this disparity is that in recent years many firms have developed an array of initiatives aimed at retaining female talent and helping women progress.

This empirical study asks why men working for City law firms continue to enjoy advantages in career progression, propelling them to the top of their profession. Altering the focus away from women solicitors' underrepresentation to men's overrepresentation draws on recent scholarly writings that argue in favour of shifting the conceptualization of inequality from marginalized identity groups to dominant ones. This new train of thought has a notable effect on how we understand the problem and its potential solution. Namely, it exposes how patriarchal power remains at the root of gender inequality.

This study's main findings have strong links to the concept of 'time'. First it finds that time spent at work remains City firms' primary measure of success. Second it argues that diversity programmes, often based on reduced time at work, paradoxically encourage users to do less of what firms continue to value most, invariably triggering career limitation. Third, it posits that despite their shortcomings, women lawyers remain the main consumers of diversity initiatives due to the persistence of a domestic gendered division of labour, often leaving them with less time for the workplace than their male colleagues. Fourth, it maintains that as gendered organisations, City firms operate on the basis of this open availability, particularly in terms of their promotion process. Finally, it queries whether the patriarchal workplace template may be disrupted by greater gender fluidity and a societal and organisational move away from stereotypical male practices and behaviour.

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CHAPTER 1

A. Introduction

Despite the growing importance attributed to dismantling disadvantage and working towards a more representative legal system in England and Wales by the legal community,¹ men remain significantly over-represented at the top of all branches of the legal profession.² Today, men represent 72 per cent of all UK court judges, 78 per cent of High Court judges and 76 per cent of Court of Appeal judges.³ Out of the twelve Supreme Court justices, ten are men and only two are women.⁴ At the Bar, the largest pool from which judges are appointed, men make up 85 per cent of all Queen's Counsel.⁵ Men also dominate solicitors' firms representing approximately 80 per cent of their equity partners.⁶ In certain

* All websites in this study were last accessed on 4th June 2018.

¹ An indication of the importance attributed to this issue in the United Kingdom and across Europe is the number of reports on the subject published on a regular basis by professional and regulatory bodies. Recent examples include: Sundeep Aulakh, Andy Charlwood, et al., 'Mapping Advantages and Disadvantages: Diversity in the Legal Profession in England and Wales' Final Report for the Solicitors Regulation Authority October 2017, Yvonne Galligan, Renate Hauptfleisch, et al. 'Mapping the Representation of Women and Men in Legal Professions Across the EU', Legal Parliamentary Affairs Policy Department for Citizens' Rights and Constitutional Affairs August 2017, 'Time for Change' PwC Law Firms Survey 2017, 'Snapshot: The Experience of Self-Employed Women at the Bar' The Bar Council 2015, 'Momentum Measures: Creating a Diverse Profession' The General Council of the Bar 2015, 'Confronting Gender Inequality: Findings from the LSE Commission on Gender, Inequality and Power' 2015.

² The legal profession in England and Wales is divided into two branches: barristers and solicitors. Barristers, who are members of the Bar Council of England and Wales, have rights of audience and their work is primarily to do with courtroom advocacy. Solicitors, members of the Law Society of England and Wales, generally do not have rights of audience, although there are exceptions. Their work tends to deal with negotiation on behalf of clients in all legal matters outside the courtroom. Solicitors tend to be employed by law firms whilst barristers are largely self-employed and work in sets of 'chambers'. Although there are many similarities between these two branches, when examining the issue of equal representation, the career progression for each of these roles is too distinct to allow for conclusions to be drawn across the board. Consequently, this study focuses on the over representation of male solicitors within private practice and, more specifically, within large City law firms. A. Zimdars, 'The Profile of Pupil Barristers at the Bar of England and Wales' (2004-2005) 17(2) IJLP 117.

³ In addition, only 7 per cent of all judges are from a BAME background, a figure largely below the proportion of BAME working age population (13 per cent in 2015), Judicial Diversity Statistics, 2017. <https://www.judiciary.gov.uk/wp-content/uploads/2017/07/judicial-diversity-statistics-2017-1.pdf>, Mapping Advantages and Disadvantages, note 1, 12.

⁴ Baroness Hale of Richmond joined the House of Lords in 2004 and, along with the other Law Lords, transferred to the new Supreme Court in 2009. Lady Black was appointed in October 2017.

⁵ Bar Standards Board 2018 <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/queen-s-counsel-statistics/>

⁶ A recent survey shows female partners make up less than 20 per cent of the partnership in the UK's top 50 law firms, Time for Change, note 1. In the US, the figures are equally discouraging. A

cases, this gender disparity is only getting worse. Recent figures at one of the City's largest law firm show a 23 per cent decline in female promotion to partnership with men making up approximately 90 per cent of newly appointed partners for the last two years.⁷

This remarkable over-representation of men within the legal profession is proving difficult to dislodge. Although some notable gains have been made since women began entering the profession in significant numbers in the 1980s, over the last decade or so, facts and figures show little improvement as men continue to occupy the vast majority of senior positions, make the highest salaries and wield the most influence across the profession.⁸ If anything, certain recent developments have only served to maintain the high number of men in upper echelons. And whilst these examples may reflect choices made by men and women lawyers, they are also the result of the conditions under which those choices are made.

Flexible and part-time working policies, for example, are now widely available across the profession.⁹ Yet, although these policies are aimed at promoting diversity by providing solutions to work-life conflicts, they are having a limited impact on curbing men's over-representation at the apex of City private practice. Despite being on offer for more than a decade, very few men are opting for these programmes.¹⁰ This lack of appetite is tied to evidence which shows that flexibility still comes at a high price in terms of legal career advancement.¹¹

recent study of the 250 largest American firms found only five to have 25% or more women as partners, Jane Ellis, Ashleigh Buckett, 'Women in Commercial Legal Practice' IBA Legal Policy and Research Unit December 2017.

⁷ Rachel Maloney, 'A&O overhaul of diversity drive as it braces for two 'disappointing' promotion rounds' *The Lawyer*, February 2017.

⁸ Mapping Advantages and Disadvantages, note 1, Caroline Binham, 'Law firms try female leadership' *Financial Times* (London 10th March 2014) which states that in large City law firms, the percentage of women who attain equity partnership has not increased from the 15 to 20 per cent mark in the last decade or so. This stalled state of affairs is in line with a general UK trend where no improvement in gender equality has been made in the last 10 years, EU Gender Equality Index <http://eige.europa.eu/gender-equality-index>.

⁹ Most large City law firms offer some form of agile working to lawyers. Clifford Chance, for example provides the possibility of agile working to all lawyers with more the two years post-qualification experience. Interview 20.

¹⁰ Law firms do not make public their figures on flexible working, including the gender divide within them. However we know that there are 42 per cent of women and just 13 per cent of men in part-time work across all UK industries, Feargal McGuinness, 'Women and the Economy' Briefing Paper House of Commons Library 9th March 2018. There are strong indicators that magic circle law firms' figures mirror this broader gender divide. One example is the high percentage of women working in City firms' knowledge management departments, which allow for greater flexibility because of their non-client facing nature.

¹¹ The stigma attached to agile work has been well documented. For women who have children and who are primary carers, this translates into the 'motherhood penalty' (and 'fatherhood bonus' for the male partner who carries on working full-time). Michelle J Budig, Joya Misra et al, 'The motherhood penalty in cross-national perspective: the importance of work-family policies and cultural attitudes' (2012) 19 *Social Politics: International Studies in Gender, State and Society* 163, Tarja Viitanen, 'The motherhood wage gap in the UK over the life cycle' (2014) *Rev Econ Household* 12, Stephen Benard and Shelley Correll, 'Normative discrimination and the motherhood penalty' (2010) 24 *Gender & Society* 616. Men who front line childcare and work

For similar reasons, men are also indirectly benefiting from new hierarchical structures within certain legal organizations. A few leading law firms, for example, have recently created internal flexible resourcing arms where they deploy lawyers as independent consultants and outsource them to clients for projects on an 'on demand' basis. One of the main advantages to being a consultant, according to these firms, has to do once again with promoting diversity through flexibility. Given the right context, these new consultancy roles could be the beginnings of a much-needed acceptance of non-linear legal career paths. However, fewer men than women lawyers seem to be signing up for them.¹² This is likely to be the case because, in addition to a lack of career progression, these consultancies come at the expense of employee benefits and job security. Women lawyers, who have taken a disproportionate interest in becoming consultants, must exit traditional employment and abandon the usual career trajectory to promotion in exchange for this flexibility.

There has also been an increase in the disparity between men lawyers practising in high paying and influential fields of the law, such as finance, and women lawyers practising in areas that are lower paid and generally less prestigious.¹³ These areas of practice have also recently been the targets of government budgetary cuts, including cuts to legal aid, thus particularly affecting women lawyers.¹⁴

So why do men continue to dominate the top of the legal profession despite women graduating from British law schools in equal numbers for nearly a quarter of a century? A number of reasons have been provided for this long lasting inequality. For some, the infamous pipeline, which would by now (even by conservative standards) have had women equally represented in senior positions across the profession, is suffering from a blockage the only solution to which appears to be patience. Women's 'time', apparently, will inevitably come.¹⁵

part time or in an agile way also experience stigma. Scott Coltrane, Elizabeth Miller et al., 'Fathers and the flexibility stigma' (2013) 69 *Journal of Social Issues* 279.

¹² These programmes are in their infancy and law firms have not made available data regarding the profile of these consultants. However, based on interviews with consultants hired by major City practices, as well as the Head of one such consultancy arm, it appears that women are in the majority. Interviews no. 18 and 23.

¹³ Mapping Advantages and Disadvantages, note 1, 13. For comments on the 'feminization of the practice of law' and its consequences, Hilary Sommerlad, 'A pit to put women in: Professionalism, work intensification, sexualisation and work-life balance in the legal profession in England and Wales' (2016) 23 *IJLP* 61. Sharon Bolton and Daniel Muzio, 'The paradoxical processes of feminization in the professions: the case of established, aspiring and semi-professions' (2008) 22(2) *Work, Employment and Society* 281, Carol Menkel-Meadow, 'The comparative sociology of women lawyers: The "feminization" of the legal profession' (1986) 24 *Osgoode Hall Law Journal* 897.

¹⁴ Family law practice is a good example of this. Bolton and Muzio, note 13. In Australia, which has had similar cuts in recent years, a report was published noting this point Asher Flynn, Arie Freiberg et al. 'Access to Justice: A comparative analysis of cuts to Legal Aid', Monash Warwick Legal Aid Workshop, Monash University, July 2014.

¹⁵ A recent example of this view is Supreme Court Justice Jonathan Sumption's comment: "These things simply can't be transformed overnight [...] not without appalling consequences in other directions. [...] It takes time. You've got to be patient." Martin Bentham, 'Rush for gender equality

However, in the last twenty years or so, women have made very little headway in gaining equal access to the higher echelons of the legal industry and at this rate, one study estimates that it will take them another 50 years to gain equality.¹⁶ For others, the pipeline appears to be suffering from a 'leak' which has women exiting the profession, often for caring roles, leaving few female candidates applying to top jobs.¹⁷ But figures show that women are there in high numbers, wanting and working towards joining their male colleagues at the peak of their profession.¹⁸

This tenacious unequal positioning is all the more puzzling given how much attention has been paid to diversity within the legal profession in the last decade or so. During this time, significant efforts have been made by a number of legal bodies, including the judiciary, the Bar and private law firms, to retain and promote women lawyers and judges. And yet, despite these initiatives, male lawyers who reach the top of the legal profession continue to largely outnumber their female counterparts. Unpacking the ingrained reasons behind the persistent over representation of male lawyers at the top and the corresponding slow progress of women's legal careers is key to legal institutions, public and private, devising effective policies and programmes to finally attain gender equality within the legal profession. This objective has become all the more pressing given the recent and growing number of popular political campaigns led by women such as #MeToo, #TimesUp and #PayMeToo.¹⁹ These movements are unmasking gender and pay inequality, exposing sexual and racial discriminatory behaviour and practices and demanding redress across a number of industries.

The main purposes of this study is therefore to contribute to a better understanding of why men continue to dominate the top positions within the legal profession and to make recommendations in order to help rectify this imbalance. Although its focus is on UK City private practice, it is reflective, at the very least, of women's experiences in the Western world's law firms. Therefore, its findings will hopefully have resonance with the whole of the legal profession in England and Wales as well as in other jurisdictions where men's over

with top judges 'could have appalling consequences' for justice" *Evening Standard* (London 21 September 2015).

¹⁶ Mapping Advantages and Disadvantages, note 1, 'Feminist lawyers; the fight for gender equality in the legal profession' (lawcareers.net, 6 June 2017)
<https://www.lawcareers.net/Information/Features/06062017-Feminist-lawyers-the-fight-for-gender-equality-in-the-legal-profession>

¹⁷ Susan Chira, 'Why women aren't CEOs according to women who almost were: It's not a pipeline problem.' *New York Times* 21 July 2017.

¹⁸ Mapping Advantages and Disadvantages, note 1, 6. This report shows that in 2016, 60 per cent of new entrants to the Roll (a register of qualified solicitors which the Solicitors Regulation Authority is legally bound to maintain) were women. Trends in Solicitors Profession: Annual Statistics Report, June 2017 shows that women represent 52.3 per cent of solicitors in private practice with 0 to 9 years of experience, 7 to 9 years' experience being the typical time for partnership selection. See also Robin J Ely, Pamela Stone and Colleen Ammerman, 'Rethink what you "know" about high-achieving women' (2014) Harvard Business Review and Jonathan Ames, 'Women make up about half the senior associates, so why are they missing from the upper ranks of commercial firms?' *The Times* (London 6 May 2013).

¹⁹ For a summary of this movement as well as the Times Up movement see for example https://en.wikipedia.org/wiki/Me_Too_movement.

representation persists in all branches. This study may also prove useful to other professions and institutions that struggle with gender equality, as conditions that limit women's roles in public life and promote and sustain inequality within the workplace are often not unique to the practice of law.

B. Key Initial Questions

1. Why study male solicitors' over representation?

Moving the focus away from women solicitors' under representation to men's over representation in the highest paid legal jobs draws on scholarly writings that argue in favour of shifting the conceptualization of inequality from marginalized identity groups to dominant ones.²⁰ This literature chimes with a growing body of academic work on men and masculinities that encourages an increased focus on men as gendered subjects with distinct identities, roles and power in contemporary society.²¹ Far from being semantic, this approach has a notable effect on how we understand the problem and its potential solutions.

First, it allows a rethink of workplace inequality in private legal practice as something other than a 'woman's issue'. It stops us from asking what women lawyers are 'doing wrong' or what they can 'do better', perversely looking for solutions from the source that has the least power to change things. Second, it shifts the onus away from women lawyers to prove they merit top jobs and instead hones in on why men are apparently best qualified to command most of the power within the profession. Finally, reassessing the issue as one of over representation and delving into the reasons behind men's dominance within private practice sheds new light on why women lawyers' career progression has stalled and allows us to come up with new solutions to change things.

Although the fallout of men's over representation and women's under representation at the apex of private practice may be the same, the importance of re-conceptualizing this inequality, by looking at over representation, lies in the emphasis it gives to the crux of the issue: too many men occupying positions of power directly correlates to fewer women making their way to the top. This may seem obvious yet deliberately adding masculine imparity to the equation has

²⁰ Kate Malleon, 'The disruptive potential of ceiling quotas in addressing over representation in the judiciary', in E. Rackley and G. Gee (eds), *Debating Judicial Appointments in an Age of Diversity* (Routledge 2017), Rainbow Murray, 'Quotas for men: Reframing gender quotas as a means of improving representation for all', (2014) 108(3) *American Political Science Review* 520. These works argue in favour of ceiling quotas, which would cap the overrepresentation of dominant identity groups, such as white, middle class men.

²¹ Fidelma Ashe, *The New politics of Masculinity: Men, Power and Resistance* (Routledge 2007). In her introduction, Ashe highlights the growing social and political interest in men and masculinity in contemporary culture. Jeff Hearn also makes this point stating that most mainstream studies of leadership and management, of which law firm partnerships are arguably a part of, "...do not seem to notice that they are often talking mainly about men and masculinities: they generally do not gender men." Jeff Hearn, 'Contextualizing men, masculinities, leadership, and management' in Savita Kumra Ruth Simpson and Ronald Burke (eds.) *Oxford Handbook of Gender in Organisations* (Oxford University Press 2014).

received surprisingly little attention. This may be because it raises an uncomfortable reality. For women to gain opportunity and parity in terms of power and influence, some men, to whom those things have customarily flowed, will inevitably have to lose them.

However, the issue is not binary. Certainly, I argue that men must make room for women at the top of the profession. But, in asserting this point, it is important to nuance the notion of men's over representation in senior positions. First, to note that within the legal profession, as in many other professions, and indeed society, not all men are equal. It is mostly white, middle class, heterosexual men who continue to dominate senior positions within the practice of law in England and Wales, with BAME men, gay men and men from less privileged socio-economic backgrounds proportionally under represented.²² As diversity is to do with how inclusion promotes equality, a gain for one under represented group is a win for all including, arguably, the dominant. And although addressing issues as to why certain men are under represented within the legal profession is beyond the scope of this study, it is recognized as a significant objective towards making the profession more representative of the population it serves. Yet, it must also be said that all Western men, regardless of socio-ethnic background benefit to a certain degree from being men in what remains a patriarchal society, a society largely conceived by men for men.²³ Many issues around gender inequality in the workplace, discussed in this study, are to do with this universal privilege, which is not shared by women.

The second subtlety that must also be highlighted is that not all men enjoy, whether consciously or unconsciously, their privileged status as men within this largely binary social order. Studies have shown that the breadwinning role traditionally pinned on men leads many to feeling pressured and unhappy.²⁴ Scholarly work is also pointing to more and more men experiencing work-life conflict and wishing to spend more time with their friends and families rather than at work.²⁵ Consequently, when referring to men in this study, I am conscious that within the legal profession, men's over representation means largely white, middle class male privilege and that not all men perceive nor act on this privilege in the same way.

A further precision must be made, but this time with respect to women. When referring to women in this study, I am aware that many, including women solicitors, experience disadvantage due to ethnicity and other marginalized

²² Mapping Advantages and Disadvantages, note 1, 5.

²³ An example of this within private practice is that BAME men get promoted to partnership in greater numbers than white women, with BAME women faring the worst in partnership process. Mapping advantages and Disadvantages, note 1, 9-10. See also Jemima Olchawski, 'Sex Equality: State of the Nation 2016', Fawcett Society.

²⁴ See for example, Keith Cunningham, 'Father time: Flexible work arrangements and the law firm's failure of the family' (2002) 53 *Stanford Law Review* 967, Richard Collier, 'A hard time to be a father? Reassessing the relationship between law, policy and family (practices)' (2001) 28 (4) *Journal of Law and Society* 520.

²⁵ Richard Collier, 'Rethinking men and masculinities in the contemporary legal profession: The example of fatherhood, transnational business masculinities and work-life balance in large law firms' (2013) 13 *Nevada Law Journal* 410.

identities as well as gender. I recognize that the category 'women' represents a sum of numerous and sometimes complex intersectionalities and I acknowledge that discussing women on the basis of a single social characteristic is insufficient. Consequently, to the extent possible, this study considers the experiences of women lawyers from all socio-ethnic backgrounds.

2. What are the consequences of male solicitors over representation?

Through the lens of men's over representation, I now turn to the main consequences of this disproportion to show the importance of solving this issue. First, the unequal representation of male solicitors in top positions is mirrored in the pool of candidates from which future leaders of the profession may be chosen. This restricted talent pool not only affects the legitimacy of the profession but as a result, women are also under represented in other higher echelons of private practice and the legal profession generally, such as law firm management committees and regulatory bodies, which often hire from the pool of candidates in top private practices.²⁶

Furthermore, a disproportionate pool of male lawyers at the top of the legal profession is also cause for concern with respect to judicial appointments. As more judges are being selected from partners at City law firms, men's over representation within these elite organizations is reflected in our third arm of government.²⁷ A reduced pool of senior female lawyers inevitably has an adverse impact on the quality as well as the credibility of the judiciary by reducing the number of highly qualified and talented candidates in the recruitment pool for judicial office.²⁸

The over representation of men in leading roles within the profession also means that there are fewer role models and mentors for women lawyers entering the profession. Studies have shown role modeling and mentoring to have positive effects on career progression.²⁹ Consequently, a lack of women leaders is likely

²⁶ For example, Alex Newman 'Linklaters, Hogan, Lovells and A&O lawyers join Competition Commission' *Legal Week* (London 11 April 2013).

²⁷ For example, an ongoing recruitment campaign has been instigated by the Law Society of England and Wales with the support of the Solicitors Regulation Authority to encourage more City lawyers to become judges, "Leading law firms sign up to judicial recruitment campaign" *The Law Gazette* (London 27 July 2012).

²⁸ Lord Neuberger made the following comment: "if ... women are not less good judges than men, why are 80 per cent or 90 per cent of judges male? It suggests, purely on a statistical basis, that we do not have the best people because there must be some women out there who are better than the less good men."

<http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/27206.htm>, JUSTICE, Judicial Diversity Report, Judicial Diversity Working Party, <https://justice.org.uk/our-work/areas-of-work/judicial-diversity/>, Lizzie Barmes and Kate Malleson, 'The legal profession as gatekeeper to the judiciary: Design faults in measures to enhance diversity' (2011) 74(2) *Modern Law Review* 245. For an interesting account of how judges are appointed in England and Wales see Kate Malleson and Peter H. Russell, *Appointing Judges in an Age of Judicial Power: Critical Perspectives from Around the World* (University of Toronto Press 2006).

²⁹ In the 2012 report *International Women in Law Summit – Setting the Agenda for Change*, one of the key recommendations made by the Law Society of England and Wales was to encourage

to have a negative impact on the career aspirations of women new to the profession.

Finally, if men's career progression continues to outpace that of women and their over representation at the top is left unchallenged, there can be little hope of change within the profession because its leaders will continue to be those who have the least personal interest in anything being different.³⁰ In this regard, the problem of men's over representation in top positions within large City law firms becomes one that is not specific to the legal profession but is part of a wider pattern of male over representation, and its resulting stalled female career progression, across professions and other institutions of power.³¹ As stated above, any study on men's over representation in law will therefore contribute to the wider debate about the role of women in public life.

3. Why focus on large City law firms?

Although City law firms may seem to be a narrow field of enquiry, the Square Mile within the City of London, home to most of these elite outfits, is fast becoming the centre of legal power in England and Wales. As the future of the Bar faces growing pressure with cuts to legal aid and increased court privileges given to solicitors, successful City solicitors are arguably wielding more influence than ever before.

In addition, sheer numbers can justify focusing on City law practices. Just less than 70 per cent of lawyers in England and Wales work in private practices, nearly half of which are located in central London.³² And despite only 1.9 per cent of these City of London private practices being defined by the Law Society as being 'large' firms (with 26 partners or more), they nonetheless employ 41.5 per cent of all solicitors in private practice and make 57.7 per cent of the total firm turnover.³³ This makes them the biggest and most profitable legal employers in the country.³⁴ Focusing on them therefore allows for more general conclusions to be drawn about solicitors' practices. And although these large City employers are unique in many ways, findings in relation to them are likely to be illuminating, including comparatively regarding the rest of the legal profession in England and Wales and, at the very least, within the Western world.

Also, large City law firms not only hire the largest percentage of lawyers in the country, they are industry leaders. These organizations command the greatest

mentoring and sponsorship programmes. See also Deborah Rhode, 'From platitudes to priorities: Diversity and gender equity in law firms' (2011) 24 *Geo. Journal Legal Ethics* 1047, 1071.

³⁰ Deborah Rhode, 'Balanced Lives for Lawyers' (2001-2002) 70 *Fordham L. Rev* 2201, 2217.

³¹ This wider issue is addressed in the recent McKinsey & Company report, 'Women Matter: Ten years of insight on gender diversity' (2016) <https://www.mckinsey.com/global-themes/gender-equality/women-matter-ten-years-of-insights-on-gender-diversity>.

³² Trends in the Solicitors' Profession 2017, note 18, reports that 66.9 per cent of lawyers in England and Wales work in private practice. Another study has the number of solicitors practicing in large firms, the majority of which are in the City, at approximately 55 per cent, see Mapping Advantages and Disadvantages, note 1, 26.

³³ Trends in Solicitors' Profession 2017, note 18, 26.

³⁴ Trends in the Solicitors' Profession 2017, note 18, 28.

influence within a number of key areas including regulatory and financial services. As noted above, senior lawyers from these large workplaces are frequently chosen to sit on regulatory boards, such as the Takeover Panel and the Competition Commission.³⁵ Lawyers from large law firms are also increasingly likely to be recruited for judgeships, making them powerful members of the legal community.³⁶ Consequently, these influential entities can be seen as well placed to lead and effect change within the legal industry.

Another reason to look at large law firms is that, encouragingly, they have expressed the desire to promote career progression amongst women lawyers.³⁷ Indeed, a growing number of initiatives aimed at changing static progress have been made. In the last ten years, many legal private practices in London, for example, have created programmes to help women progress through the ranks of their organisations.³⁸ Not impervious to the high cost of losing female talent,³⁹ these practices have engaged in serious diversity efforts.⁴⁰ Many have aimed to improve their numbers on recruitment and retention of female talent and a few have begun focusing on inciting those who have left to return.⁴¹ For this reason,

³⁵ Note 26.

³⁶ Barmes and Malleson, note 28, where the authors write that recruitment for judicial office remains almost exclusively composed of practitioners.

³⁷ Judith S Kaye and Anne C Reddy, 'The progress of women lawyers at big firms: Steadied or simply studies?' (2007-2008) 76 *Fordham Law Review* 1941, 1967. An example of this is Allen & Overy's part-time partner program, which aims to retain more women through to partnership. Under the scheme, partners are able to work a minimum four day week or be entitled to a maximum 52 days extra leave a year or be paid remuneration pro rata to the amount of time worked. See www.allenoverly.com/news/pressroom. Also, a number of articles in the legal press appear regularly on this subject, for example Richard Simmons, 'Gender diversity: beyond tick box initiatives' *The Lawyer* (London 29 June 2017) or 'Bakers aims to double female representation among equity' *Legal Week* (London 26 April 2013).

³⁸ The legal press regularly reports on large City law firms' diversity and work-life balance initiatives, for example Bridget Boateng, 'The law firm diversity debate: it's time to stop talking and start doing' *Legal Week* (London 15 January 2018).

³⁹ The cost of replacing an associate for law firms ranges depending on seniority and firm. Although figures from reliable sources are not available in the UK, one blog cites a City firm investing £50,000 of training in a two year qualified lawyer. <https://wardblawg.com/2016/08/12/law-firm-associate-solicitor-retention-tips/> A recent 2017 US association, The National Association for Law Placement report estimates the costs can be as high as US\$ 500,000 per associate. <https://www.nalpfoundation.org/bookstore>, Damien Black, 'How does associate attrition impact the bottom line?' (Evolve The Law December 1, 2017). A U.S. study shows that in 2001, the average cost of replacing an associate who has left ranges between \$200,000 to \$500,000, Joan C. Williams and Cynthia Thomas-Calvert, 'Balanced hours: Effective part-time policies for Washington law firms, The Project for Attorney Retention: Final Report' (2001-2002) 8 *Wm & Mary J. Women & Law* 357, 361.

⁴⁰ Although legal scholars are divided as to the merits of financial motivation as the driving force for improving figures on women lawyers, it is seen by some as having value. Opposed to it, Clare McGlynn analyses the business case for sex equality within the legal profession in "Strategies for reforming the English solicitors' profession: An analysis of the business case for sex equality" in *Women in the World's Legal Profession*, ed. U. Schultz and G. Shaw, (Hart Publishing, 2003). For a further discussion on the drawbacks of the business case approach to diversity, see Joanne P. Braithwaite, 'The strategic use of demand-side diversity pressure in the solicitors' profession' (2010) 37(3) *Journal of Law and Society* 442.

⁴¹ The two most recent initiatives in respect to this on the part of large City law firms have been the creation of consultancy arms and returnship programmes, both of which are further discussed in Chapter 4.

and with the resources and skills available to them, elite City legal employers have tended to be somewhat more transparent about their diversity programmes, such as flexible working arrangements, than other mid-sized or smaller firms.⁴²

Last but not least, one study suggests that it is lawyers working in large City law firms who tend to be the least satisfied with their careers.⁴³ Although they appear to be willing to address issues relating to work life balance and career progression, the fact that proportionally their employees may be the least content with work points to a possible flaw in their current approach and practices with respect to addressing career advancement.⁴⁴

Large City law firms are presented with the opportunity to lead on securing equal representation at the top for men and women of all ethnic backgrounds. They should embrace this challenge by taking advantage of the current international political climate and recent popular women's movements, such as #MeToo, both of which are lending a sense of urgency to incite change. They should also be encouraged by a growing acknowledgment, by men as well as women, of the gender disparity within the workplace, with one study showing that 85 per cent of men believe that double standards and biases against women are prevalent.⁴⁵ Relatedly and perhaps most importantly, large City law firms should be guided by the emerging male narrative which points to men's increasing willingness to be part of the solution in addressing gender inequality.

C. Research Questions

This study asks: Why do male lawyers working for large City of London law firms continue to enjoy advantages in career progression, working conditions and experiences, propelling them to the top of the profession, despite efforts by these firms that are aimed at supporting the equal advancement of female lawyers? This primary question will be answered by addressing the following five sub-questions.

⁴² However, most firms continue to keep a tight lid on their diversity and attrition figures. This is despite the Legal Services Board Guidance to all legal services providers to develop plans by the end of 2012 for gathering and publishing diversity and socio economic data. This guidance is based on the *Equality Act 2010* and the *Legal Services Act 2007* objectives for more transparency around potential discrimination and barriers including career progression underrepresentation.

⁴³ Sabrina Adler, Jenny Allen et al., 'Balancing Life and Law' The Law Firms Working Group (2007).

⁴⁴ Joshua Johnson, 'Associate attrition and the tragedy of the commons' (2008) 1 Crit. 48, 51. The author refers to the NALP Foundations For Law Career Research and Education & the American Bar Foundation 2004 study 'After the JD: First Results of a National Study of Legal Careers' where 45 per cent of respondents in U.S. law firms of 101 to 250 lawyers thought they would change jobs within 2 years and 55 per cent of respondents in law firms of 251 and more lawyers reported they would leave within 2 years.

⁴⁵ Jemima Olshawski, *Sex Equality, State of the Nation 2016*, Fawcett Society. This study also shows that 51 per cent of men believe more can be done for women's equal opportunities at work.

1. To what extent do male lawyers working for large City law firms benefit from advantages in career progression, working conditions and experiences compared to their female colleagues?
2. How have large City law firms thus far addressed the differences in career progression, working conditions and experiences of men and women lawyers working for them?
3. Given the limited success of large City law firms' initiatives in curbing differences in the career progression, working conditions and experiences of men and women lawyers working for them, to what extent is men's over representation at the top of City law firms linked to cultural realities, such as normative gender roles?
4. To what extent is men's over representation at the top of City law firms linked to organizational structures and working practices within large City law firms?
5. To what extent can we pin our hopes for progress on men, and namely millennial men, as individual agents of change?

D. Research Strategy and Methodology

In order to address these questions I have examined historical, quantitative and qualitative facts and data about the legal profession and studied analyses and interpretations of those facts and data as well as drawing on a wide range of theorizing about society, gender relations and organizational life. I have devised and tested hypotheses extracted from these literatures and added qualitative analysis of primary data collected through an interview study with practicing solicitors and members of law firm management. Specifics of this research methodology are set out below.

1. Research strategy

(i) Feminist legal theory and interpretivism

Where applicable, this study draws on feminist legal theory, namely post structural feminism, and its critique of the law and the legal profession's objectivity and impartiality as a broad explanation for behaviours and attitudes. This theory and its critique are particularly useful when considering male solicitors' over representation in positions of power within the legal profession, as their positioning has often been justified by using these two very notions.

In using feminist legal theory, an interpretive methodology is necessarily adopted. Interpretivism, in its most basic form, recognises that social sciences and the study of people and their institution are fundamentally different to

natural sciences,⁴⁶ such that research and analysis of qualitative data require “[...] the interpretation of meanings made by both the social actors and by the researcher.”⁴⁷ As it is feminist legal theory’s principal aim to critically interpret legal practices rather than simply rationalise or externally critique them, its theories are seen to form part of interpretivism.⁴⁸ Feminist views, which argue that there are strong links between theory and practice, will be adopted in this study.⁴⁹

(ii) Social constructivism

In addition, elements of social constructivism are applied. Generally, constructivism “[...] implies that social phenomena and categories are not only produced through social interaction but that they are in constant state of revision.”⁵⁰ This has encouraged me to think of ways in which social reality is the result of actions by social actors “[...] rather than something external to them and that totally constrains them.”⁵¹ In this regard, social constructivism challenges the idea that both organizations and cultures are pre-given and that the actors who play a role within them are uninfluenced by the organization or the culture itself. Applied to this study of legal career progression, working conditions and experiences and the cultural and organizational barriers often at play within large City law firms, social constructivism is particularly relevant. From a cultural perspective, it provides a useful framework within which we can assess lawyers acting as individuals within a given social context. When looking at culture, in this case in a wide societal sense, constructivism recognizes that reality:

“[...] persists and antedates the participation of particular people and shapes their perspectives, but it is not an inert objective reality that possesses only a sense of constraint: it acts as a point of reference but is always in the process of being formed.”⁵²

From an organizational point of view, when probing City law firms, social constructivism helpfully argues that an organization’s social order is often and at

⁴⁶ Alan Bryman adds that: “The study of the social world therefore requires a different logic of research procedure, one that reflects the distinctiveness of humans as against the natural order”. Alan Bryman, *Social Research Methods* (Oxford University Press 2012) 28.

⁴⁷ Matthew B Miles and A Michael Huberman, *Qualitative Data Analysis: A Methods Sourcebook*, (Sage Publications 2013), 8.

⁴⁸ Emily Jackson and Nicola Lacey, ‘Introducing feminist legal theory’ in James E Penner, David Schiff, Richard Nobles (eds) *Introduction to Jurisprudence and Legal Theory* (Oxford University Press 2005), 785. Jackson and Lacey explain internal and external critiques as follows: “An internal analysis seeks to rationalize and explicate the nature of law and legal method from the point of view of legal reasoning or legal practice itself. In contrast, adopting an external approach means self-consciously standing outside the legal practices and reflecting on the extent to which they meet certain basic normative political objectives.”

⁴⁹ Ibid.

⁵⁰ Bryman note 46, 33.

⁵¹ Bryman note 46, 34.

⁵² Ibid.

least partially created by negotiated and agreed upon patterns of action by actors within it.⁵³ It posits that:

“[...] a preoccupation with formal properties of organizations (rules, organizational charts, regulations and roles) tends to neglect the degree to which order in organizations has to be accomplished in everyday interaction [...].”⁵⁴

Much like interpretivism, in recent years, social constructivism has also included the notion that a researcher’s own accounts of the social world are constructions. In other words, the researcher always presents a specific version of social reality, rather than one that can be regarded as definitive or neutral.⁵⁵ I acknowledge this position and in researching and writing this study I have been self-reflective as to my own values, biases and assumptions brought to the field which may have influenced how and what I see. These include my personal and professional background as a white, middle class, heterosexual female who practiced corporate law in a large City law firm for eight years. As to the feminist legal theory approach of this study, I recognize the impossibility of neutrality and indifference to the subject matter of this study and that I have conscious partiality.⁵⁶

So both in terms of culture and organization, social constructivism invites me to see social order as something which is in a constant state of flux and thus subject to change. When exploring the dismantling of gender inequality, social constructivism therefore provides, amongst others, hope that things can change for the better.⁵⁷

2. Research methods

(i) Literature review

My research first consists of a review of scholarly writings on the four principal themes I address in this study. The literature reviewed on three of these themes, namely power (Chapter 2), working time and gendered usage of time (Chapters 4 and 5) and on men and masculinity (Chapter 7) has allowed me to theorise on how each of these themes, in their own right, are linked to an excess of men in the higher echelons of the legal profession and how the issue of over representation may be addressed. Consequently, the main purpose of this literature review was to inform and assist in advancing a theory on the

⁵³ Bryman note 46, 33.

⁵⁴ Bryman note 46, 34.

⁵⁵ Bryman note 46, 35.

⁵⁶ Maria Mies, 'Towards a methodology for feminist research' in Martin Hammersley (ed.) *Social Research: Philosophy, Politics and Practice* (Sage 1993).

⁵⁷ Yet, feminist legal theorists warn us that, although identifying discrimination in social action opens up possibilities for political and social change, the fact that what has been socially constructed as real, such as gender stereotypes, is sometimes the most resilient to change, Jackson and Lacey note 48, 785.

relationship between each of these three themes and the question of men's over representation in law.

On the other hand, my review of literature regarding lawyers and the legal profession (Chapters 3 and 6) was foundational for my hypothesis building. The body of literature available on this subject is vast and much of its focus has been on women lawyer's under-representation and the barriers they face with respect to career building and progress. Building on prior work,⁵⁸ I have divided my review between literature that examines the cultural barriers women must overcome in order to succeed as lawyers, as well as the structural barriers these same women face (although admittedly, the literature reviewed was not always neatly divided along these lines). The cultural barriers include the role women play in society as dedicated 'carers', front-line parents and managers of household duties. Writings on the structural barriers include the challenges women lawyers face in their career progression such as long working hours, making themselves available for business development events and the partnership process.

From this literature review, I have formed three key hypotheses, which I have tested and which have guided the two other forms of methodology that I employ and discuss below.

Hypothesis 1. The first hypothesis I test is that patriarchal power and normative gender roles continue to make women the 'house worker' and 'ideal carer' and men the 'breadwinner' and 'ideal worker'. These norms are to be held at least partly responsible for the advantages men City lawyers' benefit from in comparison to their female colleagues.

Hypothesis 2. The second hypothesis tested is that flexible, part-time and returnship programmes as well as other initiatives created by large City law firms to assist with career progression have had limited positive impact on the careers of women (and some men) as the distribution of power within these law firms is still based on a masculinist model. This creates an organizational environment where opting for such programmes is still seen as a sign of a lack of commitment leading to an impression of lack of the merit needed to make it to the top of the profession.

Hypothesis 3. Finally, the third hypothesis tested is that major City law firms operate as gendered organisations, with gendered working practices, generally creating organizational advantages for men. As with cultural norms, the gendered nature of these organisations also in part explain why men dominate top positions within large City law firms.

(ii) Existing data on men and women City lawyers and on City law firms

In order to further test the above hypotheses, it was necessary to survey existing data on large City law firms and the lawyers working for them in order to make

⁵⁸ Camille Joly, 'The Attrition of Women Lawyers' (MA Res. thesis, Queen Mary University of London 2013)

sense of the landscape of my study. Collecting this data also served to expose what is already known and unknown with respect to my research questions.

Consequently, I first examined data on women and men lawyers in England and Wales generally. These figures explain the male to female ratio of law school graduates as well as those graduates who opt for private practice. Secondly, I collected published data on solicitors working for large City law firms with respect to the two specific topics of this study, career progression and working conditions and experiences. Career advancement figures include numbers on the ratio of men and women who are members of management committees, partners and associates.

Thirdly, data on solicitors was collected with respect to working conditions and experiences within elite City entities. This includes figures on salaries, access to top clients, business development, mentorship programmes as well as usage of flexible time policies.

The collection of this data was achieved through research of secondary sources, including the Law Society of England and Wales website, studies by the Solicitors Regulation Authority and other governmental and regulatory and professional bodies as well as literature published by large City law firms, like pamphlets and recruitment documents. Secondary data was also collected from large City law firm websites and other interest group websites whose focus is on equality and diversity, such as the Fawcett Society, Working Families and the Fatherhood Institute.

However, access to data on large City law firms remains limited. Despite the Legal Services Board 2011 regulation requiring the collection and publication of data on workforce diversity, large City employers remain opaque about diversity figures.⁵⁹ To the extent data was not available from existing secondary sources, it has formed part of the data gathered through semi-structured interviews.

(iii) Semi-structured interviews

I undertook 30 semi-structured interviews with men and women lawyers working or having worked for large City law firms as well as members of the managing bodies of large City law firms. These interviews were guided by an inventory of issues drawn from the hypotheses set out above and regarding missing information gathered with respect to existing data. The list of questions asked to interviewees is found in Appendix 1.

Interview study method: Sample, methodology and mode of analysis

a) Questions: Before embarking on the interview process, I first decided upon a series of issues I wished to cover during the course of my interviews. My choice

⁵⁹ Steven Vaughan questions the value of this regulation stating that corporate responsibility and corporate governance have not given way to much improvement in clients holding firms accountable for their diversity performance. Steven Vaughan, 'Going public: Diversity disclosures by large U.K. law firms' (2015) 83 Fordham Law Rev 2301.

of issues was mostly informed by my literature review and what I concluded needed to be further researched and probed in respect to the career progression of City lawyers. The issues I chose to focus on were no doubt also partly to do with my own experiences as a former City lawyer.

With that in mind, I came up with ten open-ended questions. My plan was to prefer an open and friendly style of interviewing with a view to promoting a free flowing conversation where the focus was not so much on data collection but more on gathering commentary from interviewees on the business of being a lawyer and progressing professionally as such in a large City firm.⁶⁰ I therefore chose to let interviewees answer questions with as little intervention as possible, other than some further probing where I felt it was necessary. When interviewing senior managers of law firms, I asked a different set of questions the focus of which was more general in order to get their views of the legal industry and women and men's progression within it as well as what their firm was doing to address the issue and whether they thought they were being successful. These questions are also set out in Appendix 1.

b) Sample: Interviewees were enlisted through a combination of methodologies. My objective was to get a sample of interviewees that varied in both gender, ethnicity and levels of seniority, including law firm management. I also wanted to speak with lawyers who worked or had worked for various large City firms. Finally, I also aimed to interview lawyers who have had non-linear career paths, such as lawyers who had worked or were working as consultants to large City law firms. In order to obtain this varied sample group, I first tapped into my own professional network. This allowed me to obtain initial participation from peers who are now senior associates, partners and managers of large City firms. By using the snowball methodology I also gained access to more junior lawyers. Finally, as I felt my sample lacked balance in terms of male lawyers who have had non-linear careers, I used the social network tool LinkedIn, to send invitations to lawyers who seemed to fit this profile.

c) Profile of interviewees:

(i) Elite interviewees: The thirty men and women whom I interviewed are considered 'elite' interviewees according to some definitions. Whether an interviewee is considered elite will depend on his or her individual circumstances and position. Lawyers have often been defined as elites on the basis that they are "highly skilled, professionally competent and class-specific" individuals.⁶¹ A number of varying factors to consider when conducting an elite interview then apply, such as the value elites give to being asked open-ended

⁶⁰ Ann Oakley, 'Interviewing women: A contradiction in terms' in Clive Seale (ed.) *Social Research Methods: A Reader* (Routledge 2004), 262.

⁶¹ But it is worth noting that the term 'elite' can mean many things in different contexts, which goes to explaining the range of definitions. W.S. Harvey, 'Strategies for conducting elite interviews' (2011) 11(4) *Sage Journal* 433. Other definitions of elite are narrower, see R. Mikecz, 'Interviewing elites: Addressing methodological issues' (2012) 18(6) *Qualitative Inquiry* 482, 485.

questions that they can then expand on.⁶² The establishment of trust can also be a factor in interviewing elites.⁶³ Because of my professional background, I found that establishing this trust was not a problem, as all interviewees were aware that I am a lawyer having worked for an organization similar to theirs, in a senior role. All were aware that I am researching the issue of career progression within City law firms, hence my positionality was clear to each of them as one which is non-hierarchical.

(ii) Gender: My interview study had a fairly equal gender representation. Of the thirty interviewed, twelve were men and eighteen were women. Four were from a BAME background (three women and one man). Most of my interviewees were married with children. All men were married and all but one of these men had children. Four women were not married and did not have children and one woman was married but did not have children. Of all the men interviewed eight of them had spouses who did not work outside the home, although all of these spouses had had a previous professional career. Of the women interviewed who had spouses, two had spouses who worked from home.

(iii) Seniority: Of my interviewees, three were members of the firm management team (as well as being partners). All three were men. Two other were not partners but they were part of their respective firm's diversity committee. One is manager of the firm's consultancy group. 14 of my interviewees were partners in a large City law firm, 10 of whom were men and 4 were women. In addition I interviewed three women who held the position of counsel. I also interviewed six senior associates, one man and five women and two junior associates, both women. Finally I interviewed one consultant who had previously worked as a full time partner for her firm. All were currently working at large City firms, bar two women who had left within the last 18 months to work either in government or at a bank.

(iv) Law firms and areas of practice: Interviewees came from nine large City law firms and although most were UK law firms, some were large offices of major American law firms long established in London. By large law firm, I adopt the Law Society of England and Wales' definition, meaning a firm with 26 or more partners. However, more than half of my interviewees worked for three of the five largest London firms, which on average are far larger than that, with over 500 partners in London. A disproportionate amount of interviewees, almost 80 per cent, practiced or had practiced in the area of finance law, including general corporate law, mergers and acquisition, banking law, leveraged finance and private equity. The other twenty per cent were litigators or worked in the area of dispute resolution.

d) Interviews: I conducted a total of 30 interviews from May 2016 to March

⁶² For example, elites tend to prefer the option of expanding on answers, see Mikecz note 61, p.483. As certain elements of each of these interviewees' position would make them elites according to certain definitions of the term, I applied some, but not all, of these suggested factors during their interview process.

⁶³ Harvey, note 61, p. 432. On the issue of trust, see also R. Mikecz and S. Jones, 'Depth Interviewing' in Clive Seale (ed.) *Social Research Methods: A Reader* (Routledge 2004).

2017. One interviewee requested to be interviewed a second time, after having changed roles and one interview was conducted with two people at once. Each interview lasted on average between 45 minutes to one hour and a half. Interviews were recorded and then recordings were sent off to a professional transcription service. All interviewees, except one, agreed to be audio recorded.⁶⁴ Three interviewees requested and were sent their transcript for review. None made any changes to the transcript and none refused for parts of the transcript to be used.

The interviews were conducted on an anonymous and confidential basis. Interviewees spoke on a personal basis. I chose not to send interviewees the questions they would be asked in advance (and no one requested I do so) as I wanted a certain amount of spontaneity, and as mentioned above, wished for the interviews to be open ended and conversational in nature. However, when confirming interviews, I gave interviewees a summary of my research and a list of topics that would be discussed during the course of the interview. Interviewees were given the choice as to where they preferred the interview to be held. Many of the interviewees opted for a conference room at their place of work. However, others preferred meeting in a nearby coffee shop. Both settings worked equally well. Following these interviews, I sent emails to two interviewees asking them to either clarify or expand on what they had said during the course of their interview to which they responded.

e) Data analysis: As transcripts were sent to me from the transcription service, I first reviewed them for sense and grammar. I then inputted each transcript into NVivo for analysis. NVivo is a qualitative data analysis software that allowed me to organize, code and analyse my data. Coding in NVivo is done through nodes. As I read through each transcript I identified recurring themes and created a series of corresponding nodes. Under each of these nodes, I then cut and pasted parts of the interview that touched upon the node. This was very useful as under each node, I had a compilation of quotes from all interviewees who had discussed the theme during the course of our interview. Nvivo also provided me with the percentages of interviewees whose comments fell under each node. I only used these percentages as guidance rather than citing them in the study.

Before discussing these themes and my findings in general, I note that given my sample size and the qualitative nature of the data, it is not possible to form definitive quantitative conclusions based on the information gathered. Also, as my sample was insufficiently diverse in terms of race and class, no conclusions can be drawn from those intersectional axes. However, these interviews allowed for qualitative conclusions as they exposed views held by men and women that constitute evidence of the varying attitudes towards men's over representation in the higher echelons of private practice in the City of London.

⁶⁴ When requesting this from interviewees, I highlighted that recording the interview would allow me to concentrate on the questions asked as well as the conversational exchange. I also knew, but did not mention that it would have the added advantage of permitting me to observe things such as body language and facial expressions. Harvey, note 61, 436.

E. Main Findings

There is no single and definitive explanation for the persistent advantages many men continue to benefit from within the legal profession. The issue is complex and multi-layered. It has ties to the inequality present in society at large which also permeates the every day operations of private legal practices. For this reason, this thesis is structured around both macro and micro issues that together I argue make up the reasons why gender inequality persists in City law firms.

The study's main findings revolve around notions of power, culture and structure. My first finding relates to the umbrella concept of power. In Chapter 2, I argue that in order to make sense of the stubborn over representation of men in the higher echelons of large City firms, it is first necessary to take a wide approach in order to account for the enduring role of patriarchal power within modern capitalist societies. Patriarchy's sustainability, I suggest, is to do with a cyclical relationship, that I term 'the cycle of patriarchy', between the gender binary, hegemonic masculinity and the ensuing invisibility of the male norm. Although each of these elements has been the subject of numerous academic writings, the cyclical and self-perpetuating relationship that I argue exists between them has received little attention. I contend that this relationship helps to explain why male power in all aspects of society, including the workplace, is proving so difficult to dislodge. It also enhances our understanding of why certain groups of men manage to hold on to and accumulate power. In order to challenge this social order, I argue that patriarchy must remain on the feminist agenda and must continue to be called out and challenged collectively by women and men. It is only within this broader forum, rather than at the individual level as seen in much popular culture, that the commonalities of men that lead to their disproportionate hold on power can best be identified and addressed and that the multiple dimensions of gendered power relations and patterns of disadvantage can be monitored.

My second finding relates to the extent to which modern City firms have become overwhelmingly focused on profit making above all else. In Chapter 3, I explain that City firms have come to inhabit a world where the demise of occupational expertise coupled with the onset of neoliberalism and globalization have ushered in an acutely competitive environment. In this modern legal market place, I find that City firms' have become, in many ways, men's arenas more so than ever. The main indication of that is how the time lawyers give to servicing their firm's clients and growing firm revenue has become, by far, their most valued asset. This finding is supported by primary interview data that shows the extent to which City lawyers recognize this to be true and how male City lawyers accept this reality much more readily as an inevitable part of their professional progress than their female counterparts.

In Chapter 4, I look at how the hyper competitive environment discussed in Chapter 3 has also created a relatively recent and somewhat incompatible requirement for City firms to engage in a number of diversity initiatives to address gender inequality. However, I find that these efforts have had a limited

impact on helping women forge ahead professionally. I conclude that, fundamentally, this is because these programmes are largely based on flexible and reduced usage of working time. In other words, they focus on employees opting out of long hours by offering them either part-time positions or support roles that do not generate income for the firm. Users of these initiatives, who remain mostly women, are therefore perceived as unable to give as much time to work as their other (male) colleagues. In a market where time is the most prized commodity, I contend that this leads to diminishing their value as employees thus hindering their professional advancement. These findings are supported by empirical data that indicates how most lawyers working for top tier firms believe that part-time work is incompatible with servicing clients and therefore unsuited to those with aspirations for career advancement.

I find that major firms' diversity programmes therefore represent a paradox in relation to time: although time spent working remains an essential requirement of the successful lawyer, in the last decade or so, law firms have engaged in an ever-growing discourse of flexible or agile work and reduced hours to promote gender diversity. The result of this contradiction is that these initiatives have failed to produce any real improvement in reducing men's over representation in City firms.

A further finding, set out in Chapter 5, relates to gender norms and how the construction of City lawyers' home life is of particular relevance to men's occupation of the top positions within City firms. Turning once again to the theme of time, this chapter sets out findings with respect to how normative gender roles operate to make men, including male private practitioners, significantly more time rich than their female colleagues with caring responsibilities. This discrepancy in availability of working time not only leads to unequal opportunity, which sees men progress more quickly and in much greater numbers to the higher echelons of legal industry, it also translates into unequal pay. Regardless of lawyers' higher socio-economic standing, I find that traditional gender roles and the effect these have on the time women and men lawyers have available remain one of the primary impediments to equality within the legal workplace.

Chapter 6 presents findings on the extent to which private practice firms, as gendered organisations, continue to operate on the basis of the unencumbered male worker. Building on the notion of masculine open availability set out in Chapter 5, this chapter exposes how firms internal structures around working hours continue to benefit male lawyers and disadvantage women lawyers. More specifically, their internal processes of promotion and compensation emanate from a masculinist culture. Therefore, the amount of billable hours a lawyer works generating profit for the firm and the time spent building a client base through business development and networking are equated to commitment, competence and ambition. For those who are able to fulfill these time demands, this results in professional advancement.

However, not being longitudinal, my study can only provide a limited view of the career progression and working conditions and experiences of today's men and

women City lawyers. Nonetheless, it does so at a time when gender is increasingly seen as the result of socially constructed ideas about the behaviour, actions and roles a particular sex performs.⁶⁵ In Chapter 7, I therefore look at the extent to which this changing landscape has had an impact on the working life of City lawyers. I do this, in part, by looking at shifting ideas around masculinity and what it is to be a man. Drawing on critical studies of men and masculinities literature, I find that although there is a recognition that the new generation of lawyers, Generation Y, takes a different approach to career planning than previous generations (Gen X and Baby Boomers), this has yet to have any notable impact on lawyers' perceptions of the profession. I support this finding with data that points to how a significant number of lawyers still perceive men and women to behave differently, in stereotypical ways, in the legal work place. For instance, gender differences with respect to confidence and self belief in career prospects is seen by many as a key explanation for the discrepancy in career progression.

The sum of these findings suggests that large City law firms remain resilient to meaningful change. They continue to focus almost solely on profitability. Although some are expressing work-life conflict, most male lawyers thrive on this model whilst many women, as lead parent and household manager, continue to struggle. Because of their roles within the home, women lawyers remain the primary users of part-time work, triggering stigmatisation of lesser professional commitment and career limitation. Men and women lawyers' beliefs around gendered behaviour also seem to continue to fall along stereotypical lines, dampening hope that the new generation of millennial lawyers will disrupt these stagnant waters.

Perversely, the only notable change relating to gender equality within large City law firms seems to be the narrative around it. More than ever, law firms are voicing their dedication to solving disparity within their ranks. Yet the impression is that this enthusiasm remains confined to initiatives that do not challenge or pose threat to revenues and, relatedly, existing working structures based on male norms. Within those boundaries, large City law firms are more than happy to support individual women in what is still very much perceived as 'their' struggle to gain equal access to the higher echelons of private practice.

And although these findings are disheartening, they are an important reminder that City law firms, as the biggest legal employers in England and Wales, must continue to be held to account for their poor record on diversity at the top of the legal profession, including gender diversity. As industry leaders, they must be encouraged and indeed pressured to move beyond their comfort zone and initiate real change, even if it means a dip in the bottom line.

⁶⁵ World Health Organisation's definition of gender which states that gender, as opposed to sex, represents the socially constructed characteristics of men and women.
<http://www.who.int/gender-equity-rights/understanding/gender-definition/en/>

CHAPTER 2

A. The tenacity of men's power and the cycle of patriarchy

It is generally agreed that historically and still today, white men hold most of the socio-political and economic power in advanced western capitalist societies.¹ Certainly in the United Kingdom, men still represent a majority of the country's politicians and they are still overwhelmingly hired as head of major financial organisations and institutions.² They are also considerably over represented in the higher echelons of the professions.³ But, given the general advancement of British women in the last century, why have men persistently held on to the majority of power both culturally, in our day-to-day lives and in the workplace?⁴ Within this broad question lies my main research question: why do male lawyers working for large City firms continue to benefit from greater advantages in career progression, working conditions and experiences than their female colleagues?

Masculine hold on power is a crucial factor to examine when unpacking gender inequality both generally and within the workplace. A particular advantage of using this lens to examine disparities in gender relations is that it encourages us to hone in on men and male practices, rather than on women. As men remain the primary holders and beneficiaries of societal and organizational power, a discussion on power prompts us to examine the masculine. This focus arguably chips away at the long-standing invisibility men have benefited from within the debate on gender inequality, making them the focus of enquiry, thus making them more visible.

¹ A recent 2017 report on equality reveals that UK inequality is as bad as it was 10 years ago, 'The Colour of Power' Operation Black Vote and Green Park, 2018

<http://www.thecolourofpower.com/colour-of-power/>. This study indicates that 97 per cent of Britain's elite is white and women represent just 23.6 per cent of that elite.

²Ibid. This study will mainly focus on the United Kingdom. However, as there are similarities between the UK and other advanced capitalist societies, such as Australia and the United States, and as many scholarly writings reviewed cross-refer to these jurisdictions, my observations will at times be based on sources relevant to these other advanced capitalist societies.

³ Judicial Diversity Statistics, 2017. <https://www.judiciary.gov.uk/wp-content/uploads/2017/07/judicial-diversity-statistics-2017-1.pdf>, Sundeep Aulakh, Andy Charlwood, et al., 'Mapping Advantages and Disadvantages: Diversity in the Legal Profession in England and Wales' Final Report for the Solicitors Regulation Authority October 2017, Bar Standards Board 2018 <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/queen's-counsel-statistics/>, Jane Ellis, Ashleigh Buckett, 'Women in Commercial Legal Practice' IBA Legal Policy and Research Unit December 2017.

⁴ Women began entering higher education, the work place and the professions in very small numbers after the Second World War. It is not until the 1970s that they did so in significant numbers. For an interesting account of the first women who gained access to the legal profession, see Mary Jane Mossman, 'The first women lawyers: Piecemeal progress and circumscribed success' (2007) 45(2) Osgoode Hall Law Journal 379.

Women and women's lives have been the subject of most studies on gender inequality. Today most lines of enquiry continue to focus on issues ranging from the degree to which women are under represented in positions of power,⁵ to the barriers they face in their struggle for power,⁶ to what women must 'do' to break down these barriers in order to alter their own under representation.⁷ Although this research remains vital in exposing women's realities and how they experience power imbalances, it can also give credence to the idea that women are taking something to which they are still not quite fully entitled.⁸ This near singular focus on women is also often in lieu of holding men to account. Too frequently neglected are questions as to what systemic changes men and society in general must implement to alter masculine over representation in positions of power and influence. Indeed greater self-reflection could lead to men asking themselves game changing questions such as how to remove barriers to men's movement into 'feminine' roles?⁹ This gap in the debate on gender is perplexing as few would contest that the very foundations of gender inequality largely consist of male behavior and practices.¹⁰ But somehow, men and their majority hold on power have largely remained the elephant in the room.

This overarching attention to women rather than men must be curbed as it is contributing to the stalled progress in redressing gender inequality.¹¹ First

⁵ Rainbow Murray, 'Quotas for men: Reframing gender quotas as a means of improving representation for all' (2014) 108(3) *American Political Science Review* 520. In her article Murray calls for a 'normative shift' in looking at the problem of overrepresentation by men in politics arguing that the quality of representation is negatively affected by having "too large a group drawn from too narrow a talent pool."

⁶ A few examples include H. Herminia Ibarra, Robin J. Ely and Deborah Kolb 'Women rising: The unseen barriers' (2013) *Harvard Business Review*, Teresa Beiner, 'Not all lawyers are equal: difficulties that plague women and women of colour' (2008) 58 *Syracuse L. Rev.* 317, Nancy J. Reichman and Joyce S. Sterling 'Sticky floors, broken steps and concrete ceilings in legal careers' (2005) 14 *Texas Journal of Women and The Law*, Lauren Stiller Rikleen, *Ending the Gauntlet: Removing Barriers to Women's Success in the Law* (Thomas Legal Works 2006).

⁷ In popular culture, this translates into countless 'self-help' books which encourage women to 'take control' of their careers (and their lives in general), making them largely responsible for their own lack of career progression. An example is Sheryl Sandberg's book *Lean In*, which encourages women to believe that the fate of their careers is wholly within their control. Sandberg urges women to put themselves forward for promotion, ask for wage increases and generally reinvent their working lives. Sheryl Sandberg, *Lean In: Women, Work and the Will to Lead*, (Alfred A. Knopf 2013). However, others recognize that this is not so simple. Referring to Sandberg's book, Anne Marie Slaughter states: "The problem though is that it's often just not true. We often cannot control the fate of our careers and families; insisting that we can obscures the deeper structures and forces that shape our lives and deflects attention from the larger changes that must be made." Anne Marie Slaughter, *Unfinished Business*, (One World Book 2015), p. 14. However, Slaughter then goes on to pursue a similar discourse to Sandberg's. She devotes a number of chapters to telling her readers (which she infers throughout the book to be female) to 'change the way you talk', and to 'plan your career', the onus once again being very much on women to instill change.

⁸ Mary Beard, *Women and Power: A Manifesto* (Profile Books 2017).

⁹ Sandra Friedman, 'Still a 'stalled revolution'? Work family experiences, hegemonic masculinity and moving toward gender equality'(2015) 9(2) *Sociology Compass* 140.

¹⁰ Richard Collier, 'Researching men, masculinities and law: On sources methods and the "man question" (2015) 15(1) *Legal Information Management*; Cambridge 19.

¹¹ Note 1.

because it validates men as the 'norm', the benchmark by which everything else is measured whilst women and other non-dominant groups continue to appear as the 'other'. Men's disproportionate numbers in positions of political and institutional power, their higher earnings, and their greater levels of recognition (their activities being regarded as more important) represent the taken for granted status quo. Second, because a strong female focal point tends to promote gender issues as 'women's issues', giving men the option to ignore or dismiss them. And finally, because so many men choose to opt out of the debate on gender, it falls largely on women to shift gendered power structures when they often have the least power to do so.¹²

However, in my discussion on male power, I highlight an important tension in scholarly views between structural masculinity and the agency of diverse men and masculinities.¹³ This distinction, found within a growing body of academic writings, lies in an ideological theorization of masculinity as gender dominance versus a more social agenda that advocates a greater focus on actual men's experiences, actions and behavior. This is primarily based on recognition that within the dominant male group there are varying types of men. Nonetheless, these two views are not necessarily at odds and both are useful to this study on masculine over representation within the legal profession. As advanced by Richard Collier, masculinity, power and the gendered experiences of individual men together create a 'matrix of social relations'.¹⁴ A greater appreciation of this matrix and the complex interplay of gender relations have the potential to ignite meaningful change if recognized and taken on board by mainstream society. Consequently, in this chapter on power, I discuss the first aspect of this take on masculinity and men, or patriarchy as "the dominant collective within a gender system."¹⁵ Later, in Chapter 7, my discussion turns to men and the agency of men with respect to social and organizational practices.

My argument below lies in showing that, in addition to being endemic, male power can also be seen as circular and self-perpetuating. I allege that this tenacious cycle, which I term 'the cycle of patriarchy', is based on an enduring and recurrent relationship between patriarchal power, the gender binary, hegemonic masculinity and the ensuing normative invisibility of men. Although other aspects of society serve to maintain patriarchal power, such as politics, the media and certain institutions, I contend that this ideological cycle goes to the very foundations of patriarchy. As a conceptual framework to this study, I argue that it contributes to understanding why gender inequality is proving so difficult to dismantle in both society generally and in the workplace. In this chapter, I support this conceptual framework by critically reviewing feminist literature that exposes patriarchal power as a potent social practice, which permeates our

¹² Murray note 5. Murray makes this point with respect to women's entry into politics but her argument can be used more widely to include the burden of proof which falls on women generally trying to dislodge men's overrepresentation within any cultural or organizational structure.

¹³ Niall Hanlon, *Masculinities, Care and Equality* (Palgrave Macmillan 2012).

¹⁴ Richard Collier, *Men, Law and Gender: Essays on the 'Man' of Law* (Routledge 2010).

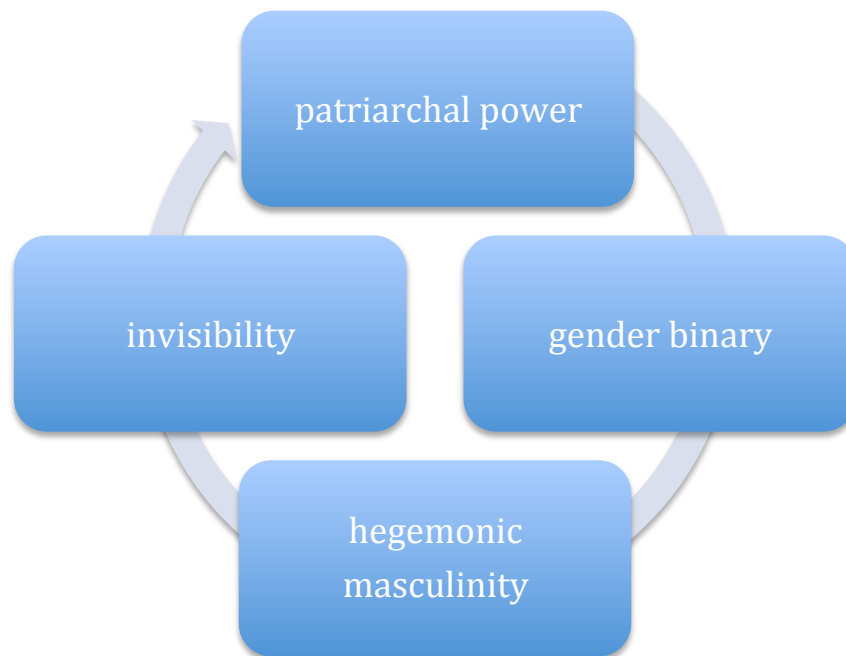
¹⁵ Ibid.

everyday lives and fuels inequality. More specifically, I concentrate on feminist writings to do with each element of the cycle of patriarchy, namely power, the gender binary, hegemonic masculinity and the concept of invisibility. I posit how each of these works to substantiate and reinforce the other.

B. The cycle of patriarchy as a conceptual framework

The power and privilege enjoyed by men in advanced Western capitalist societies is, I hold, maintained through a cycle of persistent ideas relating to gender. And although each element of this cycle has been the subject of innumerable writings, the cyclical and self-perpetuating relationship that I argue exists between them has received little attention.

The etymology of the word patriarchy is ‘the rule of the father.’ It originates from a Greek word meaning ‘father of the race’.¹⁶ In modern times, its basic usage is to refer to social systems in which power is primarily held by men.¹⁷ But how has this order of male power and privilege managed to survive centuries of social and economic change and progress?



I argue that it is through a tenacious cycle where, first the age-old idea of gender is still perceived as something that is largely binary. Even though the dualism of gender roles has receded in recent decades, I advance that most men (and many women) still adhere to certain forms of traditional ideas and behavior around what it means to be a man (and a woman). Secondly, I maintain that this dualist ideology breeds and promotes a specific and acute type of masculinity coined by

¹⁶ www.etymologyonline.com.

¹⁷ www.collinsdictionary.com.

R.W. Connell as 'hegemonic masculinity'.¹⁸ This form of gender power was initially defined by Connell as "[...] a configuration of gender practices, [...] which guarantees (or is taken to guarantee) the dominant position of men."¹⁹ Although constantly contested and in flux and not performed by all men all of the time, Connell posits that this model of maleness is used as an ideal against which other types of masculine behavior and performance are often measured.²⁰ Thirdly, I assert that the doing of this masculine hegemony, albeit inconstant, in turn feeds into and sustains a societal gender order where men are the norm and hence their monopoly on power is invisible. Challenges to this gender order by non-dominant groups including women, who by definition are 'the other' or the 'visible', will often serve to reinforce it (to the extent they are not silenced).²¹ This I argue triggers a circular pattern, whereby the reinforced power remains with the dominant masculine whose interests lie in confirming and maintaining binary ideas of masculinity and femininity and from which the hegemonic male is a powerful offshoot (and against which other males measure their behavior). This power results in male normativity and the invisibility of male power. And so goes the cycle.

In support of this conceptual framework, I unpack each of these cyclical elements in greater detail below.

C. Defining 'power' for the purposes of this study

Power, of course, is a very broad concept that transcends psychological, social, political and economic worlds, amongst others.²² There are many frameworks for analysing power and a myriad of scholarly writings on theories of power. Generally, these theories explore how power, be it social, political or economic, is played out to establish, secure and maintain dominance or influence over others

¹⁸ R.W. Connell, *Masculinities* (Polity Press 1995).

¹⁹ Connell note 18, 77. Connell's initial definition of 'hegemonic masculinity' has been the subject of much criticism. Connell addressed these in an article written with J.W. Messerschmidt, R.W. Connell and J. W. Messerschmidt, 'Hegemonic masculinity: Rethinking the concept' (2005) 19(6) *Gender & Society* 829. This work is further discussed below. In her book *Gender and Power*, Connell theorises on gender regimes but does not address the cyclical nature of the varying factors set out in this study.

²⁰ Connell notes 18 and 19.

²¹ These non-dominant minority groups include those based on race, ethnicity, religion, sexuality and all gender identities.

²² A neat summary of the great thinkers on power within their respective disciplines is provided by one scholar: "Karl Marx influenced the conceptualization of power in all social sciences; Alfred Adler, following Marx, opened a discussion on power in psychology, Friedrich Nietzsche influenced thought about power in philosophy." He adds that: "Modern conceptions of power are traced back to Niccolò Machiavelli (*The Prince*, early 16th century) and Thomas Hobbs (*Leviathan*, mid 17th century). The contrast between them, according to Sadan, represents the two main routes along which thought about power has continued to this day. Machiavelli represents strategic and decentralized thinking about power and organization. He sees power as a means, not a source, whereas Hobbs represents causal thinking about power as an hegemony where it is centralized and focused on sovereignty. E. Sadan, *Empowerment and Community Planning: Theory and Practice of People-focused Social Solutions*, e-book, http://www.mpow.org/elisheva_sadan_empowerment_spreads_intro.pdf.

through reward and punishment. Although this wide definition is not irrelevant to gender, for the purposes of this study, my interest lies more specifically in theories on power that relate to hierarchical gendered social relations in everyday lives.²³

Antonio Gramsci's work provides an early example of linking power relations to everyday cultural practices. Although Gramsci's interest in power was a political one, his conception of power, and especially his theory on cultural hegemony, is of particular interest. Gramsci contended that the maintenance of power by capitalist governments was achieved through hegemony via cultural institutions. He advanced that the bourgeois class, and its form of ideological hegemony, ruled over the masses through a form of power that was both centralised (in the state apparatus) but also diffused across society through the media, family traditions, and religious institutions.²⁴ Gramsci held that, through the use of this power, the ruling class' views came to be the world-view or the dominant ideology.²⁵ He argued that these hegemonic ideas disseminated by the ruling class and actively consented to by the dominated group (backed by state force) then translated into an acceptance or at least a tolerance of forms of inequality and oppression.²⁶

Hegemony involves persuasion of the greater part of the population, particularly through media and the organization of social institutions, in what appears to be the 'natural', the 'ordinary' and the 'normal'.²⁷

In this regard, Gramsci's theory proved to be useful to modern sociologists exploring issues of power, dominance and masculinity. It was one of the first to relate power to how it applied to an everyday cultural context and provide "[...] a way of talking about overarching ideologies, such as gender ideology, at the level of everyday ideas and practices performed with seeming consent."²⁸

However, it is perhaps Michel Foucault who has been the most influential in developing our understanding of power as socially, rather than simply politically or economically potent; and from one relating to an instrument of coercion, toward the idea that:

²³ An example of such a theory is found in Steven Lukes, *Power: A Radical View*, (Palgrave Macmillan 2005). Lukes set out his three dimensions of power: one of which is ideological power defined as the power to influence people's wishes and thoughts, even making them want things opposed to their own self-interest. In support of this notion of power, Lukes uses women's acceptance of patriarchal society as an example.

²⁴ Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci*, (International Publishers 1971).

²⁵ Jeff Hearn, 'From hegemonic masculinity to the hegemony of men' (2004) 5(1) *Feminist Theory* 52, 54. Hearn notes that in developing this theory, Gramsci relied on both Marx's first and second theories of ideology, the first having to do with every day cultural practices.

²⁶ Gramsci note 24.

²⁷ For Gramsci, the state is crucially involved in this exercise. Gramsci note 24.

²⁸ Christine Beasley, 'Rethinking hegemonic masculinity in a globalized world' (2008) 11(1) *Men and Masculinities* 93.

Power is everywhere, diffused rather than concentrated, embodied and enacted rather than possessed, discursive rather than purely coercive. [...] It comes from 'everywhere' so in this sense is neither an agency nor a structure. Instead it is a kind of 'metapower' or 'regime of truth' that pervades society, and which is in constant flux and negotiation.²⁹

A key point for this study is that, in similar ways to Gramsci's theory, Foucault's approach to power, inasmuch as he thought it to be 'embedded in and made effective through micro-practices and the relations between them',³⁰ also transcends governmental politics to become an 'everyday, socialized and embodied phenomenon'. Foucault has been highly influential in underscoring how "[...] the normative can be so embedded as to be beyond our perception, causing us to discipline ourselves without any willful coercion from others."³¹ Foucault's understanding of power is key to appreciating the difficulty of dislodging male power, which is engrained in all forms of societal and professional life. To challenge this pervasiveness, Foucault prescribes the detachment of power from the forms of social, economic, and cultural hegemonies within which it operates.³² This prodigious objective has been at the heart of feminist theory on patriarchy, to which I now turn.

D. The cycle of patriarchy: Feminist theory on male power, the gender binary, hegemonic masculinity and the invisibility of men

1. The cycle of patriarchy: Male power

Why does male power persist despite gender equality becoming, in the last twenty years or so, a virtual cottage industry? In order to answer this question, it is essential to first examine patriarchal or male power. In recognizing that power goes beyond Weberian notions of state authority and coercion, and that it transcends the many layers of social relations, socio-political theorists such as Gramsci and Foucault have long influenced feminists in developing theories on power and its relation to gender.³³ The idea of patriarchal power has been

²⁹ Michel Foucault, *The History of Sexuality: The Will to Knowledge* (Penguin 1998) 63. See also Michel Foucault, *Discipline and Punish: The Birth of a Prison* (Penguin, 1991), and Jonathan Gaventa, *Power after Lukes: A Review of the Literature* (Institute of Development Studies 2003).

³⁰ Anne Barron, 'Foucault and the law' in James Penner, David Schiff and Richard Nobles (eds) *Introduction to Legal Theory: Commentary and Materials* (Butterworths, 2002), 973.

³¹ For a discussion on Foucault and resistance, Paul Rabinow, *The Foucault Reader: An Introduction to Foucault's Thought* (Penguin 1991).

³² Foucault note 29.

³³ Patricia Amigot and Margot Pujal, 'On power, freedom and gender: A fruitful tension between Foucault and feminism' (2009) 9(5) *Theory and Psychology* 772. Feminists interest in Foucault was particularly pronounced in the 1980s and 1990s, with a number of published texts on the subject. See for example, Lee Quinby and Irene Diamond, *Feminism and Foucault: Reflections on Resistance*, (Northeastern University Press 1988). Jana Sawicki, *Disciplining Foucault, Feminism, Power and the Body*, (Routledge 1991), Lois McNay, *Foucault and Feminism: Power, Gender and the Self* (Northwestern University Press 1993).

widely explored within feminist discourse, certainly since second wave feminism,³⁴ and namely how this power serves to explain gendered relations in our cultural lives.³⁵ Although a survey of feminist literature on patriarchal power is beyond the confines of this study, I discuss below some key scholarly works whose theories I believe are salient to how power promotes, secures and maintains men in the higher echelons of society including the workplace. Understanding the evolution of feminist thought on the relationship between power and gender is important to my study as it frames much of my analysis on the phenomenon of men's over representation.

The feminist discourse on male power has evolved significantly in the last forty years or so through various movements.³⁶ Modern feminist thinking on the subject spans from an early 1970s modernist theory, or second wave feminist structural theories on patriarchy to a 'post structural' view of power as nuanced and fluid, the aim of which was, at least in part, to 'deconstruct' the notion of patriarchy.³⁷ Both I argue below remain equally relevant to the study of masculine over representation.

In her book *Gender*, Harriet Bradley explains how early second wave feminists were informed by Marxist ideas on the division of labour.³⁸ Marxist thought on inequality between the sexes was rooted in the monetization of men's work outside the home (through capitalism) as opposed to women's work within it.³⁹ Simply put, to Marxist thinkers, this monetization explained much of why feminine labour within the home became devalued and how perceptions of power between men and women shifted accordingly. This analysis resonated with early modern feminists.

³⁴ In referring to the development of the feminist movements in 'waves' Mann and Huffman remind us how such a term "can downplay the importance of individual and small scale collective actions as well as indirect and covert act [...] and that of a tendency for attention to be drawn to the common themes that unify each wave." Susan Archer Mann and Douglas J. Huffman, 'The decentering of second wave feminism and the rise of the third wave' (2005) 58(1) *Science & Sociology* 56.

³⁵ Beasley note 28, 93. Beasley explains for example how Gramsci's theory "[...] enables the idea of power to become one that is constitutive, as always associated with the mobilization of consent and complicit embodied entities."

³⁶ Emily Jackson and Nicola Lacey, 'Introducing feminist legal theory' in James E Penner, David Schiff, Richard Nobles (eds) *Introduction to Jurisprudence and Legal Theory*, (Oxford University Press 2005) 785, 814 and Deborah Rhode, 'From platitudes to priorities: Diversity and gender equity in law firms' (2011) 24 *Geo. Journal Legal Ethics* 1071, Deborah Rhode, 'Balanced Lives for Lawyers' (2001-2002) 70 *Fordham L. Rev* 2201, 2217.

³⁷ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990), Judith Butler, *Undoing Gender* (Routledge 2004). Butler, an American philosopher and gender theorist, has done extensive work on power throughout most of her career.

³⁸ Harriet Bradley, *Gender* (Polity Press 2013), 40. Bradley explains that it is Friedrich Engels, who in 1884, in his *The Origins of the Family*, first stated that men, who had full rights over their wives and children, 'exploited' women's labour to cook, clean and sew' creating a gender oppression.

³⁹ Heather Brown, 'Marx on gender and family: A summary' (2014) 66(2) *Monthly Review*. Brown notes that although Karl Marx's ideas were mainly gender blind, a few of his writings note the oppression, especially of bourgeois women whose existence was largely relegated to the home (whereas working class women were working).

Building on Marxism, these feminist thinkers were some of the first to distinguish 'gender' from biological 'sex', defining gender as "[...] cultural aspects of being a man or a woman – that is - how society sets the rules for masculinity and femininity."⁴⁰ Simone de Beauvoir's pioneering work, *Le Deuxième Sexe*, first published in 1949, and Betty Friedan's book *The Feminine Mystique*, published in 1963, were early influences that paved the way for modern feminist scholarship on gender as the seed of inequality.⁴¹ By the late 1970s, British feminists such as Ann Oakley in her *Sex, Gender and Society* and Kate Millett, in her seminal *Sexual Politics*, had broadened their analysis of gender into a theory of patriarchy. To Millett, for instance, patriarchy was defined as institutionalized masculine power and capitalism embedded in schools, churches and work organisations, which together formed a patriarchal world in which men devalued women's work and contributions.⁴²

Patriarchy is also of interest to Sylvia Walby who, in the early 1990s, wrote the influential *Theorizing Patriarchy*. To Walby, patriarchy is "[...] a system of interrelated social structures which allow men to exploit women."⁴³ She sees it as the product of a group of structures, including paid work, domestic labour division, institutional culture and male violence, which she argues all serve to further male dominance.⁴⁴ Walby was one of the first feminists to address early criticisms of the theory of patriarchy as 'all encompassing' or where all men were put into one dominant category. She did this by creating a distinction between 'public' and 'private' patriarchy, positing that although gains had been made by women in the private sphere, inequality still reigned within the public domain.⁴⁵

However, Bradley notes that modern feminists' differentiations and nuances to structural models, such as Walby's private and public inequality, did not stave off late twentieth century critical thinking about patriarchy. Allegations were soon made that existing feminist theory around institutional power and power structures was 'monolithic' and required greater nuance.⁴⁶ The ideas of

⁴⁰ Bradley note 38, 17

⁴¹ Simone de Beauvoir, *Le deuxième sexe* (Gallimard 1949), Betty Friedan, *The Feminine Mystique*, (W.W. Norton and Co. 1963), Kate Millett, *Sexual Politics* (Doubleday and Co. 1970), Ann Oakley, *Sex, Gender and Society* (Maurice Temple Smith 1972). Ann Oakley was one of the first feminist scholars to distinguish the notions of sex and gender in her 1972 work *Sex, Gender and Society* (Maurice Temple Smith 1972).

⁴² Vanessa Munro, 'On power and domination: Feminism and the final Foucault' (2003) 2(1) *European Journal of Political Theory* 79. Within second wave feminism, the notion of power was somewhat divisive. Radical feminists, such as Catherine MacKinnon, for example, thought patriarchy to be "the most pervasive and tenacious system of power in history" which operated at a macro level and was a tool used by patriarchy to continually undermine women. However, many believed MacKinnon's ideas were essentialist and left little to agency. See also Bradley, note 38, 17 and 46.

⁴³ Sylvia Walby, *Theorizing Patriarchy* (Basil Blackwell, 1990).

⁴⁴ Walby, note 43.

⁴⁵ Walby later replaced her idea of patriarchy by that of a 'gender regime' in her work *Gender Transformations*, Sylvia Walby, *Gender Transformations* (Routledge 1997).

⁴⁶ Bradley gives an interesting account of the plight of Black women in the 1990s and how their feminism differed from that of the white middle class feminist. Bradley note 38, 77. The experiences of men within this debate would not appear until the 1980s.

philosophers and sociologists, such as Jean-François Lyotard's critiquing of 'metanarratives' and 'totalizing theories', had a significant influence in developing post-modernist feminist thinking. The same is true of iconoclastic works by critical theorist Jacques Derrida, whose idea of deconstruction challenged the very existence of what he believed to be tidy, mega structural solutions to pernicious social matters such as the distribution of power within society.⁴⁷

Such oppositional ideas eventually led to the literary school of 'post structuralism', whose underlying principle was that societies are random and fluid and at times chaotic "[...] rather than governed by discernible principles."⁴⁸ This chimed with feminist Foucauldian views (which preceded the movement) as it aligned with Foucault's idea of power as having a "[...] capillary form of existence."⁴⁹

Gender theorist Judith Butler's groundbreaking works *Gender Trouble* and *Undoing Gender* are evidence of this approach within feminist theory. Butler's perspective on power, informed by both Foucault and Derrida, argues for a greater understanding of the contingent nature of identity.⁵⁰ She advances that no identity or sense of self is sovereign or constituted outside of discourse.⁵¹ Butler adopts a post structural definition of discourse that includes "[...] signs, symbols, expressions, rhetoric that serve to shape our thinking, attitudes and behaviour and form our concept of normality."⁵² It is therefore discourse as a social construction, she insists, that molds our normative attitudes and behavior towards gender identity or what it means to be a man and a woman.⁵³ It does so by "[...] seep[ing] into the very grain of individuals, reach[ing] right into their bodies, permeat[ing] their gestures, their postures, what they say, how they learn to live and work with other people."⁵⁴

Leading gender scholar and feminist sociologist Carol Smart, adds that one of the key elements to post structuralism is:

[...] its focus on discourse and the idea of the discursive construction of the subject. This emphasis shifts attention away from the idea of pre-

⁴⁷ Jacques Derrida's notion of aporia, a welcomed state of confusion signifying a maturity of thought is an extension of his ideas on deconstruction. Jacques Derrida, *Aporias* (Stanford University Press 1993).

⁴⁸ Bradley note 38, 69. Yet as Bradley explains, it is impossible to limit the emergence of these theories to late twentieth century, as what would be defined as post modern, post structural thinking had already been expressed by Michel Foucault. It is also important to note that post structuralism moves away from Marxist ideas of power and a unified state from which all power derives, C. Smart, , *Law, Crime and Sexuality: Essays in Feminism* (Sage 1995), introduction, p.7.

⁴⁹ Foucault, *Discipline and Punish* note 29.

⁵⁰ Judith Butler, *Gender Trouble* (Routledge 1990) and Judith Butler, *Undoing Gender* (Routledge 2004).

⁵¹ Ibid.

⁵² Ibid.

⁵³ This supports Foucault's view that men retain their position of power because they represent the normative standard case, see for example, Foucault, note 29.

⁵⁴ Butler, note 50.

given entities (for example, the criminal, the prostitute or the homosexual) towards an understanding of how such subjects come into being at certain moments. This entails a significant shift in perception away from the idea that people exist in an a priori state, waiting for institutions to act upon them, towards thinking about subjects who are being continually constituted and who also constitute themselves through language/discourse. Post structuralism thereby destabilizes the 'individual' allowing him/her to become more fluid and diverse.⁵⁵

Modern day poststructuralists continue to argue that it is a privileged form of this very discourse that is used to maintain tacit relations of power. Vanessa Munro's writing on power confirms this. She interprets power as something that "[...] operates to form our everyday understanding of social relations and to orchestrate the way we consent to (and reproduce) tacit relations of power."⁵⁶ For this reason, they incite us to persist in considering the discursive when looking at gender relations and the acceptance power.⁵⁷ A further example is work by Leslie Bender, who theorizes that relations of power are dictated mostly by men, as the discursive subject, positioned within institutions and organisations, to reflect their needs, ambitions and agenda. Bender writes that: "[...] so long as men have the power to name, describe, construct and continue our cultural institutions with their patriarchal biases, women will share an experience of gendered Otherness and inequality."⁵⁸

As part of its deconstruction exercise, poststructuralist feminist literature on power and privilege heightens awareness of the individual within the debate on patriarchy and power. In this regard, it welcomes the importance of considering intersectional elements such as race, class and sexuality. Kimberlé Crenshaw was one of the first black feminists scholar to highlight how individuals can experience inequality along more than just one axis, urging us to take into account the multiplicity of intersectional elements such as race and class, thereby greatly enriching the debate.⁵⁹

But despite the importance of post structural insights, and namely with respect to its intersectionality, feminists must also continue to engage with patriarchy as a structural issue. Resistance against structural patriarchy remains crucially relevant because, in many respects, male power continues to operate at a macro

⁵⁵ Carol Smart, *Law, Crime and Sexuality: Essays in Feminism* (Sage 1995) 8.

⁵⁶ Munro note 42.

⁵⁷ It is important to note that although the Foucaultian view of identity, supported by post structural feminists such as Judith Butler, is one formed through discourse, powered gender relations within which identities are at play also consist of non-discursive practices such as wage labour, violence, sexuality, domestic labour, child care, where subjects can have agency. For a discussion of this, Clare Duncanson, 'Hegemonic masculinity and the possibility of change in gender relations' (2015) 18(2) *Men and Masculinities* 231.

⁵⁸ Leslie Bender, 'Sex discrimination or gender inequality' (1998-1989) 57(6) *Fordham L. Review* 941, 949.

⁵⁹ Kimberlé Crenshaw, 'Demarginalising the intersection of race and sex: A black feminist critique of anti discrimination doctrine, feminist theory and anti-racist politics' (1989) *Feminist Legal Theory* 57.

level. As scholar Jeff Hearn maintains, for men, power represents a very significant and pervasive aspect of their social relations, as well as their actions and experiences.⁶⁰ He defines men's power as follows:

Men's power and dominance can be structural and interpersonal, public/and/or private, accepted and taken for granted and or recognized and resisted, obvious or subtle.⁶¹

He also states that differentials of power between men and women, mean that men "[...] collectively and individually, albeit differentially, benefit most from the social organisation of gender relationships."⁶² In his analysis of masculine power and privilege, Hearn advances that men still represent a 'gender class'.⁶³ It is within this gender class, he argues that social, economic, symbolic and political structures have produced gendered power imbalances that are a reflection of a patriarchal ordering of society.⁶⁴ Therefore, for Hearn, in western advanced capitalist societies, men are structurally and interpersonally dominant in most spheres of life. This patriarchy, "[...] does not downplay differences among men and between men in terms of age, class, ethnicity and other differences, including their relations with women. Rather, it emphasizes the complex interplay of unities and differences between men within patriarchies."⁶⁵

Men today can feel a similar, if not the same, sense of structural entitlement and benefit from simply being a man as their fathers and forefathers.⁶⁶ This expectation of privilege leaves some men feeling that equality is a form of male oppression and is to be resisted. In that regard, patriarchy very much remains a current structural reality deeply embedded in societal fabric. Cynthia Enloe explains this phenomenon as patriarchy's 'sustainability':

⁶⁰ Jeff Hearn, 'A multi-faceted power analysis of men's violence to known women: from hegemonic masculinity to the hegemony of men' (2012) 60 *The Sociological Review* 589. Hearn suggests that it is perhaps because men's power is often taken for granted and accepted, that these matters have continued to be neglected in mainstream social science.

⁶¹ Hearn note 60.

⁶² Jeff Hearn, 'Men, identity and power' in Fidelma Ashe (ed), *The New Politics of Masculinity* (Routledge 2007), 125.

⁶³ This concept was defined by Second Wave feminism to describe the historical and lasting political power relationships between men and women.

⁶⁴ Hearn, note 62.

⁶⁵ David L. Collinson and Jeff Hearn, 'Taking the obvious apart: Men, masculinities and the dynamics of gendered leadership' in R.J. Burke and D.A. Major (eds) *Gender in Organizations: Are Men Allies or Adversaries to Women's Career Advancement?* (Edward Elgar 2014) 73.

⁶⁶ This arguably is especially true of white men. For a discussion on men's inherent sense of entitlement, Michael Kimmel, *Angry White Men: American Masculinity and the End of an Era* (Nation Books 2013). See also M Hogue, J.D. Yoder and SB Yoder, 'The gender wage gap: An explanation of men's elevated wage entitlement' (2007) 56 *Sex Roles* 573. This study argues that men feel more worthy of higher pay based on a 'heightened legitimate entitlement even when told they are performing less well than women.' A 2014 American study also indicates that entitlement in men is linked to sexism and that this sense of entitlement is on the rise in younger generations. Joshua B. Grubbs, Julie J. Exline, Jean M. Twenge. 'Psychological entitlement and ambivalent sexism: Understanding the role of entitlement in predicting two forms of sexism (2014) 70 (5-6) *Sex Roles*, 209.

Patriarchy is a system – a dynamic web – of particular ideas and relationships. That system of interwoven ideas and relationships is not brittle; it is not static. Patriarchy can be updated and modernized. It is stunningly adaptable. That is the sense in which it is useful, I think, to talk about patriarchy as ‘sustainable’.⁶⁷

Enloe argues that because of its sustainable quality, patriarchy or male power remains as relevant as any current feminist and social justice issue. She believes it has managed to survive feminist initiatives because of its capacity to reinvent itself.⁶⁸ This reinvention is of course the product of those who have a vested interest in maintaining the patriarchal order. As in the case with any entrenched political order, when it is challenged, it is often those with the most to lose who kick back the hardest.⁶⁹ Yet Enloe believes that to say that patriarchy has proved remarkably adaptable is not to argue that there has been no progress in challenging it. Patriarchy would not require to constantly adapt if those anti-patriarchal successes had not been achieved.⁷⁰

Arguing that patriarchy persists as a structural issue is thus not to say that men and masculinity and individual approaches to gender roles have not resulted in progress and change for the better, something I look at in Chapter 7. Rather, it is to remind us that masculine power exists at both a structural and individual level. The worry is that, in today’s society, the latter seems to be gaining more traction than the former. Movements such as The Everyday Sexism Project have been remarkable in bringing to light the normalization men’s abuse of power.⁷¹ But, like other similar movements, it has done so based on an approach grounded in individual women and men’s stories, where pragmatism and self-sufficiency are peddled as sufficient to resolve the imbalance of power between the sexes.⁷² And although personal experiences are a crucial part of the narrative around inequality, with the added benefit, some say, of appealing to a younger generation whose presence in the debate is paramount, the question remains whether it is at the cost of a more collective voice based on ideas of shared interest and solidarity.⁷³

If so, this must be resisted. In her latest book on female leadership, Deborah Rhode writes:

⁶⁷ Cynthia Enloe, *The Big Push: Exposing and Challenging the Persistence of Patriarch* (Myriad Editions 2017), 16.

⁶⁸ An example is the election of Donald Trump in the United States, where patriarchy reinvented itself by hitching its cart to the ‘disenfranchised’ American blue-collar worker.

⁶⁹ Nesrine Malik, ‘Now sexual harassment is a campaign against men? Get real’ *The Guardian* (London, 9 November 2017).

⁷⁰ Enloe note 67, 21.

⁷¹ Founded in 2012 by British feminist writer Laura Bates, the project serves to document women’s everyday experiences with sexism in order to highlight the extent to which misogyny permeates women’s lives. <https://everydaysexism.com>

⁷² Moira Donegan, ‘How #MeToo revealed the central rift within feminism today’, *The Guardian* (London, 11 May 2018).

⁷³ *Ibid.*

Unlike much of the popular literature concerning women and leadership, this analysis suggests that the problem cannot be resolved at the individual level; structural and cultural solutions are essential.⁷⁴

Feminists must ensure that patriarchal power as a structural issue remains on the equality agenda, as it is only within this forum that the broader dimensions of gendered power relations and patterns of disadvantage can be monitored. It is also arguably only within this wider context that the commonalities of men that lead to their disproportionate hold on power can best be called out and addressed.

2. The cycle of patriarchy: The gender binary

I have argued above that male power and privilege exist both structurally, deeply embedded in society, as well as on a more individual and intersectional discursive level. But what sustains this structural patriarchal power at a macro level? I advance that it is a cycle I refer to as ‘the cycle of patriarchy’, that is first triggered by binary ideas around masculinity and femininity or, more precisely, gendered ideology around what it means to be a man and a woman.

The gender binary is borne of the idea that men and women possess what Stephen Whitehead calls ‘unitary identities’ where men and women are thought and seen to think and behave in a certain distinct way.⁷⁵ This binary notion is rooted in the archaic yet tenacious belief that gender is, in many ways, synonymous with sex and so it is fixed at birth.⁷⁶ What follows from this belief is that men and women are ‘naturally’ different. A common example of such differences is that men are innately more ‘rational’ and women more ‘emotional’.⁷⁷ From these ‘natural’ differences, viewed as immutable by definition, flows the idea that men and women’s destinies are, in some respects at least, preordained. Man as the objective, impartial thinker is thought to be the inherent breadwinner whereas the more emotional, nurturing woman is believed to be more suited to caring.⁷⁸

Remarkably, a number of these entrenched social myths are still being promoted today in mainstream academic circles. Simon Baron-Cohen, professor of developmental psychopathology at Cambridge University, for example, argues that the male brain is designed for systemizing and the female brain for

⁷⁴ Deborah Rhode, *Women and Leadership* (Oxford University Press 2017) 2.

⁷⁵ Stephen Whitehead, *Men and Masculinities* (Polity Press, 2002) 33.

⁷⁶ One proponent of this theory is Simon Baron-Cohen, ‘The Male Condition’ *The New York Times* (New York, 8 August 2005).

⁷⁷ There is extensive literature on the nature vs. nurture debate, which questions whether men and women are pre-disposed to certain behaviours based on biology or whether this behavior is taught. This body of work is discussed below and in Chapter 5.

⁷⁸ Darwin, for example wrote at length about women as childlike, passive, and motivated primarily by maternal instinct. There is a long history of thought on the differences between the sexes that is outside of the scope of this study. However, for a compelling overview of the nature vs. nurture debate, see for example A. Eagly and W. Wood, ‘The nature-nurture debates: 25 years of challenges in understanding the psychology of gender’ (2013) 8(3) *Perspectives on Psychological Science* 340.

empathizing.⁷⁹ He claims that: “[...] on average, women’s intelligence is best employed in putting people at their ease, while the men get on with understanding the world and building and repairing the things we need in it.”⁸⁰ Sociologist Catherine Hakim also maintains that our social gender order is biologically ordained:

There is a good reason why fewer women remain working as engineers and few men become beauticians. [...] an awful lot of policy is based on the assumption that women would be careerist and work centred, just like men, if only culture and society allowed them to. The evidence is that they simply are not.⁸¹

These theories seem to be in line with popular views. A recent US study, for example, shows that most Americans still believe women with young children should not work, that women are better and more suited to housework and that women are natural carers but not natural managers.⁸²

However, encouragingly much of modern scholarly thinking rejects theories that justify gender inequality and work segregation as something immutable due to men and women’s neurological hardwiring. This ‘neurosexism’, they argue, is a convenient way of accepting the societal status quo without having to challenge the cultural presumptions behind the roles women and men play.⁸³ As psychologist Mahzarin Banaji states: “There is no bright line separating self from culture. The culture in which we develop and function enjoys a deep reach into our minds.”⁸⁴

Historian of political thought, Sophie Smith, explains that the Aristotelian essentialist view that women were different, in an inferior way, to men both intellectually and physically has been disproven time and again by modern science.⁸⁵ Yet, she adds that between Aristotle and modern times, over two

⁷⁹ Simon Baron-Cohen, *The Essential Difference: Men, Women and the Extreme Male Brain*, (London, Allen Lane, 2003). This Baron-Cohen study is discredited by a number of scholars on the basis that the data used was based on a questionnaire where people were asked to respond to subjective questions, reporting on their self-perception as empathetic or non-empathetic. See Cordelia Fine, *Delusions of Gender: The Real Science Behind Sex Differences* (Icon Books, 2010), 16.

⁸⁰ Baron-Cohen, note 79.

⁸¹ Catherine Hakim evidence, Evidence presented to the House of Commons Business, Innovation and Skills Committee, *Women in the Workplace*, First Report of Session, 2013-2014, vol. 1, 9-10. <https://www.parliament.uk/business/committees/committees-a-z/commons-select/business-innovation-and-skills/inquiries/parliament-2010/women-in-the-workplace/>

⁸² As reported in Bryony Gordon, ‘Why are women still doing most of the housework?’ *The Telegraph* (London 9 February 2014). This is supported by further data that shows most Americans are still overwhelmingly in favour of married women with young children being at home. A recent US Pew poll shows that only 21% of adults say the trend toward more mothers of young children working outside the home has been a good thing for society. Some 37% say this has been a bad thing. This is up from 1994 where only 11% of Americans supported women with pre-school age children working full-time. Pew Research Centre. http://www.pewresearch.org/fact-tank/2015/10/01/women-more-than-men-adjust-their-careers-for-family-life/ft_15-09-30_workchildren/.

⁸³ Cordelia Fine, *Testosterone Rex: Unmaking the Myths of our Gendered Minds*, (Icon Books 2017).

⁸⁴ Fine, *Delusion*, note 79, introduction p. xxv1.

⁸⁵ Sophie Smith, ‘Limitations to equality: Gender stereotypes and social change’ (2014) IPPR.

thousand years' worth of erroneous ideas and assumptions about gendered characteristics have been banked into the human psyche.⁸⁶ Smith asserts however that late 20th century scientists began in earnest to better understand how society, environment and culture, rather than biological differences, were the main source of influence on humans. Influenced by pioneer feminist psychologists such as Sandra Lipsitz Bem, they proved that the brain's susceptibility to these external factors affected everything from neurological "soft-wiring" to hormone release in both men and women.⁸⁷

Advancing the importance of separating sex as a biological influence from gender as a sociological influence, sociologists Alice Eagly and Wendy Wood's writings are consistent with Smith's views. They explain how early 20th century feminist psychologists came to the conclusion that many scientists had erroneously attributed the behaviours of women to their intrinsic nature and failed to recognize the causes engrained in the social context of women's daily lives. It was therefore scientifically established that women were not 'naturally inclined' to carry out house and caring work.⁸⁸

Gender neuroscientist Cordelia Fine has added to this body of research. Fine's work further develops challenges to the belief that gender inequality is biological and more precisely hormonal.⁸⁹ She argues that the diversity and complexity of humanity cannot be neatly encapsulated and labeled as 'natural' and doing so is scientifically baseless:

There are many other factors involved that can greatly complicate the picture, whether to do with idiosyncrasies within the species or the particular context they're in, whether within one species or across species.⁹⁰

To prove her point, Fine uses risk taking, often cited as something men are more inclined to engage in. She contends that here the gender discrimination lies in the notion of risk taking being based on stereotypical masculine behaviour. Fine advances that if this definition included, for example risking misogynist backlash by writing a feminist opinion piece or training for a career in which there is a high probability of sex based discrimination and harassment, the gender difference with respect to risk taking would most certainly narrow.⁹¹

⁸⁶ Eagly and Wood note 78 set out that, as late as the 1990s, evolutionary scientists were advocating the science of brain structure and hormones as explanations for social behaviour, where brain size was a sign of intelligence and hormones explained behaviour of dominance and aggression.

⁸⁷ Smith note 85. For an interesting historical account of the development of feminist psychology, see Sandra Lipsitz Bem, *The Lenses of Gender: Transforming the Debate on Sexual Inequality* (Yale University Press, 1994).

⁸⁸ Eagly and Wood, note 78, explain that in the 1960s the feminist movement played a significant role in the nature vs. nurture debate. However psychology and feminism have a relatively short history as for many years, feminism was not seen as a legitimate form of study for psychologists who deemed it too much of a political issue.

⁸⁹ Fine, *Testosterone Rex*, note 83.

⁹⁰ Fine, *Delusions of Gender*, note 79.

⁹¹ Dekka Aitkenhead, 'Cordelia Fine: If women aren't sweet they're called bitches' *The Guardian* (London 25 September 2017).

Therefore when it comes to housework and caring, research has shown that hard wiring no longer stands up as a viable explanation for whom does more. This was the conclusion of the recent House of Commons Business, Innovation and Skills Committee Report *Women in the Workplace*:

We are of the view, based on much of our oral and written evidence, that the root of the problem of the stereotyping of jobs come from our cultural context in which career decisions are made, not from innate differences between men and women.⁹²

But despite being disproved by scholars across a number of disciplines, these dichotomous ideas around sex and gender roles continue to exist and sustain patriarchal power. To sociologist and gender theorist R.W. Connell, the gender binary is based on “[...] sex roles as the cultural elaboration of biological sex differences [...]” which serves to perpetuate male dominance.⁹³ Stephen Whitehead concurs that this division is responsible for the persistence of unequal gendered power relations and men’s domination over women.⁹⁴ It is supported, he claims, in general society by language, stereotype, and culture and is also sustained in political and economic organizations as well as corporations.⁹⁵ The upshot of the gender binary, Whitehead notes, is that it provides a dualism by which a vast majority of identities and gendered subjectivities are realised.⁹⁶ He adds that it reinforces the link between men and masculinities and women and femininities and is at the heart of masculinist culture. This male culture, he states, is replicated and reinforced not through inevitable biology of pre-destined gender action but through gender ideology, or persistent and dominant ways of thinking about men and women.⁹⁷ Whitehead explains that this is how most men come to learn what it is to be male in their particular social setting. And despite men taking in these discourses within a complex, dynamic process of intersectionality (with additional variables such as sexuality, ethnicity age, religion and class) he holds that “[...] there remains, across these intersectionalities, embedded and very distinct ways of being a man.”⁹⁸

A number of scholars have long recognized the essentialist nature of gender dualism and the important role it plays in maintaining male power. They argue against polarized ideas of gender, and many promote the recognition of the

⁹² *Women in the Workplace*, note 71, 11.

⁹³ Connell note 18, 22 and 42.

⁹⁴ Whitehead, note 75, 1. The term ‘patriarchy’ came into widespread use around 1970 to describe this system of gender domination, Butler note 37. Connell, note 18, 41.

⁹⁵ Stephen Whitehead, ‘Masculinities in management: Hidden, invisible and persistent’ in Savita Kumra, Ruth Simpson and Ronald Burke (eds.) *Oxford Handbook of Gender in Organisations* (Oxford University Press 2014).

⁹⁶ Whitehead note 95, 441.

⁹⁷ Whitehead note 95, 442.

⁹⁸ *Ibid.*

varied gender identities and expressions.⁹⁹ These views are informed by post structuralism and its idea, as noted above, that there exists no true or pure identity of man or woman but rather a complex dynamic reinforcing of at times conflicting discourses of identity.¹⁰⁰ This school of thought encourages us to understand how, for instance, masculine performance is not only the reserve of men. To believe so is to reinforce the gender binary and fail to recognize that both men and women are discursive subjects engaging in, knowingly or unknowingly, those gender signifying practices at their disposal.¹⁰¹ To them, all identity is socially mediated through actions of dominant and subordinate discourses. This is therefore how we see that masculinities, rather than being predictably fixed to a sex category 'man' or 'woman' are more complex ways of being which attach to men through social codes, cultures and beliefs operating in any social and cultural location.¹⁰²

Even so, despite extensive studies and scholarly work disputing dualist ideas of gender, as well as evidence all around us of men and women operating effectively across a much broader spectrum, gender binary as an ideology continues to pervade mainstream society as the main model of behaviour.¹⁰³ This polarization, I hold, contributes to the cycle of patriarchy or male power and privilege as it promotes a gendered masculinist culture that it regularly defends as rooted in human biology. The essential core of this culture is that men are predisposed to authority and power, whether at home or in the workplace. We have innumerable historical examples of men acting out this belief, of course. But, more worrying for the prospect of gender equality, we also have endless modern, everyday examples of this binary culture at play and need only look around us to see men (and women) acting out their roles accordingly.

3. The cycle of patriarchy: Hegemonic masculinity

Although progress has been made towards the achievement of more fluid gender roles and scholarly work has time and again disproved its ideological foundations, the gender binary, I argue above, continues to maintain and promote a traditional gender ideology within Western capitalist societies, where the masculine and feminine have culturally mapped out ways of being. I now turn to how this gendered topography of beliefs and behaviour is linked to an acute type of masculinity; hegemonic masculinity. But beforehand, I note that in recent decades, feminist views on patriarchy and male power have been

⁹⁹ I acknowledge that, although this study focuses on the gender identities within the gender binary and cis normativity, gender identity is far more complex and fluid and includes other non binary categories including agender, androgynous, intersex, transgender and genderqueer.

¹⁰⁰ They do this by building on Jacques Derrida's work that argued against the 'fixity' of binaries such as reason and passion, or masculine and feminine. Derrida note 47.

¹⁰¹ Whitehead note 95.

¹⁰² Ibid. Also see Hearn note 25 and Connell note 18. In addition, a recent study on male and female brains confirms that we need to think beyond the male and female sex categories as there are many ways of being both. Professor Daphna Joel, a psychology professor who led the study at Tel-Aviv University states that: "What we show is that there are multiple ways to be male and female, there is not one way, and most of these ways are completely overlapping." Daphna Joel, Zohar Berman, Ido Tavor, et al. 'Sex beyond the genitalia' (2015) 112 (50) PNAS.

¹⁰³ Whitehead, note 95.

complemented by scholarship on men and masculinities. Generally, this body of work explores and conceptualizes what it means to speak of men as a gender category.¹⁰⁴ In the 1980s scholars began looking into deeper analyses of masculinity and how it relates to both power and women.¹⁰⁵ This branch of sociology, known as the critical studies of men and masculinities (CSMM), set out to address men in the context of gendered power relations. In line with post structural feminist gender theory, its focus is often on the discursive nature of the subject and gender identity as socially constructed.¹⁰⁶ With a clear focus on men, these scholars theorize that, as there is no one type of femininity, there are also varying forms of masculinity. Richard Collier, for example, sees men's identities as constituted through diverse and socially contingent practices that, within certain contexts, may be experienced in different ways.¹⁰⁷ Masculinity, he reasons, is thus not a fixed and immutable concept but rather, "[...] masculinity or male subjectivity or what it means to be a man within grounded contexts can be seen as culturally constituted categories, neither wholly dependent on, nor set apart from biology."¹⁰⁸

In addition, much of the more recent body of CSMM work highlights how other intersectional axes such as race, class and sexuality may affect masculinity and how each serves as a further basis for exploring how masculinity may become more fluid, humane and less oppressive.¹⁰⁹ This scholarship advances that discussing masculinity in isolation from other practices can obscure rather than illuminate both structural inequalities and progressive changes. Attentiveness to intersectionality, not just masculinities and femininities, is therefore vital to ensure that change in gender relations is progressive and that any challenge to masculinity is meaningful.¹¹⁰

¹⁰⁴ Collier note 10.

¹⁰⁵ Scholarly writings on men and masculinity provide a breadth of views. Early CSMM scholar John Stoltenberg was an early analyst of men's interpersonal relationships and the power effects of those relationships. However, although Stoltenberg believes men's identities have been constituted and reproduced in ways that oppress women, he is set apart from later CSM scholars in that he advocates a radical feminist approach and believes masculinity does not actually exist and that it is a form of 'mask'. Another early CSMM scholar is Victor Seidler, whose work focuses on men's 'inner lives' and the implications of these lives on men's identities for gender relations. Seidler also believes masculinity is socially constituted. He argues men associate normative masculinity with a form of rationality that requires the suppression of emotion borne of what Seidler terms as the "Protestant culture of guilt." Seidler embraces the uncertainties around masculinity in his work as he argues men should see such confusion as an opportunity to explore new possibilities and identities. For a comprehensive history of pro-feminism and CSMM, see Fidelma Ashe, *The New Politics of Masculinity: Men, Power and Resistance* (Routledge 2007).

¹⁰⁶ Jeff Hearn notes that although some gay and queer writings have also influenced CSMM writings, these tend to focus on men in different ways from the feminist and CSMM topics of the centrality of powered gender relations. For example gay scholarship (unlike queer writing) may or may not see men's power as a problem or even as a category of men itself. Jeff Hearn, note 18, 50.

¹⁰⁷ Richard Collier, *Men, Law and Gender: Essays on the 'man' of law* (Routledge 2010), 3.

¹⁰⁸ Ibid.

¹⁰⁹ Claire Duncanson, 'Hegemonic masculinity and the possibility of change in gender relations' (2015) 18(2) *Men and Masculinities* 231.

¹¹⁰ Ibid.

In sum, what masculinities scholars contribute to the discussion on gender equality is research and conceptualizing around men, male practices and behaviour which equate to 'doing power'. If one accepts that gender inequality is fundamentally based on masculine power and men resisting challenges to this inequality, then arguably a greater focus on masculine behavior is valuable. This is not to usurp feminist theorizing on gender, women and women's realities but rather to consider within the discussion the dynamics of all gender categories.

R.W. Connell, an early influential scholar of masculinity and its relation to power, first defined mainstream masculinity as being the pattern of practices, things that are actually done, and not simply a set of role expectations or an identity, that are "[...] fundamentally linked to power, organised for domination and resistant to change because of power relations,"¹¹¹ adding that "[...] in some formulations, masculinity is virtually equated with the exercise of power in its most naked form."¹¹² Connell argues that within the notion of masculinity there exist multiple forms of masculinities, of which hegemonic masculinity is dominant.¹¹³ In this regard, for Connell, the concept of hegemonic masculinity is not only plural but also hierarchical as it presumes the subordination of non-hegemonic masculinities. Consequently, masculinities are nuanced and the extent to which they are hegemonic is a question of degree.

Hegemonic masculinity is not a fixed character type, always and everywhere the same. It is, rather, the masculinity that occupies the hegemonic position in a given pattern of gender relations, a position always contestable. [...] Hegemonic masculinity can be defined as the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women. [...] It is the successful claim to authority that is the mark of hegemony.¹¹⁴

Connell distinguishes hegemonic masculinity from other masculinities arguing that few men might enact hegemonic masculine behaviour, such that hegemonic masculinity "[...] may not necessarily represent the commonest pattern in the everyday lives of boys and men."¹¹⁵ Connell further specifies that it is not just men who successfully claim authority who benefit from masculine hegemony. Other men also gain from this patriarchy without enacting a strong version of masculine dominance. These men are regarded as showing a 'complicit masculinity'.¹¹⁶ The number of men who practice hegemonic masculinity may be small, Connell further argues, yet the majority of men benefit from its hegemony, in benefiting from the patriarchal dividend, or "[...] the advantage men in general

¹¹¹ Connell note 18, 42.

¹¹² Connell note 18, 42.

¹¹³ Ibid, 77-78.

¹¹⁴ Ibid, 76-77.

¹¹⁵ Ibid. Connell also notes that hegemonic masculinity does not necessarily translate into a satisfying life experience. Hegemonic masculinities are likely to involve patterns of internal division and emotional conflict because of their association with gendered power.

¹¹⁶ Ibid, 79.

gain from the overall subordination of women.”¹¹⁷ This gain is seen in terms of honour, prestige and the right to command but, as Connell maintains, it also holds a material value where, for example, in western societies, men’s average income significantly surpasses that of women’s.¹¹⁸ Consequently, Connell holds that “[...] it follows that the politics of masculinity cannot concern only questions of personal life and identity. It must also concern questions of social justice.”¹¹⁹

Connell’s theory of hegemonic masculinity has been the subject of much scholarly debate, namely from post structuralist CSMM scholars. Although the nuances of this critique is beyond the scope of this study, in sum and in line with the post-structural feminist theories of scholars such as Judith Butler and Carol Smart, discussed above, certain scholars of masculinity believe that the notion of hegemonic masculinity is too static and essentialist, overly focused on the sex and gender dichotomy and that it does not provide sufficient discursive construction of identities.¹²⁰

Others, such as Jeff Hearn believes the concept to be ‘blurred and uncertain’¹²¹ or that, such as Stephen Whitehead, the notion doesn’t explain what adherence to hegemonic masculinity actually looks like in practice or “[...] who actually is a hegemonically masculine man?”¹²² Whilst Christine Beasley’s critical work questions its lack of clarity as to the distinction between dominant masculinity and hegemonic masculinity.¹²³ In a 2005 article, Connell and James Messerschmidt addressed a number of these criticisms.¹²⁴ In their defence of the concept, they first state that the two core features of hegemonic masculinity, plurality and hierarchy, remain.¹²⁵ They also reiterate Connell’s initial idea that hegemonic masculinity is a pattern of hegemony which “...works in part through the production of exemplars of masculinity (e.g., professional sports stars), symbols that have authority despite the fact that most men and boys do not fully live up to them.”¹²⁶

¹¹⁷ Ibid. The scholar argues that a degree of overlap between hegemonic and complicit masculinities is extremely likely if hegemony is effective. As with Enloe, Connell also asserts that in addition to being complicit, masculinities can also be marginalized by the hegemonic form as well as subordinated. In everyday culture, this phenomenon is shown by what trans women often hear from men following their decision to transition – why descend the ladder of social worth? Why give up male privilege? See S. Smith, “Limitations to equality: gender stereotypes and social change, *IPPR*, 16th October 2014.

¹¹⁸ Connell, *Masculinities* note 18. See also discussion in Chapter 1, on the result of gender pay gap in law firms in the UK.

¹¹⁹ Connell note 18, 83

¹²⁰ This criticism by both Richard Collier and Stephen Whitehead is outlined in Connell and Messerschmidt, note 19, 841. See also Hearn 2004, note 25 and Hearn 2012 note 60 and Wendy Cealy Harrison and John Hood-Williams, *Beyond Sex and Gender* (Sage 2002).

¹²¹ Connell and Messerschmidt, note 19, 836

¹²² Ibid, 838 and notes 25 and 60.

¹²³ Beasley note 28.

¹²⁴ Connell and Messerschmidt note 19.

¹²⁵ Ibid, 846. The scholars justify this on the basis that these two core features have stood the test of time through decades of research projects.

¹²⁶ Ibid, 846

Connell and Messerschmidt then address poststructuralist criticisms of the concept of hegemonic masculinity. They respond by noting that there is nothing conceptually universalizing in the idea of hegemonic masculinity.¹²⁷ Coordination and regulation, they state, occur in the live social practices of collectivities, institutions and whole societies. The concept of hegemonic masculinity, they therefore explain, is not intended as catchall nor as a prime cause, it is a means of grasping a certain dynamic within the social process.¹²⁸ They remind us that male power achieved through normative discourse is not universal, in that although most power is held by men, they accept that not all men are powerful all of the time and that men act on their power in various ways.¹²⁹

In response to the critique that hegemonic masculinity is unclear and ambiguous, Connell and Messerschmidt agree that any usage of hegemonic masculinity as a “[...] fixed, transhistorical model” must be rejected as it fails to take on board the significant development in social definitions of masculinity.¹³⁰ To further clarify the notion of hegemonic masculinity, the scholars introduce the idea of ‘global’ ‘regional’ and ‘local’ masculinities.¹³¹ At the global level, institutions such as transnational businesses with neoliberal agendas, for example, can not only pressure regional and local gender orders but they also, as I discuss later in Chapter 7, create what Connell had, in an earlier work, coined the ‘transnational business masculinity’. The regional level happens at a cultural level, where there is a circulation of admired masculine conduct promoted by a number of outlets such as mass media that provide models and solutions to gender relations. Whereas, at a local level, Connell and Messerschmidt explain, patterns of masculinity are rooted in specific social environments such as organisations where we see well-defined patterns of managerial masculinity, for example, happening within ‘face to face’ interactions.¹³²

Despite the existing tensions between Connell’s and later, Connell and Messerschmidt’s, notion of hegemonic masculinity and theoretical underpinnings of post-structural scholarship, whose focus is to better understand what it means to speak of ‘men’ within a gender category,¹³³ it remains a useful structural framework for researchers in understanding historical as well as current male advantage and it continues to be used today.¹³⁴

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid, 838.

¹³² Ibid, 849. These also happen in families, they show by using Arlie Hochschild’s study of men’s negotiation around housework and the ‘second shift’.

¹³³ Richard Collier, note 10.

¹³⁴ Richard Howson in his critique of Beasley posits that hegemonic masculinity is both a mechanism and an ideal. Going back to Gramsci’s theory of hegemony, Howson states: “To recognise the hegemonic nature of some phenomenon such as masculinity is to understand its historical expression in the ideas and practices across all spheres of life, but also through the operation of the integral state. Thus hegemonic masculinity is simultaneously a hegemonic

In her recent book, Cynthia Enloe looks at hegemony and men and advances Connell's idea that workings of hegemonic masculinity are complex and often hierarchical. She explains that at times, hegemonic masculinity acts as glue or a shared respect and admiration for the idealized model which provides the common ground for men to mask differences of class, rank, and age. At the same time however, she posits that hegemonic masculinity is the result of power struggles and rivalries between different groups of men and their efforts to prove their masculinity.¹³⁵ Intersectionality, for example in relation to race or sexuality can trigger these power struggles according to Enloe. She also addresses the notion of complicit masculinity or what she calls 'patriarchal complicity', which she affirms can be acted out by men and women. This complicity she adds is triggered by the idea that "one's own condition is representative of others' condition."¹³⁶

Kalle Berggren also argues that subjects can be affected by competing discourses and that, through repeated enactments, cultural signs of masculinities tend to 'stick' to bodies such that the lived experiences of men and boys as well as the cultural norms of masculinity play an important roles in understanding their behaviour and practices.¹³⁷

In sum, although men's agency is a key factor in the debate on gendered power relations, something I look at in Chapter 7, hegemonic masculinity (although in flux and not practiced by all men) remains a strong model of behavior that serves to sustain male power within the cycle of patriarchy. It does so by its creation of an 'ideal' model of what it is to be a man in Western culture which many men continue to find appealing and either adhere to or feel complicity towards, although not always and not in the same way. This model I advance, propelled by ideology around the gender binary, promotes and sustains the cycle of masculine power and privilege.

4. The cycle of patriarchy: Invisible and silencing masculinity

I have claimed that masculine power is upheld by the gender binary as well as by masculine hegemony. These two elements of the cycle of patriarchy, I now assert, result in men being the 'invisible' norm with respect to which everything else gets measured.

Patricia Lewis' work on invisibility accounts for how the masculine dominates the feminine. As with other scholars discussed above, Lewis adopts a post-structural view of gender whereby gender differences are social, rather than

mechanism and ideal." Richard Howson, 'Hegemonic masculinity in the theory of hegemony' (2008) 11(1) *Men and Masculinities*, 109.

¹³⁵ Cynthia Enloe, *The Morning After: Sexual Politics and the End of the Cold War* (University of California Press 1993), 98.

¹³⁶ Enloe note 67, 164.

¹³⁷ Kalle Berggren, 'Sticky masculinity: Post-structuralism, phenomenology and subjectivity in critical studies on men' (2014) 17(3) *Men and Masculinities* 231, 247.

biological, constructions.¹³⁸ To Lewis, “[...] one’s gender identity represents a project to be worked on as individuals labour in different contexts to fulfill norms and expectations of what it means to be a man or a woman.”¹³⁹ Lewis therefore concurs with Connell, Whitehead and Butler inasmuch as to her, the status of masculinity is not fixed and it has to be negotiated and reaffirmed on a day to day basis and will be the cause of tension and conflict.¹⁴⁰

Having said that, to Lewis most men, and certainly most white middle class men in western capitalist societies, remain invisible as the dominant norm. This invisibility she posits prompts us to consider the implication of belonging to the advantaged group where one of the advantages is not having to think about gender at all. She argues that most men generally view gender as an issue or identity that they do not experience, as masculinity is ‘hidden by history’ and can therefore make itself the standard against which diversity of all kinds is assessed.¹⁴¹

In order to better understand the benefits of masculine invisibility, Lewis contrasts it with the theme of women’s visibility. She explains that the principle consequence of men’s invisibility is the visibility of women and other non-dominant groups. This often means to stand out from the crowd and to be seen as different to the white male standard or as ‘the other’. It means to be marginalized by the dominant group. Lewis views visibility for women and individuals within all non-dominant groups as a burdensome state where individuals are made to conform to stereotypes. For example, Lewis claims that as visible ‘space invaders’, women must follow social rules of femininity so as not to appear too feminine or emotional.¹⁴² Where such token status has been found to disadvantage women and individuals in other non dominant groups, men use it to draw on privileges of their sex, especially, as we will see in Chapter 6, within organisations where they tend to be rewarded for their differences from women by promotion, higher pay, etc.¹⁴³

For this reason, Lewis highlights that some women also seek invisibility, and although they cannot gain the same systemic advantage as men do from it, they do so in order to avoid being seen as ‘the other’. This is especially the case within the workforce. Margaret Thornton’s work supports this argument. Thornton posits that by maintaining silence on gender and by abiding by universal standards of work behaviour, women are trying to avoid being identified as

¹³⁸ Patricia Lewis, *Voice, Visibility and the Gendering Organizations* (Palgrave Macmillan 2007). Lewis’ theory also includes ideas on gender’s dual structure or what she sees as cultural schemas: rules of gender interaction, understanding of difference between men and women as well as resources: financial wealth and cultural capital. Lewis note 51.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.* To Lewis, men also struggle to attain the ideal of power, control and rational competitive success.

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

¹⁴³ For a similar argument of this point see also C.L. Williams, ‘The glass escalator, revisited’, (2013) *Gender & Society*, where Williams shows that men who enter nursing benefit from higher wages than their female colleagues.

different from the masculine norm.¹⁴⁴ Perhaps, as Lewis suggests, it is the price to pay to access mainstream career paths, and it may explain why many women do not engage in gender politics, under a convenient belief that the problem of discrimination has been 'solved'.¹⁴⁵

Lewis also discusses how some women and other marginalized groups do try to unseat the masculine normative in the hope of diminishing its invisibility. By identifying it they argue, men start to struggle to be kept as centre. However Lewis notes that this attempt at unseating men as the norm has created a backlash where white men have started to engage in identity politics as victims of social change and reverse discrimination. Through this backlash, men seek to maintain advantages of invisibility whilst seeking to be made visible as victims rather than as victors who have managed to keep a firm grip on their privileged status.¹⁴⁶ And although a very small amount of reverse discrimination cases have succeeded, Lewis writes that the "[...] seed has been planted in the minds of many."¹⁴⁷

Silencing to Lewis is another way men come to claim invisible status. She defines it as "[...] making something appear disruptive or unimportant – not naming something in order to disable its identity formation."¹⁴⁸ Masculinity retains its status not only because of its invisibility and norm setting status according to Lewis but also because it silences, through a refusal to name any valorisation of the (devalued) feminine even though it may recognize the benefits of some of its qualities. Dominant discourse therefore silences or contains oppositional meanings by allowing them limited and devalued space. Thus a hierarchical arrangement is achieved on the basis of what is said and unsaid. The cycle of patriarchal relations therefore consists in part, Lewis posits, of inclusion and exclusion.¹⁴⁹

Invisibility therefore arguably forms an integral part of the cycle that sustains male power and privilege. Masculine dominance is established by culturally formed binary and hegemonic ideas of what it means to be a man and a woman. This dominance becomes the invisible norm against which all is assessed and evaluated. With this invisibility men, and namely white middle class heterosexual men, have been able to create a social narrative, our collective social story, based on their insights, wants and needs. Around them women and other non-dominant individuals have come to tacitly accept and conform this social order, reinforcing male power and retriggering the cycle of patriarchy. To

¹⁴⁴ Margaret Thornton, 'Authority and corporeality: Women in law' (1998) VI (2) *Feminist Legal Studies* 147, 155. Thornton is an early scholar of the male model upon which corporate legal practices are based and women lawyers' 'otherness' within them.

¹⁴⁵ *Ibid.* This point is also explored by Stephen Whitehead in his work on masculinities within management, Whitehead note 75.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ Lewis note 138.

¹⁴⁹ *Ibid.* Lewis highlights Foucault's suggestion that silence constitutes discourse and can be an agent of power in its own right in that silence contains the taboo and forbidden.

the extent patriarchy is called out, and many have done so, a collective silencing tactic is deployed.¹⁵⁰

E. Conclusion

There are few subjects as important and pressing in the world right now than patriarchal power and the problem it causes.¹⁵¹ The struggle to address this pivotal issue that would see women holding greater societal power continues. The cycle of patriarchy, where the gender binary spawns hegemonic (and complicit) masculinities, in turn making men's power and practices the invisible norm remains to this day largely unbroken. The result of this is:

The persistent presence of accumulations of power and powerful resources by certain men, the doing of power and dominance in many men's practices and the pervasive association of the social category of men with power.¹⁵²

But what can be done to disrupt the cycle of patriarchy? First, by empowering women and men (and educating girls and boys) to knowingly and deliberately use the term 'patriarchy' and call it out as a pernicious, current and relevant dominant social order that is used to maintain masculine power. This can add an important dimension to the debate on gender equality. It supports arguments I make above that we must continue to engage with patriarchy as a collective reality that is as relevant today as it was when first conceptualized in the 1970s. Second, by continuing to expose patriarchal power at play within our day-to-day lives. We need only look to the recent and growing accusations of rape, sexual assault and sexual harassment by women (and some men) against powerful men across the arts, politics and industry to see the worst of how patriarchal power and privilege still plays out. Third, by challenging the reasons behind men's disproportionate hold on power and their ensuing privileged positions within

¹⁵⁰ An example of such a form of silencing, and its danger to women is internet trolling, where misogynist men verbally abuse and threaten women who express feminist views online with physical violence. A particularly distressing example of this is the recent death of a woman killed by a member of Incel, an male organization which promotes hatred against women, Zoe Williams, 'Raw hatred: Why incel movement targets and terrorizes women' *The Guardian* (London 25 April 2018).

¹⁵¹ Gender based discrimination is often seen as one of the greatest global social injustice and the struggle against it spans millennia and continents. Men's hold on power has therefore long been challenged. Going back nearly a century, suffragettes won the fight against men holding all political power in the United Kingdom and obtained the right of women to vote, Mossman, note 4. Second Wave feminism, which started in earnest in the 1970's, saw the beginning of an open debate in most advanced capitalist societies on gender-based discrimination, gender relations and gender power struggle at home and in the workplace. However, today, a growing number of governments, in the United States, India, Austria, Poland and Russia, to name a few, are adopting alt-right policies grounded in patriarchy, which are putting historical gains for equality, such as women's reproduction rights, at risk. Pankaj Mishra, *Age of Anger* (Farrar, Strauss and Giroux 2017).

¹⁵² Hearn note 25. Hearn argues that this male power and dominance is seen in both cultural and structural spheres (or the private and the public spheres) where, in either explicit or implicit ways, this power is accepted, taken for granted or resisted.

organizations on the basis of greater social justice. Lastly, by breaking down the gender dichotomy. Masculinity is a privileged discourse used to maintain power. We must reject it in all of its hierarchal sense, including its hegemonic state, and look at gender in more contingent, fluid and multiple ways.¹⁵³ This has the potential not only to benefit women from all non dominant groups but also to help the growing number of men who are voicing interest as well as those who are silently aspiring to a more gender fluid model of what it means to be a man.¹⁵⁴

My argument that male power is at the very root of inequality and men's over representation in City law firms is used as a thread throughout the chapters that follow. In Chapter 3, I maintain that it is a patriarchal society that initially enabled men to write the legal profession's rules book and determine its *modus operandi* based on their own personal and professional insights, needs and aspirations. This patriarchal power, still in operation today,¹⁵⁵ has coded law firms as male. The result I posit is a profession closed to women progressing equally. In Chapter 4, I advance that, although much effort and money have been spent on diversity programmes by elite City legal employers, they have had insufficient impact on alleviating masculine over representation. This, I contend, is because they operate within a legal profession that is modeled on the male norm and namely on masculine notions of time and availability. In Chapter 5, I argue that masculine power continues to determine the social order of things. I contend that the gendered division of labour within the home, borne of living in a patriarchal society, is partly responsible for masculine over representation within the higher echelons of the law. In Chapter 6, I posit how gendered practices and what I refer to as 'the workplace cycle of patriarchy' translate and are maintained within the work force. This I advance affords many men the ability to pursue work and career interests more freely than women, perpetuating their accumulation of economic and social power. Finally in Chapter 7, I suggest that if the power dynamic is to change we must break the cycle of patriarchy by embracing gender fluidity and do away with binary ideas of men and women behaving in certain ways. Society must adopt and accept that there is a much wider spectrum of behavior to be enjoyed than the traditional, normative masculine and feminine both at home and in the workplace.

¹⁵³ Whitehead note 75.

¹⁵⁴ Mishra, note 151.

¹⁵⁵ Beard note 8, 87.

CHAPTER 3

A. Male advantage within large City law firms: Chasing profits above all else

This chapter addresses the first of my sub-questions: to what extent do male lawyers working for large City law firms encounter advantages in career progression, working conditions and experiences? In order to answer this research question, understanding the functioning of the large City law firm is essential as it provides the context within which advantage arguably occurs.

In Part I of this chapter, I therefore discuss the organizational structure of the large City law firm. I do so by first providing a historical overview of how, in just over fifty years or so, a small number of large City law firms morphed into global commercial organisations. A number of scholars have written as to how this transformation resulted in the undermining of occupational expertise in exchange for the promotion of business growth and profits.¹ Many have also suggested that this general preoccupation with profitability has given way to today's hyper competitive legal market where civic culture has been replaced by business culture.² This business culture, they state, creates barriers to female career advancement. I make use of this literature in my historicizing of private legal practices.

Yet, although scholarly attention has been given to the link between the loss of value attributed to occupational expertise in favour of profit chasing by City legal outfits and the obstacles women face, this chapter takes a different approach. Pursuing this study's focus on men rather than women, I explain how the workings of private legal firms have come to equate masculine advantage within them by tracing the evolution of their identity, structure and working practices over the last sixty years or so. I maintain that the fairly recent commercial professionalisation of firms, conceptualized, developed and perpetuated mostly

¹ Hilary Sommerlad 'Minorities, merit and misrecognition in the globalized profession' (2011-2012) 80 *Fordham L. Rev* 2481. Hilary Sommerlad 'Women solicitors in a fractured profession: intersections of gender and professionalism in England and Wales' (2002) 9(3) *IJLP* 213. John Flood, 'The re-organizations and re-professionalization of large law firms in the 21st century: from patriarchy to democracy' (2012) 36 *The Journal of the Legal Profession* 415. John Flood, 'Megalaw in the UK: Professionalism or corporatism? A preliminary report' (1988-89) 64 *Indiana Law Journal* 570. Gerard Hanlon, 'A profession in transition? Lawyers, the market and significant others' (1997) 60 *Mod. L. Rev.* 795. Richard Abel, *English Lawyers between market and state: the politics of professionalism* (Oxford University Press 2003).

² See for example, James Faulconbridge and Daniel Muzio, 'Financialization by proxy: The case of large City law firms' in Hillary Sommerlad et al. eds. *The Futures of Legal Education and the Legal Profession* (Hart Publishing 2015). Eli Wald, 'Glass ceilings and dead ends: professional ideologies, gender stereotypes and the future of women lawyers at large law firms' (2009-2010) 78 *Fordham L. Rev* 2245. Julia Evetts, 'Professionalism, enterprise and the market: Contradictory or complementary?' Hilary Sommerlad et al (eds) *The Futures of Legal Education and the Legal Profession* (Hart Publishing, Oxford, 2015).

by male lawyers in their own image, is at the root of masculine advantage within the profession today. Despite the striking increase in women solicitors – from less than 10 per cent in 1970 to more than 60 per cent in 2016 - I contend that this male coded business culture continues to promote structures and working practices that benefit men. A prime example of that, I argue, is how time spent working long and often unpredictable hours has become the most valued currency of the successful lawyer. Consequently, male lawyers, and more specifically those with no or few caring responsibilities, benefit from a considerable professional advantage in contrast to their female colleagues many of whom, for a certain time in their careers at least, are unable or unwilling to meet long hours demanded by private legal City employers.

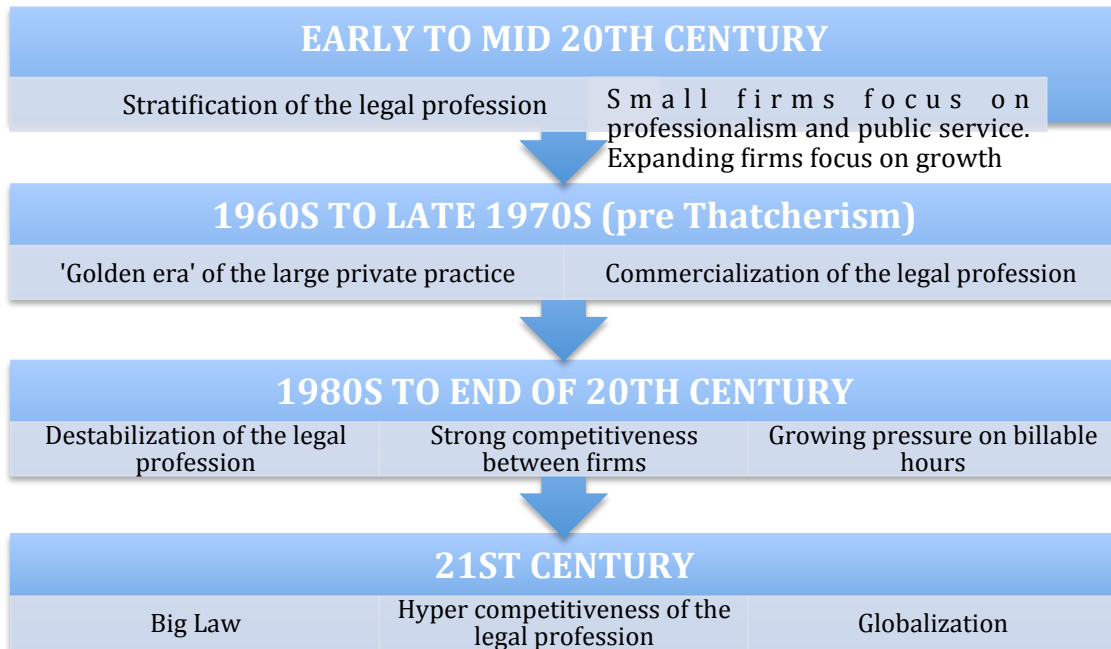
In Part II of this Chapter, I use recent figures from existing studies on the legal profession to show how and the extent to which today's men continue to enjoy advantages compared to women in large City law firms. I turn to 'Big Law', coined as the last phase in the legal profession's evolution towards financialisation.³ Here I present and analyse qualitative research data from my interview study which support arguments I make in Part I. I put forward data relating to how and the extent to which identity, structures and working practices have developed within the profession since the 1990s. This data addresses the change in expectations regarding time spent at work and it shows overwhelming agreement amongst lawyers that profit and long hours at work are, more than ever, what matters most to City firms.

³ This term was first used in the US with respect to large elite law firms such as White and Case LLP, Sullivan and Cromwell LLP and Cravath, Swaine & Moore LLP and has since been adopted with respect to similar firms in the UK.

Part I

B. Historical overview: From professional occupation to global organization

The Legal Profession: Key Features of Phases of Growth



In a relatively short space of time, the City of London has seen many of its small, patrilineal private legal practices grow into global commercial enterprises. Below, I look at the various changes that have led to today's global legal practices. I focus on three key areas of development: identity - both lawyer's individual identity and firm identity - firm structure and firm working practices.

1. The stratification of the legal profession

Until relatively recently, English law firms remained small and male dominated.⁴ In 1960, Freshfields, which is today one of the world's biggest law firms, boasted only seven partners.⁵ Slaughter & May and Linklaters, also large modern City law

⁴ The legal profession was the last of the professions, together with the Church, to continue to ban women well into the 20th century. However, following an extensive legal battle (*Bebb v Law Society* [1914] 1 Ch. 286), the *Sex Disqualification (Removal) Act 1919* was passed finally giving women access to the profession.

⁵ Flood, 2012, note 1. Today, through expansion and two mergers with prominent German firms, Freshfields Brukhaus Deringer has a global practice of 427 partners and a further 1,600 associates <https://www.freshfields.com/en-gb/>

firms, each had only twelve partners.⁶ In fact, up until 1967, English law firms were prohibited from forming partnerships of more than 20 members.⁷ This limitation was in line with a nineteenth century ethos of professionalism.⁸ As professional legal advisers, lawyers' work was not deemed to require a large team. Rather, a lawyer's competence and knowledge, seen as an occupational expertise, was thought to naturally lend itself to a sole or small legal practice. Also engrained in this ethos was the notion that a legal practice's primary objective was to serve the greater community and the administration of justice.⁹ Certainly, during this period, a clear distinction was made between the culture within which lawyers practiced as professionals and that of the management of commercial enterprises, which were perceived to be more hierarchical and focused on profit making.¹⁰

But this dichotomy between profession and business was soon to become muddled.¹¹ Late nineteenth century law firms found a way around the *Partnership Act* restriction on the amount of members by padding their practices with large numbers of unqualified male clerks, with ratios as high as one partner to every one hundred clerks.¹² However, although in a new state of flux, these law firms retained a traditional character "[...] where partnership represented an 'ascribed status under a framework provided by patrilineal kinship."¹³ A rigid

⁶ These three firms, Freshfields, Slaughter & May and Linklaters, along with the firms Allen & Overy and Clifford Chance form part of what is referred to as the City of London's five 'magic circle' firms. These firms dominate private practice in the City of London.

⁷ This limitation originated in the *Partnership Act 1890* and was carried through to the *Companies Act, 1948* 11 & 12, which stated that: "... no company, association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business..." This provision was abolished in respect to solicitors in 1967 by s. 120(1)(a) of the *Companies Act, 1967*. R.G. Lee, 'From profession to business: The rise and rise of the City law firm' (1992) 19 *Journal of Law & Society* 31, 33. See also Flood, Megalaw, note 1, 570.

⁸ Theory on the sociology of the professions nuances the term 'professionalism'. Applied to the legal profession, this body of work traces the meaning of 'professionalism' through the varying changes identified within the practice of law. Here, I use it to mean a normative value system with a focus on the importance of trust in client-practitioner relations, of occupational discretion, as well as quality of service and expertise. However, I recognize that, as Julia Evetts's states, 'professionalism' is not a fixed term and that its definition can also be interpreted to mean a discourse that is a "[...] a powerful instrument of occupational change and social control" increasingly used by managers to promote work identities, conduct and practices. Julia Evetts, 'Professionalism: value and ideology' (2013) 61 (5-6) *Current Sociology Review* 778, 784. See also Margaret Thornton 'Squeezing the life out of lawyers: legal practice in the market embrace (2016) 25(4) *Griffith Law Rev.* 471, 473.

⁹ Evetts note 2, 23. See also Faulconbridge and Muzio note 2, 42 and Hanlon, note 1 p. 802.

¹⁰ Evetts note 2, 23. Roscoe Pound, a dean of Harvard Law School in the 1930s, believed that the primary purpose of a profession was the pursuit of "[...] a learned art as a common calling in the spirit of public service. As quoted in Amelia J. Uelmen 'The evils of elasticity: Reflections on the rhetoric of professionalism and the part-time paradox in large firm practice' (2005-2006) 33 *Fordham Urb. L.J.* 87. The author notes that the "[...] loss of this central insight is certainly one of the primary maladies of large firm legal practice."

¹¹ Hanlon, note 1, 803.

¹² Flood 2012, note 1, 424. See also John Flood, 'Law Firms' in D. S. Clark (ed) *Encyclopedia of Law & Society: American and Global Perspectives* (Sage Publications 2007) 924.

¹³ Marc Galanter and Simon Roberts, 'From kinship to magic circle: the London commercial law firm in the twentieth century' (2008) 15(3) *IJLP* 147. This traditional character was reflected in

British societal class divide enabled this framework, acting as a barrier between clerks and partners.¹⁴

The need for so many extra pairs of clerical hands was fuelled by the rapid economic expansion experienced across England in the late nineteenth and early twentieth century. This led not only to an increase in legal work within the City of London, but also to the emergence of a new type of legal practitioner, the finance lawyer:

Big enterprises, such as the formation of railroads, demanded an array of legal skills in finance, corporate structure and bankruptcy, which lawyers were able to offer. The railway business gave lawyers considerable experience in risk management, investment strategy and trust administration both in England and abroad.¹⁵

As a flourishing number of enterprises were experiencing significant expansion, English lawyers, as their advisors, were gaining new exposure to matters of corporate finance on the back of this booming economy. This is arguably when lawyers first began to identify as business facilitators, creating a burgeoning relationship between the profession of law and the business community. These growing businesses had a newfound need not only for cutting edge knowledge of finance law but also for continual legal services. This could be provided only by a large team, causing firms to swell in size.¹⁶ And although the early twentieth century was a challenging period for most industries, post war economic growth soon led to a return to ideas promoting market efficiency and limited government intervention. Under this emerging post-war Keynesian market economy, enterprise came to dominate British political doctrine and business as well as legal practice.¹⁷

In response to this growing market capitalism,¹⁸ in a period of approximately sixty years, from the early 1900s to the mid 1960s, a number of small City practices slowly began retracting from the notion of professionalism and its emphasis on core values such as social justice and the administration of law in

the partnership agreements of these firms. Galanter and Roberts make note of such an agreement, dated 1875, "...where two Freshfield brothers had the sole right to introduce a partner and the consent of all partners would be required if the partner should be other than a relation of William and Edwin."

¹⁴ Galanter and Roberts note 13, 150. The authors quote one Freshfield clerk stating "[...] there never had been anyone taken into partnership from the staff; it was just not done."

¹⁵ Flood, 2012, note 1, 422. Flood, note 12, p. 924. Flood notes that City of London law firm Norton Rose, which still exists today, had no less than 23 railway company accounts between 1848 and 1878.

¹⁶ This demand was met by hiring yet more clerks whilst the number of partners in these firms remained small. Galanter and Roberts note 13, 144. See also Hanlon, note 1, 803.

¹⁷ J. Evetts note 2. Keynes was against the 18th century idea of *laissez faire* economics and believed that limited government intervention was needed in times of recession or depression. Michael Zakim and Gary J. Kornblith (eds.) *Capitalism Takes Command: The Social Transformation of Nineteenth Century America* (University Press 2012).

¹⁸ For an interesting overview of market capitalism and the development of large corporations at the end of the nineteenth century, Zakim and Kornblith, note 17.

society.¹⁹ These firms were now drawn to high productivity brought on by selling their services in the free market and serving their clients' commercial interests. Accumulation of profits, although not a primary goal for most at this point, was beginning to show its appeal.

This period, with its shift from "social service professionalism to commercial professionalism" has been identified as the beginning of the profession's stratification between small and large City law firms.²⁰ A professional community that had shared a "[...] unified habitus based on status improvement, limited competition and public service ethos [...]" was now morphing into something quite different.²¹ The erosion of this 'unified habitus', due to an emerging commercialized ethos and the changing role of the client, created tensions within the legal community and it is thought to have resulted in the polarization the profession.²²

Division within the profession emerged as to key matters relating to it, such as who controlled the profession and its lawyers, what their function was to be and how their services were to be delivered and paid for.²³ Those holding on to the notion of the profession of law as distinct from commercial practice continued to highlight its unique characteristics:

A profession is not a business. It is distinguished by the requirement of extensive formal training and learning, admission to practice by qualifying licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the market place [...]²⁴

Nonetheless, the professional mindset, based on occupational expertise and social service, which dictated the comportment of early twentieth century lawyers, was changing as certain family run firms began mutating into larger organisations. The men behind these growing practices now identified as being part of the business service industry "[...] designed to lubricate the activities of global capitalism rather than provide commercially disinterested public safeguard services."²⁵ And although change did not occur overnight, and many

¹⁹ Flood 2012, note 1, 417.

²⁰ Hanlon as quoted in Evetts note 2, 25. See also Ulrika Schultz, 'Introduction: Women in the world's legal professions: Overview and synthesis', in Ulrike Schultz and Gisela Shaw (eds.) *Women in the World's Legal Professions* (Hart Publishing 2003).

²¹ Hanlon note 1, 803.

²² Hanlon note 1, 803. Uelmen argues that the loss of this central public service insight is thought by many to have led to a decline in the trust of lawyers and the legal profession generally, Uelmen note 9, 86. See also Flood 2012, note 1, 427.

²³ Evetts note 2, 25.

²⁴ Uelmen note 7, 92 quoting *In re Freeman* 311 N.E.2d 480, 483 (NY 1974). See also Richard Abel, 'Lawyers' in Leon Lipson and Stanton Wheeler (eds) *Law and the Social Sciences* (Russell Sage Foundation 1986) 395 where Abel defines the profession's core traits as: "A body of theoretical knowledge, extensive formal training, self-regulation over entry into the profession and over discipline, and a bias towards altruism."

²⁵ Faulconbridge and Muzio note 2, 43. In 1956, as many as twenty law firms operating in the City of London were recognized for their commercial practice.

firms retained a strong traditional character, by the end of the first half of the 20th century, a sense professional ethos and public service, core features of professionalism were being undermined. Professional success began having closer ties to financial reward and serving those who paid, rather than serving those in need.²⁶

2. The 'golden era' of the large private practice – 1960s through to late 1970s

The stratification of the profession in the first half of the twentieth century was caused largely by City law firms' fast developing approach to legal practice as a commercial enterprise and their move away from public service.²⁷ In many respects, as stated above, firms were responding to increasing client demand fuelled by the post-war economic growth of industries such as the railway and the automobile. For these growing establishments, the servicing of corporate clients and their commercial interests became a priority. From the 1960s onwards, and certainly over the course of the next twenty years, these large clients would impel a number of significant changes within the firms they instructed. Gerard Hanlon notes:

[...] despite the differences in market bases between provincial and City firms, lawyers in both sets of firms may well have shared very similar professional-client experiences for much of the last century and a substantial piece of this one. However, this changed dramatically in the 1960s as law firms, and City firms in particular, began to put much more emphasis into expanding their company and commercial profiles and to downgrading or eliminating other areas of legal work [...]. Professional-client relationships for large firms changed because of this market shift but also and, perhaps more importantly, because clients altered the relationship they had with the professional advisers.²⁸

This arguably led to the transformation of these firms' identities as well as the identities of the growing number of lawyers now working for them, their structures and their working practices. I discuss each of these aspects below.

(i) Identity: Firms were now identifying with the corporate clients they looked to serve.²⁹ In doing so, they were progressively moving away from operating as

²⁶ Galanter and Roberts note 13, 153. Flood 2012, note 1, p. 427.

²⁷ Faulconbridge and Muzio note 2, 43. The authors note that this was a reflection of what had happened in the US at least a decade earlier. New York law firms had been building up to this period of growth since the turn of the 20th century. In the United States, it is the automotive industry that was the greatest cause of nineteenth century economic prosperity. By the 1960s, the burgeoning divide between small law firms with small clients and large law firms with large clients was felt on both sides of the Atlantic.

²⁸ Hanlon, note 1, 802.

²⁹ Milton C. Regan Jr. 'Corporate Norms and Contemporary Law Firm Practice' (2002) 70 *Geo. Wash. L. Rev.* 931, 933. Having said that, firms still use the language of professionalism today for marketing purposes. Arguably, few would admit to jettisoning professional identity and conduct. See also Flood 2012, note 1, 425.

a profession and began behaving more like business organisations.³⁰ Openly promoting the servicing of clients as their main objective, law firms were now defining themselves as members of the 'legal services industry'.

The identity of the individual lawyer was also changing. As firms were recasting themselves as commercial organisations, lawyers working for them also began identifying more strongly with their firm rather than with their professional legal associations and bodies.³¹ By the 1960s, the number of clerks had declined dramatically, replaced by graduate recruits hired on the basis of their educational credentials.³² A reflection of the era, these lawyers were male, white and conservative - there was no question yet of hiring women in any significant way nor any other non dominant minority groups.³³ They spent the lion's share of their time advising clients on the legal aspects of running a large business as they looked to grow their practices as a parallel to their large clients flourishing businesses.

This new individual identity, with its strong links to the firms and its clients' commercial endeavours, also signified that these lawyers were now turning to their employer to define and assess their professional work competence.³⁴ Legal practitioners were no longer seen nor did they behave as occupational experts. Rather they adopted an identity of organisational employee. With this change in identity, the traditional relationship of professional trust morphed into one requiring supervision, assessment and audit.³⁵ Individual lawyers performance began being measured and being closely associated to notions of loyalty to the firm, commitment to work and hence career prospects.³⁶

(ii) Structure: In addition to its role in redefining both lawyers and firms' identity, client demand also began having a significant impact on firm structure. As large City law practices' identities were being altered to reflect their clients'

³⁰ Regan note 29, 935.

³¹ By this time, what is today The Law Society of England and Wales had been founded and included a disciplinary committee. It was also responsible for the issuance of practice certificates. It had established its school of law in 1903, which became the College of Law in 1922. By this time, a compulsory academic year was demanded and a three-tier examination system had been put into place. It was also during this year that women were first admitted as solicitors. See <https://www.lawsociety.org.uk/about-us/our-history/>.

³² Galanter and Roberts note 13, 154. The authors explain that many of these graduates began moving directly to professional qualification, encouraged into the profession as salaries began to be paid. The number of solicitors admitted to the profession in 1970 more than doubled from 711 to 1877.

³³ John Hagan and Fiona Kay, *Gender in Practice* (Oxford University Press 1995) 3.

³⁴ Evetts note 2, 30. Previously, the Law Society would intervene in case of incompetence or neglect. Now we have internal formal assessment processes.

³⁵ Flood describes this as a move from partnership in a traditional or formal sense to "[...] a more bureaucratized form of governance that is based within the partnership yet contains a strong sense of corporate control." Flood 2012, note 1, 427.

³⁶ George Lafferty and David Shufflebotham, 'Monitoring the implied promise: Promotion to partnership in large UK law firms' (2013) 19(1) *International Employment Relations review* 6. However, although evaluations and assessment have been around for a long time in City firms and are the 'paper trail' behind the progression of a lawyer, firms remain very elusive as to what they are assessing and the criteria to be met.

organisational model, hierarchy surfaced. More characteristic of organisational rather than professional forms of control, until the 1970s, hierarchy had not played a major role in law firms. In fact, up until then, partnership within law firms had remained elusive. As many London firm partnerships were still open exclusively to family and friends, associates came and went with no promise of career advancement, cutting their teeth working for a law firm for an undetermined period of time, until they left either to set up on their own or to create a small partnership.³⁷ But now, law firms' were looking to populate and grow their practices in line with client demands and in a structured and organised manner. An answer to this objective came from the United States in the shape of the Cravath System. In the early 1940s Paul D. Cravath, a partner in the New York law firm Cravath, Swaine & Moore, began systematically:

[H]iring outstanding graduates straight out of law school on an understanding that they would progress to partnership after an extended probationary period; requiring them to work for the firm only, eschewing practices of their own; paying them salaries; providing training and a graduated increase in responsibility.³⁸

The Cravath System therefore provided these newly commercially driven private legal practices with their first formal selection process towards career advancement. It was also the very beginning of a formal system of hierarchy within the profession. These rapidly expanding firms could now promote lawyers in a seemingly objective way, lending credibility to the process.³⁹

Objectivity and credibility were important factors, as another feature of this era was its claim to hire on the basis of merit rather than the nepotism of the late nineteenth century. It was claimed that, in both recruitment and promotion, performance was all-important and family influence, social friendships and wealth counted for little.⁴⁰ But despite this discourse of meritocracy, hiring continued to be limited to white Christian male graduates from elite law schools. Top Wall Street law firms, for example, were after a specific type of candidate,⁴¹ ones who "[...] are Nordic, have pleasing personalities and 'clean-cut' appearances, are graduates of the 'right' schools, have the 'right' social background and experience in the affairs of the world, and are endowed with

³⁷ Galanter and Roberts note 13, 155. Slower to develop than their American counterparts, commercial London firms only began moving in earnest from family to collegial partnerships towards the end of the 1960s.

³⁸ Marc Galanter and Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (University of Chicago Press 1991), 9.

³⁹ Although enthusiastic to grow in numbers, it must be noted that entry into the profession remained highly controlled. For an interesting account of the reasons behind this control, see Richard L. Abel 'The decline of professionalism?' (1986) 49(1) *Modern Law Review*. See also Hilary Sommerlad, 'Shaping the size and composition of the profession' (2004-2005) 11(1-2) *IJLP* 67.

⁴⁰ Robert T. Swaine, *The Cravath Firm and its Predecessors, 1819-1948*, (Ad Press 1948) 265.

⁴¹ Erwin O. Smigel, 'The impact of recruitment on the organization of the large law firm' (1969) *American Sociological Review* 56 as quoted in Galanter and Palay note 38, 25.

tremendous stamina.”⁴² Again, there was still no question of elite firms hiring women or individuals from subordinated groups.⁴³

Buying into the Cravath system was an obvious choice for partners on both sides of the Atlantic, boasting an abundant number of clients with large transactions to be serviced, they required large teams of young associates.⁴⁴ Consequently, partners began hiring salaried lawyers to assist in these matters. The labours of this expanding work base generated profits for the partners, which they protected by limiting who had access to the partnership. Indeed, not all associates became partners. Most took part in what has been described as a form of medieval ‘tournament’⁴⁵ to see who would finally attain partner status.⁴⁶ An acceptable few, who had the potential to develop their own book of business, further adding to the pot, would be chosen. They then in turn hired their own associates. During this period, the ratio of associates to partners, known as leverage, soon became the measure of a firm’s success.⁴⁷ The more associates working for a partner, the more profit.⁴⁸ This pyramid structure is how many firms came to be in a constant state of growth and evolved into large partnerships.

Another main attraction of this system was that, although partners’ profits were exposed to fluctuation from the economy and their clients’ commercial successes, they had little exposure to growth risk as partners maintained control over how many partners were made up each year. This pyramid model worked so well that it is still largely in use in most firms today.⁴⁹

It is through this system, where large numbers of associates would compete for partnership, that the small City law firms of the 1960s and 1970s mushroomed into the large organizations of the 1980s.⁵⁰ In England and Wales, although large firms had already begun emulating their American counterparts in terms of hierarchy and style of practice, the era of Margaret Thatcher ensured propulsion towards this end, as one of the prime beneficiaries of Thatcherism was the City

⁴² Smigel as quoted Galanter and Palay note 38, 25.

⁴³ Andrew Bruck and Andrew Canter, ‘Supply, demand, and the changing economics of large law firms’ (2007-2008) 60 *Stanford Law Review* 2087, 2098. The United States, in 1960, had less than one percent lawyers from racial minority backgrounds and less than 5 per cent were law students. In the same year, women accounted for only 2.6 percent of lawyers. A small exception to this rule was the slow hiring by elite New York firms of Jewish men, Eli Wald, ‘The Rise of the Jewish Law Firm or is the Jewish Law Firm Generic?’ (2007-2008) 76 *UMKC L. Rev.* 885.

⁴⁴ Galanter and Palay note 38, 10.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Lee note 7, 34.

⁴⁸ Bruck and Canter, note 43, 2093

⁴⁹ The model was seen as so successful that it was been adopted by a number of other professions, such as accounting and management consultancy.

⁵⁰ In London, the biggest firms went from having approximately 25 partners in 1970 to five times that by 1990. In addition, the number of associates to partners grew. By 1990, associates exceeded partners in all but 5 of the largest 20 firms in London. Galanter and Roberts note 36, 156.

law firm.⁵¹ Thatcherism's deregulations and privatizations, grounded in classical liberalist notions of market domination, not only led to a growth spurt in the number of large law firms but it also resulted in the 'Square Mile' of the City of London becoming one of the world's most powerful international financial centres.⁵² City law firms were there to assist this thriving financial services industry.

(iii) Working practices: Changes to the way law was practiced by these expanding legal organisations was also steered by elite client demands. For these clients, part of the convenience of sizable London large law firms, with their teams of eager lawyers, was the speed of service they offered. The pace of activity in the London marketplace was quickening and client expectation on the delivery time for correspondence, generation of documentation and deal making generally was fast increasing. In 1961, a young associates working for such a firm would bill approximately 1300 hours annually, or approximately 25 hours per week. By the mid 1980s, associates at large firms were logging in 1800 hours.⁵³ This sharp increase would continue well into the 21st century and would significantly contribute to the end of the 'golden age' of private practice.

For clients, convenience was also measured in the seamless service large private practices were beginning to provide across various fields of law.⁵⁴ They now offered a variety of specializations to their clients, who required this 'full service' as they began being subjected to new government regulations in areas ranging from employment, tax, product liability and intellectual property.⁵⁵ Offering a number of services to a large range of clients was also beneficial to firms as it afforded protection from becoming dependent on a single or a small number of clients or a particular type of work.⁵⁶ The high demands of City clients on their legal advisers and these advisers willingness to accommodate them also led to rapidly escalating professional services fees.

The economic and employment growth of early large law firms can be seen simply as a reflection of what was happening in generally. Law firms after all were by no means the only industry to experience a period of significant growth

⁵¹ Lee note 7, 34. See also Flood, *Megalaw*, note 1, 573. Gerard Hanlon states that the Thatcher government regulation and control of the legal profession spared commercial legal practices as these were seen as complicit in assisting in the liberalization of capital, a major aim of Thatcherism. Gerard Hanlon, *Lawyers, the State and the Market: Professionalism Revisited* (Palgrave 1999).

⁵² Lee note 7, 31.

⁵³ These figures are all the more impressive if one considers that not all hours spent in the office are billable. Billing 2000 hours a year translates into 40 hours per week for 50 weeks. This does not seem excessive yet it does not account for all the administrative tasks associated with a legal practice. Although what is billable or not seems to be very subjective, one scholar describes a billable hour as an hour spent "[...] in full concentration of a client's work... not having a cup of coffee or attending a firm meeting." M. Hitt, L. Bierman, J. Collins, 'The strategic evolution of large US law firms' (2007) Kelley School of Business 22.

⁵⁴ Bruck and Canter note 43, 2094.

⁵⁵ Young associates would therefore now "[...] rotate through the different departments of the law firm before specializing." Flood, note 1, 925.

⁵⁶ Flood 2007, note 12, 927.

during the 1960s to the late 1970s. Nor were they alone in being stratified along the lines of economic success. However, for City private practices, this expansion arguably translated into the beginnings of a pressure-filled, one-dimensional long hours culture.

3. The destabilization of the legal profession: Towards a hyper competitive market

From the 'golden era' of the 1960s and 1970s, by the late 1980s a number of top tier London City firms had evolved into something different again.⁵⁷ Although service driven and thus in constant flux, the golden era had provided relative stability to what was now coined as the legal services industry. However, further advancement towards commercial professionalism was giving way to what some commentators have described as the destabilisation of the practice of law:⁵⁸

As mentioned above, the commercialization of large City firms was propelled by the new dominant political rationale of the time adopted by Margaret Thatcher's government in the early 1980s. Inspired by neoclassical economics, entrepreneurialism and competition as well as regressive taxation became the central tenets of her neo-liberal government. From then on, not only did the state look to secure the capital market as 'free', it also went out of its way to promote the creation of new markets in part through the deregulation of financial services, otherwise known as the Big Bang.⁵⁹ This neoliberal approach was embraced by large City law firms, causing destabilizing effects.

As large law firms were changing from small, parochial partnerships into large, complex, diverse organisations, mirroring the growth of the economy, the 'law factory' emerged.⁶⁰

Indeed, the sustained direction towards an organisational model, chosen by many large legal employers, had led to the 'law factory'.⁶¹ With the "body of a partnership but the mind of a corporation",⁶² these large firms were now firmly positioning themselves increasingly against one another in the race for the

⁵⁷ Although a late bloomer, the large City law firm managed to catch up in size and profitability with its New York counterparts through a series of mergers. Clifford-Turner, for example, merged with Coward Chance, forming what is today one of the largest law firm in the world. Three of the world's five largest law firms are currently headquartered in the U.K. This was possible due to the deregulation of financial services in England in the 1980s, otherwise known as 'Big Bang'.

⁵⁸ Larry E. Ribstein, 'The death of Big Law' (2010) Wis. L. Rev 749.

⁵⁹ Margaret Thornton, 'Squeezing the life out of lawyers: legal practice in the market embrace' (2016) 25(4) Griffith Law Rev. 471, 473. Technically, the Big Bang refers to a specific day, 27 October 1986, where the London Stock Exchange began benefiting from a specific financial deregulation set out by Thatcher's Conservative government which aided market trading. However, it is now widely used to denote the effects of a number of further deregulating measures put into place by this government.

⁶⁰ Flood 2007, note 12, 925.

⁶¹ Ibid.

⁶² Lee note 7, 38.

greatest accumulation of profit and growth.⁶³ This was the early beginning of what we know today to be the hyper competitive legal services market.

Competition between top tier City law firms was enhanced by the appearance of a legal press and annual directories in the late 1980s.⁶⁴

This new media generated an arena of open discussion of the hitherto unexamined performance of – and competition between – City firms. Within this arena, the firms themselves and individual lawyers came to engage eagerly – and to most observers unexpectedly – in narcissistic reflection, self-representation and display.⁶⁵

A number of other components acted as unsettling elements to these firms' identity, structure and working practices. First, changes to the career path of associates resulted in the significant prolonging of the tournament to partnership, turning it into an 'elasticated tournament'. In addition, modifications to partnership rules created instability and growing dissatisfaction amongst aspiring senior associates and partners. Some argue that it is at this time that associate "[...] expectations about partnership and the traditional assumption of a lifetime in a single firm were radically revised."⁶⁶ The impact both these reforms had on lawyers' identity is noteworthy as they served to sow the seeds of professional angst. This feeling of professional insecurity is arguably what has, at least in part, led City lawyers to work such long and unpredictable hours in a bid to prove their commitment and worth.

Second, the organisational structure of large City firms also shifted. The running of these legal practices by newly hired business administrators not only weakened the collegiality previously enjoyed by many partnerships but firm accountants were now incessantly vying for growth in firm profitability. In this chase for revenues, firms went through extensive global expansion, with many opening up to 30 new international offices within the span of a decade.⁶⁷ This costly enlargement put great pressures on associates and partner performance in London, especially given that few of these international offices were profitable, at least initially.⁶⁸ Pressure was also felt by the new possibility of having to work around the clock, responding to international client demands across the globe.

⁶³ Hitt, Bierman, and Collins note 53, 21 and Galanter and Roberts note 13, 160.

⁶⁴ Legal magazines *The Lawyer*, *Legal Business* and *The Commercial Lawyer*, all appeared on the scene between 1987 and 1989. Galanter and Roberts note 13, 160.

⁶⁵ Galanter and Roberts note 13, 160.

⁶⁶ Galanter and Roberts note 13, 162.

⁶⁷ In addition to its original London office, Allen & Overy now has 43 offices across the world. Clifford Chance has 31 and Linklaters 29. On its website, Freshfields boast to be working in over 150 countries, although it does not have an office in each of these countries.

⁶⁸ Even today, many of these international offices lag behind their London equivalent in terms of profitability, putting continued pressure on London to compensate. 'Time for Change', PwC Law Firms Survey 2017, 16.

Third, and most likely because of the new pressure for increased revenues, in terms of working practices, the billable hour became the undisputed holy grail of legal advisory work within the City. Not only did it represent the only way firms raised revenue but also it became directly linked to a lawyer's commitment and hence professional success.

(i) Identity

The elasticated tournament: By the late 1990s, it was clear that the horizontal structure of 'up or out' equated to a need to fire those associates who did not make it to partnership rank. But firms eventually came to believe firing large number of associates was against their financial interests. From this period onwards, top tier firms were investing a significant amount of time and money in training associates and they did not relish them going to a competing firm with this expensively acquired knowledge.⁶⁹

In order to address this issue, professional hierarchy within the large City firm was extended. New positions such as those of senior associate and counsel were created to encourage associates to stay on. It certainly allowed firms to retain talent that would otherwise have left. However, these new roles did not necessarily translate into greater access to partnership.⁷⁰ At best, they served to extend associates' tenure track, delaying the decision time as to whether they would be allowed to share in the firm's equity. At worst, they were a professional dead end.

So, the classic tournament to partnership was elasticized. Firms began retaining associates as employees, inducing them to stay for as long as possible.⁷¹ After all, these associates often had as much if not more technical experience than certain junior partners and many enjoyed profitable client relationships. Furthermore, although very well remunerated, they were not asking for a slice of the pie or a partner's equity stake in the firm.

Increasing the number of salaried staff in relation to profit sharing partners leads to an increase in volume of surplus which can be used to maintain and expand the equity partner income levels.⁷²

But the effect of this elongation on associates was one of growing career dissatisfaction as their prospects of advancement became less clear. This uncertainty also generated professional insecurity. Those who had opted for an

⁶⁹ At one magic circle firm, the associate training programme is extensive and includes a one-week corporate or banking 'university', weekly morning and lunch time seminars on points of law, regular off sites to work on soft skills such as leadership as well as encouraging and paying for associates to attend conferences and other educational events. Interview 1.

⁷⁰ In 1996, only 1 in 7 associates were making it to partnership. David B. Wilkins and Mitu G. Gulaki, 'Reconceiving the tournament of lawyers: Tracking, seeding and information control in the internal labor markets of elite law firms' (1998) 84 Virginia Law Review 1581.

⁷¹ Ribstein note 58. However, other authors argue that growth and diversification did not necessarily give way to higher profitability, see for example Hitt, Bierman and Collins, note 53.

⁷² Faulconbridge and Muzio note 2, 47.

extended career track were often left in the dark as to where this role was leading, if anywhere. In addition, a move away from organic growth to partnership was occurring, through the development of hiring associates laterally outside the firm. Having put in the hours and competed in the tournament, associates were no longer confident that theirs was the next number up.⁷³ There was now the possibility to contend with a superstar lateral hire taking their place at the front of the queue. Indeed, partnerships had become so coveted that even highly regarded associates were passed over following an extended tenure track. The increasingly disturbing message for these lawyers was that their employer valued partner profitability over effort and talent.

Changing rules of partnership: The rules of partnerships also changed, causing further uncertainty. A new distinction between salaried partners and equity partners was adopted by a number of large City law firms. This change reflected a grievance regarding remuneration on the part of corporate and banking partners, who argued they brought greater revenues to the firm and worked longer hours, than other partners in 'supporting' departments such as litigation or property.⁷⁴ For similar reasons, and linked to the entry of a growing number of US firms onto the London legal marketplace, in some firms, the lockstep structure and compensation where a partner would automatically gain in both seniority and salary each year until a plateau was reached, was replaced by a more US style of remuneration known as 'eat what you kill' - a process based on productivity. Under this structure, a partner's salary depended on the revenues brought to the firm. This gave way to a loss of solidarity amongst partners and a less collegiate attitude within the partnership.⁷⁵ For the first time, partners who were deemed to generate low revenues were being fired or de-equitized in hard economic times.⁷⁶

Short-termism: At the same time, the focus of management within City law firms changed from a long-term view of the growth and hence profitability of the firm to a short term one based on maximising profits per equity partner (PEP). The more a firm could boast of a high PEP, the more it was able to attract 'rainmakers' to their practice. These stars would often be paid large joining bonuses as well as given a guaranteed income for a period of anywhere between two to five years. This special treatment caused further resentment within some partnerships, especially when these stars did not deliver on the client business they had promised to the firm and for which they were hired. This approach to business also thwarted efforts in firms taking an interest in the longevity or sustainability of lawyers' careers. Certainly little or no consideration during this period seemed to be given to collecting data on employee satisfaction or addressing issues around the professional advantages many men gained from having little or no caring responsibilities.

⁷³Galanter and Palay note 38, 54.

⁷⁴Galanter and Roberts note 13, 162.

⁷⁵Wald note 2, 2259-2260.

⁷⁶Wald note 2, 2261. This practice still exists today, see for example Anna Reynolds, 'Ashurst moves six super plateau partners down from top of lockstep' *Legal Week* (London 7 May 2013)

(ii) Structure

Professional administration of law firms: As firms grew in size, their effective governance became critical to their success. As partners came to recognize their limitations in this field, the managerial approach to legal services, as described above, surged.⁷⁷ Behind a waning ideology of professionalism, firms were now run like businesses with, more often than not, senior partners as political head but backed by CEOs, CFOs and their teams of accountants and managers who were responsible for strategy on how to grow the business.⁷⁸ Soon to follow were marketing, information technology and other support services. These newly created roles within private practices did not come cheap in terms of overhead costs and added to pressure for profitability.

As top tier firms were now behaving as businesses, with an entrepreneurial outlook, many clients deemed it acceptable to shop around for the best deal on professional fees. From this there occurred an erosion of client loyalty. Large corporates who had exclusively instructed a firm for generations were now comparing and negotiating bills, with the real threat of going to a competing firm should requests on fee proposals not be met.

Global clients: A further cause of destabilisation loomed in the late 1980s when many large legal City outfits began to extend their operations internationally to capture income from their global clients' international commercial activities.⁷⁹ Yet, with the development of the international firm, entrenched long-term client loyalty was further eroded. Client relationships, which were now more distant contacts open to constant negotiation, began to change as firms reached out internationally. These were now seldom based on personal relationships but rather on transactions. A lawyer therefore became as good as the last transaction or deal closed. Dissatisfied clients were quick to turn to the competition, leading to the development of the 'migrant client'. The client relationship of days gone by also grew in precariousness as dissatisfied or disillusioned associates and partners moving firms now often took many of their big clients with them.⁸⁰

(iii) Working practices

The billable hour: The organisational fixation with accounting and measuring soon gave way to the billable hour becoming a permanent fixture. The obsessive measuring of time a lawyer spent in the office is certainly one of the key factors that began undermining the stability enjoyed by the London legal establishment, creating what is perhaps the profession's greatest destabilising factor. Given the nature of legal work, opting for hourly billing has been described as an "odd

⁷⁷ Hitt, Bierman and Collins note 53, 21.

⁷⁸ Galanter and Roberts note 13, 162.

⁷⁹ Sommerlad 2011-2012, note 1. See also Galanter and Roberts note 13, who argue that despite their costliness, it is thought by some that the firms that weathered the recession of the 1990s most successfully were those who had developed a global reach.

⁸⁰ Ribstein note 58, 759. Ribstein argues that partners who suspect other partners may not themselves be loyal, chose to 'grab' their clients and leave the firm. This can quickly change a firms' dynamics from cooperation to competition.

choice.”⁸¹ Prior to the 1970s not only did lawyers bill sporadically, but “[...] the amount charged would reflect the lawyer’s judgment about how long and hard they had worked, how successful they had or had not been, the client’s expectations and ability to pay and any desire to charge an amount that would seem fair and acceptable to their client.”⁸² But in the late 1970s more sophisticated clients, newly influential in-house counsel, and a competitive market, all went to force partners of large law firms to re-think some of the less efficient elements of their practice.⁸³ In order to address this, a new manner of hourly billing was adopted and became commonplace.⁸⁴

Yet, there is so much more to dealing with a legal issue than hours spent.⁸⁵ For example, this type of hourly billing disregards important factors such as technical difficulty and the seniority and experience of the lawyer performing the task.⁸⁶ Determining how much work is involved in a matter, and “[...] whether a lawyer’s efforts will be minimal, routine, substantial, or all out warfare.”⁸⁷ requires the assessment of a number of variables. These include:

[...] the personality, realism, stubbornness, generosity, greed, good heartedness, vindictiveness even integrity or sleaziness of the client and of all parties involved.⁸⁸

Yet clients in the 1980s generally did not seem to be concerned by the disconnect between hours spent and hours needed to do a good job.⁸⁹ This was the case, despite many pointing out the obvious; that billable hours could encourage inefficiency. This innate flaw could take many forms. For example, by having too many lawyers on a file, or by having a lawyer whose level of seniority did not match the complexity of the task or by spending “[...] too long in the backwaters of imprecise research rather than braving the hour of decision and moving on.”⁹⁰ Given the pressure they felt, it also put lawyers in the line of temptation to overbill.⁹¹

⁸¹ Ribstein note 58, 768.

⁸² Shabnum Durrani and Parbudyal Singh, ‘Women, private practice and billable hours: Time for a total rewards strategy?’ (2011) 43(5) Compensation and Benefits Review 300. Although the bill ‘for services rendered’ as it most often succinctly stated, did not make these considerations explicit, leaving much to the lawyer’s discretion.

⁸³ Bruck and Canter, note 43, 2094.

⁸⁴ Ibid. Firms needed to move away from the existing system of ‘fees schedules’ that had given rise to antitrust concerns in the U.S. regarding their application to large geographic areas.

⁸⁵ John Beach, ‘The rise and fall of the billable hour’ (1996-1996) Albany Law Review 942. The scholar notes that there are a number of variables in determining how much work is involved in a matter, such as whether a lawyer’s efforts will be minimal, routine, substantial, or “[...] all out warfare.”

⁸⁶ Interestingly, bills as they were sent in the late nineteenth and early twentieth century ‘for services rendered’ would often factor in the complexity of the matter, the outcome of the work and the client’s ability to pay, Lee. note 7, 87.

⁸⁷ Beach note 85, 942.

⁸⁸ Ibid.

⁸⁹ Ribstein note 58, 769.

⁹⁰ Beach note 85, 947.

⁹¹ ‘ABA Commission on Billable Hours Report’ (2001-2002) American Bar Association.

Despite the risks of inefficiency, somewhat surprisingly, this system caught on. Firms were of the view that this arrangement would make it easier for clients and partners to keep track of costs. An additional advantage was the ability of partners to now track their associates' output as narrowly defined by hours billed, giving way to a quantifiable link between the number of hours an associate worked, remuneration and partnership prospects.⁹² Although, as mentioned above, long hours had been equated to ambition and commitment for some time, partners were now being encouraged to monitor these as a near science.⁹³

This simple formula was attractive to firms as not only did it provide them with a steady cash flow as clients agreed to be billed monthly or quarterly, it also pressurized associates to bill as much as humanly possible,⁹⁴ increasing firm profitability.⁹⁵ And pressure there was. As with the golden era, where associates saw expectations of hours worked spike, as noted above, by the mid-1980's associates at large New York law firms were logging 1800 hours annually.⁹⁶ A decade later, the norm at such firms had reached 2000 to 2500 hours.⁹⁷ This figure translates into twelve hour days, five days a week and seven hours on Saturdays twice monthly. One scholar notes that:⁹⁸

Hourly billing, which started as a tool for law office management, turned into a requirement for all timekeepers to bill a large minimum number of hours per year. Salary, bonus and growth within the firm began to be largely based on the number of hours billed.⁹⁹

⁹² Beach note 85, p.944, where the author writes: "[...] it became a powerful tool to record and measure the lawyer's effort [...]".

⁹³ Mary C. Noonan and Mary E. Corcoran, 'The mommy track and partnership' (2004) *ANNALS, AAPSS* 596, Flood, note 1.

⁹⁴ *Ibid.*

⁹⁵ Bruck and Canter, note 43, 2094.

⁹⁶ Michael H. Trotter, *Profit and the Practice of Law: What's Happened to the Legal Profession*, (Atlanta, 2012), 6. The author notes that although billable hours were not institutionalized until the 1980s, in the 1960s and 1970s, a few US law firms and US lawyers were early pioneers of time keeping. See also Leslie Larkin Cooney, 'Walking the legal tightrope: Solutions for achieving a balanced life in law' (2010) 47 *San Diego Law Review* 421.

⁹⁷ Joan Williams and Cynthia Thomas Calvert, 'Balanced hours: Effective part-time policies for Washington law firms: The project for attorney retention' (2001-2002) *William & Mary Journal of Women and Law* 357. This does not include business development, training and many firms don't include pro bono in this calculation. Some commentators believe that the arrival of the billable hour as common practice in the 1980s with that of women entering the profession in much greater numbers is coincidental whilst others such as Eli Wald, argue that it was a form of 'macho' mechanism to stop women from progressing see Wald note 2, 2263.

⁹⁸ Cooney note 96. This allows for three weeks of vacation per year.

⁹⁹ G. F. Phillips, 'The rules of professional conduct should provide guidance to attorneys with respect to billing clients' (2004) *Spring Professional Law* 2, as quoted in Susan Saab Fortney, 'The billable hours derby: Empirical data on the problems and pressure points' (2005-2006) 33 *Fordham Law Review* 171.

The sustained escalation of billable hours inevitably began affecting lawyers' morale and wellbeing.¹⁰⁰ Also, the ability the firm now had to monitor closely the productivity of lawyers and focus on targets, was to the detriment or neglect of other perhaps less measurable achievements. This near incessant pressure soon caused instability in the form of associate and partner career dissatisfaction and lack of wellbeing.¹⁰¹

These new working time norms, which became common place in the 1990s are concomitant with women entering the legal work force in earnest.¹⁰² Certainly, as women began being hired by elite law firms, long hours at work not only began to be expected but it is also around that time that they became a marker for ambition and competence.¹⁰³ Suddenly, working time norms were intertwined with gender identity. Time spent at work was reconstructed into an indicator not only of competence but also of commitment. For women, and namely women with caring responsibilities, meeting the required billable targets in order to progress to more senior roles became increasingly difficult. Therefore, within approximately a decade of having reached the critical mass of about 30 per cent of lawyers in private practice, women began to leave the profession altogether or in exchange for positions such as in-house roles with more measured working hours.¹⁰⁴

Had the billable hour not become the holy grail of career progression, large law firms, as organizational structures, had the potential to be good employers to women of all ethnicities entering the legal profession.¹⁰⁵ The need to respond to increasing client demands in the mid 1980s (with neoliberalism and the booming economy leading to a greater need for lawyers), had a liberalizing effect

¹⁰⁰ See for example, John Hagan and Fiona Kay, 'Even lawyers get the blues: Gender, depression and job satisfaction in legal practice' (2007) 41(1) *Law & Society Review* 51. This debate culminated in the 2001-2002 American Bar Association Commission on Billable Hours Report, note 91. The ABA has subsequently written a number of update reports that continue to show that the billable hours culture is not beneficial to lawyers' morale. See also Calvert & Williams, note 97.

¹⁰¹ Evetts note 2, 35.

¹⁰² Andrea Davies and Brenda Frink, 'The origins of the ideal worker: The separation of work and home in the United States from the market revolution to 1950' (2014) 41(1) *Work and Occupations* 18. The authors write that the gendering of working hours was seen post World War II, when short days i.e. 6 hour days were seen as 'women's hours' – the hours women had worked during the war to replace male labour. Post war men prided themselves on working the standard workday of 8 hours and according to the authors a new rhetoric emerged promoting longer hours for men.

¹⁰³ It is conceivable that professional women would have thrived equally to men in a pre long hours' culture world, when for example lawyers worked a normal working day and law firms closed on weekends and during holidays.

¹⁰⁴ Wald note 2, 2255. See also Judith K. Pringle, Candice Harris, et al, 'Women's career progression in law firms: Views from the top, views from below' (2017) 24(4) *Gender, Work and Organization* 12.

¹⁰⁵ Uelmen note, 10, 87. The scholar writes that certainly, for women with caring responsibilities who would soon begin to enter the profession and work for these large organisations, this move towards high productivity and profit would prove problematic.

and resulted in greater numbers of women entering the profession.¹⁰⁶ Firms' growing attention to business interest represented the possibility of exposure to more gender-neutral market forces potentially allowing women equal status within the profession. Hilary Sommerlad notes that:

The apparent displacement of a tradition based on ideas of craft, honour and interpersonal, quasi-kinship relations by a cut-throat business rationality which includes the adoption of a corporate style of management should be generating conditions where gender has ceased to be significant for career development.¹⁰⁷

Instead, gendered careers continued to be a defining feature of the legal profession.¹⁰⁸ Patriarchy, as I set out in Chapter 2, is a likely explanation as to why market forces were not able to provide women with equality in the profession. Exploring patterns of dominance in modern society and the unequal distribution of power in the labour market, Anne Witz's theory on professions and patriarchy is a useful tool. Witz looks at how "[...] men have organized and acted to limit and control the terms on which women participate in paid work."¹⁰⁹ For Witz, 'profession' is in fact a gendered notion and professionalization is a form of occupational control through professional closure. This closure can take the form of patriarchal closure, where "[...] a successful professional project of class privileged male actors at a particular point in history and in particular societies becomes the paradigmatic case of profession".¹¹⁰ Hence, applied to the legal profession, Witz's work provides a powerful explanation as to why women did not enter the profession on equal terms and it remains relevant today in explaining, at least in part, why their struggle to do so persists.

The significant male-coded transformative changes to the legal profession and particularly its large City firms, which took place in the late twentieth century, were based on a neoliberal agenda. This market driven agenda, including the Big Bang's, served to propel the hyper competitive market in which these firms thrive in today. This market, created and operated on the basis of the male template, has galvanized gender inequality by operating almost solely with a view to maximizing profit. As this invariably translates into long working hours, I argue that men have disproportionately benefited from structures and working practices which give little weight to other measures of success. Many women on the other hand and especially women with caring responsibilities have not fared well under this masculine *modus operandi* as I contend in Part II.

¹⁰⁶ Clare McGlynn, 'The status of women lawyers in the United Kingdom's Professions in Ulrike Schultz and Gisela Shaw (eds.) *Women in the World's Legal* (Hart Publishing 2003) 142.

¹⁰⁷ Sommerlad, 2002, note 1, 215.

¹⁰⁸ Hagan and Kay, note 33.

¹⁰⁹ Anne Witz, *Professions and Patriarchy* (Routledge 1992) 36.

¹¹⁰ *Ibid*, 39-41.

Part II

C. The general legal landscape for women and men solicitors today

1. Figures on men and women lawyers working for large City law firms

This part lays bare the consequences of the development of private City practices, as set out in Part I, on gender equality. Its aim is to show how the proliferation of male coded identity, structures and working practices has resulted in today's male advantage.

Although women have made significant inroads into the legal profession over the last forty years, in the last decade or so, figures show that their career progression has stalled and equal representation at the top remains a distant aspiration.¹¹¹ The study of masculine advantage with City law firms is a complex issue and although statistics and figures do not tell the whole story, they provide a starting point for understanding the extent of privilege men continue to have over women.

In 2016, women accounted for 49.4 per cent of solicitors with practicing certificates in England and Wales.¹¹² This represents an increase of 79 per cent in the number of women solicitors fifteen years ago, in 2002.¹¹³ This near parity did not happen overnight. Women gained initial but very limited access to the legal profession in the 1920s.¹¹⁴ They began entering the legal profession in the UK in significant numbers in the 1970s with the number of women solicitors tripling in 1973.¹¹⁵ By 1987, women comprised a fifth of all solicitors and by 1999 they held 35 per cent of all practicing certificates. By 2006, this figure had risen to 42.5 per cent. In summary, since 1996, the number of women holding practicing certificates has increased by 107.9 per cent.¹¹⁶

On the basis of current trends, female representation in law will likely continue to grow. In 2017, over 60 per cent of newly admitted solicitors to the Roll were

¹¹¹ Figures show that women still represent an average of 20% of partnerships in large City firms.

¹¹² Law Society of England and Wales 'Trends in the Solicitors' Profession 2017' (June 2017).

¹¹³ Law Society of England and Wales, 'Trends in the Solicitors' Profession 2017' (June 2017) and Law Society of England and Wales, 'Trends in the Solicitors' Profession 2009 (June 2009).

¹¹⁴ For a compelling account of the history of the first women lawyers, Cynthia Grant Bowman, 'Women in the legal profession from the 1920s to the 1970s: What can we learn from their experience about law and social change?' (2009) 61(1) *Maine Law Review* 2 and Mary Jane Mossman, 'The first women lawyers: Piecemeal progress and circumscribed success' (2007) 45(2) *Osgoode Hall Law Journal* 379.

¹¹⁵ With 222 women admitted to the profession, representing 12.4 per cent of all solicitors in 1980. The number of women in large law firms increased from 14.4 per cent in 1975 to 40.3 percent by 2002. Bowman note 114, 15.

¹¹⁶ Alexandrine Guyard-Nedelec, 'Working out gender: Discrimination against women lawyers in England and Wales: An overview' (2007) 17 *Gender Forum*.

women and more than 50 per cent of new traineeships were given to women.¹¹⁷ In 2009, law schools reported that 62.3 per cent of students accepted onto university law degree courses in England and Wales were women.¹¹⁸ Women law students now not only outnumber their fellow male students but in many case they also outperform them.¹¹⁹

With such high numbers of women opting to become solicitors, one could be forgiven for concluding that the profession of law affords them equal career satisfaction and significant opportunities for advancement to those of men. These figures might also lead one to believe that, with more than 40 years of continual and significant growth in female representation, the legal profession would have somehow changed in ways that allowed women to work and progress on an equal footing to their male colleagues.¹²⁰ However, further figures suggest that this is not the case. It is worth noting once again that today, at least 80 per cent of large UK law firms' partnerships consist of men whilst their female counterparts' figures have stagnated at anywhere between 16 to 20 per cent.¹²¹ Women constitute just 4 percent of the managing partners at the 200 largest U.S. law firms. Only 20 percent of the members of those firms' management committees are women. In 11 percent of these firms, there are no women on the management committee, and 35 percent have just one woman on their management committee.¹²² Certainly, for women solicitors working for large City law firms today, this progress can, at best, be described as stagnant.¹²³

For a number of years now, City firms have tried to address this inequality by creating a plethora of formal, as well as informal, programmes and practices to encourage women to progress and stay within the profession. And yet, despite these initiatives, women lawyers are not making their way to the top. What statistics indicate is that, despite retention and returnship efforts, at a certain

¹¹⁷ Note 114.

¹¹⁸ Guyard-Nedelec note 116, 16. This is in contrast to 1973 figures where only 13 per cent of law students were women. By 1986, a fifth of law students in England and Wales were women and in 1996, this figure had grown to a representation of 42.5 per cent.

¹¹⁹ 'Throughout university, and not just in law, women tend to outperform men. Camilla Turner, 'Women should study English to earn more than men' *The Telegraph*, (London 13 June 2013).

¹²⁰ K. Hull and R. L. Nelson 'Assimilation, choice, or constraint? Testing theories of gender differences in the career of lawyers' (2000) 79(1) *Social Forces* 231. Referring to a classic concept explored by scholars of race and ethnicity, the authors note that: "[...] we might expect that as larger numbers of women enter a profession, women's careers would have converged with those of men. This convergence might happen as a straightforward demographic process, in which recent entrants, both men and women, replace more senior, and more exclusively male groups of professionals. It is more realistic to presume that convergence will be produced by a combination of institutional change on the part of the employers, who traditionally did not hire women, and the acquisition by women professionals of the same kind of institutional and labour-market resources (skills, networks, experience, and mentors) that male professionals traditionally have acquired."

¹²¹ 'Time for Change' PwC Law Firms Survey 2017, 16

¹²² Marc Brodherson, Laura McGee, Mariana Pires dos Reis, 'Women in law firms' McKinsey & Company October 2017.

¹²³ For example, 2017 Law Society figures show an increase of just 0.1 per cent of women partners. 'Trends in the Solicitors' Profession 2017, note 113. As set out in Chapter 1, in some large City law firms' 2017 and 2018 promotion round, there was more than a 20 per cent decrease in women acceding to partnership.

point in their legal careers, usually coinciding with child bearing and child rearing years, women begin to exit the profession, not to return, or their careers within it stall.¹²⁴ If things remain as they are today, by the time 2016 entry-level female solicitors reach their seventh to eighth year of practice, approximately 40 per cent of them will have left the profession.¹²⁵ The ones that remain will be paid on average 35 per cent less than their male counterparts, which is significantly greater than the national pay gap of 13 per cent.¹²⁶ And in the next few years, if current trends continue, only 23.5 per cent of them will become partners in UK's 100 largest law firms whilst only 9.4 per cent of them will make it to equity partnership.¹²⁷

These disheartening figures inform us not only of the extent of male advantage but they also give an idea of how many women exit City firms and what happens in part to those who stay.¹²⁸ And yet there is more to the story. To provide a fuller picture of the complex position of masculine over representation, I present below qualitative data on Big Law, which exposes the views of associates and partners, male and female, working within it. The sum of this data supports the premise that male advantage continues to exist within large City firms and it indicates how little significant change has occurred within them to curb it.

¹²⁴ According to one study, women lawyers working for City law firms tend to exit private practice after approximately five years of employment. This timing often correlates with women's childbearing and early rearing years, which tend to be in the mid to late thirties for professional women. Noonan and Corcoran, note 93, 131-132.

¹²⁵ Figures vary slightly from one survey to another. The figures stated are based on 2017 statistics in England and Wales and presume that there will be no improvement or worsening of the situation. Figures also differ slightly in the US with women representing only 17 per cent of partners in large law firms with only 1 per cent of them being Blacks and Hispanics, Monique Payne-Pinkus, John Hagan and Robert Nelson, 'Experiencing discrimination: Race and retention in America's largest law firms' (2010) 44(3) *Law and Society Review*, 553.

¹²⁶ Major, Lindsey & Africa, '2017 London Partner Compensation Survey' (January 2018). <https://www.mlaglobal.com/en-gb/publications/research/london-partner-survey-2017>. This is despite accounting for the 10 per cent discrepancy in origination. One law firm, Stephenson Harwood recently paid women 62 per cent less in bonuses. <https://www.thelawyer.com/gender-pay-gap-stephenson-harwood-pays-women-62-4-less-bonuses/>.

¹²⁷ *The Lawyer, UK 200 Survey 2012*. This survey gathers figures from the largest 200 law firms in the UK. Figures for magic circle firms do not reflect a much brighter picture with only 14.6 per cent of total partners being women and 13.5 per cent of women equity partners, "UK Women's Equity Partner Rate is Abysmal (worse than in US)" *The Careerist* (October 2012).

¹²⁸ Large private practice having proven resilient to the achievement of equal opportunity for women lawyers, many tend to opt for other forms of practice. 2010 figures show that women lawyers in England and Wales are less likely to enter private practice than men, preferring sectors such as local government and trade unions, where 63 per cent of solicitors are women, health services, where 75 per cent of all solicitors are women and educational establishments where 66 per cent of solicitors are women. This creates a feminization of certain sectors of the industry where pay is often lesser than in private practice. Also, these fields are less likely to lead to top legal jobs, such as judgeships, as noted in Chapter 1. For a discussion of the feminization of the legal profession, Carrie Menkel-Meadow, "The comparative sociology of women lawyers: The 'feminization' of the legal profession" (1986) 24 *Osgoode Hall Law Journal* 897.

2. Big Law: Data analysis of the views of today's lawyers

At first glance, City law firms today do not seem that different from their late twentieth century selves.¹²⁹ Their identity, structures and practices have in recent times remained relatively constant.¹³⁰ Like most large businesses, their main objective continues to be the maximization of profitability. These firms, forming part of what is today colloquially called 'Big Law', still operate within the legal services industry and compete for clients' instructions on mostly financial related matters that will bear the fees that firms look to charge. Although they are full-service firms, providing legal advice on a variety of areas of legal expertise, including employment law, intellectual property law and competition law, their bread and butter work lies in advising large corporate and banking institutions with respect to financial transactions such as mergers and acquisitions, leveraged finance and high profile litigation.

However, since the beginning of the twenty first century, the financialisation of these private organisations has become acute.¹³¹ A number of senior lawyers interviewed noted that a hyper competitive market, still licking its wounds from the 2008 financial crisis and laden with new Brexit uncertainties, had created even tougher market conditions for City legal employers leading them to demand more from their workforce. The increased presence of US firms on the UK market has also contributed to a hike in competition for both clients and legal talent. I examine below lawyers' views on this more exacting market in terms of identity, structure and working practices. But first I set out data which supports my arguments set out in Part I on how the industry has generally changed since the 1980s and 1990s period of destabilization.

(i) Comparison between the period of destabilization and Big Law

There was unanimity amongst lawyers interviewed (with sufficient seniority and so in a position to compare the two periods) that for reasons such as market saturation, external and internal ultra competitiveness, draconian hours and

¹²⁹ In terms of organizational structure, large City law firms still operate on the basis of a pyramid structure. From the base of the pyramid all the way to near the top, one finds the associates working for a fixed annual salary and typically, some form of performance related bonus. Associates' post qualification experience ranges from newly qualified to ten years or more. Most firms operate some form of 'lockstep' model for associates' compensation, whereby salary increases each year through a series of bands in line with years of post qualification experience. The top of the pyramid is made up of partners. Depending on the firm, the partnership will either be made up solely of equity partners or will be a mix of equity partners and contract or salaried partners.

¹³⁰ Today's large City firms vary in size, although many will have over 500 associates and 100 partners. A firm's biggest overhead is the cost of employing legal staff (mainly assistant solicitors) and administrative staff. Once overheads have been expensed, firm profits will be divided amongst equity partners (i.e. partners who share in the profits and losses of the firm) in accordance with the firm's compensation structure.

¹³¹ Faulconbridge and Muzio note 2, 37 for a complete explanation of the concept of 'financialisation'.

aggressive clients, the practice of law in the City had only become worse. Certainly, a telling fact is that at no point did any interviewee with the required hindsight express that today's working environment had improved in any way.

One male partner, explained why he thought the industry had changed since the 1990s and how today's extreme competition was in part due to the excessive growth of City law firms in the late 1990s and the early 2000s, followed by the 2008 financial crisis, causing a saturation of lawyers on the City legal market place.

If you look at big firms up until, I suppose the early '90s, they were still only 100 or so partners, and then they grew very, very rapidly during the '90s - particularly towards the back end. Both in London, but also because of international expansion, and that was reflected as well in the amount of transactional activity driven by essentially a credit bubble. We're now in something of a contraction, and there are just far too many lawyers around. In reality there's too much capacity. You see that in firms having gone bust. You see that in the marketplace being much more competitive-middle ranking firms being squeezed by both American firms, by the big magic circle firms seeking to increase market share and to take work away from little ranking firms. You also see it, of course, at the individual level [...] in relation to the fact that the people now trying to get themselves made up as partner are struggling in an environment where there are just too many lawyers. The market for legal services is either stagnant or contracting.¹³²

Another male partner, noted how the days where firms were able to rely on the loyalty of clients for recurring business had gone, and how these clients now aggressively negotiated fees:

The ability of any particular firm to rely on historic, institutional clients is not what it used to be. It's just life. Even those clients, if you still have them, banks being one of the best examples, in terms of what you're going to get paid, are a lot different from what they used to be. Those institutions are exercising their power in the market very aggressively.¹³³

Vying for clients was also mentioned by a partner who explained how his firm, like most, now consciously positioned itself in the legal market, attesting to the high level of competition amongst Big Law City firms.

All firms now benchmark themselves against others. We benchmark ourselves against six other firms or what we consider the 'global elite'. In our industry, the legal industry, we believe it is consolidating and those who are at the top are going to become fewer and fewer and those at the

¹³² Interview 1

¹³³ Interview 25. The position of in-house counsel was developed on the back of these fees, as corporates began hiring their own cost effective lawyers to deal with routine legal matters. When work was outsourced to private practices, these in-house counsels came to occupy powerful position to bargain down hourly rates

bottom are becoming greater and the people in the middle are being squeezed.¹³⁴

This competitiveness was also recognized to be internal to the profession inasmuch as City outfits competed for legal talent amongst each other, mainly through salary increases. One female magic circle partner noted that:

We are increasingly having to hike up our chargeable hours targets to meet the US firms... because in order to offer the salaries that the American firms are offering, you've got to make a profit. In order to make a profit, you've got to make the figures.¹³⁵

A symptom of this competitiveness is linked to how firms will rarely question or resist client expectation on the basis that they accept it is just part of being in the service industry. One female associate bluntly put it down to this:

I think the overall culture is that clients snap their fingers and say jump and you say how high.¹³⁶

However, of substance was how men and women lawyers differ in their views on this approach to constantly meeting client needs. But first, a last comment from a senior male partner who points to the extent to which he thought things had changed for the worst within the Big Law community:

I think Big Law is one of the huge problems. It is the ultra competitiveness... the environment which now demands so much time and energy and investment and emotional energy that I see youngsters and I think 'God, how can you sustain a relationship given what we ask of you?' It's very different now compared to what it was 30 years ago.

He added:

Back in the late 1980s or early 1990s, I think you could go to a whole range of firms and have a perfectly good legal existence. You might have to work hard, but actually most people, primarily because of communication, didn't work on the weekend. You didn't take papers home [...] you were out of contact [...] many firms in the City would shut for the whole of the Christmas holiday period, 10 days at a time. That is just unthinkable now. It's unthinkable that you would go an entire weekend without some kind of... at least some reference to what's going on. It's unrelenting.¹³⁷

¹³⁴ Interview 6

¹³⁵ Interview 19

¹³⁶ Interview 5

¹³⁷ Interview 17

(ii) Identity

Within the context of the hypercompetitive market described above by lawyers, what impact has Big Law had on the identity of lawyers today? Although the number of men and women lawyers entering the profession remains strong, junior associates interviewed seemed to have a phlegmatic view of the industry they had joined, readily acknowledging that it is largely about competition and profitability. More senior respondents also appeared to recognize that they now exercise their profession in a different environment to the one they initially chose, one where competition is at its highest ever.

In terms of identity, for male lawyers and especially male partners, this seemed to translate into a form of resignation and an overwhelming acceptance of today's legal market conditions. When interviewed, most of this category of lawyers, for example, displayed relative equanimity when discussing money making and growth in business as being the two overarching objectives for their employers. They also appeared accepting of the extended career path they face and the job insecurity that goes with it.¹³⁸ Female lawyers, and namely those that had not yet acceded to partnership, held more combative views towards the direction the profession had taken, putting profit above all else. Perhaps this is because, as we will see in Chapter 5, women lawyers still tend to have greater caring responsibilities than their male colleagues which conflict with the demands of a highly competitive industry.

Yet regardless of gender, most respondents pointed to global financial market conditions and resulting sharp competition between firms for client business as the principal reason for where Big Law City practice is today.

One senior partner who had been in the industry for over forty years stated that firms continued to chase profit above all else:

I think there is still a bottom line focus, which is a fact of life. You can regret it, but it's a feature. [...] I'm recognizing that the bottom line is really important because that's fortunately or unfortunately the measure of people's success or people's perception of the measure of success of a particular law firm. What's the underlying profitability? Where does that put you? I think it's a very competitive environment.¹³⁹

Another male partner not only appeared to accept these market conditions but also seemed to think them justifiable:

You're part of a business and you should feel that you owe something to that business. So you've got to be forever thinking about the business and I am not saying this as a sort of obsessive thing. It's part of you. You spend most of your life in the office. If you didn't think it was important, you'd

¹³⁸ Law Society Trends 2017 note 113 shows an increase of 2.1 per cent in the last year of solicitors with practicing certificates.

¹³⁹ Interview 27

be missing a piece, because it seems like you'd be wasting your life.¹⁴⁰

One female partner emphasized how chasing profitability had a correlative effect on the service now expected from clients.

I think it's a function of competition too because it's such a competitive marketplace. There will always be somebody who jumps higher than you. It's a function of our fees too. I mean we haven't done ourselves the biggest favour. We're endlessly chasing profitability. We're endlessly increasing fees. You can't just increase fees without increasing service.¹⁴¹

Another female partner concluded by saying:

My strong belief is, it's very simple, it's about how much money you can make for the firm [...] your billable hours and the money you bring is really all that matters.¹⁴²

This train of thought was confirmed by a male partner who believed profitably came before all else, even objectionable characters:

The reality is, in a law firm, if you're making it rain, then unless you're really, really bad, people will find a way to tolerate you.¹⁴³

(iii) Structure

As noted in Part I, the management of these professional firms has also put increasing pressure on lawyers' performance.¹⁴⁴ Measures of success, using new metrics of profitability are redefining their governance, leading to yet another redesign of structures and practices. An example of this is how the ratio of associates and salaried partners to equity partners, for a long time the measure of a firm's achievements in conjunction with turnover, has been replaced by the PEP (profit per equity partner), which has acquired a performative value for firms.

In recent years there has been a refocusing around financial performance underscored by new discourses and metrics of profitability that inevitably promotes different types of values, practices and structures.¹⁴⁵

In order to ensure a high PEP, firm management has focused on strategies that emerged in the 1990s but have become all the more real today: the jealous protection of a firm's equity (the fewer equity partners the better) and a further extension of hierarchy. Also, a new strategy, that of cost cutting through

¹⁴⁰ Interview 7

¹⁴¹ Interview 20

¹⁴² Interview 4

¹⁴³ Interview 25

¹⁴⁴ Faulconbridge and Muzio note 13, 38

¹⁴⁵ Ibid.

redundancy, first seen in earnest during the years following the 2008 financial crisis, is now a Big Law standard aspect of law firm management. Manipulating staffing ratios has become a new and effective route for increasing profitability. One female partner explains:

The way our business model works is that you need a certain amount of turnover [of lawyers] because you are bringing in new people all the time. I don't know exactly what it is but you need as a firm about 20 per cent turnover for the business model to function. If you get more and more senior people, they're expensive and the clients won't pay [...] and there is no room for everyone in partnership. Obviously there is a healthy level of attrition and depending on the market, sometimes we lose more than we'd like to and sometimes we're not losing enough, frankly.¹⁴⁶

Lawyers working for these firms are aware of the new pressures imposed on them by management and how they can quickly become dispensable when profitability metrics are down. In today's hyper-competitive Big Law market, even the owners of the firm are not safe from cost-cutting measures. In their quest for sustaining and expanding profitability, law firms regularly de-equitize lesser performing partners. They do so by either encouraging them to step off the lockstep by requesting that they take on a salaried managerial position within the firm or simply by asking them to move on.

New global structures, developed in the last twenty years have also added pressure to the time needed at work. One female senior associate explains:

[...] the catchphrase that my firm uses is "global reach, local depth", so the fact that we are a global law firm and that we are able to work together across jurisdictions, across continents even, to provide the client a seamless service. How is that even possible to achieve on a practical level? But it's what they want to project. So when it comes to working hours, you have to make yourself available regardless of the time zone.¹⁴⁷

Another female partner, added:

It's a challenge working for an international firm because as our working day here comes to a close, another office is in the middle of their day, and they may well need some sort of input.¹⁴⁸

So although firms like to be seen as 'investors in people' (given people are, after all, their main asset) their profound focus on short-term profitability stops them from investing in individual lawyers for the long term. Today, and perhaps rather conveniently, few firms expect a lawyer, man or woman, to stay on at a firm for

¹⁴⁶ Interview 10

¹⁴⁷ Interview 13

¹⁴⁸ Interview 14

the entire span of their career.¹⁴⁹ This short-term approach means that firms do not take an extended view of their lawyers' productivity, allowing for peaks and troughs. Paradoxically, in an era when most City lawyers were men with little or no caring responsibility, firm structures were such that management took a longer termed approach to their lawyers' productivity. Although these market conditions are trying for both men and women, this myopic reformulation of City lawyers' careers based on a growing immediacy of productivity has been especially detrimental for women with caring responsibilities.

(iv) Working practices: Hours and billing

Working practices have also fallen prey to hyper competitiveness under Big Law, with City legal employers becoming ever more demanding on their staff's time. Hours and hourly rates are now a key performance metric for most firms, both for measuring individual performance and firm wide financial performance. This performance metric has fuelled the pressure to bill a maximum of hours and it remains the principal reason for excessive time at work even though, increasing clients appear to be turning their backs on hourly billing in favour of alternative methods.

There was a notable gender difference in the interview data as to the acceptability of these hours. Male associates and partners interviewed expressed a much greater acceptance of this time demand than their female counterparts. Again, as stated above, this is likely due to women feeling more conflicted between time spent at work and the greater responsibilities they continue to shoulder at home.

An example of this willingness to tolerate long hours was expressed by a male senior associate, who was well ahead in the partnership track:

They are obviously long hours and I am a transactional lawyer and the simple fact is if you are doing transactions and the client needs a billion pound deal done in a week, you can't just go home at 5:00pm. That's not happening.¹⁵⁰

Another male partner perceived long hours as simply inevitable within a hyper competitive market:

There are a lot of deadlines. Clients expect them to be fulfilled. You have to keep a lot of plates spinning, and to meet client expectations on a number of fronts, on a number of different transactions on the same day within a very short space of time, you have to work long hours. It's a bit dismissive in a sense to refer to it as 'the hours culture' because those hours are not all about face time. They're not all about people being heroic and putting in efforts they really don't need to. Very frequently it's

¹⁴⁹ This is especially true of millennial lawyers, many of whom are prepared to change firms on a regular basis. Interview 28

¹⁵⁰ Interview 15

about having to work those hours because if the lawyers don't, there are other lawyers who will in other firms.¹⁵¹

When asked what it took to succeed in his firm, one male partner added matter of fact:

The simple answer to your question is if you want to be made up, you have to put in the hours. It's very hard in Big Law to get yourself made up without notching up to 2000 hours a year for a sustained period.¹⁵²

Women were more open in expressing their resentment of hours, in respect to both their length and unpredictability. One magic circle female partner, when asked what she thought were the challenges around career progression for women, responded by saying:

I think there are obviously pressures around being client focused, client dependent, whatever, and this relentless need to be responsive to clients and the new technology and responding quickly are the obvious things.¹⁵³

Another female partner explained that in certain ways the long hours were worse for partners because:

It's awful and it wrecks your life. Particularly, it's worst actually as a partner because you can never be on holiday. [...] even in your down time, you're always on holiday doing conference calls or having holidays cancelled because of work or an email. You're never free of it. [...] The volume is what kills this job for people because the work itself... the people are highly intelligent and the work's really interesting but the volume is where it all falls apart. It's the volume.¹⁵⁴

One female partner working for a US law firm in London held a similar view but in addition, she also inferred that because of these time demands, women had to chose between family and work:

[...] you have to be here all the time, you have to. Therefore there's an assumption that in the long term this job is not made for women who want to have kids.

Certainly, one junior female associate seemed to be well aware of this choice she would have to make:

Being an associate is not compatible with having children. I would want to become a [...] consultant. I could not imagine doing the two.¹⁵⁵

¹⁵¹ Interview 1

¹⁵² Interview 12

¹⁵³ Interview 10

¹⁵⁴ Interview 20

¹⁵⁵ Interview 11

For those female associates' who were not prepared to work long hours, there was a tone of resignation as to the options left open to them. One associate who had moved from fee earning work to a professional support lawyer role after having had children said:

If you don't like doing the hours, the obvious thing to do is to move, do what I do, go in house, go to a smaller firm.¹⁵⁶

Another senior associate who had also left fee-earning work within her magic circle firm after having had children noted that the arrangement was clear – either you did the hours or you stepped down. This 'all or nothing' choice appears to have initially suited:

[T]he deal that you make with them if you are not prepared to do the hours is that you don't get promoted again. The long hours are non-negotiable. For me that deal was worth making. [...] but possibly not so much now because I have been working in this way for a decade now, it is really quite a long time.¹⁵⁷

However, some women, like this consultant, seemed to share the more male view that long hours were an inevitable part of large legal practice in the City:

Law firms and the nature of the work that we do, is obviously it's always described as a long hours culture, isn't it but to get the job done you have to be willing to go the extra mile, and it's largely about putting in the extra hours to get the deal done for the client when the client wants the deal done. Unfortunately it does a lot of the time come down to hours.¹⁵⁸

Asked why the focus on hours persisted, the global head of a magic circle corporate department felt that the hours model was not the greatest model but that billing on an hourly basis was still alive and well. He added that although he did not particularly favour billing by the hour, his firm used mostly this system and it was very profitable. One reason it still worked, he added, is that:

If I tell a client a job will cost £1 million, he'll think I'm being dishonest. Many of our clients have an accounting background and they like to see the hours on paper, as a measure of the work being done, so they can tick things off.¹⁵⁹

But many would disagree. Increasingly clients are not interested in consuming legal services on the basis of units of time and instead want fixed fee or other arrangements. A number of large firms have been offering clients a menu of

¹⁵⁶ Interview 5

¹⁵⁷ Interview 2

¹⁵⁸ Interview 18

¹⁵⁹ Interview 24

alternative billing arrangements for at least five years. These include discounted fees, capped fees, and success fees, based on the successful outcome of a case.¹⁶⁰

One partner confirmed this by explaining that:

There may come a point at which law firms find that they are trying to price legal services (using hourly rates) on a basis that is different from how consumers expect to pay for them. If that starts to happen one assumes that we will see a move away from hourly rates and in turn hours since if hours become less relevant to pricing legal services then retaining hours recorded as an internal individual performance metric would make no sense. That said, law firms are notoriously simplistic in pricing what they sell, resistant to change and very much wedded to hours so nothing will change quickly.¹⁶¹

City firms' and the private legal industry commitment, in general, to tracking lawyers' performance by recording hours worked is beginning to have little to do with billing clients. The link between time spent at work and firm revenues is therefore arguably becoming weaker.¹⁶²

A further argument against linking hours to performance is that they are inherently subjective. This subjectivity leads to male advantage inasmuch as men take a more liberal approach when it comes to recording hours, logging most of the time they spent on file whereas partners interviewed noted that female associates were more conservative. More critical of their efficiency in completing work, women tend to under record hours. One female partner gave an example:

I'm supervising two women this year, both to whom I said: "You've worked very hard but your utilization is low. It's under what it needs to be to get the bonus. Why is that?" They both said they under report so they edit, which I do myself, because I think I should have done that in an hour, it shouldn't have taken me an hour and a half. I will judge what I think I should have done if I was being super efficient.¹⁶³

¹⁶⁰ See for example, Pui-Guan Man, 'Weil Gotshal's London arm rolls out range of alternative billing methods' *Legal Week* (London 26 April 2013).

¹⁶¹ Interview 1

¹⁶² The legal press regularly reports on clients putting more and more pressure of their legal advisers to provide them with alternative billing or fee arrangements, such as '6 creative arrangements to solve law firm fee pressure' (Lexisnexis 26 April 2017) <https://blogs.lexisnexis.co.uk/futureoflaw/2017/04/alternative-fee-arrangements-for-law-firms/> or 'Alternative fee arrangements: A comprehensive guide for law firms, 16th September, 2015' <https://legaltrek.com/blog/2015/09/alternative-fee-arrangements-a-comprehensive-law-firm-guide/>

¹⁶³ Interview 19

D. Conclusion

City firms have become part of a global business community. Their evolution, as advanced in this Chapter, has led to the commercial professionalization of law in the City of London. Founded on the currency of time, these firms have made the billable hour City law firms' holy grail. This direction of flight has been further accentuated by neoliberalism and globalization. This has had a significant impact on lawyers' identity as well as law firm structures and working practices.

In accounting for these changes R.W. Connell transnational business masculinity theory, an extension of her theory on hegemonic masculinity discussed in Chapter 2 is relevant.¹⁶⁴ Grounded in theories of neoliberal agendas of globalization, Connell's idea is that, within the global business elite, there exists a 'transnational business masculinity'. Connell and Wood's definition of this type of masculinity can arguably relate to men working for global City firms.¹⁶⁵ They describe this male as affluent, powerful and competitive who embraces globalization and works transnationally.¹⁶⁶

However, Juanita Elias and Christine Beasley warn against the temptation extending hegemonic masculinity from a structural model, which serves to legitimize, reproduce and perpetuate male dominance by claiming that actual men with institutional power have a common set of character traits.

Hegemonic masculinity provides an important entry point into investigating the gendered character of globalization but ... only if it is understood as [...] a political mechanism mobilizing legitimation for globalizing gender inequalities rather than simply as a rather unreflective way of recognizing elite groups of men and their particular personality traits in contemporary globalized spaces.¹⁶⁷

Nonetheless, the transnational business mode of masculinity does appear to fit, at least to some degree, with what is happening to male lawyers who practice Big Law. It would go some ways in explaining, for example, why men in this study's cohort seemed more inclined than women to accept the realities of City law firms' demands on their time. It would also provide answers as to why men were

¹⁶⁴ R.W. Connell and J. Wood, 'Globalization and business masculinities' 7(4) *Men and Masculinities* 337. R.W. Connell, 'Masculinities and globalization' (1998) 1(1) *Men and Masculinities* 3.

¹⁶⁵ Richard Collier, Rethinking men and masculinities in the contemporary legal profession: The example of fatherhood, transnational business masculinities and work-life balance in large law firms' (2013) 13 *Nevada Law Journal* 410, 422, 429.

¹⁶⁶ Note 164, Although Hearn notes that more research is needed on the concept,ore specifically, he goes further and describes him as "marked by egocentrism, precarious and conditional forms of loyalty to employers, and a declining sense of responsibility." Hearn 2012, 428.

¹⁶⁷ Juanita Elias and Christine Beasley, 'Hegemonic masculinity and globalization: Transnational business masculinities and beyond' (2009) 6(2) *Globalizations* 281, 286.

more phlegmatic than women about their firms' acute concerns with profitability.

However, such an approach should not neglect important complexities related to men and women's professional identity formation. As Connell's work with Messerschmidt highlights, masculinity must be considered holistically, in relation to women and other intersectional axes.¹⁶⁸ Consequently, although the transnational business masculinity can account for some developments, as I discuss in the Chapters that follow, the picture is more complicated. I maintain, for example, that socio-temporal norms and their symbolic meanings is a key factor to consider when exploring masculine advantage and male over representation in large City firms. I argue that rather than identifying time targets imposed on lawyers as the cause of gender inequality within the profession, firms have pointed to women's failure to meet them as the key problem; they have somehow come to believe that women do not attain the apex of private practice mainly because they cannot meet the hours required for success, mostly due to caring roles.

This facile approach which is arguably based on a deeply embedded resistance to putting into question the billable hour may be because firm managers continue to value the simplicity, however flawed, of tracking associate performance through hours. It may also be because they feel convinced that clients still prefer billable hours for whatever reason. It could also be based on a fear of losing ground to competitors within a hypercompetitive market or simply apathy to change. Whatever the reason, in order to address what they have identified to be the problem, namely women's difficulty in fulfilling the demands for long hours, a great deal of effort has gone into accommodating women (and some men) with caring responsibilities through flexible working programmes. But to what effect? This is the subject of my enquiry in Chapter 4.

¹⁶⁸ Ibid. R.W. Connell J. Messerschmidt, 'Hegemonic masculinity: Rethinking the concept' (2005) 19(6) *Gender & Society* 829, 848.

CHAPTER 4

A. The paradox of time: What City law firms are doing to address gender inequality and why it isn't working

In this chapter, I answer the second and third of my research sub-questions: how have large City firms thus far addressed the differences in career progression, working conditions and experiences of men and women lawyers working for them? And given the extent of the initiatives by large City law firms to redress these differences, how can we explain the continued over representation of men within their higher ranks?

In order to answer these two questions, in Part I, I provide a brief overview of what a number of large City firms have on offer by way of programmes in order to address gender inequality. Although City firms each have their own menu of initiatives to promote diversity, there are similarities in what they make available. They have all, for example, largely addressed the issue of disparity in attrition and career progression between men and women by allowing for flexibility in terms of both number of hours worked and place of work.

However, although law firms are vocal about adopting gender equality measures, they remain circumspect about their users as well as the extent of their success.¹ In this chapter, I therefore draw on law firm websites, the legal press and existing quantitative data on the diversity of the profession for information on the extent and effect of diversity programmes. I also use my own qualitative data collected through semi-structured interviews. The nature of my sample, including the considerable experience of interviewees and what they were prepared to share with me as both an insider and outsider, proved very useful. Together with existing theoretical analysis, the research I set out in this Part I points to the fact that measures thus far adopted by top tier law firms are not proving to be effective in achieving gender equality.²

¹ Georgina Stanley, 'Trio of firms team up to push gender diversity agenda as they unveil gender pay gap' *Legal Week* (London 8 February 2018). As stated in Chapter 1, this represents a methodological limit to this study inasmuch as data on existing diversity programmes as well as on new initiatives remains limited.

² An indication of this is the fact that figures on women lawyers reaching the top of their profession have changed very little in the last decade despite the increase in discourse around the issue of gender diversity, Sundeep Aulakh, Andy Charlwood, et al., 'Mapping Advantages and Disadvantages: Diversity in the Legal Profession in England and Wales' Final Report for the Solicitors Regulation Authority October 2017. Caroline Binham, 'Law firms try female leadership' *Financial Times* (London 10th March 2014) which states that in large City law firms, the percentage of women who attain equity partnership has not increased from the 15 to 20 per cent mark in the last decade or so.

In Part II, I turn to why these initiatives, founded on the premise of time, are unlikely ever to be truly potent in curbing the over representation of men in the higher echelons of law firms. Based on the research design set out above, I hold that the narrative of work-life balance has suited the legal profession and certainly City firms. By pinning persistent inequality on the demands of families and on the women who usually care for them, I argue that attention has been diverted from the broader and real issues of these firms' relentless focus on profitability, the long hours culture and linear careers. In order to avoid engaging in the more testing debate on overwork and the related fixation with profitability, City legal employers have encouraged conflicted lawyers (most of whom are women) to take advantage of flexibility. However, in doing so, I contend that these lawyers are in many ways being set up to fail on the basis of the paradoxical notion of time promoted by firms. Building on work by scholars such as Margaret Thornton and Joanne Bagust, who show how flexible work tends to confine women to subordinate roles, I argue that the paradox lies in these legal outfits claiming that part time arrangements will somehow contribute to women's professional advancement, if only by allowing them to remain in work.³ Yet at the same time, because of hours still being the primary measure of success, firms are encouraging women to give up the most important currency a City lawyer holds in negotiating promotion – hours worked.

In Part 3, I present data from my semi-structured interviews which supports the existence of this paradox. First, I show how the idea of gender diversity continues to be appealing largely on the basis that it is good for business. As I indicate in Chapter 3, profitability (rather than socio-racial employee multiplicity) seems to remain the key consideration when assessing the value of diversity measures. Second, I advance that the full time working model is still the only model that seems acceptable to transactional City lawyers, despite the number of gender diversity initiatives focusing on a reduction of working hours. This illustrates the extent to which the currency of time remains deeply embedded in firm culture such that the availability of part-time work, although deemed useful to those who use it, by definition, is perceived as deviant. It is principally for this reason, I posit that part-time work can never fulfill its purported objective to improve gender diversity and women's career progression.

³ Margaret Thornton and Joanne Bagust, 'The gender trap: flexible work in corporate legal practice' (2007) 45(4) *Osgoode Hall Law Journal* 773. See also Savita Kumra, 'Busy doing nothing: An exploration of the disconnect between gender equity issues faced by large law firms in the United Kingdom and the diversity management initiatives devised to address them' (2015) 83 *Fordham Law Review* 2277, P. Easteal, A. Caligari, L. Bartels and E. Fitch, 'Flexible work practices and private law firm culture: a complex quagmire for Australian women lawyers' (2015) 15(1) *QUT Law Review* 30.

PART I

B. Current initiatives to address discrepancies between men and women’s career progression, working conditions and experiences

The slow progress in redressing masculine over representation at the top and promoting women lawyers’ careers does not appear to be from lack of trying.⁴ In the interest of creating a more even playing field, in the last decade or so, many UK law firms, and certainly top tier City practices, have invested in a full suite of diversity initiatives. Initially, these programmes were mostly aimed at providing part-time positions in order to accommodate female associates with caring responsibilities.⁵ However, today, their scope and nature have been broadened and their main goal is not only that of addressing retention but female career progression generally.⁶ Law firms now also promote their programmes as catering to both women and men lawyers.

In addition to the classic part-time arrangement, this wider breadth of programmes aimed at accommodating lawyers includes remote working, job sharing, condensed work and reduced contribution as well as flexible working also known as agile/intelligent working programmes. Recently a few magic circle firms have also created consultancy arms and returnship programmes. Furthermore, as stated above, many have turned to championing women and turning what was informal mentoring into formal programmes.⁷ Networking initiatives have equally been on the rise to assist lawyers who identify with non-dominant groups such as LGBT lawyers, BAME lawyers, but also women lawyers

⁴ Most law firms now have an extensive menu of flexible working arrangements available to employees and although none divulge specific details, many make broad statements about promoting diversity internally. See for example, Clifford Chance’s webpage: https://www.cliffordchance.com/about_us/our-responsibilities/people-inclusion/inclusion-and-diversity.html. Linklaters, another large City firm has something similar: <https://www.linklaters.com/en/about-us/responsibility/diversity-and-incl>. Many gender initiatives began as part of wider diversity programmes within law firms when firms began being ranked by the legal press and legal directories such as *The Legal 500* on the breadth of their diversity programmes.

⁵ A number of scholars have commented on the nature of these early gender initiatives whether in the UK, Australia or the United States. See for example Joanne P. Braithwaite, ‘The strategic use of demand-side diversity pressure in the solicitors’ profession’ *Journal of Law and Society*, 2010, vol. 37, no. 3. Thornton and Bagust, note 3. Joan Williams and Cynthia Calvert, ‘Balanced hours: Effective part-time policies for Washington law firms: the project for attorney retention’ (2001-2002) 8 *William & Mary Journal Women and the Law* 357.

⁶ See for example Emma Spitz, ‘Women in law: the critical factors to focus on’ *The Lawyer* (London 23 February 2016).

⁷ One magic circle firm’s managing partner, for example, is being mentored by a female associate with caring responsibilities, the idea being that she can provide him with insight on her needs as a firm employee with young children. ‘Reverse mentoring the senior partner: Allen & Overy’s DeJonghe and his female mentor on their honest conversations’ *Legal Week* (London 8 March 2018).

generally, in building their book of business.⁸ Below I briefly explain the nature of the most common of these initiatives, focusing mainly on diverse working arrangements.

1. Diverse working arrangements: Accommodating female talent

First a note about the language used by the legal industry around flexible working arrangements. This catalogue of new expressions has evolved rapidly in the last ten years or so. Much of it mirrors terminology found in relatively recent UK statutory laws on flexible working, which includes part-time working.⁹ It is also to do with the numerous diversity initiatives that have sprouted steadily to address issues around employee retention. However, although expressions such as 'part-time work' and 'flexible work' are still widely used, for some, they hold a negative connotation, arguably to do with how committed users appear to the job. Consequently, in many private legal practices 'part-time' work is now often replaced by the specific arrangement agreed such as 'job-sharing' or 'condensed work' and it does not tend to include full-time flexible working.¹⁰ 'Flexible work' on the other hand is often used alongside 'agile' and 'intelligent' work and certainly within the legal industry, it tends to mean full time work that can be performed from home or elsewhere than the workplace during normal business hours. This was previously known as 'working from home' but, again probably because of negative implications, it is now often referred to as 'remote working'.

(i) Part-time working: Reduced hours, job sharing, condensed work and reduced contribution

Many of these diverse working arrangements are self-explanatory and associates (and some partners) will use them for the whole or only part of their careers. Variations on part-time and flexible work will form part of most large firms' policies to reflect UK law and some go further. Part-time work can mean working three or four days a week or working reduced hours, for example arriving at 10am and leaving at 5pm. Job sharing is when two or more lawyers share a 'desk'. This can have a variety of permutations but generally it is two lawyers each working part-time, the sum of which is a full time position. Condensed work is when a lawyer works full time but only for a set amount of months.¹¹ For example, some lawyers work ten months of the year and take two months off in the summer.¹² Reduced contribution is a form of condensed work specific to partners where a partner will work full time but with an agreed amount of

⁸ See for example, Anna Ward, Rose Walker, 'Top firms step up pressure on partners to take responsibility for improving diversity' *Legal Week* (London 4 April, 2017). <http://www.legalweek.com/sites/legalweek/2017/04/04/top-firms-step-up-pressure-on-partners-to-take-responsibility-for-improving-diversity/>

⁹ All UK employees have the legal right to request flexible working under the *Employment Rights Act 1996*. There are also various codes of practice for employers and employees on how to deal with such requests. Part-time workers rights are also protected under the *Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000*.

¹⁰ This is despite legislation on flexible working including part time working.

¹¹ Interview 20. These arrangements can vary widely from firm to firm. For example, at one magic circle firm, employees can purchase holiday time.

¹² Interview 12

weeks off spread across the year.¹³

Lawyers who wish to work in a part-time manner will usually request to do so by approaching the partner who heads their working group. The details of the arrangement, individually negotiated, are then worked out with the firms' human resources department.¹⁴

(ii) Flexible working or remote working

Again, this term is self explanatory in many ways. As stated above, it involves associates and partners opting to work in places other than the official place of work. This is often home but it can be anywhere. The practice of remote working has grown in popularity in recent years with some firms affording their lawyers full discretion as to when they show up to the office. Whereas before, most firms required associates to have permission from more senior lawyers, usually partners, to work from home, now many just ask that they be notified.¹⁵

(iii) Consultancy/outsourcing arms

Consultancy arms of large City law firms are the 'new kid on the block' in terms of flexible working policies made available to associates and partners looking for flexible working conditions. This type of flexible work is still in its infancy in terms of proving its worth for both firms, clients and the consultants who provide the service. However, in the last three to four years, a few large City law firms have started the business of deploying lawyers as independent consultants and proposing them to clients on an 'on-demand' basis.¹⁶ Legal consultants are not employees of the firm. They work for their own personal services firm for which they are the only employee. Although the firm supports them in a number of ways (facilities, administration, accounting, etc.), it does not guarantee them a steady flow of work. Initially many of these consultants were alumni of the firm but they now come from various backgrounds.¹⁷

One of the main motivating factors behind the creation of consultancies was to help firms to control peaks and troughs of activity more efficiently, especially during economic downturns and it is no coincidence that many outsourcing arms appeared during the last financial crisis. Employee salaries are firms' biggest overhead. Consequently, flexibility as to how many employees a firm has on its

¹³ Interview 12

¹⁴ This information is based on knowledge acquired through my interviews as well as my own knowledge, as previously having worked as a part-time lawyer.

¹⁵ Some commentators state that remote working is the future of City legal practice as rent in the Square Mile is getting increasingly unaffordable. See for example two magic circle's firms 2016 programmes officially rolling out remote working for associates and partners. Anna Ward, 'Clifford Chance and Slaughter and May roll out new remote working schemes' *Legal Week* (London 2 June 2016)

¹⁶ It is not only large City law firms who engage in this practice. Certain legal organisations such as Axiom and Lawyers on Demand are founded on this model. Jeremy Hopkins, 'The Future of Law' (Lexisnexisblog January 2015).

¹⁷ Interview 23

books can only be an attractive prospect.¹⁸ However, consultancies also have the potential to be attractive to lawyers who ostensibly have the ability to accept or reject work proposed by the firm, leading them to be in greater control of their working time.¹⁹ This factor is often cited by firms when recruiting consultants.²⁰

2. Mentoring and returnship programmes: Championing female talent

Many large City law firms offer at least one of these types of programmes often aimed at women in order to improve their career progression.²¹ Mentorship programmes look to create a close working relationship between a junior associate and a more senior lawyer, usually a partner. This is most often done through assignment where two people are teamed together on the basis of commonality such as area of work and sometimes, personal identity.²² Mentor and mentee will then arrange to meet regularly, usually to discuss career matters.²³

Returnship programmes are a very recent addition to firms' toolbox of answers to staff retention.²⁴ At the time of writing only one major law firm had officially launched such a programme, which was in its third year.²⁵ This consists of inciting alumni women of all ages to return to work.²⁶ In addition one magic circle firm had a 'Re-start' programme inciting employees over 50 years of age to return to work.

But despite their breadth, these programmes, which are mainly aimed at keeping women in work and promoting them, have had limited success in curbing masculine representation.²⁷ How do we know this? As stated above, City law

¹⁸ Hopkins, note 16.

¹⁹ Interview 23

²⁰ See, for example, the Allen & Overy Peerpoint webpage <http://www.allenoverly.com/peerpoint/Pages/default.aspx>.

²¹ The Law Society of England and Wales has recently created a mentoring scheme in order to help members with career progression. See <http://www.lawsociety.org.uk/news/press-releases/mentoring-boosts-career-progression/>. See also A&O's reverse mentoring initiatives, note 7.

²² Interview 28

²³ Interview 28

²⁴ Prior to this, many firms were uninterested in women who wished to re enter the legal job market following a career break. See for example, Hilary Sommerlad and Peter Sanderson, 'The legal labour market and training needs of women returners in the United Kingdom' (1997) 49(1) *Journal of Vocational Education and Training* 45.

²⁵ Allen & Overy is the only City law firm that has thus far come out publicly with such a programme. The firm may have been encouraged to do so on the back of the success of similar programmes launched by large banks such as Morgan Stanley. <http://www.allenoverly.com/news/en-gb/articles/Pages/Allen-Overy-launches-Return-to-Law-programme-in-the-UK.aspx>.

²⁶ Camille Joly, field notes from participation at Allen & Overy's returnship programme, June, 2015. Allen & Overy invited me to the launch of its Returnship Programme. The firm organisers were aware that I was a former employee doing research on women's career progression.

²⁷ Recent U.S. figures show that associate attrition is at about 19.5 per cent overall, with the greatest number of associates leaving after two to three years. M. Erb, 'Red light, green light: Assessing the stop and go in the advancement of women in the legal and business sectors' (2008)

firms do not make public data on whether their diversity programmes are bearing fruit. However, the limitations of these programmes' can be appreciated by looking at figures from regulatory bodies, such as the Law Society of England and Wales and the Solicitors Regulation Authority as well as recent surveys and studies. These clearly show that women still do not progress as quickly as men. They also inform us as to the extent to which they leave private practice, when and why.

As I have set out in Chapter 1, men continue to be over represented in all branches of the legal profession with most City partnerships still today consisting of 80 per cent men. Their management is even more male with over 90 per cent of men. It is also worth noting that white men are still 3.6 times more likely to make partner in major City firms than white women and six times more than BAME women and that BAME men progress more quickly than all women.²⁸

We also know that women leave private practice in greater numbers than men. Although these figures are not specific to major City law firms, recent 2016 Law Society figures show that of all practitioners in England and Wales, for those with 0-9 years experience, women outnumber men 52.3 per cent to men's 32.7 per cent. But of the practitioners with twenty years or more experience, women only represent 12.9 per cent of private practitioners to men's 19.3 per cent.²⁹

The inefficiency of diversity programmes in gaining ground for equality is not only apparent by the lack of career advancement and higher female attrition rates in private practice, it is also evident with respect to how much men get paid compared to women. At the time of writing, the largest of UK law firms (as well as any private or public company with over 250 employees) were under a new regulatory obligation to publish their gender pay gap figures.³⁰ Unsurprisingly, most large City law firms reported gaps favourable to male associates. However, it is the extent of this gap that is disconcerting. As stated above, three of the five magic circle firms had, for example, an average median hourly gender pay gap of 35.2 per cent among associates.³¹ Notably, most firms refused to include figures on partners' salaries (which is not required because partners are not regarded as employees). This is likely because, as discussed, partners tend to be men and this

14 Wm. & Mary J. Women & L. 393, citing NALP, 'Beyond the Bidding Wars: A Survey of Associate Attrition, Departure Destinations and Workplace Incentives' (2000).

²⁸ Sundeep Aulakh, Andy Charlwood, et al., 'Mapping Advantages and Disadvantages: Diversity in the Legal Profession in England and Wales' Final Report for the Solicitors Regulation Authority October 2017, 49.

²⁹ Law Society of England and Wales, 'Trends in Solicitors Profession 2017: Annual Statistics Report' June 2017, 18.

³⁰ Under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 public and private companies with over 250 employees must publish their pay gap figures by April 2018.

³¹ Barney Thomson, 'Law firms resist pressure on gender pay gap reporting', *Financial Times*, (London 19 March 2018). Slaughter and May, whose median pay gap was 34 per cent and bonus pay gap was over 54 per cent, was asked to provide evidence to the Commons Business, Energy and Industrial Strategy Committee where the firm was criticized by MPs for not 'telling the truth' <https://www.lawgazette.co.uk/law/mps-rap-slaughter-and-may-over-lack-of-pay-gap-transparency/5066120.article>.

would have significantly increased their pay gap figures.³² However, two magic circle firms did include partners' salaries, which brought their pay gap to over 60 per cent.³³

So, in sum, despite being around for well over a decade, diversity programmes have not produced the desired results for gender equality. Even so, despite failing in their objective to attain greater parity amongst men and women solicitors, can it be mooted that these programmes are at least valued by those who use them? This does not appear to be the unequivocal case. According to one of the largest survey of women solicitors, most believe there are negative career consequences associated with using work-family-life policies.³⁴ One in two women solicitors believes for example that lawyers who make use of such policies are viewed as less serious about their careers. In addition, the survey shows that 44 per cent feel that working flexibly has a negative impact on lawyers' promotion prospects.³⁵ Women who did work flexibly, on part time/reduced hours or flexitime, reported being less stressed or burnt out from their work but perceived fewer promotional opportunities and were less satisfied with their careers than other women solicitors.³⁶

But the question remains, why have diversity programmes delivered so little in terms of equality in both women's career progression and career satisfaction? Building on arguments made in Chapter 2 on power and in Chapter 3 on the masculinization of law firms' identity, structures and working practices, I posit that it is much to do with the patriarchal model in place at City law firms, which has led firms to adopt a paradoxical view of the notion of working time. In order to protect and grow profitability, firms have chosen to embrace the narrative of work-life balance rather than look to more meaningful and deeper reasons for their diversity programmes shortcomings. This has allowed them to pin the problem of career progression on women's inability to meet the long hours' demands rather than questioning the overwork culture itself.

³² Ibid. That argument did not dissuade some of the big accountancy firms, such as Ernst & Young, from including partner salaries. They are in a similar position to City law firms with respect to male over representation at partner level.

³³ Ibid.

³⁴ Janet Walsh, 'Women solicitors' work-life balance examined', King's College London and Association of Women's Solicitors, March 2010. Over 800 women solicitors participated in this survey. See also Thornton and Bagust, note 3, 787.

³⁵ An example of this is Allen & Overy's flexible partnership programme. According to one article, only 15 of its 355 equity partners had enlisted in its flexible partnership programme. This may be because of perceptions regarding such flexibility programmes one partner for example described it as "career suicide." Alex Aldridge, 'City law firms must do more to help women become partners' *The Guardian* (London 29 October 2010).

³⁶ Note 35.

Part II

C. The origins of working time norms

The common western view that long hours at work equate to professional competence and commitment is a modern one. At the turn of the 20th century, lengthy working hours were mainly restricted to the working class and often associated with arduous manual labour.³⁷ Free time for the pursuit of leisurely activities was the domain of the wealthy. Even the professional elite would pride themselves on working as little as possible. Bankers, for example, were known to apply the '3-6-3' rule: borrow at 3%, lend at 6% and be on the golf course by 3p.m.³⁸ Lawyers also aimed to work short days, leaving more tiresome tasks to apprentices.³⁹

Yet by 1930, economists such as John Maynard Keynes thought a short working week for all, not just the privileged, was within reach.⁴⁰ Keynes opined that society was getting sufficiently rich that hours worked by most might soon be limited to 10 to 15 a week.⁴¹ He based his theory on the working week becoming progressively shorter, from 60 hours in the early 1900s to 40 hours by the 1950s.⁴² This change was attributable to an increase in productivity across western society, due largely to technological advancements in industries such as manufacturing.⁴³ Keynes believed that this increased production, which led to a rise in wages and a corresponding drop in hours, would allow workers more time to pursue activities of leisure, creating a new 'leisure class'.

But this Keynesian vision was to be short lived. Macro economic factors such as globalization, a neo-liberal agenda of cutting taxes, a contracting welfare state and restrictions on labour market protections all contributed to ending the Keynesian dream of reduced working hours. In fact, some economists posit that the average time spent on leisurely activities has gone back to what it was in the early 1900s, with time spent at work now higher than ever.⁴⁴ Yet contrary to earlier norms, today, those at the bottom of the ladder often struggle to find hours of work, whereas those at the top work round the clock. Zero hours contract and 'just in time' scheduling represent one end of this new working time

³⁷ Ryan Avent, 'Why do we work so hard?' *The Economist* 1843 (April/May 2016) 102.

³⁸ Ibid. These hours became colloquially known over time as 'bankers' hours'.

³⁹ John Flood, 'Law Firms' in D. S. Clark (ed) *Encyclopedia of Law & Society: American and Global Perspectives* (Sage Publications 2007) 924.

⁴⁰ John Maynard Keynes, 'Economic possibilities for our grand children', *Essays in Persuasions* (The MacMillan Press Limited 1972) originally published in 1931, as quoted in Avent note 37, 102.

⁴¹ Ibid.

⁴² Ibid.

⁴³ John Maynard Keynes, as cited in Avent note 37.

⁴⁴ Valerie Ramey, Neville Francis, 'A century of work and leisure' NBER Working Paper Series, 2006, National Bureau of Economic Research.

spectrum, whilst the long hours culture found in many of the professions is an example of the other.⁴⁵ Both extremes represent their own sets of concerns but my focus will be on the latter.

So why do professionals work such long hours? Scholars have given much thought to this. One view is that it is because they enjoy what they do.⁴⁶ Most, after all, have invested much time, money and effort in education and training in order to gain access to their profession and many attest to finding their work intellectually stimulating.⁴⁷ For City lawyers, by way of example, solving complex, interesting legal problems in the company of both talented colleagues and clients, in one of the world's biggest financial centres, can be appealing.

But although interest in one's job is an understandable reason to enjoy time at work, can this explain the development of such extraordinarily long working hours? The concept of the 'greedy institution' provides some answers. Conceived by Lewis Coser and Rose Laub Coser, this notion is based on the claims the powerful make on the individual or more precisely "[...] how organized groups compete with each other for the limited energies and time commitments of individuals."⁴⁸ Although the Laub-Coser writings never extended to modern working life, their definition of greedy institutions, which seek exclusive and undivided loyalty, has been applied by scholars to organizational hierarchies.⁴⁹ According to Teresa Sullivan, demands made by various institutions in our lives, including family, religious and social clubs, exercise clubs, and work, are manageable provided they remain reasonable. When one institution exceeds measured demands and begins making excessive claims on our time, until space is left for little else, then it becomes a greedy institution. These types of institutions, writes Sullivan, exert subtle pressures on individuals whilst seeking more and more time commitment. The aim is to damage, consciously or unconsciously, existing ties with other groups and slowly push out connections with competing institutions.⁵⁰

Sullivan and other scholars deem that technological advancement is also partly to blame for the ever-increasing hours creep resulting in work's dominance over our personal and professional lives.⁵¹ Although practical, smartphones and

⁴⁵ Alexandra Beauregard, 'Work life conflict and interaction', (2014) March/April, Focus 48.

⁴⁶ Avent, note 37.

⁴⁷ Interestingly, of the cohort I interviewed, it is mostly women who emphasized how much they enjoyed the intellectual aspect of their work, see for example interview 3 and interview 2.

⁴⁸ Teresa Sullivan, 'Greedy institutions, overwork and work life balance' (2014) 84(1) *Sociological Inquiry* 2. See also Lewis A. Coser 'Greedy Organisations' (1967) 8(2) *European Journal of Sociology* 196. Interestingly, Coser's concept of greediness has also been extended to home life, see Constance Shehan, 'Greedy homes and the demands they add to work-life conflict: a neglected dimension in work-family policies' (2011) 40(2) *Contemporary Sociology* 143.

⁴⁹ Marianne Egger De Campo, 'Contemporary Greedy Institutions': An essay on Lewis Coser's concept in the era of the 'hive mind' (2013) AV CR, v.v.i., *Sociologicky ustav* 969.

⁵⁰ Sullivan note 48, 3.

⁵¹ See for example, Kaspar Villadsen, 'Constantly online and the fantasy of 'work-life balance': Reinterpreting work connectivity as cynical practice and fetishism' (2016) 25(3) *Culture and Organisation* 363.

laptop computers mean that work is no longer limited to office space as it merges with home.⁵² Work has not only entered our homes, but it also pervades our weekends out and holidays and, for those with children, it impedes on school plays and sports days to become part of our lives and ultimately part of our identity.⁵³ This explains why sociologists such as Arlie Russell Hochschild believe that in recent decades, rather than complementing or improving family life, work has competed with it and won.⁵⁴

There has indeed been, over the years, a blurring of boundaries between our professional and personal identities. For many, professional life has morphed into a community. Long hours spent at the office, often in the company of peers from similar socio economic backgrounds, who share a professional interest, can lead to a sense of belonging.⁵⁵ Client relationships can also add to this phenomenon. Often encouraged by professional service providers, social activities with clients can form lasting social bonds. This strong sense of community and feeling of extended family, borne of long hours in the workplace begins to play a part in our sense of identity. It is no longer just gainful employment but rather a central part of who we are.

D. The 'ideal worker'

Those whose identity is strongly linked to the workplace are often willing and able to comply with these changing time norms by working long hours. Coined 'ideal workers', by definition they are wholly committed and make themselves fully available to their professional employer having adopted the stance that their job is all-important.⁵⁶ Yet, lurking in the background is the reality of the need to repress the demands of other compelling identities such as being a good parent, life partner, friend, citizen, etc. Over time, this choking of other fulfilling aspects of life can lead to depression and other mental health issues.⁵⁷ Yet despite acknowledging the risks associated with the high demands of over commitment, ideal workers also know that this way of life is not without its

⁵² Arlie Russell Hochschild, 'When work becomes home and home becomes work' (1997) 39(4) *California Management Review* 79.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Many professions and certainly large City law firms continue to lack in diversity and remain populated by a relatively homogeneous group of white middle class men and women of similar age groups. Mapping Differences and Advantages note 28.

⁵⁶ The origins of this term are unclear but it has formed part of the dialogue on the sociology of overwork and law firms for over two decades and appears in seminal works on the subject such as Joan Acker, 'Hierarchies, jobs bodies: A theory of gendered organizations' (1990) 4(2) *Gender and Society* 139, Mary Blair-Loy, *Competing Devotions: Career and Family Among Women Executives* (Harvard University Press, 2003).

⁵⁷ Hochschild note 52. John Hagan, Fiona Kay, 'Even lawyers get the blues: Gender, depression and job satisfaction in legal practice' (2007) 41(1) *Law & Society Review* 51, Margaret Thornton 'Squeezing the life out of lawyers: legal practice in the market embrace (2016) 25(4) *Griffith Law Review* 471 and Alexandra Beauregard, Lesley C. Henry, 'Making the link between work life balance practices and organizational performance' (2009) 19 *Human Resource Management Review* 9.

rewards. Compensation goes beyond the financial and comes in the form of career advancement based on the values most professions allocate to long hours, namely competence and ambition.⁵⁸

More often than not, those able to conform to modern time norms are men. Women, and especially women with caring responsibilities, cite long working hours as the main reason for work life conflict, lack of professional advancement and ultimately attrition.⁵⁹ The reason men are better able to meet the time demands from their profession is because these demands are based on a masculine paradigm, the subject of Chapter 2, which relies on the sustenance of a binary world in which men are breadwinners and women are caregivers. As intensive parenting has become prevalent, endorsing parents' constant availability for their children, this dichotomous world is all the more real for many carers.⁶⁰

Interestingly, and as noted in Chapter 3, these new working time norms, which became common place in the late 1970s and early 1980s, are concomitant with women entering the work force in earnest.⁶¹ Certainly, as women began qualifying into the legal profession, Ann Witz's theory on professional closure can be applied, where long hours at work not only began to be expected but it is also around that time that they became a symbol for ambition and competence.⁶² Suddenly, time spent at work was reconstructed into a symbol not only of elite competence and devotion to work but also of masculinity. Busyness became symbolic of one's place in society as well as a badge of honour, status and importance. This masculine enactment of work devotion arguably gave way to a new form of macho competition developed around presenteeism and 'face time' in the office. Arguably, the result of this closure was that, as women with caring responsibilities were not able to compete, they began to seek out different

⁵⁸ Shelley J. Correll, Erin L. Kelly et al, 'Redesigning, redefining work'(2014) 41(1) *Work and Occupation* 5. The authors state that the rise in overwork is increasingly rewarded. People working over 50 hours/week earn a premium on any hour worked over 40.

⁵⁹ A number of studies report this to be the case. A recent example is Jane Ellis, Ashleigh Bucket, 'Women in commercial legal practice' IBA Legal Policy and Research Unit December 2017, 11. See also the KLC study conducted by Janet Walsh note 34.

⁶⁰ Correll and Kelly et al, note 58, 5.

⁶¹ Andrea Davies and Brenda Frink, 'The origins of the ideal worker: The separation of work and home in the United States from the market revolution to 1950 (2014) 41(1) *Work and Occupations*, 18. The authors write that the gendering of working hours was seen post WW II, when short days i.e. 6 hour days were seen as 'women's hours'. These were the number of hours women had worked during the war to replace male labour. Post war men prided themselves on working the 'standard' workday of 8 hours and a new rhetoric emerged promoting longer hours for men. See also John Hagan and Fiona Kay, *Gender in Practice: A Study of Lawyers' Lives* (Oxford University Press 1995).

⁶² Ann Witz, *Professions and Patriarchy* (Routledge 1992). As stated in Chapter 3, Sommerlad writes that it is conceivable that professional women would have thrived equally to men in a pre long hours' culture world, when, for example, lawyers worked a normal working day and law firms closed on weekends and during holidays. Hilary Sommerlad, 'Women solicitors in a fractured profession: intersections of gender and professionalism in England and Wales' (2002) 9(3) *IJLP* 213.

working time arrangements or they left their profession altogether.⁶³ But female attrition was not the only repercussion, this bravado display also jeopardized work quality and work productivity by preferring to focus on time at work rather than its results.⁶⁴

E. Working time norms and the work-life balance narrative

Women entering the work force in the 1970s and 1980s significantly increased the number of dual career couples. This new social phenomenon saw the dawn of a narrative on work-life balance. By the 1990s, most large corporates and professional outfits had some form of policy on work-family solutions. Although altruism had some role to play, organisational motivation for such initiatives was largely based on growing research showing work-life conflict as being bad for business.⁶⁵ Studies were beginning to find that this tension not only led to job dissatisfaction but also reduced job effort and performance and increased absenteeism.⁶⁶

Initially, these programmes' objectives were fairly modest: to alleviate pressure on mothers with young children with the offer of part-time work. These terms were likely to be negotiated on an individual, case-by-case basis.⁶⁷ With time, work-life solutions have expanded to include not only part-time work but also remote work (working from home), job sharing and other parental leave programmes. These work life practices have also been extended to all employees including men. Remarkably however, most seem to remain individually negotiated, reifying full-time work as the norm.⁶⁸

Terminology around the issue of work-life conflict has also evolved. As set out in Part I, language around 'part-time' work and 'flexible' work has been replaced in many organisations by 'intelligent' work or 'agile' work. This semantic change can be explained as an effort by organisations to move away from the insinuation that users of these diversity initiatives are working less than 'full-time'. By changing the expressions, firms are also trying to fix, albeit with limited success, the related problem that these programmes, still largely aimed at and consumed by women, come with a stigma that results in career limitation.

⁶³ This is not only true of the legal profession, but the financial community in general. The 1980s and 1990s culture and namely the media, played a role in glamourizing the legal profession's identity with long hours and the chasing of profits through movies such as *Wall Street*, TV series like *Law & Order* and *Ally McBeal* and books including *Bright Lights, Big City*.

⁶⁴ Correll, Kelley, et al, note 58. The reason for this is that results are perhaps more difficult to measure and firms do not have the structures in place to do so.

⁶⁵ Clare McGlynn, 'Strategies for reforming the English Solicitors' profession: An analysis of the business case for sex equality' in Ulrika Schultz and Gisela Shaw (eds.) *Women in the World's Legal Professions* (Hart Publishing 2003).

⁶⁶ Beauregard note 57. Beauregard states that today, research shows that work life programmes are good for business, giving firms who have them a competitive edge over recruitment and retention. Research cited by Beauregard also indicates that these programmes' set up and running costs are relatively small.

⁶⁷ These programmes were often also created to comply with emerging government legislation.

⁶⁸ Information based on this study's interview data.

Yet, instead of addressing this issue and confronting the true shortcomings of part-time working policies, firms continue to promote and develop them.⁶⁹ One group of scholars explains the persistence in this organizational work-family discourse and its related flexible routines and policies as an unconscious “social defense.”⁷⁰ Drawing on research on professional service firms, they propose that these organisations, supported and reinforced by cultural beliefs about intensive mothering, focus on the work-family discourse as an explanation for women’s stalled career advancement partly because it diverts attention from the broader problem of a long hours culture among professionals. They argue that this readily available work-family narrative allows firms and their members to avoid this reality and the anxieties it creates by projecting the problem onto women and by projecting the image of a successful employee onto men. The scholars highlight the irony of how this focus leads to accommodation policies that do little to help women and often hurt them, leaving the larger problem unaddressed and unacknowledged.⁷¹

In summary, overwork and any issues or problems that are thought to result from long hours have arguably been renamed ‘work-family conflict’ and made into a woman’s problem, allowing firms to sidestep the bigger issue of the long hours culture and freeing (or forcing) men to continue complying with this culture by embodying the ideal worker. This is not to say that work family conflict does not exist, it does. The problem is that the narrative around it has been almost solely pinned to women and families. This leads to many women feeling that they are somehow the problem, causing them to opt out. For those women who are in two parent heterosexual couples, many revert to a neo traditional pattern by leaving paid work and relying on their partners, who continue to do long hours, for financial support.⁷²

F. Time norms and the over representation of male City lawyers

Applied to today’s over representation of men within large private legal practice, working time norms are a useful thread which not only serve to explain, at least in part, why men dominate positions of partnership in City firms, but also expose crucial paradoxes that help us better understand the resilience of this dominance against initiatives devised to address it. Drawing on the theory set out above, working time first features in explaining masculine over representation within

⁶⁹ This is not to say that work life practices do not have a positive effect on women’s lives. They are known to add to the longevity of women’s careers and also reduce stress related to balancing home life and work life. Yet, evidence still shows that they are career limiting.

⁷⁰ Irene Padavic, Robin J. Ely ‘The work-family narrative as a social defense’ (2013) Gender and Work Symposium, Harvard Business School, 4.

⁷¹ Ibid.

⁷² Correll and Kelly note 58, 5. The authors advance that professional women pay a steep price for even a short time outside their profession.

City law when looking at how City law firms are structured as organisations, both externally and internally.

Long hours at work are now assumed to be an essential requirement of the modern successful career. As discussed in Chapter 3, from an external perspective, this is because City firms inhabit a world where the demise of professionalism coupled with the onset of neoliberalism and globalization have given way to a hyper competitive environment where profitability is prioritised about all else.⁷³ In this world, firm profitability is generated by a single source of revenue, billable hours. So it is unsurprising that big firms have taken on the qualities of a greedy institution and encouraged a long hours culture where a lawyer's time must be free from all competing interests, such as family commitments or hobbies.

Yet large City firms go further than merely encouraging lawyers to time commit at the expense of other outside interests or responsibilities. From an internal perspective, these organisations nurture the notion of the 'ideal worker' discussed above. Compliance with time demands has become a proxy measure of reliability, commitment and productivity. The number of hours worked is associated not only with a time commitment but with interest in career advancement, productivity and more generally one's value as an employee.⁷⁴ Promotion to partnership still largely depends on hours worked whether they are chargeable to clients or attributed to business development.⁷⁵ Time has therefore become a resource, one used to control, measure and exchange. As I discuss below in Chapter 5, with women lawyers often taking on the lion's share of caring responsibilities at home, this resource has been, from the get go, more available to men. These new working time norms therefore reflect and reinforce a paradigm in which employment and family continue to occupy distinctly separate spheres.⁷⁶

⁷³ A number of scholars have written about this environment, see for example Hilary Sommerlad, 'Minorities, merit and misrecognition in the globalized profession' (2011-2012) 80 *Fordham L. Rev* 2481, Eli Wald, 'Glass ceilings and dead ends: professional ideologies, gender stereotypes and the future of women lawyers at large law firms' (2009-2010) 78 *Fordham L. Rev* 2245.

⁷⁴ Belinda M. Smith, 'Time norms in the workplace: Their exclusionary effect and potential for change' (2002) 11 *Columbia Journal of Gender and Law* 271.

⁷⁵ Law firms have said that hours billed are no longer as important as they use to be and what matters now, just as much, especially for senior associates, is business development. But business development also requires time. And because it is time in the evening it is all the more difficult for those with caring charges. This time is often also recorded by firms. In any event both represent hours worked for the growth of the firm, whether or not the firm can bill them out to clients.

⁷⁶ The meaning of public and private although useful is not without its critics. This dichotomy has long been contested on the basis of three overlapping arguments: "One is that the conceptual orientations of much social and political theory have ignored the domestic sphere or treated it as trivial. The second is that the public/ private distinction itself is often deeply gendered, and in almost uniformly invidious ways. It very often plays a role in ideologies that purport to assign men and women to different spheres of social life on the basis of their 'natural' characteristics and thus to confine women to positions of inferiority. The third is that, by classifying institutions like the family as 'private', the public/private distinctions often serve to shield abuse and domination within these relationships from political scrutiny or legal redress. Jeff Weintraub, 'The theory and politics of the public/private distinction' in Jeff Weintraub and Krishan Kumar

Nonetheless, rather than addressing the deeper issue, City firms have engaged in a social defence by adopting their own version of the work-life narrative. In the last decade or so, firms have developed an ever-growing discourse of flexible and agile work to promote gender diversity.⁷⁷ This ranges, as I set out in Part I, from flexibility on the numbers of hours worked to where they are worked. Yet, although certainly useful in alleviating demands from home, these two realities, that of the long hours culture on the one hand and flexible working on the other, as they are constructed today, are irreconcilable. If the number of hours spent at work remains the marker of individual and firm success, then a reduction in working time cannot be the answer to redressing the disparity between men and women lawyers' progress.

There is a growing recognition amongst City law firms that diversity initiatives have not delivered expected results. It is therefore an opportune time for them to recognise that the cause of male advantage within private practice is not women's inability to meet the hours because of caring roles. That is the symptom. The cause of female attrition and slower progress is the imperative placed upon all lawyers to do those hours in the first place in order to succeed. Firms need to move away from the link they make between profits and hours and commitment and success and look to perhaps less measurable but more meaningful gauges of accomplishment such as quality of output and efficiency. As things stand, a weary observer might say that to protect profitability, overwork has conveniently been renamed work-family conflict and made into a woman's problem.

Part III

In this part, I present data that upholds arguments made in Part II and that I argue explain, from a practice point of view, why these various diversity programmes are not delivering the desired results for large City law firms despite the investment that has gone into them. This data supports my general argument relating to firms paradoxical notions of time. It illustrates, on the one hand, how time remains the most important marker of profitability and success and on the other, how despite this reality, a reduction of time is encouraged as a solution to the disparity between men and women's career advancement.

Below, I break this data down into three points: first, that from my sample, most lawyers believed profitability, or the business case, to be the main reason behind diversity programmes. Second, that the full-time and linear model of employment continues to be the only one that is accepted, with lawyers

(eds) *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy* (University of Chicago Press 1997). See also Nancy Fraser, 'Rethinking the public sphere: A contribution to the critique of actually existing democracy' (1990) 25-26 *Social text* 56.

⁷⁷ Sullivan, note 48. Sullivan reminds us that the cleverness of greedy institutions is that each good work-life balance policy can be undermined by subtle efforts to dissuade workers from using them. These manifest reasons include increased business, pressing work deadlines, internal threats of reorganization and layoffs.

overwhelmingly being of the view that fixed part-time hours are unworkable for City lawyers. Consequently and lastly, that significant stigma is still tied to users of flexible or agile working causing limitations to career prospects.

G. What drives City firms' gender diversity initiatives?

The main driving force behind large City firms' diversity programmes, including gender diversity, remains the business case, or how diversity is good for profits.⁷⁸ If firms are motivated to employ and retain female employees for moral reasons, this did not come out of my interviews, other than fleetingly. Respondents noted two main factors within this business case that seem to motivate support for gender diversity. The first is to do with firms becoming acutely aware in recent years of the extent of the costs associated with losing female associates and partners.⁷⁹ The second is related to lost work from clients, who are increasingly women in-house lawyers, whose own internal policies are to hire law firms that promote gender diversity.

Therefore, it is noteworthy that a significant number of interviewees generally thought that firms are running diversity programmes, not necessarily to help women and other non-dominant groups progress but rather in order to maximise, directly or indirectly, client work and their own bottom lines. Also of interest is that many respondents, and namely male respondents, seemed phlegmatic about this reality. In discussing gender diversity and why his firm was aware more than ever of the importance of female retention, one male partner and manager in a high ranking City firm had the following explanation:

It's not a new problem. But I think the reason why, the ultimate reason why it is happening now, really it is sad to say, but the single most compelling reason in making people do it is competition. It's economics. So if our peer firm is at 30 per cent women partners and we are at 12 per cent, we are not going to recruit the best people. We are not going to get the best cases. It's going to have a negative impact on our business.

Apart from the social and moral reasons why it is good to do that, it is completely in line with the business reasons, which are to reflect the client base with whom we deal. If we want to be serving them to the best of our ability, what we need to have is a business that reflects that. A lot of women who leave our firm become in-house lawyers, so they become

⁷⁸ Savita Kumra explains how the dominant approach to encouraging equality continues to be based on the business case where ties are made between diversity initiatives and organizational benefits such as profit growth (including cost savings due to lower employee turnover), employee performance, recruitment success and improved client relationships. Kumra, note 3, 2287.

⁷⁹ The cost of replacing an associate for law firms ranges. A recent 2017 US association, The National Association for Law Placement report estimates the costs can be as high as US\$ 500,000 per associate. <https://www.nalpfoundation.org/bookstore>, Damien Black, How does associate attrition impact the bottom line? (Evolve The Law December 1 2017). This may be even higher as a less recent 2001 U.S. study was already pointing to those figures, reporting the average cost of attrition to be between \$200,000 to \$500,000. Williams and Thomas-Calvert, note 5, 361.

clients. If you have a disproportionate number of women clients, [...] there is a disconnect. In my section, there are 42 partners and as of January 2015, we had only one female partner. Now we have five. The only actual reason I think that is driving the actual change is the business case. It is because of the competitive imperative on the market place.⁸⁰

Another male partner explained how he became aware of the importance of diversity during a pitch for instruction to a US client:

US clients spend a lot of time and they go through everything with a fine-toothed comb but they spent about half an hour talking about how we're dealing with diversity.⁸¹

But although this partner recognised the pressure from clients to present a diverse legal team, as an internal issue he did not think it mattered as much as profitability:

When the pressure on partners is to make more money, when partners are seeing their peers getting further, making more money, when it comes down to it, for them it's not about who's a woman or who's not a woman, whose somebody from a diverse background. It is who has the most billable hours and therefore making me more money. Who has the potential of bringing our department the most money. Therefore anything else becomes irrelevant.⁸²

Another senior male partner added that, although things had become much better in terms of gender parity at his large law firm since he began practicing in the early 1990s, he remained skeptical as to the authenticity behind its diversity initiatives:

I've been a little bit cynical over the years about diversity and why people are doing it. I think it started off with a degree of lip service. [...] There was a degree of tokenism [...] You get some large bank that says: "We're going to look at your diversity credentials as part of the pitch." You hear that once, the next time, you're bloody well going to make sure that your diversity credentials are focused on or someone has thought about them. But there is an element of window dressing [...] and putative diversity - this is how we would like to be, and that's how we have to present ourselves - and then we'll let the reality catch up to the projected perception.⁸³

One magic circle diversity manager admitted that her firm's initiatives and their success had become more pressing as the firm is beginning to better understand the real costs of losing women lawyers:

⁸⁰ Interview 6

⁸¹ Interview 7

⁸² Interview 7

⁸³ Interview 17

We're talking about institutions that are financially successful, so they haven't had the burning platform for change around women [...] they haven't seen their business suffer because they haven't dealt with it. Because of that, we haven't made the hard decisions and done the difficult things that are going to make a difference. I think we know more about the business benefits than we ever have so we're now able to quantify the cost of losing women, the kind of financial loss in a way that we haven't before. I think people are stepping back a bit and saying: "Okay, why aren't things changing?" And I think we're a good example of that. We've done a lot. We've invested a lot but our numbers haven't moved as quickly as we would've liked them to. It's time to do something differently. I think the City is waking up to that.⁸⁴

This slow awakening was illustrated by the following comment from another manager who works closely with the senior managing partner of a magic circle firm on improving diversity. He added that although his firm had aimed to make up 20 per cent of women by 2020 across its global offices, it had now become clear that this would not be achievable:

We haven't thought big enough either. So, I don't know how many years ago, we came up with a figure of 20 per cent of the partnership being female. We've inched slowly towards that. Almost two steps forwards, one step back. But we've now come out in the press saying the pipeline is not great. So we know things will get worse before they get better. [...] We know that in certain of our offices we are already achieving these targets, so it can be done and we are doing it in certain places, but overall we're struggling.⁸⁵

One male partner who works at the same firm as the manager of the above comment, but is not involved in the management of gender diversity, had this to say regarding his firms' public target of attaining 20 per cent of female partners by 2020:

[...] this whole 20 per cent by 2020 thing, there is a certain amount of PR element to it. I don't know if you can take at face value some of the initiatives that the firm's come out with because a lot of it is PR. A lot of it hasn't seemed to make that much difference. [...] The rhetoric is easy.⁸⁶

⁸⁴ Interview 29. This firm has recently announced its 2018 London partnership results where it promoted only two women out of 20 new partners. James Booth, 'Magic circle Allen & Overy has promoted just two women in 2018 promotions round underlining the persistent problem of gender imbalance in the legal sector *Citya.m.* (London 18 April 2018).

⁸⁵ Interview 29

⁸⁶ Interview 12

So although management of large City firms seem to be buying into gender diversity, albeit for financial reasons,⁸⁷ it remains questionable as to whether this buy-in has spread across the partnership, to partners who ultimately are the ones who need to 'own' and effectively apply diversity measures within their respective practice groups.

There is an on going scholarly debate as to whether diversity programmes bear limited fruit because they are so often founded on a business case rather than a moral one.⁸⁸ On the one hand, some believe it is unrealistic to think firms, who as businesses are so focused on profitability, would venture to have these programmes in the first place if they did not have the potential to be financially rewarding for them. They further advocate that it is not because they are based on a business case that they are destined to produce such limited results.⁸⁹

But others claim that if the value of attaining equality is measured primarily in financial terms, diversity programmes are unlikely to be deemed successful, as equality is not always profitable. Rather, they argue that these programmes should be promoted on the basis of social justice and morality.⁹⁰ Indeed, if inclusion has to prove financially rewarding to firms who promote it, initiatives aimed at doing so will not only be precarious but they will always be limited in their results as they will target client and employer satisfaction as opposed to that of employees. Certainly, it would be interesting to see whether female retention and advancement improved if the *raison d'être* of diversity initiatives became wholly based on fulfilling the needs of employees who require them without any or at least limited consideration of profitability.

H. Formal part time arrangements and informal agile working arrangements

A further striking result from the data gathered was the strong disconnect between the diversity measures promoted by City legal management as an answer to gender disparity in career progression and the perception fee earners have of part-time work as largely unviable. A significant number of respondents expressed strong beliefs that transactional work did not lend itself well to anything other than full-time employment. Although many embraced the idea of occasional remote working, they unequivocally thought that part-time positions were unworkable due to the pressures of client demand.

⁸⁷ The managing partner of one magic circle firm, for example, has made diversity one of his five main goals during his tenure. Allen & Overy website: <http://www.allenoverly.com/corporate-responsibility/diversity-inclusion/Pages/Creating-a-better-gender-balance.aspx>

⁸⁸ Joanne Braithwaite, 'The strategic use of demand-side diversity pressure in the solicitors' profession' (2010) 37(3) *Journal of Law and Society* 442. See also Hans van Dijk et al., 'Reframing the business case: A values versus virtues perspective' (2012) 111 *Journal of Business Ethics* 73.

⁸⁹ Cedric Herring, 'Does diversity pay? Race, gender and the business case for diversity' (2009) 74(2) *American Sociological Review* 208

⁹⁰ Mike Noon, 'The fatal flaws of diversity and the business case for ethnic minorities' (2007) 21 (4) *Work, Employment and Society* 773.

1. Acceptable and unacceptable diverse working arrangements

Generally speaking, formal working arrangements, those that are contractually agreed between a firm and its employee, tend to relate to part-time work. This is largely due to the salary being proportionally reduced. But it is also because it provides certainty for the part-time employee in terms of time off work as these terms are often laid out within the contract.

As set out above, informal flexible arrangements, such as remote working, tend not to be formalised by contract. Flexible or agile working is where firms accept, mostly on an informal basis that lawyers can work from home when they need to. The idea is that, provided the work gets done, it is acceptable for fee-earners to execute it flexibly, within reason. However, importantly, hours of work are still recorded and billed to clients. In the past, working in this way was less prevalent and often formalized. However, recently, in the last year or so, some large City firms have condoned these informal practices 'officially', in some cases by an announcement from management. One senior female associate, explained how it work at her magic circle firm:

We have a formal flexible working policy which applies to all associates and I think it kicks in at about two years PQE [...] when people have gone through the initial stage of being supervised and proving themselves a bit. You can basically work from home whenever you want. The only caveat is that you have to make sure that it does not disadvantage your clients or your team. [...] It was on a trial basis that has now been going on for about a year.⁹¹

A significant number of respondents agreed that there was genuine progress in management thinking about where and when hours were performed. They felt these long hours could now be done in a flexible way. One female partner confirmed this was also the case in her magic circle firm:

The message from senior management is very much that agile working is fine.⁹²

So informal working arrangements, where associates are left with the discretion of where to work, without having to obtain approval, seems to now be acceptable. A senior associate, noted:

My firm [...] is recognising that as long as people are willing to make those commitments and do what it takes to get something done, they are introducing means of doing that. That means you don't necessarily have to be chained to your desk until 3 a.m. if say, you have got a child to pick up. You can go home at 5 p.m., get your child, give it dinner, get it to bed and then you can be back online until 3 a.m., albeit from home. [...] But the

⁹¹ Interview 2

⁹² Interview 19

flip side is that there are times, at the big climax moment of the deal where the simple fact is, you've got to be there. You're either an individual who is willing to do that because you get something from it, or you're someone who doesn't get enough from the commitment of doing it.⁹³

This however, is not the case for more formal part-time arrangements. The distinction between part-time work and agile work is an important one for law firms. On the one hand, agile working represents no reduction in the hours lawyers work and hence it has no direct cost to the firm in terms of delivery of service and profit. On the other hand, part-time work can mean that firms have to deal with the logistics of servicing clients seamlessly. It can also represent additional costs, for example, those related to employing more lawyers. In addition, there are perceived hidden costs to part-time work. Lawyers interviewed believed that clients disliked the arrangement and that it therefore risked jeopardising working relationships. They also felt that working anything other than full-time was unfair on colleagues, who might have to 'pick up the pieces'.

Certainly, a number of interviewees, both men and women, conveyed very strong views about what they thought was the 'unworkability' of part-time work. Many expressed it to be impossible in the context of transactional legal work (working as a team to complete a business transaction for a client). One magic circle partner who runs a large team thought part-time work to be unmanageable from a service provision point of view. He also expressed the view that it led to the impression of putting family before work.

What doesn't work is that you can just do a four-day week because the day you are off is the day a deal is exploding. You can't imagine that somebody is going to step in and take your place and the client will be saying: "Who are you and where is X because I need to speak to them?" I'll be interested to see if anyone can honestly say it has actually worked for them. If somebody has a day off every week to spend time with their family – does it actually work? I honestly don't know anyone in my office who has tried it. You can try to manage a flexible approach to being in the office but not have a day off because with that you can manage expectations much better and you are not seen to be somebody who is arguably privileging family life more than others.⁹⁴

Respondents' views transcended gender with a few women equally sceptical about part-time work regardless of whether they had dependants. One female litigation partner, saw part-time work as problematic:

That's a big problem for the service industry and how we make that work because that's not the model that we run on.⁹⁵

⁹³ Interview 15

⁹⁴ Interview 9

⁹⁵ Interview 20

Another woman lawyer, who now worked as a consultant, concurred:

It depends on the department you're in but I don't think it's feasible to work part-time in a transactional department. [...] There are plenty of people who in theory have part-time working arrangements, or at least there are some examples of people who only work four days a week, but I don't see how it can ever work. All it means is that if you're doing a transaction, the work doesn't just disappear on the fifth day, so if you're not there to do it, somebody else has to do it.⁹⁶

As an indication of certain firms not supporting part-time work in practice, one female respondent, a senior associate who had requested to go part-time following her maternity leave, explained how her demand was met with much resistance.

Upon my return from maternity leave, I was essentially told by the HR team: "You know this is a full service firm, you might want to work a few days but that's not really going to work [long term] for a firm or practice like this." [...] So you've got policies and processes in place but the views of those working in HR, your partnership, your associate group, is that they don't believe in them or know how to put them into practice.⁹⁷

Some lawyers go further than merely having a negative opinion of part-time work. One counsel, recounted how she had to deal with a male partner in her group who was openly dismissive of her work over the course of a year:

In addition to constantly saying that he didn't understand what I did, he would also send me very unclear emails on days he knew I didn't work. He would also make disparaging comments about whether I had my phone turned on. I got so upset, I would wake up sobbing at 3am. So I finally went to see a female partner to tell her I wanted to leave. She spoke to him and we set up a lunch. I felt like crying during the whole lunch but now things are slightly better and we just avoid each other.⁹⁸

The views expressed intimate a strong belief that there is still only one viable way of working in large law firms in order to progress and that is full-time. In sum, it seems that for lawyers working for leading City law firms, flexibility is not about doing fewer hours but about where and when you do those hours. So in essence, what law firms deem acceptable is not flexible time, including part-time, as that is defined in UK legislation and across other industries, but rather it is flexible working practices.

⁹⁶ Interview 18

⁹⁷ Interview 22

⁹⁸ Interview 16

2. Stigma

So given respondents' views on the challenges related to working part-time, it is unsurprising that those who opt for them often feel they are stigmatised as being less committed. One male partner, admitted to the existence of such assumptions in his response to a question relating to why women did not progress as quickly as men:

I'm not saying that it's right or that's the way it should be but there is a natural tendency that the guys who are not slogging on deals, there is a suggestion that maybe they are not as interested. I'm not saying that is the right attitude but there are slight implications.⁹⁹

One female counsel, who had worked part-time in the past but was now back to full time work, noted how she felt management at her magic circle firm perceived part-time lawyers:

I think the difficulty is that the people who run the management side tend to be less sympathetic towards [part-time work] in practice even though in theory they may say one thing. I think there is a perception that if you work part-time, you are not committed and that is a real issue. If you are not seen to be on the ground enough then there will be a question mark over your commitment.¹⁰⁰

She added that often for this reason, people who worked part-time tended to work in fact much longer hours, which were generally not recognized and not paid.

Another senior male partner added:

I think that there is a perception, and it may well be incorrect, that because you are working three days a week, that that is the limit of your commitment. I think that the perception is that part-timers get a sort of more favourable deal in the sense that they have much more defined hours than others whose hours are completely undefined.¹⁰¹

Yet a female senior associate who had left her firm, thought it perverse that part-time work invited stigma as she felt she was more productive when she worked from home, away from the social distractions of being in an office space:

Certainly there was a perception that working from home was always putting a dent in performance because people didn't think you were

⁹⁹ Interview 9

¹⁰⁰ Interview 3

¹⁰¹ Interview 28

working as hard. Ironically, I think you probably work [...] harder, certainly in a law firm where you waste so much time.¹⁰²

Another male partner, who himself had worked part-time, added:

You can work part-time and be incredibly efficient. Indeed, many of my colleagues fit that description. [...] On the four days they're there, they're heads are down, they don't take lunch, they don't chat. They're focused and they get as much done in four days as most people in five. I think people are becoming a bit more savvy about that and recognising that you've got to judge people by their output, not just by spending time in the office. It's changing but it's still got some way to go.¹⁰³

But stigma of lesser commitment still seems to come with work that is anything but full-time. It is perhaps this comment by a senior partner and manager when asked whether he thought users of part-time work were perceived as less committed that illustrates the deeply rooted perception around part-time lawyers:

As to being biased against part-time work, a woman partner... drew an analogy that you could not be a Wimbledon champion without putting in the hours of work – and being a partner at this firm is the same. To be the best, you have to put in the hours.¹⁰⁴

Because of this, a number of women (as it was only women) admitted to being as discreet as possible about their arrangements and not publicizing their part-time work schedules unless necessary:

They don't know I work three days a week because I just keep quiet [about it]. I put my out of office on when I'm not there and they think 'maybe she is on holiday'. And I flip my days a little bit. That is to one show I am flexible and two not to have any perhaps negative...¹⁰⁵

A male partner said:

I know this woman who is working [a reduced contribution]. She doesn't like people to know. Within the firm she does not advertise it because she wants people to view her just as good and just as capable as men.¹⁰⁶

So despite firms embracing diversity policies and putting them at the top of their agenda with a view to improving figures on gender, on the ground, the picture seems very different. The risk of stigma remains a harsh reality for those who opt for anything other than full-time work, with some women still feeling the

¹⁰² Interview 21

¹⁰³ Interview 28

¹⁰⁴ Interview 24

¹⁰⁵ Interview 16

¹⁰⁶ Interview 6

need to conceal their part-time arrangements in order not to be perceived as less committed.

3. Career limitations

Figures show that it is women lawyers who are the greatest users of part-time working arrangements.¹⁰⁷ One senior partner confirmed this with respect to the professional support lawyers, also known as knowledge management lawyers,¹⁰⁸ at his top tier firm:

[...] if you look at professional support lawyers, if you take 12, you probably find that 10 of the 12 would be female. That sort of tells you a bit of the story.¹⁰⁹

The position of professional support lawyers has become feminized largely because of the flexibility it allows.¹¹⁰ However, as their services are internal to the firm, they are not charged out to clients. Their salary is therefore an overhead for the firm, and by definition, much more vulnerable to budget cuts. Those who take on the role of professional support lawyer also know that their career prospects will be limited as very few become partners.

One partner thought this to be a simple reality: "If you're working three or four days a week [...] I think it's hard to realistically think you're going to make partner." Hence, if part-time lawyers are more exposed to stigma, it follows that they can also suffer in terms of career advancement.

A partner at another elite outfit reported similar figures with respect to the position of counsel within his firm, which he noted was mainly made up of women: "We have a disproportionately high number of women who are counsel." In his section, he noted that all counsel were women. He felt that this was borne of an unconscious bias:

Only in the recent discourse of this last year and a half, where this has become a concrete strategic objective with obligations that are being imposed on the partners in each section, only since then have people started talking openly saying: "Wow look around...they are all women." Some of the men partners honestly don't care and couldn't care less and think: "Well yes, [that is] because they are not as committed so they should be counsel." Whereas other male partners think: "This is

¹⁰⁷ Figures vary but one recent international study by the International Bar Association found 17 per cent of women lawyers worked part-time versus 10 per cent of men. Ellis and Buckett, note 59.

¹⁰⁸ This role involves providing research and other knowledge to lawyers of the firm. It is an internal position where lawyers do not generally engage with clients. Similarly, the position of 'counsel', which is a rank below partnership is also mostly occupied by women. Scholars, such as Hagan and Kay, argue that these positions were in fact created for women. Hagan and Kay note 61.

¹⁰⁹ Interview 28

¹¹⁰ Hagan and Kay, note 61.

ridiculous, we have fallen into that pattern...why should some of them not be partners?"¹¹¹

One of the main reasons why men are not quick to opt for part-time work is the effect many believe it has on career progression. One female partner acknowledged this and highlighted how she saw it as problematic:

What we still struggle to do if you really want to progress is that 9 to 4 pm three days a week. That's not something that we're finding ways of delivering. Well, we are delivering it for some people but it's very limiting in terms of career progression.

[...] some associates will have a four day work deal or "leave at five" deal or whatever it is. It means that you have to, when you're allocating work, obviously you have to be mindful of that. You can't set people up to fail but equally it means you can't give them a job, which means going to Geneva to work closely with a client. OK it doesn't work. That inevitably impacts on their levels of experience and it's just harder. I suppose indirectly it may impact on career progression. You know some people are okay with that because it's the equation. [...] It tends to be women. It tends to be for reasons around children but not universally.¹¹²

Certainly, for senior women who had opted for some form of part-time arrangement, it was clear that promotion to partnership had become significantly less attainable:

My experience has been that if you do particular work arrangements you are seen as being short of being able to demonstrate the commitment needed to become a partner. However, there is a minimum level that you can do in terms of flexi-working that allows you to still look committed, I think [...] but it needs to be managed as a sensible arrangement.¹¹³

One senior associate also explained that for short-term periods, part-time arrangements did not have a great impact on career for high performing associates. The exception to that was if the arrangement became permanent, as was the case with her:

If you want to work part-time, meaning less than 24/7, then that is career limiting.¹¹⁴

In sum, a telling number of respondents continue to believe that the traditional full-time schedule is the best if not the only way to professional advancement. It appears from my interviews that career limitation is simply a reality for fee-earners who opt for formal part-time arrangements, as these are deemed to

¹¹¹ Interview 6

¹¹² Interview 20

¹¹³ Interview 3

¹¹⁴ Interview 2

invariably equate to lack of commitment. For those wanting to remain eligible for promotion to partnership, only a careful approach to flexible working practices seems acceptable.

4. Leading from the top

There is a possible way around part-time work being stigmatized and career limiting and that is leading from the top or having partners and other leaders utilise part-time and other flexible arrangements. However, this is far from being the case today as partner usage remains low. A male manager and partner seemed to believe the following:

It is just an assumption that personal and professional lives are incompatible. That is because our structures are too rigid. We are not flexible enough. Or even if we are, even if we have the policies in place, people are not using them and showing that it is possible, so they do not believe it is possible. And there is no one making sure that they try and do it.¹¹⁵

Another partner who was on a reduced contribution agreement with his magic circle firm concurred. He believed it was possible for partners to successfully work part-time:

If you manage your practice well enough and you've got people who can look after your deals whilst you are away and you are sensible about it, that can work.¹¹⁶

However, another partner, felt that stigma was also applied to partners who did try to use these policies:

The message down to your team can have two effects. One is that: 'He's never around' and 'he doesn't care' the other one is that you can actually construct a life which is more flexible.¹¹⁷

Further research is needed on whether usage of part-time arrangements by partners and people in leadership positions generally has the potential to lead to change.¹¹⁸ The initial hurdle to this research will be that few seem willing to do so. From my sample, only one male partner was using flexible work (as reduced contribution). As for the rest, they thought it no more viable for them than for associates. This is perhaps because they projected that associates would think them less committed, as they thought part-time associates to be. Or perhaps it is because there was no need or desire on their part to take advantage of these

¹¹⁵ Interview 6

¹¹⁶ Interview 12

¹¹⁷ Interview 9

¹¹⁸ This research could take the form of a longitudinal quantitative study as to whether usage of part-time arrangements by male partners and managers generally leads to greater numbers of men taking advantage of part-time and flexible arrangements available to them and how it affects more junior associates working patterns and career satisfaction.

policies. Certainly, there seemed little motivation on the part of this leadership to act as role model in order to incite change.

5. Consultancies

In addition to flexible working arrangements, some large firms have been vocal about trying to move away from the linear career path, detailed in Chapter 3, where associates slowly try to make their way, in the course of a decade or so, to a single promotion, that of partnership.

We're trying to make it not such a linear model. So we're setting up these other things. But I think it's fair to say that it is still quite a linear model, and you don't change these sorts of things over night.¹¹⁹

Initially as stated above, these consultancies were created to deal with varying levels of activity within large City firms. However, today they are promoted as a career option for associates and partners looking for flexibility. These consultancies risked being another track for mothers to run on. However, in one top tier law firm, it appears that they are beginning to appeal to men almost as much as women with uptake being 40 per cent men and 60 per cent women. The head of one magic circle firm's consultancy arm had the following thoughts on reasons why lawyers became consultants.

I think there are all sorts of reasons why people become consultants. My very strong view is that at the moment there is often an event that leads them down this path. It could be children, it could be that you've decided you want to become a writer or painter. It may very well be that graduates of today will look at our consultancy business and other providers and just say: "I want to work this way, that's how I want my career to go." And that would be brilliant. But I think at the moment, the way it works with consultancies is that there is a triggering event.¹²⁰

However, she was very clear that consultancy work did not just appeal to mothers:

What I do want to be very careful about is to say that women are attracted to this because it gives them flexibility. Because I don't think that that is necessarily the right way to look at it. I think we have lots of men on our panel and they're looking for similar things. It's more about working in a different way and [...] sort of almost taking control of your career. I think it's not just women being attracted to this. I think maybe two or three years ago, you could say that there were more women attracted to this because it was seen as flexible. Obviously, we do have women who are working off-site, who are working ad hoc and it's working really well for them in terms of their childcare. But actually, this is about more than that. It's about a [...] platform to progress your career and it's about

¹¹⁹ Interview 29

¹²⁰ Interview 23

sustainability of your career wherever you are in your life at the moment, male or female.

Sustainability of career is certainly an appealing prospect and it has the potential to make consultancy work an interesting concept for many. She added:

What we say is that actually if you want a career in five to ten years' time, you have to sustain your career now and let's look at how we can do that, mindful of the fact that you have a number of balls to juggle.¹²¹

Because these consultancies are run out of major City firms, the quality of work available to consultants seems interesting and although consultants work hard, they can chose to do so on the basis of the availability they decide is acceptable to them. For this head of a consultancy, it appears to ultimately be about providing choices for men and women:

What success looks like for each of our consultants is completely different but what they all want and what they all need is good quality work and they want to use their skills and they want to work with teams where they can stretch themselves. So it's about embracing new opportunities.¹²²

She noted that there was an 'explosion' of initiatives available to men and women who did not want to follow a linear career path and for women especially this was progress inasmuch as with initiatives such as consultancies, women with caring demands could now 'keep a foot in':

There will be fewer women who will have been out of the workforce for 10 or 15 years [going forward] because actually for my generation, if you had children, there were few choices.

But consultancies are in their infancy and they have yet to be a first port of call for many lawyers who are seeking flexibility. One reason for this, according to a female consultant with children (and a spouse who works from home), is that they are unworkable from a child care point of view:

Who can just drop childcare and pick it up again when deals come on and off? Who can suspend their lives like that? The model is not workable – very few people have lives that fit this model.¹²³

Also the jury is still out as to whether they will join the list of other flexible working arrangements that are career limiting. Will they incite a similar stigma of lack of commitment? Or worst, lack of loyalty on the basis that lawyers leave the firm altogether to set up their own company? Or alternatively, will they be viewed in a more positive light? After all, there is much to commend from both a

¹²¹ Interview 23

¹²² Interview 23

¹²³ Interview 18

lawyer, firm and a client perspective. Consultants are exposed to quality work and greater flexibility and clients get lawyers often trained and supported by top tier firms. They are also beneficial to law firms in controlling headcount. The acid test will be whether these firms are ultimately willing to fully embrace non-linear careers by promoting consultants who wish to return to the firm to partnership, sending an important message that consultancy need not signify the end of partnership prospects.

In any event, a move away from linear careers is a step in the right direction for both men and women. But ultimately, it will take more than that to attain gender equality at the top echelons of City firms: One female diversity manager believes harder issues need to be addressed:

We have invested hugely in the last 10 years [...] but we've not necessarily been seeing the progress. My sense is that we haven't necessarily been tackling the root issues, the hard cultural issues. They're the ones that lead to the disparity in the first place. A lot of the programmes have focused on fixing women, and inspiring women to stick to their careers, to get ahead, to put their foot on the pedal, without necessarily changing the environment around women. So they've been encouraging women to push themselves forward but not giving them an environment that is desirable to push themselves forward.¹²⁴

In line with that, what is perhaps most telling with respect to responses from this cohort when asked how they thought the legal profession could become more gender equal, is what was not said, rather than what was said. No respondent for instance questioned why women remain the principal consumers of part-time and flexible work. No thought was given to the possible benefits of having more men users and how this could be achieved. And no comment dealt with the requirement for such long hours in the first place. Like so much of the thinking around the issue of women solicitors' career progression, respondents focused on fixing women or the barriers women face with respect to hours. No insight was provided as to the possibility of a need to fix the workplace itself.

I. Conclusion

In answering research questions on what law firms are doing to address gender inequality and why their efforts have not delivered the desired results, this chapter has drawn on the concept of time. In doing so, it has allowed me to test my second hypothesis: that flexible, part-time and returnship programmes as well as other initiatives created by large City law firms to assist with career progression have had limited positive impact on the careers of women (and some men) as the distribution of power within these law firms is still based on a masculinist model. This creates an organizational environment where opting for such programmes is still seen as a sign of a lack of commitment leading to an impression of lack of the merit needed to make it to the top of the profession.

¹²⁴ Interview 29

The extremely long and taken for granted hours now spent at work, I argue, help explain why men progress more quickly and continue to dominate positions of partnership in City firms. But these long hours also expose crucial paradoxes that assist us in improving our comprehension of the resilience of male dominance at the top against initiatives devised to address it. Drawing on scholarly work that sets a distinction between the objective or quantitative aspect of time and its subjective or social aspect, where “our temporal subjectivities take the form of socio-temporal norms and symbolic meanings,”¹²⁵ I argue that time helps us understand disproportionate masculine progress. This is because the practice of law as it is known today was developed on the basis of the ‘man clock’ or ‘man time’, where structures and practices correspond to men’s availability. In the business world within which the legal industry operates, this temporal availability has become a most valued commodity. It is a premium asset that is used to exchange, control and measure. I posit that, in many ways, male advantage within the profession originates from a greater ability to adhere to these socio temporal norms than many of their female counterparts on whom child bearing, rearing and caring responsibilities still largely fall.

But time has also been given a normative quality or symbolic dimension by the private legal sector. Law firms have shaped temporal subjectivities to match their organizational objectives where long hours mean commitment and ambition. The result has been to spur both patterns of behaviour and attitudinal conformity among lawyers regarding these temporal practices.¹²⁶ Male advantage is therefore also explained by law firms’ attitudes towards part-time working. To initiate a temporal alteration to one’s work schedule is to go against what is socially expected and accepted by City legal employers. Female lawyers, the largest consumers of diverse work arrangements, who request alternative working hours therefore risk labeling themselves as demanding or at the very least not adhering to the organizational time culture and hence the accepted work place temporal practices.¹²⁷ This arguably explains much of the stigma many feel they are subjected to once they choose to alter their full-time schedules.

There is as of yet no public acknowledgement by City law firms that their collective time culture may be the root cause of male over representation. This needs to change and hard choices about this culture need to be made. Decisions about working time are in many ways decisions about the values law firms chose to promote. In that regard, time is part of the problem and also part of the solution. Questioning how firms perceive and reward working time, putting the onus on themselves as employers rather than the individual employee, can enable a true reassessment of the value system underpinning the temporal behavior of lawyers.¹²⁸

¹²⁵ Emily Rose, ‘Workplace temporalities: A time based critique of the flexible working provisions’ (2016) 46(2) *Industrial Law Journal* 245, 254.

¹²⁶ Rose, note 125, 256.

¹²⁷ Rose, note 125.

¹²⁸ Kerry Daly, *Families & Time: Keeping Pace in a Hurried Culture* (London: Sage, 1996).

New initiatives, such as consultancies, are promising but will only work if the culture and structures of City firms also change and non-linear career paths are truly accepted and appreciated for what they can provide to both employer and employee. So rather than continuing to pin lack of career progression and attrition to women, City legal employers must begin the less comfortable work of addressing unchallenged assumptions about gender roles within private practice and tackling the link that they have made for decades between time and the normative concept of the ideal worker. This will require them to examine their external structures, for example how they bill clients for lawyers' work, as well as their internal structures related to promotion and career advancement.

Theoretical work around the nature of these alternatives can be helpful to firms. Belinda Smith for example advances that the link between time and valuable work is not innate or inevitable. Optimistically, she argues that at worst, our understanding of the ties between time and worker value are in flux and at best there is a culture shift happening. In order to secure this shift, Smith recommends that norms should be de-gendered by integrating family responsibility into workplace practices. To do this, she argues that we need to reject the prevalence of full-time positions as the dominant form of employment. She suggests that if a range of alternative work time options (pluralism of working arrangements) was available and legitimized in terms of rewards, recognition, responsibility and interest, in a way full time employment is now legitimized, this would go a long way towards enabling people to balance their employment and family commitments.¹²⁹ It would also serve to loosen the link between time and the normative concept of the 'ideal worker'.

This proposal seems to be increasingly aligned to Generation Y men and women's idea of work, with growing evidence that younger workers generally attribute greater value to time spent with family and quality of life than previous generations.¹³⁰ And although these figures are not specific to City lawyers, City law firms would do well to engage with such ideas sooner rather than later. If not, they may well find that, in addition to losing female talent, more and more men lawyers will leave for reasons of work-life conflict.¹³¹ However, for now, based on the responses of this study's cohort of men and women City lawyers, there seems to be little indication of a significant shift away from the masculine model of full-time work as the surest path to success.

¹²⁹ Smith, note 70.

¹³⁰ Modern Families Index 2018 https://www.workingfamilies.org.uk/wp-content/uploads/2018/01/UK_MFI_2018_Long_Report_A4_UK.pdf

¹³¹ Interview 9. More and more 'post-work' literature is appearing that argues against the current neo-liberal work ethic, stating amongst other arguments that an all-consuming workplace is not only bad for health but also for vital human activities such socializing, exercising, engaging in hobbies as well as raising children or looking after elderly parents. See Andy Beckett, Post-work: the radical idea of a world without jobs, https://www.theguardian.com/news/2018/jan/19/post-work-the-radical-idea-of-a-world-without-jobs?CMP=Share_iOSApp_Other

CHAPTER 5

A. Culture: How normative gender roles contribute to men's over representation in City law firms

In Chapter 4, I maintain that for the past decade, at least, elite City firms have invested a significant amount of time and effort in creating and operating flexible work policies that aim to promote greater gender diversity. I argue that despite these efforts, which admittedly send the right message and have had some impact in alleviating work-life conflict, much work still needs to be done as parity in the higher ranks of City firms remains a distant prospect. In this chapter, I put forth some of the deeper, more challenging arguments, mentioned in Chapter 4, that I believe law firms must take on board in order to address the imbalance in men and women lawyers' career progression in an effective manner. In doing so, I answer the fourth of my research sub-questions: to what extent is men's over representation at the top of City law firms linked to cultural realities, such as normative gender roles?

Although progress has been made, as noted in Chapter 2, Western society largely continues to promote norms, albeit in perhaps more subtle ways, that reinforce a gendered division of labour where men are still seen as the main breadwinners and women as front line house workers and carers. This is despite UK figures showing that today, 30 per cent of women are principal income earners and three quarters of mothers are in formal employment.¹ These gender stereotypes might not be so detrimental to women's careers, if care and domestic work were valued by society.² But as those roles remain significantly taken for granted and predominantly unpaid, they often prove to be harmful to professional advancement.³

¹ A recent article by the Office of National Statistics shows that three quarters of mothers are now in full time or part-time employment. *Families and the Labour Market: England 2017* <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/familiesandthelabourmarketengland/2017#mothers-with-a-youngest-child-aged-between-three-and-four-years-old-have-the-lowest-employment-rate-of-all-adults-with-or-without-children-and-are-the-most-likely-group-to-work-part-time>. See also 'One third of mothers in working families are breadwinner in Britain' Institute of Public Policy Research, 20 October 2015, <http://www.ippr.org/news-and-media/press-releases/one-third-of-mothers-in-working-families-are-breadwinners-in-britain>.

² Judy Fudge, 'Women workers: Is equality enough?' (2013) 2(2) *Feminist@law*.

³ This is not to say that all gender inequality is the result of housework and caring responsibilities. Studies show that women with no partner and or no children are still the subject of gender discrimination which lies in deeply rooted stereotypes of the way men and women behave generally, see for example Yvonne Galligan, Renate Haupfleisch, et al. 'Mapping the Representation of Women and Men in Legal Professions Across the EU', Legal Parliamentary Affairs Policy Department for Citizens' Rights and Constitutional Affairs August 2017.

Drawing once again on the theme of time, I argue that these continuing systemic beliefs result in many men having more time to devote to the workplace than their female colleagues. For male lawyers, this unencumbered or less encumbered status allows them to invest greater time at work billing hours. This, as argued in Chapter 3, is key to solicitors' professional success. It also permits them to dedicate additional time to career enhancing roles such as business development, reinforcing gender norms as they progress more quickly to the top.

In order for diversity programmes to be fruitful, I hold that City firms must stop turning a blind eye to the greater societal culture within which they operate inasmuch as they must begin to take on board the issues that emanate from this gendered division of labour and how these affect the men and women lawyers working for them. Practically, they must then ensure that this reality is reflected in their workplace diversity policies.

Still, it is important to note that gender roles are no longer as binary as they once were. Today, the concept of family has evolved to include same sex couples and greater gender fluidity means that traditional homes are no longer the only recognised form of family unit. Also, within these varying households, not all women do more work and not all men do less. Not everybody resents doing housework or caring work and certainly some men wish they could do more.⁴ But the institutionalization of a new gender order is hard-won and figures still indicate that on average, and regardless of socio-economic factors, women lead within the home whereas men lead outside of it.⁵

In Part I of this chapter, I review literature of a general nature to do with women's role in the home and how engrained stereotypes regarding gender roles often result in inequalities between men and women within the workplace. Much of the scholarly writing on equal representation generally, and certainly works relating to the professions, focuses on the barriers that impede women's ascension to the top. This literature continues to be valuable as awareness of such obstacles and their consequences has yet to permeate mainstream society and the everyday workplace in a meaningful way. However, as contended in Chapter 1, perpetually focusing on the impediments women face can give credence to misogynist questioning of their very entitlement to occupy top roles. Also, this honing in on barriers can quickly result in overlooking the ensuing advantages men benefit from. This gives way to thinking that the struggles relating to career advancement is solely a woman's problem to be resolved by women.

Consequently, although I begin by critically reviewing the literature that has helped to form the theory on how cultural obstacles curtail women's professional advancement, I also consider men. In examining how these

⁴ Evidence from the Women's and Equalities Committee inquiry entitled *Fathers and the Workplace*, April 2017, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/fathers-and-the-workplace/oral/69104.html>,

⁵ Note 1.

impediments explain, at least in part, the difference in upward mobility between men and women's careers, I widen the lens to include discussion on the roles both men and women play in housework and caring work. In doing so, I shed light on the benefits men may gain from a traditional division of labour. I do this in the hope of encouraging a greater masculine presence in the discussion on inequality within the home and its effect on the workplace.

In Part II, I present data from semi-structured interviews that relates to how women and men solicitors perceive the problem of work-life conflict. I also present data on men and women's views as to how their roles as care givers have affected their careers and how they believe, if at all, that their responsibilities at home can become less of a detriment to their professional life. But before turning to the discourse on cultural norms, it is important to clearly define what we mean by them. In doing so, I draw a distinction between cultural norms and structural norms, the latter of which is the subject of Chapter 6.

B. Defining cultural and structural norms

Scholars largely agree that the disparity between men and women's career advancement is to do with both cultural and structural norms.⁶ The two are not mutually exclusive when applied to the issue of women and men's career progression. However, cultural norms, also referred to in scholarly literature as normative constraints, or stereotypes, are generally defined as constraints placed upon us and others, in terms of cultural and social expectations.⁷ Generally speaking, and as I discussed in Chapter 2, they include all manner of obstacles linked to beliefs, traditions, and familiar influences. These cultural assumptions are foundational to daily life and are reflected in people's attitudes on matters linked to race, religion, sexuality, physical ability, social status and gender. Cultural constraints are seen as being more 'internal' or operating within the realm of the 'private' societal sphere.⁸

⁶ Scholars who have conducted research in this field have highlighted the complex nature of this problem and how deeply embedded it is in cultural norms, organizational structures and working practices. See for example, Hilary Sommerlad 'Minorities, merit and misrecognition in the globalized profession' (2011-2012) 80 *Fordham L. Rev* 2481, Lisa Webley and Liz Duff, 'Women solicitors as a barometer for problems within the legal profession – Time to put values before profits' (2007) 34 *Journal of Law and Society* 374.

⁷ For a further discussion on normative constraints, see S. McRae, 'Constraints and choices in mothers employment careers: A consideration of Hakim's preference theory' (2003) 54(3) *British Journal of Sociology* 317 and Jennifer Tomlinson, Daniel Muzio, Hilary Sommerlad et al. 'Structure, agency and career strategies of white women and black and minority ethnic individuals in the legal profession' (2013) 66 *Human Relations* 245.

⁸ However, that is not to say they do not have an impact on the 'public' or external sphere. A parallel between cultural and structural barriers can be drawn from the well-documented idea of the private and public spheres of our society. Certain authors have explored theories relating to this dichotomy. Pierre Bourdieu's theory of social 'fields' for example has been used to understand behaviours and practices determined by traditions. Through this theory, authors are able to reject the premise that legal institutions today are free of gender or race discrimination or 'bleached out'. For a compelling application of Bourdieu's theory, Hilary Sommerlad, 'Researching and theorizing the processes of professional identity formation' (2007) 34 *Journal of Law and Society* 190, Richard Collier, 'Naming men as men, in corporate legal practice: gender and the idea of virtually 24/7 commitment in law' (2014) 83 *Fordham Law Review* 2403 and

When applied to gender, cultural stereotypes have, over the years, led to innumerable social perceptions or myths about women and men. These assumptions are to do with what women and men are thought innately to do well. One such enduring and deeply embedded belief is that, contrary to women, men are generally less suited and hence less eligible to take on primary responsibility for household work and care. Rather, they are assumed to be better at responsibilities relating to breadwinning.⁹ This normative notion withstands figures showing that in the UK today, nearly 70 per cent of women do paid work outside the home, an increase of 53 per cent since 1971, whilst men's work outside the home has decreased from 92 per cent to 76 per cent in the same period.¹⁰

Structural norms, on the other hand, represent institutional characteristics deemed to be gender neutral but that still impact men and women's progress. These include organizational working conditions and practices. They are viewed as 'external' or forming part of the 'public' sphere. In the case of leading City law firms, they relate to how these organizations are structured and how they promote working practices that tend to alienate women and unite men.¹¹ Both types of constraints must be addressed and transformed in order for women to progress on an equal footing to men within the workplace. As one scholar notes:

Efforts directed solely at changing the social institutions cannot have far reaching effects if the cultural language and imagery continue to purvey a relatively devalued view of women. But at the same time, efforts directed solely at changing cultural assumptions [...] cannot be successful unless the institutional base of society is changed to support and reinforce the changed cultural view.¹²

There is an inevitable relationship between cultural and structural constraints and indeed, both must be tackled in order to effect change. Yet arguably, structural norms in the form of gendered working practices largely emanate from normative gender roles played out in society. These systemic roles are then replicated in the workplace through unchallenged assumptions, creating conscious and unconscious biases leading to discriminatory practices.

Emily Jackson and Nicola Lacey, 'Introducing Feminist Legal Theory', in James Penner, David Schiff and Richard Nobles (eds.) *Introduction to Jurisprudence and Legal Theory: Commentary and Materials* (Butterworths, 2002), 784.

⁹ For a discussion on the social perception of women, Rebecca Asher, *Shattered: Modern Motherhood and the Illusion of Equality* (Vintage Books, 2011). Leslie Bender, 'Sex discrimination or gender inequality?' (1988-1989) 57(6) *Fordham Law Review* 941, 947. Heather Haveman and Lauren Beresford, 'If you're so smart, why aren't you the boss? Explaining the persistent vertical gender gap in management' (2012) *ANNALS, AAPSS*.

¹⁰ Note 1.

¹¹ Nancy Reichman and Joyce Sterling, 'Sticky floors, broken steps, and concrete ceilings in legal careers' (2005) 14 *Texas Journal of Women and Law* 70.

¹² Sherry Ortner, as quoted in E. Jackson and N. Lacey, note 8, 784. Kaye and Reddy also make this point: 'The logical ripple effect is that women cannot assume equivalency to men in their career pursuits - not just legal careers - until men assume equivalency in their care responsibilities.' Judith Kaye and Anne Reddy, 'The progress of women lawyers' at big firms: steadied or simply studied?' (2007-2008) 79 *Fordham Law Rev* 1941.

Consequently, in order to better understand how these discriminatory working practices have come to be, it is helpful to first consider the dynamics of normative cultural gender roles.

Part I

There is nothing novel or even debatable in declaring that women do most of the work within the home, regardless of whether they also work outside of it. Although figures show that today's men are more involved in domestic tasks and that many men wish they could spend more time with their children, in most heterosexual households women still take on the lion's share of both caring and housework whilst men remain primary income earners.¹³ Although the extent to which men, and society in general, continue to rely on women for domestic chores and the caring of children and family members has been addressed in the wider discussion on workplace equality, popular feminist discourse seems to be moving on from talking about this universal 'second shift'¹⁴ to focusing on more individual issues such as breaking the 'glass ceiling' and 'leaning in.'¹⁵ Yet highlighting the central role of housework and caring work in the discussion on workplace equality remains crucial as domesticity comes at a high price to women's careers.¹⁶ Despite the multitude of people who benefit from this labour, it is not receiving the attention it deserves.

Drawing on the notion of women's invisibility set out in Chapter 1, domestic work, including care work, is still largely cast as invisible in relation to men's work.¹⁷ Even though it is essential to society's proper functioning, what is done (mostly by women) within the four walls of a home is often overlooked or discounted.¹⁸ 'Work' continues to largely be defined in society as something that happens outside the home between the hours of eight in the morning until six in

¹³ Office of National Statistics, 'The United Kingdom 2000 Time Use Survey' Technical Report, 2003. There are a number of studies on this matter, see also the recent Institute for Public Policy Research, Dalia Ben-Galim, Amna Silim, 'Sandwich Women: the Role of Older Women at Work and at Home' March, 2013. See also A. Singh, '36 household chores men don't bother to do' *The Telegraph* (London 6 October 2014).

¹⁴ Arlie Russell Hochschild *The Second Shift: Working Families and the Revolution at Home*, (Viking Penguin 1989). Deborah Rhode, *Women and Leadership* (Oxford University Press 2017).

¹⁵ This is perhaps explained in part by the tension between feminists recognizing domestic labour as an obstacle to women's professional progress and their rejection of domestic labour as freedom from traditional roles. Eve Livingston, 'Middle class feminism has a blind spot over female cleaners' *The Guardian* (London 1 April 2016).

¹⁶ According to a McKinsey & Company report, 57% of women cite the double burden of work and domestic responsibilities as one of the biggest barriers to diversity in senior management, as cited in McKinsey & Company, *Think, Act, Report, Promoting Gender Equality in the Workplace: One Year On*, Government Equalities Office, 2012, 7.

<https://www.gov.uk/government/publications/think-act-report/think-act-report>

¹⁷ A number of academic works address the issue of invisibility of domestic and care work, Arlene Kaplan Daniels, 'Invisible work' (1987) 34(5) *Social Problems* 403, Marjorie L. Devault, *Feeding the Family: The Social Organisation of Caring as Gendered Work* (University Chicago Press 1991).

¹⁸ Judith Treas and Anne Tatlock, 'Housework', Oxford Bibliographies, <http://www.oxfordbibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0099.xml>. The authors note that it is not until the middle of the 20th century that household labour caught the attention of scholars as a measure of equality.

the evening. Anything other than this is still today mainly seen as a woman's concern, despite men's increased participation in the last fifty years or so. When such work does get mentioned, it is often discussed in restricted terms which arguably goes to undermining its multi faceted and demanding nature. This discourse often neglects not only the myriad of big and small jobs to be done in running a home and a family, but also the head space and emotional energy needed to organize, accomplish or delegate this work.¹⁹

In addition, when this type of work forms the subject of debate, professional women, including lawyers, tend to be excluded from it as it is presumed that most will outsource tasks to cleaners and child minders.²⁰ And although some do, many don't or can only afford to do so in a limited way.²¹ Such outsourcing should therefore not be seen as the professional woman's panacea to the demands of responsibilities at home. The cost of UK childcare, for example, is one of the highest in the world.²² Early career lawyers, the ones who tend to have young children and who work long and unpredictable hours, often have to resort to employing a full-time nanny, by far the most expensive of all childcare. And although admittedly they are much better paid than most, a large part of their salary can go towards paying for this service.²³ In addition, regardless of how much outside help they hire, most professional women who have caring responsibilities are not free of the organizational work and mental charge associated with home and care. They are certainly less free from it than most

¹⁹ Emma, 'The gender wars of household chores: a feminist comic' *The Guardian* (London 26 May 2017). <https://www.theguardian.com/world/2017/may/26/gender-wars-household-chores-comic>

²⁰ It is important to highlight that this outsourcing is also not without its consequences. There is the important dimension of chains of care where women in poorer countries are paid in richer ones to do housework or caring work, often leaving their own children behind to be cared for by other women from their community (either paid or unpaid), Lydia Hayes, 'Sex, class and CCTV: The covert surveillance of paid home care workers' L. Adkins and M. Dever (eds.) *The Post-Fordist Sexual Contract: Working and Living in Contingency* (Palgrave Macmillan 2016), Nicole Busby, *A right to care? Unpaid Care Work in European Employment Law* (Oxford University Press 2011). Many scholars also argue that hiring less well-paid women to care for homes, children and family perpetuates class and race hierarchies. This is largely because some of the lowest paying jobs in the UK are caring jobs often performed by women from minority groups, UK's Annual Survey of Hours and Earnings 2015. <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2015provisionalresults>. For a compelling discussion on this point, Judith Rollins, *Between Women: Domestic and their Employers* (1985).

²¹ This is largely because their legal education and employment in the law puts them in a higher earning bracket than most women. This allows them to outsource some of their household responsibilities and caring role, Scott Coltrane, 'Research on household labour: Modeling and measuring the social embeddedness of routine family work' (2004) 62 *Journal of Marriage and Family* 1208.

²² An annual OECD survey confirms that childcare costs in the UK are some of the highest in the world, with UK parents spending at least a third of their income on childcare, compared to only 10 to 12% in other European countries such as France and Germany. <http://www.oecd.org/education/education-at-a-glance-19991487.htm>

²³ Interview no 16. Senior associate working for a magic circle firm attested to this: "I have child care [at home] four days a week. I'm lucky because my husband's salary allows for that care. It's not coming from my salary, I haven't got much left [after paying for] 3 days of child care."

men thereby perpetuating the tenuous balance women try to strike between their personal and professional lives.²⁴

Below, I therefore begin by exploring academic contributions on normative gender roles that focus explicitly on the nature of the work that is required of women and men in the home, the extent to which women do more of it and why. Secondly, I turn to scholarly input on the inequalities that result from the gendered division of labour. Finally, I assess how these inequalities are justified by some, using the notion of choice and how and where certain scholars see potential for change. This scholarship is applicable to the analysis of women and men's relative participation in the workplace generally, and although not often specific to City lawyers, it includes them.

C. Cultural gender norms

Sociologists and feminists have long been looking at the relationship between culture and gender²⁵ and how normative gender roles have led to “[...] the assignment of public space to men and private space to women [...] in western society.”²⁶ Although, as stated above, it is difficult to determine when the impact of cultural constraints ends and that of structural ones begins on women and men's careers, normative constraints play a significant role in restricting women's access to the higher workplace echelons whilst easing men's.²⁷ However, that is not to say that cultural gender impediments are experienced equally. It is crucial to note, for example, that the careers of white, middle class, professional women will most likely be less affected by the cultural barriers than those of professional BAME women and non professional women generally. Nonetheless, within the legal profession and, more specifically in large City law establishments, these cultural norms have a far greater and disproportionate effect on women than men from all socio-economic and racial backgrounds.²⁸

²⁴ In a recent survey, both female and male lawyers with 0-5 years of qualification reported most of their stress to be linked to problems with family life although women experienced greater 'extreme' stress than men. The Law Society Resilience and Well Being Survey Report – Junior Lawyers' Division April 2018 <http://communities.lawsociety.org.uk/Uploads/p/d/i/jld-resilience-and-wellbeing-survey-report-2018.pdf>

²⁵ There is a plethora of academic writing on this topic, for example, Arlie Russell Hochschild, *The Time Bind*, (Henry Holt and Company 2001); *Organizational Culture and Leadership* Edgar Schein (ed) (John Wiley & Sons 2004).

²⁶ As quoted in I. Bacik and E. Drew, 'Struggling with juggling: Gender and work/life balance in the legal professions' (2006) 29 *Women's Studies International Forum* 136.

²⁷ McKinsey & Company note 16.

²⁸ Sundeep Aulakh, Andy Charlwood, et al., 'Mapping Advantages and Disadvantages: Diversity in the Legal Profession in England and Wales' Final Report for the Solicitors Regulation Authority October 2017.

1. The perpetuation of normative gender roles: who does the housework and why it matters

Although not specific to the legal profession, a number of scholars have opined that housework and caring work lie deep within the gender equality debate.²⁹ According to these authors, the reasons women persistently do most of this work, and men do less, must be questioned as they believe this daily, repetitive and often inflexible, unpaid labour is linked to a number of stereotypes that lead to male advantage and female disadvantage.

(i) Defining housework and care giving

Before evaluating the importance of housework in the fight for gender equality within the legal profession, it is important to clearly define it. Scott Coltrane's review of more than 200 scholarly articles on household labour helps in this regard. He first distinguishes 'routine' housework, mainly performed by women, from 'occasional' housework, mostly done by men.³⁰ Routine housework, he asserts, is less optional and less subject to schedule control or postponement. The five most time-consuming routine house tasks he explains are cooking, cleaning, grocery and household goods shopping, washing dishes and post-meal tidying, and finally, laundry, ironing and mending. He adds that although some people find pleasure in doing some or all of these tasks, they are more often than not described as 'mundane', 'repetitive', 'onerous', 'unrelenting' and 'boring.' On the other hand, Coltrane defines 'occasional' housework as tasks that are more discretionary, flexible and pleasurable in contrast to everyday routine housework. The main occasional housework tasks include household repairs, gardening, and taxiing family members.³¹

To Coltrane, clearly defining who does what in the home helps us to see how housework continues to be mostly performed by women. Crucially, it also shows us how this division of labour, through its disparity in time demand, perpetuates gender inequalities by tying women down to the home and allowing men more time to invest in work and leisure.³² Coltrane adds that these arrangements also perpetuate inequalities relating to race and class because, as stated above, women such as busy lawyers will buy out of at least some of their socially imposed obligations to cook and clean if they can afford to.

²⁹ For example, Keith Cunningham, 'Influences of gender ideology and housework allocation on women's employment over their life course' (2008) 37(1) Soc. Sci. Res. 254, N.M. Fortin, 'Gender Role attitudes and the labour market outcomes of women across OECD countries' (2005) 21 Oxford Review of Economic Policy 416. This US study examines the influences of women's attitudes about gender and couples' patterns of housework allocation on women's employment status and work hours across a 31-year interval. Donald Nicolson also points to women's role as primary carers as burdensome to career advancement, Donald Nicolson, 'Democracy, discrimination and diversity: A new dawn for the British legal profession?' (2005) 12 ILJP.

³⁰ Coltrane note 21, 1210.

³¹ Ibid.

³² Ibid.

In her article Mary Noonan also asserts the importance of distinguishing between task types performed by men and women. She concurs with Coltrane as she notes that women tend to be responsible for chores that require to be performed on a regular basis and at specific times, with no or little possibility of command over schedule. These types of tasks, she argues, tend to be more onerous and therefore have greater repercussions on work women do outside the home.³³ On the other hand, tasks performed by men allow for greater discretion as to time and place of endeavour. Even when accounting for some outsourcing of tasks, when holding a demanding job, such as legal advisory work, the likelihood of tension existing between these inflexible domestic chores and the time requirements of formal employment is high.

Coltrane and Noonan's respective definition of housework does not carve out tasks specifically attributable to caring for children.³⁴ This is perhaps because there is a certain amount of overlapping between housework and caring work, be it for children or elderly relatives. But time use literature focusing on gender differences indicates that as primary caregivers, women's housework significantly increases once they have children whilst men's housework decreases.³⁵ For this reason, testimonials, which make a distinction between the two, specifying what is specifically involved in caring for children are useful. Many are found in the press or come from working mothers' organisations. One example is from a journalist and a mother, who gives a real sense of how time consuming this role can be. When describing her children's after school activities she explains that just this one task involves not only the enrolment process in activities such as dance classes, soccer, tutoring (often three or four extra curricular activities a week per child) and getting the child to these activities but also the less visible time costs. These include searching the web for the best programme, ordering equipment, packing snacks and so on. She adds that it is mothers who generally perform the behind the scenes labour that make kids' sport and other pursuits possible.³⁶ This is supported by research which shows that mothers' paid work activities go up as children's activities go down whereas fathers paid hours are not affected by how much their children do.³⁷

Notwithstanding that, overall, most would agree that looking after loved ones is emotionally rewarding, one further demanding yet overlooked element of caring is the constant interruptions it can generate. Unlike household chores, such as cleaning and cooking, caring is an unpredictable and infinite task. It can permeate the large part of a carer's day with interruptions relating to the emotional, physical and hygienic needs of the person being cared for. For the

³³ Mary Noonan, 'The Impact of domestic work on men and women's wages' (2001) 63 *Journal of Marriage and Family* 1135.

³⁴ Coltrane states that most studies are not clear as to whether they include these less visible and at times overlapping types of work.

³⁵ Note 13. See also National Science Foundation, 'Chore wars: Men, women and housework', April 2008. This article cites a US study that found that women's weekly housework went up by 7 hours a week after marriage and women with more than three children recorded an average of about 28 hours of housework per week while men with more than three children reported doing 10 hours a week.

³⁶ Judith Shulevitz, 'Mom: the designated worrier' *The New York Times*, (New York, 8 May 2015).

³⁷ *Ibid.*

individual executing these tasks, taking on any other form of work, whether inside or outside the home can be a challenge.

Other scholars have adopted even wider definitions of housework that not only include caregiving but also recognize the importance and demands of household management, also referred to as the mental load.³⁸ In addition to cleaning and parenting work, scholars such as Lachance-Grzela and Bouchard emphasize the importance of accounting for what is also called the 'worry work.'³⁹ Household management, they advance, is everything to do with thinking and planning what needs to be done and who needs to do it.

A recent survey of over 1000 working mothers by Mumsnet, a U.K. organisation, defines household management performed mostly by women as including tasks such as organizing car and home insurance, paying utility bills and planning and booking holidays, liaising with schools and nurseries over everyday issues, being the first person to call when there is a problem, packing school bags, supervising homework, arranging childcare, applications for schools and play dates, buying clothes, managing medical appointments, reading bedtime stories and looking after poorly children. And although many men will also participate in these tasks most of them are performed by women.⁴⁰

Linda Sayer argues that the new ideology of 'good' mothering, which has become part of our gender ideology requires women to be 'supermoms', deeply involved in all aspects of their children's well being, schooling and activities. This role is particularly consuming, she holds, as the value of children has gone from economical to emotional, substantially increasing the amount of time necessary to produce a 'good childhood'. Mothers today are expected, more so than ever, to be experts in child development methods and to cultivate and supervise all aspects of their children's development and wellbeing.⁴¹

Nicole Brais advances that it is not only children whose needs need to be catered to. She summarises household and caring labour as "[...] the management, planning and organizational work, which is in some ways intangible yet crucial and constant and the objective of which is to satisfy every member of the household's needs and the good functioning of the home". She adds that it is the fact that women permanently have these tasks in the corner of their minds even at times when they are not executing them that make them all the more demanding.⁴²

³⁸ Note 19.

³⁹ Mylène Lachance-Grzela, Geneviève Bouchard, 'Why do women do the lion's share of the housework?: A decade of research' (2010) 63(11-12) *Sex Roles* 780.

⁴⁰ Mumsnet 'Chores Survey 2014', <https://www.mumsnet.com/surveys/chores-survey-results>,

⁴¹ Liana Sayer, 'Gender, time and inequality: Trends in women and men's paid work, unpaid work and free time' (2004) 84(1) *Social Forces* 285.

⁴² Nicole Brais, 'La charge mentale: Quand les femmes pensent a tout' (May 2017), <https://preprod.aws.la-croix.com/Famille/Parents-et-enfants/Quand-femmes-pensent-tout-2016-09-20-1200790409>.

So whilst to some household management, or thinking about doing chores, may not appear as a form of work (another aspect of its invisibility), one author writes:

[...] consider what an incredible privilege it is to have your mind free of multi-tasking. Men who don't have to think about which chores have to be done and who is going to do them have the luxury of headspace to think more about work, hobbies, or any damn thing they want. Women meanwhile are trying to figure out if the kids need any more juice boxes that week.⁴³

Emotional work, other scholars argue, should also form part of what we understand as housework. It includes sending birthday cards and buying presents for family members and friends, returning phone calls, responding to social media and organizing social events. The importance of considering emotional work when discussing division of household labour was advanced by one study which looked at words used by British men and women.⁴⁴ The study identified certain words, such as 'Christmas' as clearly female, not because women were more emotional about Christmas but rather because they were sorting out most of the organization around it. Consequently, the study noted that for women 'Christmas' was a role word similar to 'shopping'.⁴⁵ Using further examples, the study concluded that, in language at least, men and women were not so different, except in the roles society expects of them.⁴⁶

Despite there being a certain amount of overlap between housework, caring work, household management and emotional work, a further reason to distinguish between them is that, although it may be understandable why men should shun mundane tasks such as cleaning and ironing, it is more difficult to comprehend why many are not embracing the emotionally rewarding tasks around looking after others. Surely, taking a child to school, reading a bedtime story or spending time with an elderly parent is more satisfying, on many levels, than cleaning. Yet a large number of men seem to avoid both.

The sociology of fatherhood provides some answers. Richard Collier advocates for the rejection of the essentialist conceptualization of the father categorically shunning his parental responsibilities and family commitments in favour of work. In a study on male lawyers working for large corporate law firms, Collier paints a more complex portrait of the influences on men's behavior with respect

⁴³ Jessica Valenti, 'Women aren't 'better' at housework – but men sure are better at avoiding it' *The Guardian* (London 22 October 2014).

⁴⁴ Paul Baker, 'Using Corpora to Analyse Gender' ESRC (CASS) 2014. This ESRC study's main aim was to assess language use by men and women to disprove claims that men are more rational or innovative and women more emotional. The research was backed up by a UK advertisement appearing around Christmas time, which implored: "Behind every great Christmas, there's Mum."

⁴⁵ Singh, note 13. In her article, Singh confirms this point by referring to the Mumsnet survey, note 40, which shows that 81% of women said they were responsible for making Christmas arrangements all or most of the time.

⁴⁶ Baker note 44.

to their personal lives and how they negotiate issues of work-life balance.⁴⁷ In earlier work, Collier makes a similar point:

Some men in law, as in other fields of work, encounter deeply entrenched institutional, cultural and organizational resistance to taking up what limited provision for leave and flexible working is available. Some experience powerful subjective tensions between their commitments to a breadwinner model of fathering and the ideas of the hands-on, nurturing parent associated with the new father ideal.⁴⁸

However, Collier notes that for others, this is not the case and it is for these many men that a gendered parenting ideal remains “powerful and resonant”.⁴⁹

Another possible explanation lies in the devaluation of domestic labour. This hierarchy of work is built into norms of appropriate femininity and masculinity, meaning it is more acceptable for women to adopt masculine behaviour (such as doing paid work) than for men to adopt feminine behaviour (such as doing unpaid work).⁵⁰ Avoiding unpaid work is therefore, according to some, one way some men display masculinity and solidify their power.⁵¹ And whilst definitions of acceptable female behaviour have evolved to include paid work, for many men and women, domestic work is still enmeshed with being a caregiver, a ‘good mother’ and a ‘good wife’ whilst male identity is still entangled with being the breadwinner.⁵²

Although time use has dramatically changed, some scholars believe that progress has stalled, partly because, at an individual level, women and men are “[...] struggling to liberate themselves from oppressive social constructions of gender.”⁵³ Many believe that attitudes have remained stagnant since the 1990s and in some ways, have regressed, over the last decade,⁵⁴ This works to the detriment of women and the benefit of men.⁵⁵ As a result, one author argues that: “[...] women who intended to work full-time end up leaving the work force,

⁴⁷ Richard Collier, ‘Fatherhood, gender and the making of professional identity in large law firms: bringing men into the frame’ (2018) *International Journal of Law in Context* 1.

⁴⁸ Richard Collier, *Men, Law and Gender: Essays on the Man of Law* (Routledge 2010) 194.

⁴⁹ *Ibid.* In his 2018 article, Collier reiterates the multi faceted aspect of men’s professional identity formation and reminds us that support for gender equality “often runs in parallel with gendered paradigms that reproduce such divisions in the first place”. Collier, note 47, 16.

⁵⁰ Sayer note 41.

⁵¹ Sayer evaluates empirical data showing women do more paid work and men do more unpaid work. Men do less unpaid work when married and even less so when parent. Sayer note 41.

⁵² See for example, Deborah L. Rhode, ‘Balanced Lives for Lawyer’ (2002) 70 *Fordham Law Review* 2201.

⁵³ Sandra Friedman, ‘Still a ‘stalled revolution’?: Work/family experiences, hegemonic masculinity and moving toward Gender Equality’ (2015) 9(2) *Sociology Compass* 140.

⁵⁴ *Ibid.*, 143.

⁵⁵ Sayer note 41. Sayer argues in favour of looking to European countries that encourage more equitable divisions of labour, for example those countries which have policies that require fathers to take parental leave reduce differences between full-time and part-time work in terms of pay and legitimize alternative work-family patterns.

particularly women in male dominated occupations.”⁵⁶ Whereas, the few men who have entered female dominated fields often benefit from higher wages.⁵⁷

Without broad structural and normative changes, that encourage and reward care giving among men and women alike, and where men move into work performed largely by women, the gender revolution is likely to remain incomplete.⁵⁸ Understanding how couples can achieve an egalitarian division of household labour is one of the most important in attaining gender equality in both the private and public spheres.

(ii) The extent to which women do more

As set out above, it is not only a question of whether women do more housework and caring than men but rather, the extent to which this occurs. As mentioned, according to Coltrane and Noonan’s assessments, it is because of the demanding nature of the tasks women tend to execute, versus those men are inclined to take on, that they end up spending more time performing housework. This view is supported by studies that have shown, time and again, how women across the world continue to take on responsibility for the majority of housework and caregiving.⁵⁹ Although figures vary, all studies have women doing more regardless of whether they also hold employment outside the home.⁶⁰

One UK study has women doing 70 per cent of all routine housework and caring work, even when they are the household’s main breadwinner.⁶¹ Another study of over 6,500 UK households indicates that women work four hours and 40 minutes a day in the home (including cooking and childcare) whereas men only do two hours 28 minutes.⁶² Finally, further data indicates that 80 per cent of married women do more routine household chores than their husbands, with only 10 per cent of married men doing an equal amount of cleaning as their partner.⁶³ As noted above, one UK study also demonstrates that once women have children, the number of routine household chores they perform goes up by 40 per cent.⁶⁴ Men, on the other hand, go from doing approximately eight hours of chores per week before being fathers and only seven after having children.⁶⁵ Coltrane’s study supports these figures. His work holds that routine housework seems to be largely exacerbated once women have children. Couples without children seem to share more or less equally in cleaning and household chores, he claims.⁶⁶ But once children arrive on the scene, the ‘maternal pay penalty’ changes the dynamics. However, interestingly, in their recent study using

⁵⁶ Friedman note 53, 144.

⁵⁷ Friedman refers to Williams’, ‘glass escalator’ example of male nurses, Ibid, 49.

⁵⁸ Ibid, 140.

⁵⁹ IPPR study, note 13, which shows that 77% of married women do more than their husbands, 10% do an equal amount and 13% of men do more.

⁶⁰ Note 1.

⁶¹ Economic and Social Research Council study, note 1.

⁶² IPPR study, note 13.

⁶³ Ibid.

⁶⁴ Mumsnet, Chores Wars note 40.

⁶⁵ Ibid.

⁶⁶ IPPR study note 13.

348,000 diary entries in which men and women between the ages of 20 and 59 recorded how much time they spent on household work and child care each day, Kan and Laurie found that ethnicity has a significant impact on the sharing of household labour and that black Caribbean men have the least traditional gender role attitudes of all groups.⁶⁷

In developed countries at least, figures indicate improvement in men's participation in the home in the latter half of the 20th century.⁶⁸ Indeed, 75 per cent of women today claim to do less housework than their mothers.⁶⁹ Yet, although men are contributing more than they used to, few of the additional hours they tally up are to do with routine household chores.⁷⁰ So few, in fact, that it is estimated that parity within the home will not be achieved until 2050 if chores such as cleaning and ironing continue to be viewed as 'women's work'.⁷¹ If we accept that workplace equality hinges on parity within the home, this is a dispiriting estimate. In order for things to change, a shift in cultural norms, which would see men take on an equal share at home, must be placed at the very top of equality's agenda.

2. Theories on why women do most of the housework

But why have women always done, and continue to do, more of these household tasks than men? As early as the 1960s, feminists, social scientists and psychologists, amongst others, started questioning the trivialization of the work done by women within the home.⁷² The allocation of housework and caring work thus began being the subject of a number of theories. The hope was that a better understanding of why women lead on the domestic front would provide the key to changing cultural norms by inciting men to do more.

(i) Societal forces

Accepting the position set out in Chapter 2 that there is no biological explanation for why women should have a greater inclination towards household chores, and based on research conducted in the latter part of the 20th century, a number of scholars advance that gendered division of labour and women's superior 'awareness' of it emanates from societal forces.⁷³

⁶⁷ M.Y. Kan and H. Laurie, 'Gender, ethnicity and household labour in married and co-habiting couples in the UK' (2016) Institute for Social & Economic Research. <https://www.iser.essex.ac.uk/research/publications/working-papers/iser/2016-01.pdf>.

⁶⁸ Cunningham note 29, 260.

⁶⁹ ONS *UK 2000 Time Use Survey*, note 13.

⁷⁰ Noonan, note 33. See also Mumsnet survey, note 40.

⁷¹ Kan and Laurie, note 67.

⁷² In addition to influential texts such as Juliet Mitchell's *Women: The Longest Revolution* (New Left Review 1966), *Spare Rib*, a feminist magazine was also first published in the UK in the 1970s and included articles about women's experiences on health, family, education and a number of other issues.

⁷³ Remarkably, although this premise is at the heart of much feminist literature going back more than half a century, the cost of a gendered division of labour to women remains largely unresolved and for this reason continues to be a current issue. Bryce Covert, 'Why it matters that women do most of the housework' *The Nation* (April 2014).

In her book *Shattered*, Rebecca Asher refers to societal forces as ‘creeping up’ on women, eventually entrenching them as responsible for home duties.⁷⁴ One study shows that such forces start early and that most men’s lack of involvement can be traced back to childhood. In US homes today, for example, girls do two more hours of chores a week than boys, carrying a telling message for both genders. Evidence also has it that we perpetuate these experiences as we age. Boys who grew up with girls are 13.5 per cent more likely to have conservative views of women’s role within the home compared to boys who grew up with mostly brothers.⁷⁵

And, as another study indicates, it is not just what we do within the home that encourages the perpetuation of normative gender roles. It is what we teach to children outside of it. A UNESCO report on teaching materials in countries at all levels of economic development and gender equality found a strong prevalence for gender bias.⁷⁶ The study notes that in many countries, “[...] women were portrayed as accommodating, nurturing household workers and girls as passive conformists while boys and men were engaged in almost all impressive, noble, exciting and fun things, and almost none in caregiving roles.” The study concludes that the uniformity of gender bias on every continent is ‘breath-taking.’ It includes under-representation of females generally in textbooks, use of male words to mean all of humanity, traditional gender stereotypes about activities of males and females in both occupational and domestic spheres and traditional stereotypes about the traits and activities of men and women.⁷⁷

Social researchers have also opined that the media has a role to play.⁷⁸ A number of studies show that marketing messages are centred on normative gender roles with only about 2 per cent of commercials featuring men taking on routine housework.⁷⁹ This is supported by how, increasingly, men are doing more cooking. According to sociologists, this is, at least in part, the result of the cultural message diffused by the media.⁸⁰ As cooking and baking are now within the socially acceptable realm of male activity, thanks to the growing number of male gourmet chefs, many of whom appear on television, men at home are beginning to embrace it.⁸¹

⁷⁴ Asher note 9.

⁷⁵ Covert note 73.

⁷⁶ *Gender Bias in Textbooks: A Hidden Obstacle on the Road to Gender Equality*, Unesco, 2016 <https://gemreportunesco.wordpress.com/2016/03/08/gender-bias-is-rife-in-textbooks/>

⁷⁷ Ibid. House of Commons Business, Innovation and Skills Committee, *Women in the Workplace*, First Report of Session, 2013-2014. also supports this view stating how “crucial” early education and career advice on the full range of career opportunities available to them was for girls and boys in school.

⁷⁸ See for example Fabio Parasecoli, *Bite Me: Food in Popular Culture* (Bloomsbury, 2008) 29, and Michelle Szabo, *Foodwork or foodplay: men’s domestic cooking, privilege and pleasure* (2012) 47(4) *Sociology* 623, 636.

⁷⁹ Covert, note 73.

⁸⁰ Lotte Holm et al. ‘Whose cooking dinner? Changes in the gendering of cooking from 1997 to 2012 in four Nordic countries’ (2015) 18(4) *Food Culture & Society*

⁸¹ Although some of these chefs are marketed as very ‘manly’ cultural role models, such as depicted on British and US television programmes like *Hell’s Kitchen* and *Iron Chef*. This is also an example of men dominating in earning from ‘women’s work’ following the mainstream and fairly recent ‘professionalization’ of cooking, Parasecoli, note 78, 29.

Finally, other authors posit that social institutions also play a role in men doing little of the housework and caring work. In terms of caring work, Asher argues that this begins with the UK national healthcare service (NHS). British society including the NHS she affirms, is geared towards making the woman the lead parent. She explains that even before having children, unequal expectations are placed on mothers and fathers, beginning from how the NHS marginalizes fathers.⁸² Given the lack of take-up of paternal leave in the UK,⁸³ Asher maintains that following birth, women soon acquire the role of expert caregiver. During their maternity leave, it is mainly women who will have all the crucial initial contacts with pediatricians, childcare centres, play groups, etc. It is also women who will gain confidence and knowledge on the baby's wants and needs within the scope of these initial few months, inevitably creating a strong bond. Asher affirms that this bond with the child and the often friendly and supportive network, will often lead to many women finding themselves satisfied with the arrangement and slipping into being the primary care giver.⁸⁴ This is further perpetuated as the child naturally begins to turn to the mother in preference to the father. A new caring order within the household is then embedded.

Consequently, the literature points to a number of societal influences that can have an impact on the gender roles adopted by men and women years before they form a household or family unit. Childhood upbringing, the media, education and institutions are all formative elements that shape behaviour. But do societal forces create cultural stereotypes or merely reify them? Social research interest in gendered normative constraints and the allocation of household work has increased significantly and in the last forty years or so, a number of sociological theories were developed to explain the dichotomy of work between men and women that go further than looking to societal forces.

(ii) Sociological research: Micro and macro level theories

Coltrane's work, which surveys these sociological theories, explains how the gender construction theory, for example, looks at gender from a symbolic and performance dimension. It posits that doing household tasks provides opportunities to show to oneself and others competency as a member of a sex category with the ability and willingness to conform to appropriate gender behaviour.⁸⁵ Another theory is the neoclassical economic view based on human capital investment which asserts that men and women split household and paid

⁸² Asher note 9, 55.

⁸³ UK figures show that in 2013, less than 1% of British fathers took advantage of the additional 26 weeks paternity leave available to them. <http://www.bbc.co.uk/news/uk-22924708>. In light of recent gender pay gap figures still showing significant pay inequality, MPs are now pushing for fathers to get 12 weeks paternity leave with a caveat of 'use it or lose it', similar to that of Sweden's successful legislation, https://www.theguardian.com/money/2018/mar/20/mps-call-for-12-weeks-of-paternity-leave-to-address-gender-pay-gap?CMP=Share_iOSApp_Other. March, 2018. Politicians are finally concurring with feminists who have long believed that strong ties exist between the gender pay gap and paternity leave.

⁸⁴ Asher note 9, 53.

⁸⁵ Coltrane note 21.

work with the ultimate objective of maximum efficiency.⁸⁶ Further theories focus on psychology. One such theory states that many women who return to work after maternity leave end up taking lower-paid employment, creating all sorts of psychological boundaries at home when it comes to who does what. This theory maintains that women can often feel guilty about having become a lesser earner, leading to a belief that they should compensate by doing the household chores as well as their job.⁸⁷

To a number of sociologists however, who ultimately picks up the baby and the cleaning brush is influenced by four principal factors: the nature of employment within a couple, their respective earnings, education and gender ideology.⁸⁸ Coltrane for example maintains that the richer, more educated and more enlightened will hold more equitable views regarding gendered division of labour.⁸⁹ Keith Cunningham's research supports this. He concludes that there is a strong link between gender ideology and the paid labour market, where women with more egalitarian attitudes spend more hours in paid work.⁹⁰ Similarly, Susan McRae adds that women's choices regarding their careers are not made on an ad hoc basis but rather, reflect their attitudes to being mothers and mothering which, she argues partly relates to their earnings.⁹¹

Mylène Lachance-Grzela and Geneviève Bouchard define the determining factors identified by this body of work as micro levelled. In addition to these micro reasons for division of household labour, Lachance-Grzela and Bouchard also provide a macro-level explanation. They contend that in order to have a more complete understanding of the human social world, importance must be given to the social context in which the behaviour takes place. Consequently, they argue that factors such as national context, or the country where the couple lives, must be considered when analysing allocation of housework.⁹² They set out to prove that couples living in countries that have greater macro level gender equality, often associated with large public sectors, tend to divide housework more equally. Greater parity of house chores is seen, they argue, in Canada and Sweden, for example, where women's professional opportunities, economic power and participation in politics is higher than other national averages. Lachance-Grzela and Bouchard also hold that political context influences the

⁸⁶ Ibid. This theory draws on the human capital theory, and measures efficiency as to who should be doing housework on the basis of each individual's education, previous labour market experience and the availability of wages and jobs.

⁸⁷ Bryony Gordon, 'Why are women still doing most of the housework?' *The Telegraph* (London 9 February 2014).

⁸⁸ Coltrane note 21, 1226.

⁸⁹ Ibid.

⁹⁰ Cunningham note 29, 2. Cunningham posits that egalitarian gender attitudes were the strongest predictor of the amount of time that employed women devoted to paid work.

⁹¹ McRae, note 7, 317.

⁹² Lachance-Grzela and Bouchard, note 39. This is supported by other studies, see for example Damian Grimshaw and Jill Rubery, 'The motherhood pay gap: A review of the issues, theory and international evidence' (2015) International Labour Organization

sharing of household labour. Liberal regimes that care about issues such as parental leave and the cost and availability of day care also matter.⁹³

So there are a number of societal factors that explain why, during childhood as well as once within a family unit, boys and men tend to be less burdened with household and caring chores. Micro sociological theories add to these and maintain that in order to improve this social order gendered ideologies taught explicitly and implicitly to children in schools, and via the media, institutions and within the family core, must change. Girls and women must be encouraged to further their education and women's earnings must grow.⁹⁴

On the basis of these analyses, women in the legal profession in England and Wales are set apart from the majority of the female labour force. Women and men lawyers are on average better educated and better paid than most. They consequently also tend to hold a more equal gender ideology.⁹⁵ On a macro level, although not a leader in equality, compared to many countries, the UK remains a fairly gender equal society. But despite lawyers being less exposed to factors which lead to unequal allocation of time spent on work within the home, it remains that they are not immune from its consequences.⁹⁶ The key point is that, like all women, women lawyers are significantly more burdened with domesticity, including household management, caring and emotional work, in comparison to their male counterparts.

3. Why does it matter that women rather than men do most of the housework and caring work?

But why should it matter so much that the existing social gender order change? Why should who cooks, cleans and cares be of any real importance? And why should the factors leading to this unequal distribution of work between men and women be of any significance? The answer to these questions arguably, is that these additional responsibilities, born of our culture's traditional gender roles and stereotypes, are what drive many women to being more conflicted about time spent at work than most of their male colleagues. This conflict is known to give way to women having to make decisions about work that lead to professional disadvantages.⁹⁷ It can also result in hidden assumptions being

⁹³ A good example is Iceland, so far the only country in the world where women have attained parity in pay, John Henley, 'Equality won't pay for itself: How Iceland got tough on gender pay gap' *The Guardian* (London 20 February 2018). A 2015 study of Quebec's new paternity leave QPIP where men are given non exchangeable six month leave found that women's salaries increased significantly as did men's participation in childcare. Ankita Patnaik, 'Reserving time for daddy: The consequences of fathers quotas' (2018) *Journal of Labour Economics* [forthcoming].

⁹⁴ Lachance-Grzela and Bouchard, note 39.

⁹⁵ Marisa Young et al., 'Gendered differences in perceived domestic task equity: a study of professionals' (2015) 36(13) *Journal of Family Issues* 1751, 1753.

⁹⁶ *Ibid*, 1773.

⁹⁷ This is also known as the 'motherhood penalty'. There are large numbers of socio-legal studies dating back at least 20 years that discuss this reality, for example Hilary Sommerlad, Peter Sanderson, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (Ashgate 1998), Jean E. Wallace and Fiona M. Kay, 'Tokenism,

made by employers that lead to gender discrimination.⁹⁸ Women who lead on housework and caring responsibilities can find themselves the subject of biases, such as that they will readily abandon work and their careers, at least temporarily, to care for children or postpone or trade off strategic moves in exchange for more family time.⁹⁹ Pooled together, this social order goes far in explaining the tenaciousness of gender inequality.

One commentator explains how housework:

[...] is a distracting grind of apprehension and organization to women which scatters her focus on what she does for pay and knocks her partway or clean off a career path [...] It may be one of the least movable obstacles to women's equality in the workplace.¹⁰⁰

Coltrane affirms that housework is invariably related to gender equality.

[...] Household work embodies a set of complex material and symbolic practices that constitute and reproduce daily life. Because most of it continues to be performed by women, wives and daughters, and because most women buy out of onerous domestic tasks when they can afford to, we ought not to lose sight of the fact that domestic labour allocation is embedded in social arrangements that perpetuate class, race and gender inequalities.¹⁰¹

This view is further supported by a myriad of scholarly writings that overwhelmingly point to women front lining responsibilities for the home and childcare as primary impediments to career progression.¹⁰² So, who does the mundane housework and caring is actually crucial to women's fight for equality.¹⁰³ So much so, that many authors argue that without challenge to gendered domestic disparity women will continue to lag behind within the workplace.¹⁰⁴ "For women to have a realistic chance of equality outside the home they must have equality within it."¹⁰⁵

organizational segregation, and co-worker relations in law firms' (2012) 59(3) *Social Problems* 389, 393-394, 406.

⁹⁸ Ibid.

⁹⁹ Kaye and Reddy note 12, 1955.

¹⁰⁰ Noonan note 33.

¹⁰¹ Coltrane note 21, 1227.

¹⁰² By way of example, each of the following studies point to this fact *Women in the Workplace*, note 77, *Mapping Advantages* note 28 and Jane Ellis, Ashleigh Buckett, 'Women in Commercial Legal Practice' IBA Legal Policy and Research Unit December 2017.

¹⁰³ Coltrane note 21.

¹⁰⁴ Friedman, note 53.

¹⁰⁵ Asher note 9, 33.

4. Workplace inequality and normative gender roles

Women taking on most of the routine housework and caring responsibilities results in inequality in the workplace as “[...] women’s presence in the world of waged work is permanent yet always contingent on taking care of care.”¹⁰⁶

Scholarly thought focuses on four major resulting inequalities. Each is a vast topic, which this study can only touch upon in order to highlight their link to the debate on how cultural stereotypes affect men and women in the workplace.¹⁰⁷ First, is how unpaid work done by women in the home results in inequality of pay, distinct from the gender pay gap. Second, how housework leads to women being time conflicted, resulting in women gaining less work experience than their male counterparts and generating discriminatory assumptions on the part of employers. Third, how unpaid labour and less work experience can create an opportunity gap leading to a gender pay gap. Fourth, how women front lining routine housework and care results in them having less leisure time, putting them at greater risk of mental and physical illness.

(i) Unpaid, non-market labour

Unpaid work is integral to the sustenance of unequal power relations between men and women.¹⁰⁸ The patriarchal structure of our society, which employs a male gender norm and privileges male gender attributes, results in a higher consideration for what men do. It translates into men’s work being deemed more worthy of monetary compensation and esteem, whereas the housework and care giving work many women undertake is often left unpaid or paid at a minimum wage.¹⁰⁹ Yet society depends equally on both if only because domestic work enables other work places and eases demands on State finances.¹¹⁰ The origins of a dualistic approach to paid and unpaid work and the gendered division of labour generally is a rich field of inter-disciplinary study. Judy Fudge explains how:

[t]he weakening of the gender contract, which was caused by a range of economic (the dismantling of tariff walls, changes in technology, the

¹⁰⁶ Beatrix Campbell as quoted in R. Collier, note 8, 2403.

¹⁰⁷ Noonan summarises scholars’ views on how housework can affect women in four main ways: pay, the type of job one opts for or is placed in, the energy one can devote to work and finally, discrimination by employers. Noonan, note 33, 1135. But it is not only women who suffer for these inequalities, they also promote primacy of paid employment over caring labour thus arguably subordinating the needs of dependents in our society.

¹⁰⁸ Sayer note 41. See also Judith Treas and Sonja Drobnik, *Dividing the Domestic: Me, Women and Household work in Cross National Perspective* (Stanford University Press 2010), Ellen Malos, *The Politics of Housework* (New Edition 1980).

¹⁰⁹ Bender note 9, 947-48.

¹¹⁰ Ibid. See also Belinda Smith, ‘Time norms in the workplace: their exclusionary effect and potential for change’ (2002) 11 *Columbia Journal of Gender and Law* 271.

growth of the public services, the deterioration of men's wages and women's mass entry into paid employment) and social (women's education, falling fertility rates, and marital breakdown) factors has revealed the extent to which employment norms rested on an unpaid full-time caregiver.

Fudge also discusses the commodification of care and explores how the new dual breadwinner model in developed economies has illuminated the significance of care work to sustaining societies.¹¹¹

For feminist political economists such as Isabella Bakker, social reproduction, or the every day activities of maintaining life and producing the next generation of workers are increasingly being realized through unpaid and paid resources of (largely) women as, with the advent of neoliberalism, states withdraw from public provisioning with the result that capitalist market relations increasingly infiltrate social reproduction.¹¹²

Sue Himmelweit, argues that the dualism between home and work, production and reproduction must be rejected to allow for the caring activities that are performed in the home to categorically form part of paid labour and be the subject and protected by a new range of policies that would appease the pressures of inequality.¹¹³

Non-market labour is not only bad for women, as they personally suffer professionally and financially, but it is also bad for families, who would benefit from greater pay equality. This lack of recognition is also bad for society, including national economies, as labour performed by a large share of workers is made invisible.¹¹⁴ In 2014, the Office for National Statistics (ONS) valued this non-market labour at £1 trillion per year, equivalent to approximately 56 per

¹¹¹ Fudge explores how this process leads to increased reliance on migrant care workers and she questions why unpaid care work performed in the home, typically by women, falls outside labour laws jurisdiction. Judy Fudge, 'Reflections on the scope of labour law: domestic work, social reproduction, and jurisdiction' (2014) 22(1) *Feminist Legal Studies* 1.

¹¹² Isabella Bakker explains that labour is a particular aspect of work, which under capitalism is characterized by the alienation of the labourer and the appropriation of surplus labour by capital through the institution of wage labour. The modern origins of this phenomenon emanate from the historical development of markets for commodities (labour and goods) separated from social reproduction. Care work, the author argues, is part of a continuum that reflects degrees of commodification. Isabella Bakker (2007) 'Social reproduction and the constitution of a gendered political economy' 12(4) *New Political Economy* 541.

¹¹³ Sue Himmelweit, 'Domestic labour' in Janice Peterson and Meg Lewis (eds.) *The Elgar Companion of Feminist Economics* (Edwar Palgar 1999) 28.

¹¹⁴ This is especially true of developing countries. See also Olga Khazan, 'The scourge of the female chore burden' *The Atlantic* (23 February 2016). In a recent article, Melinda Gates calculates that reducing the 'opportunity cost' of women's unpaid labour from 5 hours to 3 hours per day can increase a country's female labour force participation rate by 10 per cent. She posits that if women participated at an equal rate to men in the labour force, global GDP could increase by 12 per cent. Bill and Melinda Gates Newsletter 2015, as reported in *Fortune Magazine* <http://fortune.com/2016/02/23/melinda-gates-women-unpaid-work/>

cent of the UK's gross domestic product.¹¹⁵ In conjunction with its report, the ONS launched an unpaid work calculator allowing people to add up the value of the unpaid work they do. On the basis of these figures, a woman in the UK would earn £259.63 a week for household chores whereas a man would earn £166.63.¹¹⁶ Calculated using the UK Living Wage of £8.25 per hour, this adds up to women missing out on £6,022 of wages per year due to their fulfillment of unpaid household and caring duties.¹¹⁷

It is not just housework that goes unpaid but caring as well. Another study points to unpaid carers saving the NHS £132 billion a year, a figure which represents the total annual health spending by the NHS in the UK.¹¹⁸ In this regard and to encourage change, the United Nation's Development Programme has come up with the Gender Empowerment Measure (GEM) as an indicator of women's professional, economic and political development.¹¹⁹ GEM shows that women in gender equal nations (including the United Kingdom) perform 15 hours of housework per week where others perform 27 hours.¹²⁰ GEM shows that where men are more involved in the private sphere and where women are more involved in the public sphere there is a societal shift in gender roles which goes far beyond individual negotiations between couples. Consequently socio-economic regimes that actively support gender equality have lower levels of women performing unpaid labour with all the macro-economic benefits this entails.

Promoting women's participation in the workforce is seen as an aid to helping them negotiate more equal division of housework. But although policies can help, they must be supported by workplace equality. The persistence of a traditional ideal of full time and uninterrupted work can mean that fathers who take advantage of part-time programmes are also undervalued in the workplace and may see their careers limited just like many mothers who work flexibly.¹²¹

Some have suggested that the answer may lie in remunerating unpaid labour, including caring. But the concept of wages for domestic work is not without its serious problems.¹²² Who for example would be eligible for such payment? Just

¹¹⁵ The Office of National Statistics has launched an "unpaid work calculator".

<https://www.ons.gov.uk/visualisations/dvc376/index.html>,

¹¹⁶ Ibid. The Office of National Statistics attributes different value to different tasks. For example, for caring work pay is deemed to be £15.28 per hour whereas gardening is £8.58. This also shows how women do more work of greater value than men.

¹¹⁷ Organization for Economic Cooperation and Development study 'Balancing Paid Work, Unpaid Work and Leisure', 2014.

<http://www.oecd.org/gender/data/balancingpaidworkunpaidworkandleisure.htm>.

¹¹⁸ L. Buckner and S. Yeandle, *Valuing Carers 2015*, Report by Carers UK and the University of Sheffield: https://www.sheffield.ac.uk/polopoly_fs/1.546409!/file/Valuing-Carers-2015.pdf

¹¹⁹ GEM is used by the UN in its reporting on issues of equality, see *Achieving Gender Equality, Women's Empowerment and Strengthening Development Cooperation* (UN Department of Economic and Social Affairs 2010)

¹²⁰ Ibid.

¹²¹ Lachance-Grzela and Bouchard, note 39, 776.

¹²² Conaghan and Rittich discuss this issue when they consider the re-positioning of unpaid care work as integral to the performance and structure of productive activity and consideration of the

women? Just mothers at home? Would it also include men and women who work outside the home but also do housework and caring work? Who would pay for this work? The State? Or, as one commentator noted, would men pay their spouses, throwing us back more than half a century and furthering a majority of men's aversion to chores?¹²³ Arlene Kaplan Daniels argues that not all work should be paid. As a society we would fare better by giving much greater recognition and validation to domestic and caring work as well as emotional work. She argues that this would provide at the very least a dignity and moral force to those who perform this type of work. It could also have positive knock on effects on how these carers are viewed by their employers. It may even rally men into taking a bigger part in them.

The important message remains that there is a strong interdependence between work and family activities and every society requires the performance of household tasks and caring in order to function.¹²⁴ Our very existence depends on routine tasks that feed, clothe, shelter and care for both adults and children.¹²⁵ Not only is this type of work essential within the home but it also enables and supports most work places outside the home and saves the State significant amounts of money.¹²⁶ Yet, this valuable work, vastly performed by women, remains largely invisible and often unpaid or significantly underpaid on a global scale. It thus leaves those who do not have to do it or do little of it richer.

(ii) Missed work experiences – the opportunity gap

The second workplace inequality, which arguably results from the persistent traditional division of labour, is that related to the missed opportunity cost, or the opportunity gap. A systemic and perhaps less overt way women are

implications of recognizing the interdependence of work and family activities. Joanna Conaghan and Kerry Rittich, *Labour Law, Work and Family: Critical and Comparative Perspectives* (Oxford University Press, 2005).

¹²³ Rupert Jones, 'Paid housework? No one will clean up from that idea' *The Guardian* (London 27 June 2017).

¹²⁴ R.M. Fischl discusses the results of an experimental society where care giving (done by women) is socialized and provided by the state and individuals and families are left to fend for themselves with respect to police and fire protection (done by men). Fischl draws up a thought-provoking scenario where women doing care work are treated like civil servants (with unions and seniority benefits) and men are left to form informal structures such as neighbourhood watch groups. The scholar highlights that care work represents a "public good" just like police and fire protection, one which both family members but also employers, communities and society as a whole "free ride." R.M. Fischl, 'A woman's world', 2004, *Buffalo Law Review*, vol. 52, 659.

¹²⁵ Coltrane, note 21, 1209. It must be mentioned that more and more paid work now happens within the home. According to a 2015 study by the Department for Business, Innovation and Small Business, in the UK, 20 per cent of small businesses run from the home are owned by women. The effect, if any, that this paid work may have on the attitudes and practices of both men and women who execute paid work from home remains unclear but for sociologists, it will be an interesting phenomenon to monitor.

¹²⁶ Smith, note 110. Naomi Wolf, consultant at the Athena Center for Leadership Studies said "Sexism in the workplace pumps untold revenue into the coffers of global business...this situation will never yield to reasoned appeals, too much money is at stake" as quoted in Alexandra Topping, 'Gender pay gap will not close for 70 years at current rate, says UN' *The Guardian* (London 5 March 2016).

disadvantaged is by missed work experience. Women whose time and energy are spent partly or mostly in the home on unpaid labour, will accumulate less work experience than men, whose time and energy is concentrated in the workplace. This is especially true of women with children. It is a well established that mothers are more likely to have career breaks, switch to part-time work, chose jobs that help reconcile family and work (which are usually lower paying) all of which lead to missing out on professional experiences, opportunities and ultimately promotions.¹²⁷

For example, although few women lawyers get remunerated by the hour, as I indicate in Chapter 4, many adapt their working schedules in order to accommodate family demands. Women working for large City employers often sacrifice a significant part of their salary to benefit from extended maternity leave.¹²⁸ Following this, a number of female lawyers take on a flexible work schedule or part-time work to look after young children. This can thwart their return to full time employment and some of them leave the practice of law altogether, either to opt for less time-demanding industries or to stay at home doing full-time unpaid work. Hilary Sommerlad advances that law firms often perceive commitment to family to be a concomitant absence of commitment to work.¹²⁹ She posits that domestic responsibilities often lead to a form of hidden assumption that women lawyers lack commitment to their job and to the law firm, for which they are penalized by legal employers.¹³⁰ This is supported by primary interview data presented in Chapter 4.

This disparity leads many women to finding it more difficult to compete with male colleagues. In her book *The Second Shift*, Arlie Hochschild powerfully made, more than a quarter of a century ago, the case that women cannot compete fairly with men when they are doing two jobs and men are doing only one.¹³¹ This view continues to be largely supported by scholars. Heather Haveman and Laura Beresford's research, for example, highlights how the resilient belief in gender roles of women as homemakers and men as managers results in a vertical gender gap in management roles:

Because traditional gender roles involve women doing more housework and childcare than men, working women who fulfill their expected gender role are forced to take on a "second shift" of housework and childcare after working hours, while men who fulfill their expected gender roles can concentrate more on work or spend time on leisure.¹³²

Women who front-line housework and caring responsibilities don't only miss out on work experience from fewer hours at work. In connection with Sommerlad's

¹²⁷ Grimshaw and Rubery, note 92.

¹²⁸ It is during maternity leaves that women perform the highest amount of unpaid work according to the ONS, 'Women shoulder responsibility of 'unpaid work' *ONS Digital* (10 November 2016).

¹²⁹ See for example, Sommerlad and Sanderson note 97. See also Nicolson, note 29.

¹³⁰ Sommerlad and Sanderson note 128.

¹³¹ Hochschild, note 14.

¹³² Haveman and Beresford note 9, 122.

view, Cunningham holds that housework and caring also increase the potential for discrimination by employers who believe certain employees will be less productive due to their domestic responsibilities. This discrimination leads to missed opportunities as women may not be considered for promotion.¹³³ Gendered-related dynamics can therefore exert long-term influences on women's employment.

Applied to the legal profession and private practice in large law firms, Megan Erb affirms that large law firm demands are in constant tension with the demands lawyers working for them face at home.¹³⁴ As advanced in Chapter 4, most large City law firms continue to see, whether it be implicitly or explicitly, their ideal lawyer as "[...] someone without regular interpersonal responsibility for the care of others, whether they are children, parents, siblings, lovers or the community needy."¹³⁵ Today single men or men who have partners at home continue to represent a large part of the pool of 'ideal lawyers', embodying the norm to which others must try to conform, whether they are women or men.¹³⁶ Lawyers with caring responsibilities face real disadvantages as they spend less time at work than their less encumbered counterparts, not because they chose to devote less time but because they have other important responsibilities to fulfill, such as childcare, which conflict with their paid work.¹³⁷

(iii) The gender pay gap

The third inequality borne of the gendered division of labour is the gender pay gap.

The campaign for equal pay between men and women has included picketing, demonstrations, legal challenges, individual cases, commissions, task forces, new policies, increased women on boards, T-shirts and a Hollywood movie. Yet, little has changed for women.¹³⁸

¹³³ Cunningham note 29.

¹³⁴ Megan Erb, 'Red light, green light: assessing the stop and go in the advancement of women in the legal and business sectors' (2008) 14 *William & Mary J Women & L.* 393.

¹³⁵ Bender note 9, 942.

¹³⁶ This preference is of course not unique to the legal profession. The world of information technology refers to this as 'zero drag' candidates. A 'drag point' is attributed to a candidate's various personal attachments. For example, having a spouse represents one drag point, for each child, a further 2 drag points are added.

¹³⁷ One study on highly qualified women reports that although nearly four in ten women (37%) have left work voluntarily at some point in their careers (among women with children, that figure is 43%) ... "an overwhelming majority have every intention of returning to the workforce". The authors add however that these women have "seemingly little idea of just how difficult that will prove." The authors conclude that women have a number of reasons for working or wanting to go back to work which include financial reasons but also issues of discomfort with 'dependence' on their working spouse and deep pleasure in chosen careers and wanting to 'reconnect' with something they love. S. Hewlett and C. Luce, 'Off-Ramps and On Ramps' (2005) 83(5) *Harvard Business Review* 43.

¹³⁸ Kamaljeet Jandu, Equality Officer, GMB union, a UK trade union with over 630,000 members, as quoted in Rob Davies, 'Gender pay gap: three quarters of employers yet to analyse wages' *The Guardian*, (London 11 March, 2016)

The UK's Equal Pay Act is 45 years old.¹³⁹ Yet, recent studies suggest that women still earn an average of £300,000 less than men over their working life.¹⁴⁰ Women across the world earn 77 per cent of the amount paid to men, and this figure has improved by only 3 per cent in the last two decades.¹⁴¹ In 2017, the U.K. median pay for a woman was 19.7 per cent less than that for a man, and women in management received lower basic salaries and bonuses than men in equal roles. A United Nations study warns that it will take a further 70 years to close the pay gap if the pace at which it is currently being reduced does not change.¹⁴²

One explanation for this tenacious disparity is the link between unpaid housework and caring responsibilities and earnings. Feminists have been arguing for decades that the spheres of home and workplace are integrally related. Research has consistently found that the negative relationship between housework and wages is stronger for women than men.¹⁴³ Housework is deemed to be a contributing factor to lower pay women receive across the board, as is motherhood as a number of studies have found that in addition to the pay gap, women with children earn less when they return to work compared to childless women.¹⁴⁴ This 'motherhood pay gap' increases with each child.¹⁴⁵ Fathers on the other hand earn more than childless men, as much as 11 per cent more according to one study.¹⁴⁶

As mentioned in Chapter 4, under new legislation, large City law firms have recently divulged their gender pay gap figures. For most of those magic circle firms who only published results for associates, this gap stands at an average of 35.2 per cent with one magic circle firm's associate bonus gap at over 54 per cent. When partners salaries are included however, as they were by two magic circle firms, the average pay gap figure leaps to approximately 63 per cent.¹⁴⁷ Although these figures are striking and at their root deeply unfair, to say the least, the wide discrepancy should come as no surprise. After all, if work experience is associated to promotion and earnings, it follows that, unless cultural gender roles shift significantly, women will continue to incur greater wage penalty than men for time spent away from work on housework and care.

¹³⁹ The *Equal Pay Act of 1970* was replaced by the *Equality Act 2010*.

¹⁴⁰ Andrea Davies and Brenda Frink, 'The origins of the ideal worker: The separation of work and home in the United States from the market revolution to 1950' (2014) 41(1) *Work and Occupations*, 18.

¹⁴¹ *Ibid.*

¹⁴² UN, ILO study

[http://www.ilo.org/gender/Informationresources/Publications/WCMS_348087/lang--en/index.htm](http://www.ilo.org/gender/Informationresources/Publications/WCMS_348087/lang-en/index.htm)

¹⁴³ Noonan note 33.

¹⁴⁴ Grimshaw and Rubery, note 92.

¹⁴⁵ *Ibid.* A further report dated 2005 and cited in the ILO report shows that UK mothers can expect to earn 25% less than women without children. The UK fares poorly compared to other countries such as Belgium, Ireland, Spain and Portugal where the figure was at less than 10%.

¹⁴⁶ *Ibid.*

¹⁴⁷ Much of the legal press reported on these figures, see for example, <https://www.legalcheek.com/2018/03/clifford-chance-reveals-44-gender-pay-gap-but-figure-includes-mega-earning-partners/>

(iv) Leisure time

Lastly, lack of free time has emerged as another and the fourth inequality related to the unequal gendered time allocations.¹⁴⁸ As a result of taking on paid work as well as most of the unpaid work, women are spending more time in total work activities than men.¹⁴⁹ Women therefore have less free time than men. This leisure gap equates to approximately 30 minutes per day, according to scholars or three and a half hours per week.¹⁵⁰ Deprivation of leisure time can lead to depression and marital difficulties.¹⁵¹ John Hagan and Fiona Kay write that women who bear most of the housework experience a notable decline in marital satisfaction and their perception of fairness.¹⁵² Lack of wellbeing amongst lawyers due to the high stress, competitive and long hours' environment is well documented.¹⁵³ For women lawyers, added negative feelings tied to disparity within the home and frustration over biases they encounter within the workplace may only serve to aggravate this unhealthy spiral.¹⁵⁴

5. The Notion of Choice

So long as men choose not to care, women will have no choice but to do so.¹⁵⁵

This quote by Judy Fudge underlines how the issue of men and women's career advancement and the 'choices' women are deemed to make with respect to caring responsibilities are inseparable from the choices men make, both as fathers and as employers. But rather than adopting this optic, the exclusion of women from the top is too often justified by using the vague and umbrella concept of women's choices.¹⁵⁶ In discussing women's career paths and lack of career advancement, many continue to argue it is a matter of 'free choice' on the part of women. This point of view forms part of the theoretical approach set out in the 'human capital theory.'¹⁵⁷ This theory posits that women do not progress in the workplace in the same way as men because they choose to invest less

¹⁴⁸ Sayer note 41.

¹⁴⁹ John Hagan and Fiona Kay, 'Even lawyers get the blues: gender, depression and job satisfaction in legal practice' (2007) 41(1) *Law & Society Review* 51.

¹⁵⁰ Sayer note 41. See also Covert, note 73, who cites a study that calculates this figure to be at three more hours per week.

¹⁵¹ Hagan and Kay note 149.

¹⁵² Whereas Coltrane adds that for men, the division of domestic work is unrelated to perceptions of fairness or marital satisfaction. Coltrane note 21, 1209.

¹⁵³ Hagan and Kay note 147. Richard Collier, Presentation, Research Committee on the Sociology of Legal Profession Working Group, Conference in Andorra conference 2016.

¹⁵⁴ Note 147.

¹⁵⁵ Fudge, note 2.

¹⁵⁶ Deborah Rhodes, 'From Platitudes to Priorities: Diversity and Gender Equity in Law Firms' (2011) 24 *Geo J. Legal Ethics* 1047.

¹⁵⁷ The two main proponents of this theory are Jacob Mincer, 'The Distribution of Labour Income' (1970) 8 *Journal of Economic Literature* 1 and Gary S. Becker, *Human Capital* (University of Chicago Press, 2nd ed. 1975).

'human capital' (education, training, time, etc.) and so indirectly opt for home over career.¹⁵⁸

The human capital theory, which "remains a strong intellectual current in law firm thinking about gender",¹⁵⁹ is based on the premise that labour markets are "rational and hence gender and race neutral."¹⁶⁰ This theory has also been applied to explain the small inroads minorities have made into the higher echelons of the legal community.¹⁶¹ With respect to race, human capital theory simply replaces issues relating to work and family as applied to women, with "racial differences on legal learning" or lack of qualifications and competence issues.¹⁶² However the human capital theory is not without its critics. As one commentator points out:

In deeply unequal societies people tend to justify their privilege with the belief that those who are less well off made worse choices rather than consider they have unfairly benefited from privilege.¹⁶³

This last remark can be applied to the condition of male advantage within the legal profession. Opponents claim that women's choices in society are not to be seen in isolation but rather as the result of other choices by men (not to shoulder more responsibilities at home) and by employers (not to take on board cultural norms and provide more structures that address issues primary carers face as lawyers).¹⁶⁴ Women's career decisions are therefore not so much to do with free choice but rather, with a forced choice¹⁶⁵ or being "[...] pulled by family demands and pushed by inflexible, unresponsive work places."¹⁶⁶ These decisions are also

¹⁵⁸ Catherine Hakim, *Key Issues in Women's Work: Female Diversity and the Polarisation of Women's Employment* (Glass House Press 2nd ed. 2004). A number of feminist scholars reject this theory, for example, L. Webley and L. Duff, s note [8], 377 and Haveman and Beresford, note 9.

¹⁵⁹ Monique Payne-Pinkus, John Hagan and Robert Nelson, 'Experiencing discrimination: Race and retention in America's largest law firms' (2010) 44(3) *Law and Society Review*, 553. 555.

¹⁶⁰ Sommerlad, (2011-2012) note 6, 2493.

¹⁶¹ Payne-Pikus et al. note 159, 556. When it comes to women of ethnic minority, Nancy E. Dowd notes that white women are separated from women of colour showing the complex cross sectioning of this group. The fact that ethnic minorities are seen to be underrepresented due to underperformance "measured by traditional merit standards" and that women generally, hence women of colour, also suffer from the perception of being uncommitted, points to the hierarchy of discrimination noted by Dowd. Nancy E Dowd, 'Resisting essentialism and hierarchy; A critique of work/family strategies' (2000) 16 *Harvard BlackLetter L.J.* 192. See also David Wilkins, 'Fragmenting professionalism: Racial identity and the ideology of bleached out lawyering', (1998) 5(2-3) *IJLP*. Statistics support this with black women solicitors being paid less than white women and being less satisfied with their work, Solicitors Regulation Authority, *Mapping Advantages*, note 27.

¹⁶² Payne-Pikus et al., note 159, 556.

¹⁶³ Poppy Noor, 'Working class and BAME? Here's how not to feel like an impostor at uni' *The Guardian*, (London 11 September 2017).

¹⁶⁴ Deborah Rhode, 'Gender and the profession: The no-problem problem' (2002) 30(3) *Hofstra Law Review* 1.

¹⁶⁵ Pamela Stone, *Opting out? Why women really quit careers and head home*, (University of California Press 2007).

¹⁶⁶ Deborah Rhode, 'From Platitudes to Priorities: Diversity and Gender Equity in Law Firms' (2011) 24 *Geo. J., Legal Ethics* 1058, 1071. See also E. Wald, *Glass Ceilings and dead ends: professional ideologies, gender stereotypes and the future of women lawyers at large law firms'*

often conditioned by the expectations of others, such as family, colleagues, the larger culture –expectations that do not constrain men’s labour supply choices.¹⁶⁷ What the human capital theory also fails to do is to further nuance the notion of choice by noting that a growing number of women are faced with no choice at all with respect to work and family life.¹⁶⁸ Sole support mothers, for example, have no choice but to combine work and family responsibilities.¹⁶⁹

6. How will things change?

A number of scholars have theorised on what is required for the unstalling of the gender revolution. Sayer argues that although time use by men and women has changed dramatically, it is unlikely that further convergence will occur without changes to normative and institutional contexts within which decisions about time allocation are embedded.¹⁷⁰ Sayer states that it is societal values and norms about how time should be allocated and which activities will be prioritized that limit the ability of women and men to autonomously determine how they will spend their time. Sayer recommends equitable division of labour, as seen in some Northern European countries, that reduce time competition between paid work and family caregiving and leisure. She pushes for policies that require fathers to take parental leave, for offers of extended job leave, and a general reduction in differences between full-time and part-time work in terms of pay and benefits. She also promotes reduced economic penalties associated with caregiving and the legitimization of alternative work-family patterns.¹⁷¹ Similar to Kaplan Daniels earlier, she also advocates for broad structural and normative changes, that encourage and reward caregiving among both men and women alike. Without them, she notes, the gender revolution is likely to remain incomplete.¹⁷²

In addition to concrete policies, hope for greater equality within and outside the home can also be derived from demographics, or the changing social landscape in Britain. Greater diversity in the personal choices people make may bring solutions as less traditional routes are now being followed. A recent study shows more couples opting for alternative living arrangements, as they increasingly chose to cohabit rather than marry. Cohabiting parenthood is also on the rise by

(2009-2010) 78 Fordham Law Review 2245, 2255. Carrie Menkel-Meadow also highlights this issue when she states that “A crucial step in understanding women’s participation in the legal profession is to locate points where women either choose to leave the training track or are forced out by external discriminatory practices”, see Carrie Menkel-Meadow, ‘The comparative sociology of women lawyers: The “feminization” of the legal profession’ (1986) 24 Osgoode Hall Law Journal 897.

¹⁶⁷ Cynthia Fuchs Epstein, Carol Seron and Bonnie Oglensky, *The Part-Time Paradox*, (Routledge, 1999) as quoted in Mary C. Noonan, Mary E. Corcoran, ‘The mommy track and partnership’ (2004) ANNALS, AAPSS 596.

¹⁶⁸ M.J. Mossman, ‘Lawyers and Family Life: New Directions for the 1990’s’ (part one), *Feminist Legal Studies*, 1994, vol. II, 75.

¹⁶⁹ Note 167, p. 75. Likewise, men with no meaningful paternity leave have no choice but to carry on in paid work and not take time off to care for babies and children generally.

¹⁷⁰ Sayer, note 41.

¹⁷¹ *Ibid.*.

¹⁷² *Ibid.*

both same sex and heterosexual couples.¹⁷³ Many are also remaining single. A recent study shows that more and more women are opting not to have children or delaying the decision until much later. According to this study, nearly a fifth of British women born in 1970 had not lived with a partner or become a parent by age 42.¹⁷⁴

In her book *Unfinished Business*, Anna Marie Slaughter urges employers to take this changing face of what it is to be a family as a reason to reform the work place and do away with 'bad work culture'. She advances this culture is everyone's problem, for men just as much as for women. "It's a problem for working parents not just working mothers. For working children who need to take care of their parents not just working daughters." She suggests the building of an infrastructure of care to replace women at home.¹⁷⁵ She echoes Sayer's work and stresses the need for high quality affordable childcare, paid family leave and medical leave for men and women.¹⁷⁶ But perhaps more fundamentally, Slaughter urges society to stand up for care "[...] by valuing it, teaching boys to do it, voting for politicians in favour of it and building an infrastructure to accommodate it."¹⁷⁷ Slaughter argues that if we really valued caregiving in our society we would not so readily equate it to a black hole in *curriculum vitae* but rather:

We would see it as engaging in a socially, personally and professionally valuable activity. We would see men who 'lean out' for care roles as role models just as much as women who 'lean in' for work. We would think managing kids matters as much if not more than managing money.¹⁷⁸

However, changing cultural boundaries is a most difficult task.¹⁷⁹ It may be why much of the academic focus on career progression and improving women lawyers' work life balance has tended to target the more tangible, albeit related issues of structural barriers, which I discuss in Chapter 6.

¹⁷³ ESCR, *Britain in 2015*. <https://esrc.ukri.org/news-events-and-publications/publications/magazines/britain-in-magazine/>

¹⁷⁴ ESRC study, *The Generation Game*, 2015, 103. <https://esrc.ukri.org/files/news-events-and-publications/publications/magazines/britain-in/britain-in-2015-society/>. Although women's decisions to have children should never be questioned, Gabriele Plickert and John Hagan's study highlights how some women lawyers experience "formidable and consequential" pressures to choose between work and having a family, G. Plickert and J. Hagan, 'Professional work and the timing of family formation among young lawyers in US and German cities' (2011) 18(3) *IJLP* 243.

¹⁷⁵ Not everyone agrees with this view. Infrastructure is all well and good but it should not replace the need to change more fundamental aspects of our culture, which create barriers to women in the workplace.

¹⁷⁶ Anne Marie Slaughter, *Unfinished Business* (Oneworld Publications, 2015)

¹⁷⁷ Slaughter note 174. Rhode, note 52, 2211.

¹⁷⁸ Anne Marie Slaughter, 'A toxic work world' *The New York Times* (New York 18 September 2015).

¹⁷⁹ Louise Ashley, 'Making a difference? The use (and abuse) of diversity management at the UK's elite law firms' (2010) 24(4) *Work, Employment and Society* 711.

Part II

The literature reviewed in Part I of this chapter strongly points to cultural gender norms having an impact on men and women's work. The disadvantages that come with the responsibility for housework, caring and emotional work, as well as the mental load associated to these roles, are real. The benefits gained from not bearing this responsibility are also tangible. They include more time for paid work (hence greater accumulation of wealth), more exposure to experience and opportunities (hence higher pay) and more time for leisure (hence potential for increased health). As women continue to largely experience the economic and work-related disadvantages and men the advantages of this status quo within households, gender inequality at work inexorably persists. As posited above, although many female lawyers, who tend to be high-income earners, are able to outsource some of this work, they are rarely, if ever, entirely free from it. Many must still spend time thinking, organising and executing a number of household and caring tasks. The impact of this on women and men's differential working lives should not be underestimated.

In this Part II, I put forth data that supports conclusions I draw from my literature review in Part I as well as my first hypothesis: that normative gender roles norms are to be held at least partly responsible for the advantages men benefit from in comparison to their female colleagues.

Based on this data, I have found there to be two principal cultural reasons for the disparity between men and women's progress within City firms. First, I found that, as in wider society, men and women lawyers still tend to adopt traditional gender roles within their households. The men and women interviewed conveyed an image of family units where men still executed much less of the work around cleaning, cooking and caring than their female partners. In relation to this conclusion, I also found that caring and specifically maternity leaves have a particularly detrimental effect on women's legal careers. Second, based on my data, I also determined that gender inequality continues to be seen as a woman's problem. And although male and female interviewees recognized this inequality as an issue needing attention, both sexes expressed views suggesting that solutions should come from individual women, rather than women and men (with a collective aim) and legal employers.

D. Lawyers and normative gender roles

Perhaps it is not so surprising that City male and female lawyers' homes appear to largely mirror normative gender practices. Looking to explanations set out in Part I, on a micro scale, despite having completed higher education, many of the lawyers interviewed grew up in the 1960s and 1970s where discourse that challenged normative gender roles was only just beginning to emerge thanks to second wave feminism. Consequently, childhood upbringings, the media and

institutions including schools of that time were likely to be powerful reinforcing agents of traditional gender practices to which most of this cohort would have been exposed.

1. Housework

First in line to support this argument is that out of this sample, no man interviewee, in answering questions about how they balanced their work and home lives, mentioned housework as a factor to contend with. It must also be said that few women explicitly mentioned housework and none identified specific household chores as obstacles to spending time at work and developing their careers. To the extent housework was noted, it was linked to maternity leave, which I discuss below. This aligns with studies that show many professional women outsource daily and repetitive housework in order to cope with the time demands of their professional lives. However, it may also be attributable to normative behaviour related to the demarcation between the private and public spheres. Not naming something as taxing because it forms part of private life is typical of a patriarchal working environment.

Despite the general reserve respondents, and especially male respondents, displayed when the interview turned to their private lives, there were a few general comments regarding the demands women faced at home. A senior female associate said:

Realistically, women still in this day and age have to put in, or maybe want to put in, effort in things other than their careers, like having children, raising them. I think this is still the norm. Just straw polling amongst my friends, things like housework are unevenly divided between men and women and there are only 24 hours in a day.¹⁸⁰

More generally, another female senior associate said:

I think it is easier for a man who has a wife who supports him and runs his house to do those hours than for a woman with children who also has a husband who works. That's what I struggle with.¹⁸¹

Second, no man or woman mentioned the mental charge that goes with organising and outsourcing housework and no one mentioned the emotional charge related to domesticity. This could be due to a lack of awareness and recognition of the toll these two types of work can take on the person responsible for domestic tasks, rather than not being burdened with them. The mental load and emotional work are relatively new social concepts and they do not yet form part of everyday working culture and language. In connection with this, no interviewee explicitly expressed the view that men should be more active in these household tasks.

¹⁸⁰ Interview 13

¹⁸¹ Interview 8a

2. Caring work and missed opportunities

Of the lawyers' interviewed, female associates with children were almost always the family's primary carer. This has led a number of them to take on either part-time or flexible work, support roles within their firms or to leave the profession all together. In contrast, no male associate and no male partner with children whom I interviewed were primary carers. Normative gender roles in terms of caring and the division of labour that goes with it were still mainly adopted and adhered to by this cohort. One exception to this were women partners, all of whom had either spouses who either worked from home or who took on the primary caring role.

A further indication that lawyers adopt normative gender roles lies in the difference in responses between men and women regarding the impact that having children and caring for them has on their ability to do their job. To the extent caring was spoken about by male participants, it was to do with how their partners handled the situation or how caring responsibilities had an impact on their female colleagues. One male senior associate who had a newborn child admitted feeling some stress but did not specify whether this was because of any new caring responsibilities. Strikingly, one male partner, who has children, seemed to distance himself from the question in his response, as if it had never been an issue for him:

Childbearing appears to take a bigger demand on mothers' time and emotions than it does the father. Whether it's true or not, I don't know. It seems to be much harder for a young mother to do the hours than a young father.¹⁸²

In line with this last comment, no male respondent shared any personal experience on the challenges the caring for young children represented in terms of their careers, even though of the men interviewed, an overwhelming number of them had children.

On the other hand, the majority of female interviewees with children had much to say on how parenthood had affected their careers. Many of them mentioned that the result of maternity leave was not only to do with what normally goes with being away from work for an extended period. It also related to the order of things at home. In accordance with the theory set out in Part I, a number of respondents felt maternity leave had had a transformative effect, turning them into experts in childcare and the primary caregiver. One counsel who works three days a week, and whose husband is also a lawyer, noted:

I probably blame maternity leave for where the sharing of responsibilities all went a little bit wrong, because we were in equal jobs, equal pay, sharing household responsibilities equally. We might have negotiated who did what, but it would be quite equal. I then had our first child and on

¹⁸² Interview 1

maternity leave, perhaps just because of the way I am, I ended up doing everything as well as looking after the baby at home.¹⁸³

This same interviewee explained how now she still does “[...] everything. His career has taken off and he’s been able to do that with me providing more support behind the scenes.”¹⁸⁴

Not only did many acknowledge that maternity leave and caring for young children presented a challenge to their careers, they also expressed ways in which they coped with this tension. One noted:

I think that there is a patch in a woman’s career where it is really difficult. But it’s hard to keep ticking over as a fee earner because it just doesn’t lend itself to having very young children. There are not necessarily a lot of models of how people step out for that amount of time, that allow people to really step back in. I managed to keep ticking over by going in-house. I guess you could keep ticking by becoming a PSL.¹⁸⁵

An associate with young children, noted that keeping her head down at work and being a ‘worker bee’ was linked to having children. “It’s because that paperwork is probably easier to manage than a seven o’clock meeting.”¹⁸⁶

The difficulties with having children, in terms of missed opportunities, was also underlined with respondents expressing that maternity leave was particularly destructive on both client relationships and, relatedly, prospects to partnership. One senior female associate said:

It’s what happens to your client contacts if you have three successive maternity leaves in five years. Maternity leaves were just the biggest destructor because I’d make relationships and then I’d go away for nine months. And no one was going to come and hang out with me and the baby in the park.¹⁸⁷

The timing within the framework of their careers when many women City lawyers take maternity leave was also mentioned as having a damaging effect. One senior female associate explained:

Because most people want to have their kids close in age then you are going to be taking two successive maternity leaves out of working life. You’ll come back, but you will have been out for nearly two years in total and I think that has an impact because they seem to have the attitude that you have to make that decision about partnership at a certain PQE point

¹⁸³ Interview 14

¹⁸⁴ Interview 14

¹⁸⁵ Interview 16

¹⁸⁶ Interview 8a

¹⁸⁷ Interview 22

in someone's career. If you're not made partner after 7, 8 or 9 years, then it's gone.¹⁸⁸

Finally one interviewee expressed how maternity leave and having children changed her views on the amount of time she spent at work:

It doesn't apply in all cases but I would say a significant number of people don't have the same appetite to do all night deals and work over the weekends and over evenings than perhaps they did before [maternity leave] when they were aiming for that promotion.¹⁸⁹

A number of women interviewed gave their thoughts on how men perceived women colleagues who took maternity leaves and who generally had children to care for. One female partner had this view:

If a woman's been off for a cumulative period of three years on maternity leave, they've had less experience and less exposure than a guy who hasn't. Probably that does unconsciously feed into people's perceptions about whether you're ready to be a partner or not. Because the reality is, you're three years behind.¹⁹⁰

No mention was made of the possible cross sectional value for legal employers of the work women engage in at home.

Another female senior associate made allusion to a form of sliding scale, following a maternity leave, with respect to the unconscious bias on women's career prospects:

From what I've seen, in the first four years it's equal in terms of views on people's ability. After that, it's more likely that it is man versus female. They might be positioned more strategically on deals and in front of people. Then I think you get to the point where someone has gone on maternity leave and then, maybe unconsciously, they start thinking what is the likelihood of her staying, what is the likelihood of her wanting to become a partner whereas for a guy, nothing changes in their personal life.¹⁹¹

A female associate concurred:

There is an assumption that in the long term this job is not made for women who want children. On the basis of that assumption, men senior associates tend to be invited to certain events because of an expectation

¹⁸⁸ Interview 21

¹⁸⁹ Interview 2

¹⁹⁰ Interview 20

¹⁹¹ Interview 21

that they will be there and they won't be going out on [maternity] leave.¹⁹²

A female partner, agreed: "I think that if they are in a relationship and thinking of children, there is still an expectation that they will take a back seat in the whole career game."¹⁹³

An extreme example was provided by a male partner who recounted what had been told to a female associate by another male partner:

When she went on maternity leave, one of the partners said to her: "Oh well, I guess you won't be coming back." It is built in unconscious bias.¹⁹⁴

Female respondents were clear that maternity leave in particular does not sit well in a business where time spent both in the office billing clients and outside the office developing client relationships is key to progression. A number of members of this cohort, both men and women believed there to be an assumption that women will either not return to work or will 'step back' in one way or another. This belief points to cultural norms, where women remain the lead parent, as still having a negative impact on the careers of women. It also, partially at least, explains masculine over representation in top-tier law firms.

3. A woman's problem

Despite recognising the burden of caring on women's careers, no male or female interviewee suggested solutions to address the issue. No interviewee, for example, noted that improving paternity leave might be helpful and no one specifically questioned their organizations responsibility for changing things. Remarkably, both women and men interviewed saw this issue as a woman's problem; that it was up to individual women to negotiate, compromise, balance and set up arrangements so as to accommodate work-life conflicts. Some women interviewed went even further and felt that leaving City private practice was the only solution: "I think a lot of people, including me, do leave when they are thinking of having a family."¹⁹⁵ Another junior associate said, categorically, that: "Being an associate is not compatible with me having children. I could not imagine doing the two."¹⁹⁶

However, most women were trying to cope by finding individual solutions. One senior woman associate who was trying to deal with a demanding practice and two young children, added:

¹⁹² Interview 4

¹⁹³ Interview 19

¹⁹⁴ Interview 6

¹⁹⁵ Interview 16

¹⁹⁶ Interview 11

You actually have to, after becoming a mother, attempt to negotiate something that will allow you to see your children before work and then after work and that is hard. I was never allowed to, when asked to do a flexible day. It was called a flexible day to be able to come in at 9am and leave at 7pm.¹⁹⁷

A female counsel thought:

I personally feel you have to make a compromise somewhere along the track. Ultimately, it depends what sort of parent you want to be. But I think ultimately, a lot of women decide that they want to be able to balance other things.¹⁹⁸

A partner very much gave the impression that the onus was always on her to figure out how to deal with her work-life conflict: "I had the confidence to ask to do that (move into a management function) and to work part-time."¹⁹⁹

Similarly, another female counsel added:

It comes down to individuals making a decision as to how they wish to push their careers forward, and in many cases, I think it is perhaps looking at the relationship the woman has with her partner, to determine how, as a unit, they're going to move their careers and their lives forward. But it does mean that sacrifices are made.²⁰⁰

Men respondents also felt that it was up to women to devise ways of staying at work. A male partner shared the following:

It is quite clear that the family pressure does play its toll on females and it is quite clear that having kids in a law firm like this one and therefore having time off to have the kids and then coming back into a structure which doesn't stop and slotting back in and having your peers that have been there while you have been off – that naturally has an effect on two levels – one psychological slotting back in: "This guy has been doing all these transactions and I'm not up to speed." There is a natural question that people ask.

I think the second is do people feel the firm will accommodate a mother with kids compared to somebody who has not got a family or kids. Can you give concessions to a gender that is not across the board? Can you say we'll be flexible with you because you are a mother but you're a father therefore you're going to be working all night.²⁰¹

¹⁹⁷ Interview 22

¹⁹⁸ Interview 3

¹⁹⁹ Interview 10

²⁰⁰ Interview 14

²⁰¹ Interview 9

The idea that fathers might wish to request similar flexibility to take on some of the caring within a dual income home was not even on this male partner's radar screen. Another male partner added that women had to lead and although he acknowledged that the firm needed to play a role, that role was not explained:

It's got to be done by the woman herself, she needs to identify what needs to happen and where she needs help. It's a combination of what the firm can do but also, the woman needs to take initiative, some of the initiative.²⁰²

And then there was outright denial of there being an issue at all, as stated by a senior male associate: "I'm not aware of there being any reason why women have left that is materially different to the men who have left at the same level."²⁰³

In coping with the work-life conflict brought on by caring work, many women mentioned that having a supporting spouse at home was key to their working life. So rather than expecting support from their employers, women seemed to turn to their spouses. As note above, this was especially true of women partners. One female partner said:

I couldn't have done it without him. I've worked unbelievably long hours, I've travelled, but he is, as far as our kids are concerned, a completely interchangeable carer. You need somebody who doesn't make you feel guilty. I think if you don't get that, it's all over for you. I've seen a number of female partners who've left because they've been with very traditional partners who won't step up. It's still always their job to be home and always their job to go to school sports and things like that.²⁰⁴

When asked how she deals with life and work conflict, one consultant added:

My husband being at home. When he was still working the juggle was sometimes tricky. Having someone at home that is not just a carer but a parent, for the children I think it's important and I think it's important that a parent is home from 6pm or 7pm. That one of you is anyway. If you've got two parents in City firms, than you have to try and balance that...²⁰⁵

One female partner involved in the partnership process at her firm noted the incompatibility with being a partner and primary carer:

I think it's probably quite often the case that the women partners who flourish, not in all cases, but are most likely to have a partner who has a

²⁰² Interview 1

²⁰³ Interview 15

²⁰⁴ Interview 20

²⁰⁵ Interview 20

more flexible job. If you don't have that, if you are trying to be a partner here and you are the primary carer, then that is tough.²⁰⁶

Recognising that doing it all was not possible and that support was needed, one female counsel, responded:

It depends what responsibilities you have outside of your working life and within your partnership, who picks up responsibility for that. It may be children, it may be elderly parents, principally caring responsibilities. It's how you divvy up those responsibilities between you and your partner or if you're on your own, having proper support and backup.²⁰⁷

Interestingly, of the men respondents on the other hand, and namely those who had children, only one mentioned his partner's support as a necessity to being able to do his job: "You clearly need to have a very flexible and accepting other half."²⁰⁸ Arguably, this is indicative of the extent to which it is taken for granted that it is up to women lawyers not only to take on most of the care for children but also to work out ways to reconcile those demands with those of a legal career in a large City firm.

The data presented supports the literature I have reviewed in a number of respects and it allows me to theorise on three main points. First, with regard to women lawyers' continued role as primary caregivers. Despite their privileged socio-economic position relative to the rest of the UK population, of the men and women interviewed who had children, it was women associates (or male associates' spouses) who remained the primary care givers. Interestingly, this was not the case with women partners interviewed, all of whom had spouses at home taking an equal or primary role in caring. Presumably this could be because these female partners' were the family's principal income earner. Second it also shows that men and women City lawyers still view the tension between home and work as an individual woman's problem, and not one which concerns their employers or the greater legal profession. Lastly, this data also indicates that both men and women interviewees believe that the conflicts women face due to their role as primary carers can only be resolved by negotiation between individual women and the partners they work with, rather than on a more collective basis. As noted by Richard Collier, this optic based on a neoliberal ideology of individualism, where self-reliance is valued above any form of outside intervention or assistance.²⁰⁹

²⁰⁶ Interview 10

²⁰⁷ Interview 14

²⁰⁸ Interview 9

²⁰⁹ Richard Collier, 'Rethinking men and masculinities in the contemporary legal profession: The example of fatherhood, transnational business masculinities and work-life balance in large law firms' (2013) 13 Nevada Law Journal 410, 428.

E. Conclusion

In this chapter I have considered the question of the extent to which men's overrepresentation in leading City firms is linked to the normative cultural gender roles, which continue to be played out in today's society. Building on findings in Chapter 2, as well as those in this Chapter I, have tested my first hypothesis: that patriarchal power and normative gender roles continue to make women the 'house worker' and 'ideal carer' and men the 'breadwinner' and 'ideal worker', and that these norms are to be held at least partly responsible for the advantages men City lawyers' benefit from in comparison to their female colleagues.

Certainly, housework, caring and emotional work and the mental load associated with this work, are still predominantly performed by women. On the whole, this type of labour also continues to be cast as invisible, particularly in relation to the work of men. This lack of recognition by society leads many women to experience a number of workplace inequalities. Scholars mainly agree that domestic and caring tasks are not innate to women. Many also concur that changing gender stereotypes involves progress on both micro and macro scales. Education and the related wealth it brings, for example, help to change gender ideologies within the home. Public policies such as parental leave also help to change practices which in turn shifts gender culture.

Large City law firms have a part to play in this shift. Although it is clear that these legal employers cannot alter a whole gender culture, they have sufficient influence and resources to effect significant change, at the very least for the men and women lawyers who work for them. They can achieve this in four main ways. First, by doing their bit in breaking down normative gender roles. This can be achieved by legitimizing and championing within the workplace the importance of men's role as carers. Holding talks and lectures on this issue and integrating this view into firm culture (by featuring fathers and their families in law firm newsletters, for instance) would be beneficial. Second, encouraging fathers to take their full paternal leave and providing additional leave might motivate more fathers' to get involved in the early stages of childcare. Third, law firms can lead by example and prove that caring need not have a detrimental effect on careers by ensuring equal career advancement for the women and men who are primary carers or who share in the caring work. More specifically, this can be accomplished by promoting men and women who work part-time to partnership. This would go a long way in eliminating stigma. It would also serve to erode the assumption that anything less than a full-time linear career leads to advancement. Finally, City firms have a role to play within the greater financial community in advocating for gender equality. This effort must be spearheaded by senior partners and management.

All of these initiatives will require City firms to survey certain aspects of their work force's private lives. To do so meaningfully there must be buy in on the part

of these outfits' leadership to do away with the deeply embedded patriarchal structures of these firms. This is the question I now turn to in Chapter 6.

CHAPTER 6

A. Structure: The workplace cycle of patriarchy

In Chapter 5, I posit that the over representation of men at the top of large City firms is partly attributable to the tenaciousness of a gendered distribution of labour within the home which can appreciably impact lawyers' personal and professional lives. Of course, this division of labour impacts women's working lives in all sectors of the labour market, but its effects are particularly acute for lawyers given the time extraordinary demands these law firms' ask of their employees. I maintain that Big Law's diversity policies, set out in Chapter 4, have not adequately taken on board the consequences of this cultural reality, which often benefits men and disadvantages women. This, I hold, partly explains the limited success of these programmes aimed at improving women's career progression. But there is more to the disproportion of men and women lawyers in high-ranking roles than cultural factors. In Chapter 5, I draw a distinction between cultural and structural elements that contribute to masculine imbalance at the top. I now turn to the latter of these elements as I address the fourth of my research sub questions: to what extent is masculine over representation linked to City firms' structural nature, including their working practices?

In order to answer this research sub question I refer back to my findings in Chapter 2, where I advance that male power and privilege are maintained by a cyclical relationship between three mutually reinforcing elements: the gender binary, masculine hegemony and the normative invisibility of male power. Here, I extend this conceptual framework by applying it to the workplace, and more specifically to City law firms. This 'workplace cycle of patriarchy', as it is referred to in this Chapter, assists in better understanding the enduring nature of men's over representation within the higher echelons of firms. It does so by exposing an ever-present undercurrent of patriarchal power within them.¹ It also reveals how this power manifests itself through a masculinist workplace environment sustained by everyday working practices.²

This Chapter is divided into four parts, each corresponding to an element of the workplace cycle of patriarchy. In Part 1, I set out and explain the relevance of this cycle as adapted to the workplace. I maintain that normative ideas around men and women's 'natural' or 'biological' propensities to do housework and caring work, evoked in Chapters 2 and 5, also have a presence in organizational life. Similar to the gendered allocation of domestic and care work this ideology creates within the home, I argue that applied to the workplace, it gives way to a

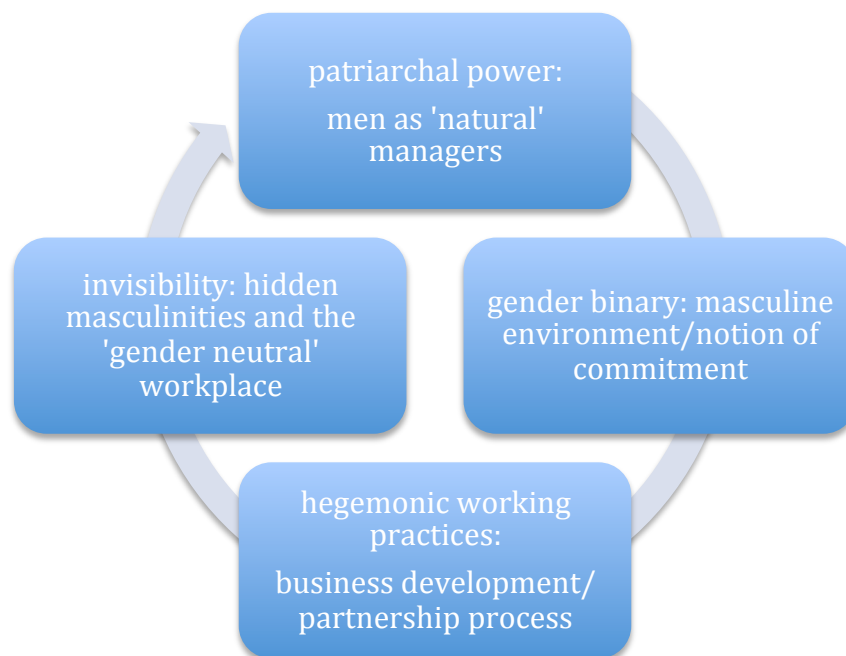
¹ M. L. Johns, 'Breaking the glass ceiling: Structural, cultural, and organizational barriers preventing women from achieving senior and executive positions', *Perspectives in Health Information Management*, 2013, 10 (Winter), 1e.

² J. Kaye and A. Reddy, note [], 1947.

gendered workforce division. One of the clearest indications we have of this is the persistent over representation of men at the apex of most industries, including the legal industry.

In Part 2, I argue that patriarchal power within legal organizational life is linked, in a cyclical nature, to normative binary ideas of gender that create and perpetuate a masculinist workplace environment. I use the notion of commitment to support this argument. In Part 3, I show how this culture gives way to dominant male organizational practices within law firms. I use the practices of business development and the partnership selection process as examples. Finally, in Part 4, I claim that because of these practices, the template for organizational legal life remains the masculine, cyclically perpetuating male power within private legal practice. I argue that until this template is altered to reflect non-dominant realities and insights, meaningful change will not come. In my discussion of each element of the workplace cycle of patriarchy, I draw on a body of academic work as well as on my qualitative data.

B. The workplace cycle of patriarchy as applied to City law firms



1. Patriarchal power: Unconscious bias towards men as 'natural' managers

Gendered organizations silently create job descriptions, evaluate work performance, and define work rules around the cult of domesticity – men as ideal workers, woman as caregivers.³

This quote highlights the strong link between patriarchy, gendered time allocation and the masculinist workplace. As noted in chapter 5, the labour market has long been identified by scholars as a key site of patriarchal power. Also discussed in previous chapters, this is largely to do with the deeply rooted gendered belief that men are biologically disposed to be in positions of authority.⁴ Put simply, over the years, this archaic belief has come to be upheld by a system of values creating a patriarchal culture that is also found in the work environment. By extension of men's cultural role as 'natural' breadwinners, this patriarchal work culture has come to also perceive them as 'natural' managers and 'ideal' workers. Feminists such as Leslie Bender have long disagreed with this normative perception:

Gender differences do not cause gender inequality; gender inequality is gender difference translated into hierarchical power relations in which one gender (male) is privileged.⁵

It is arguably largely because of this patriarchy that a gendered division of labour was born and remains a powerful presence in organizational life. In the UK men still tend to work in managerial occupations associated with higher levels of pay than women, whereas women dominate the typically lower paid industries such as caring and leisure occupations.⁶ When women enter professional occupations historically associated with men, such as the law, the patriarchal impact remains. As raised previously, they are less likely to be promoted to partnership and once they become senior associates, they are often paid less than their male colleagues of equivalent experience. In the City, the consequences of this culture are quantifiable, and here, it is worth restating some noteworthy figures from earlier chapters. Men make up on average 82 per cent of the partnership and 85 per cent of the equity partnership of these firms and over 90 per cent of their management boards.⁷ Women associates are also paid approximately around 35

³ Catherine MacKinnon as quoted in Nancy J. Reichman and Joyce S. Sterling 'Sticky floors, broken steps and concrete ceilings in legal careers' (2005) 14 *Texas Journal of Women and The Law* 14.

⁴ For an interesting account of the history of women's suppressed power see Mary Beard, *Women and Power: A Manifesto* (Profile Books 2017).

⁵ Leslie Bender, 'Sex discrimination or gender inequality?' (1988-1989) 57(6) *Fordham Law Review* 941, 947,950. She argues that the patriarchal structure of our society "[...] employs a male gender norm from which difference is constructed and which privileges male gender attributes."

⁶ Office National Statistics, 'Women in the labour market 2013'

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/womeninthelabourmarket/2013-09-25>

⁷ H. Brenner and R. Newman Knake, 'Rethinking gender equality in the legal profession's pipeline to power: A study on media coverage of supreme court nominees' (2011) 84 *Temp. L. Rev.* 325.

per cent less than men.⁸ This state of affairs corresponds to Richard Abel's description of the large law firm as being based on "[...] a hegemonic model of white, male, middle class dominance which transcends the everyday life of lawyers who are employed by them."⁹

But why does this patriarchal dominance persist within the private legal workplace, especially given the extent of the endeavours by the legal profession as a whole to put a stop to it? Could it simply be due to the inequality in the number of men in positions of power? Certain scholars argue that with so many men at the helm of City practices for so long, a form of workplace homo-sociality, akin to homo-sociability, has become common practice.¹⁰ They believe that men who, consciously or unconsciously, hold patriarchal beliefs will also likely hold a greater valuation of men as employees including a preference for their company as colleagues.¹¹ Certainly, homo-sociability appears to be part of the problem. A notable number of women respondents across all levels of seniority believed unconscious bias, akin to homo sociability, was present in their workplace environment. They also understood this affinity bias as something that has predominantly benefited men.¹² When discussing the difficulties she experienced with respect to negotiating her advancement towards partnership, one female partner said:

I really think it comes down to the fact that we do not reflect what they look like and whom they see themselves as and whom they see as future

⁸ The new UK gender pay gap regulations have revealed a pay discrepancy of over 35% in the largest of City firms, as stated in previous chapters. This is not accounting for partner salaries. Major, Lindsey & Africa, '2017 London Partner Compensation Survey' (January 2018). <https://www.mlaglobal.com/en-gb/publications/research/london-partner-survey-2017>. This is despite accounting for the 10 per cent discrepancy in origination. One law firm, Stephenson Harwood recently paid women 62 per cent less in bonuses. <https://www.thelawyer.com/gender-pay-gap-stephenson-harwood-pays-women-62-4-less-bonuses/>.

⁹ Richard Abel, *English Lawyers between market and state: the politics of professionalism* (Oxford University Press 2003).

¹⁰ The term 'unconscious bias' was used in a number of different contexts by interviewees but generally all use of this expression related to a form of homo sociability. When discussing women's under representation at the top of the profession, many socio-legal scholars have theorized on homosociability such as Margaret Thornton, 'Hypercompetitiveness or a balanced life? Gendered discourses in the globalization of Australian law firms (2014) 17(2) Legal Ethics, 153, Savita Kumra 'Busy doing nothing: an explorations of the disconnect between gender equity issues faced by large law firms in the United Kingdom and the diversity management initiatives devised to address them (2015) 83 Fordham Law Review 2277, Hilary Sommerlad, 'Minorities, merit and misrecognition in the globalized profession' (2011-2012) 80 Fordham L. Rev. 2481.

¹¹ Jeff Hearn, 'Men, identity and power' in Fidelma Ashe *The New Politics of Masculinity: Men, Power and Resistance* (Routledge 2007). This is also referred to in social psychology as the "Beer Test" meaning an assessment of whether one could happily have a beer with the person being evaluated rather than be at work. See Richard Howard, 'The danger of unconscious bias in HR decisions and how to overcome it' (2017) Human Resources Director, <https://www.hcamag.com/hr-news/the-danger-of-unconscious-bias-in-hr-decisions-and-how-to-overcome-it-244975.aspx>.

¹² Other forms of unconscious biases include the 'confirmation bias' where most of us will decide whether we like someone within the first four minutes of meeting them. There is also the 'halo effect', a bias where one characteristic (physical looks for example) will outrank all others Howard note 11.

partners. I really do think that's got a lot to do with it.¹³

Another female partner stated:

There is an assumption that to be as successful as they have been, there's only one secret, and that is to do it the way they have done it. If they've done it and it has been successful and their peers, who are similar to them, have done it, then that is the key to success.¹⁴

Another senior female associate thought unconscious bias existed at her firm not only with respect to gender but also to social class:

We still have many more male partners than female partners that fit a certain profile, who were educated at certain very elite schools and there are certain characteristics, which go with that profile, including the way you speak, your accent but also your intonation and the way you interact with different people doing different jobs, the way you view yourself and how you fit in the world. So they are looking for people like them because they feel they have always been successful, and they have, there is no denying that. The way to ensure they remain successful in the long term is to choose people who are going to replace them.

I think they are consciously trying to change it. But when it comes to it, the people on the selection panels choose the people who they think are going to do the best job. I think there is another leap to be made before some of the selection panels are open minded enough to think the person who is going to do the best job isn't the one who is just like them.¹⁵

The sum of these passages reflects the extent to which many women are alive to the disadvantages they continue to face in comparison to what they are implicitly referring to as the white, middle class male lawyer. Their comments amount to an understanding that the men who prevail in positions of power within top City firms continue to display a tendency to prefer working with, hiring and promoting in their own image.

Of the men interviewed, a senior male partner and manager did not believe unconscious bias existed in his leading law City firms:

My personal opinion is that there is not much value in [unconscious bias training] for gender diversity. It does not change things and I would say that the firm does not behave in an unconscious bias way in any meaningful sense. We had training and I was told I am unconsciously bias against fat people!

Yet three of the men interviewed did acknowledge the presence of homo sociable

¹³ Interview 19

¹⁴ Interview 2

¹⁵ Interview 2

tendencies in their firms. One noted how ‘naturally’ people migrated towards “[...] people they want to hang out with [...] people seek out people with whom they have an affinity.”¹⁶ And although this partner did not outwardly support this practice, the impression was that because it seemed an innate form of behaviour, little could be done about it. A similar comment was made by another senior male partner:

You’ve got an element of ‘group think’, so partners would tend to feel more comfortable with male associates than female associates. And therefore I think there are a lot of hidden biases – that’s been around for a long time. It takes a while for that to... even though you try to consciously avoid it, it’s quite hard to actually eliminate it.¹⁷

Studies show that indeed there is a deeply rooted human element to the biases we hold.¹⁸ However, that should not serve to justify their practice. It is whether we chose to recognise them and how we opt to act on them that results in them being perpetuated or thwarted.

The other male respondent to comment on unconscious bias was a senior associate who was quick to note that such biases worked both ways:

I assume that can work for women partners.... if you’re on the flip side of a woman partner wanting to actively promote and back a female candidate.¹⁹

Admittedly, it can work both ways. Some women also prefer working with other women. Of the sample of lawyers I interviewed, one female partner noted her own partiality as well as men’s in this regard:

I think I see it in myself when I work with women. In many ways, I just enjoy it more because it’s kind of more of a known quantity. It’s not people saying women aren’t good, it’s just predominantly male partners saying: “I’ve got things in common with that person. I recognize myself in that person. I like working with them because I get them.” There are some associates whom I like less as people. It’s much easier for me to work with somebody I click with. It’s more comfortable than working with somebody who may be brilliant but... I’ve got a trip to the States, do I want to sit next to that person for a long haul flight?²⁰

Nonetheless, the issue with these last two comments is that homo-sociability advantages men, if only because there are so many more men than there are

¹⁶ Interview 25

¹⁷ Interview 28

¹⁸ Doyin Atewologun, Tinu Cornish and Fatima Tresh, *Unconscious Bias Training: An assessment of evidence for effectiveness*, EHRC Report No 113, March 2018.

<https://www.equalityhumanrights.com/en/publication-download/unconscious-bias-training-assessment-evidence-effectiveness>.

¹⁹ Interview 15

²⁰ Interview 20

women in positions of power who exercise this tendency, creating a persistent pattern of male advantage.

Unconscious bias training has been an integral part of many law firms' artillery with respect to gender diversity. The aim is to raise awareness of its negative consequences on the careers of women and other non-dominant groups. However, over the years it has become apparent that highlighting unconscious bias is not a panacea.²¹ A recent report by the Equality and Human Rights Commission concludes that although this type of training is effective in raising consciousness and can be useful in reducing biases, it is unlikely to eliminate them as its ability to change behavior is limited.²² For some, educating men with respect to their prejudices even has the potential to be counter-productive. One diversity manager thought that this was the case at her firm:

I think unconscious bias is the start of the conversation. It's not the fix. I think ten years ago, we all hoped it would be, and you just had to make people realize it. But it doesn't work like that. I think there is some evidence now to say that it's gone the other way. The more you educate people on their biases the more they think they're virtuous and they'll just go out and do exactly the same thing anyway.²³

This last comment attests to the fact that although raising awareness of the existence of unconscious behavior is important, it is unlikely to be an agent of change. This is arguably because the staying power of patriarchy, which results in gender inequality within the workplace, runs much deeper than men's unconscious biases to hire and promote in their own image.

Even so, unconscious behavior remains an important element of patriarchal power to tackle, if only because it serves to sustain a masculinist workplace environment which has become part of the structural fabric of many legal private organisations. Although today, this culture is more nuanced in the manner in which it privileges men, I maintain below that it is still present and by no means less pernicious for being subtle.²⁴

2. The gender binary: Masculinist workplace environment, systemic discrimination and the notion of commitment

I now turn to the second element of the workplace cycle of patriarchy as set out in the schema above. In Chapter 2, I argue that the gender binary contributes to the maintenance of patriarchal power. I theorise that despite feminist and pro

²¹ Note 18. See also Mike Noon, 'Pointless diversity training: unconscious bias, new racism and agency' (2018) 32(1) *Work, Employments and Society* 198.

²² Note 18

²³ Interview 29

²⁴ Eden King and Kristen Jones, 'Why subtle discrimination is so often worse than blatant discrimination' (2016) *Harvard Business Review*. This article is based on a study of 90 separate samples of discrimination and examines the relationship between discrimination and outcomes such as career success and satisfaction, stress, turnover, performance and physical and mental health.

feminist arguments on the importance of greater gender fluidity, there remains in society a tenacious ideology on the distinct ways of being a man and a woman. Stephen Whitehead posits that this division of being, reinforced through language, stereotypes and culture “[...] continues to provide dualism by which a vast majority of identities and gendered subjectivities are realized.”²⁵ So it is unsurprising, he states, that they are replicated within work organisations.²⁶

Although equality laws and regulations²⁷ have resulted in some progress²⁸, as has the notable increase in women entering law schools and the legal profession generally, this gendered polarization continues to give way to overt gender discrimination in UK law firms, including sexual harassment.²⁹ Diversity programmes as described in Chapter 4 and firm policies are attempting to address this inequality with limited results. In addition to explicit discrimination, there also continues to be subtle, underlying binary ideas about gender within the legal workplace. These ideas may be more muted and based on good intentions, but they nonetheless also serve to sustain a systemic masculinist workplace culture.

According to Eden King and Kristen Jones, subtle or systemic workplace biases can be just as damaging as overt ones for those on the receiving end.³⁰ First, they write that when prejudice is in a discreet or subtle form, it can require much more energy on the part of the recipient to figure out what has happened. It also often generates more self-doubt. Second, because they are nuanced, the frequency of these types of discriminatory acts is often higher. Finally, the authors state that discriminatory bias is damaging because there is often little or no legal recourse for the victim.³¹ For many women within the workplace, including women lawyers, it may seem that there is nothing illegal in being told they are not ready for the demands of a big case or a ‘difficult’ client. Being side lined in meetings or left out of key conference calls can also often be done in such subtle ways as to cast doubt as to intent. Yet these understated practices are an

²⁵ Stephen Whitehead, ‘Masculinities in management: Hidden, invisible and persistent’ in Savita Kumra, Ruth Simpson, Ronald Burke (eds.) *The Oxford Handbook of Gender in Organisations* (Oxford University Press 2014).

²⁶ Whitehead note 25.

²⁷ Solicitors’ Regulation Authority’s Regulation on sexual harassment based on Equality and Human Rights guide, <https://www.sra.org.uk/solicitors/diversity-toolkit/sexual-harassment.page>.

²⁸ For example, although far from perfect, some progress has been made with respect to flexible working rights, maternity rights and parental leave. There are also now workplace harassment laws and most recently gender pay gap reporting regulations.

²⁹ A recent 2018 survey by The Lawyer of 1000 UK lawyers showed 42% of lawyers (mostly women) had some experience of sexual harassment at work. <https://www.thelawyer.com/metoo-lawyer-sex-harassment-survey-2018-2/>. See also *Turning the tables: Ending sexual harassment at work*, EHRC Report, March 2018. <https://www.equalityhumanrights.com/en/publication-download/turning-tables-ending-sexual-harassment-work>. This survey is based on evidence from 750 respondents.

³⁰ King and Jones note 24.

³¹ King and Jones note 24. These systemic practices could in certain cases be deemed to be indirectly discriminatory and proven to be illegal under the Equality Act 2010.

example of the gender binary at play within a masculinist workplace environment as these are seldom situations male lawyers find themselves in.

Feminist scholars have written extensively about the systemic disadvantages women continue to experience within the workplace and many have concentrated on the legal industry.³² The second shift, the glass ceiling and the motherhood penalty continue to be part of many professional women's stories.³³ However, in keeping with this study's focus on men and male privilege, I concentrate on one key aspect of this environment which embodies what is often traditional masculine behavior and attitude: the notion of commitment to work. This notion runs deeply through most professional establishment, and I have advanced in previous chapters that its ties to time spent at work advantages men and disadvantages women in top City law firms. Here I stress the extent to which this problematic link, and firms' apparent lack of appetite to address the gender issues around commitment to work, provide a key example of a working environment which caters mainly to men.³⁴

Advancement and success is often linked to time commitment. Many forms of achievements relate to how much time is devoted to them. This is not unusual, nor at face value, is it objectionable. Elite athletes will train inordinate amount of hours to triumph at an event. Artists can take years to complete a work of art. But arguably, time spent at each of these objectives is not the only measure of their success. A number of other factors are usually used to assess achievement, such as natural physical talent or intellectual ability, organizational or management skills, quality of work, past experiences or simple output. Some of these measures are of course also considered in determining success within City practices. Nonetheless, as mooted in Chapters 3, 4 and 5, career advancement in these organisations is overwhelmingly linked to time spent at work. The ability to deliver long hours is still a proxy for job devotion, ambition and advancement. In order to execute these hours, it is assumed that all lawyers are free of most other responsibility.

Although this requirement of open availability is not by definition gendered, it is a salient example of the existence of systemic masculine workplace culture as it most often remains the privilege of men, especially if caring responsibilities enter the equation. This practice can therefore be seen as emanating from the legal profession's normative binary idea of the generic man with a family but

³² For example Fiona Kay, Rosemary Hunter, Clare McGlynn, Kate Malleson, John Flood, Ulrike Schultz, Hilary Sommerlad, Deborah Rhode, Carrie Menkle Meadow and Margaret Thornton are just a few examples of scholars who have written on gender imbalance within the legal industry.

³³ A number of recent studies show this, for example, *The Modern Family Index 2017*, Bright Horizons, <https://www.workingfamilies.org.uk/wp-content/uploads/2017/01/Modern-Families-Index-Full-Report.pdf>, and the McKinsey & Company Report *Women and the Workplace* <https://www.mckinsey.com/featured-insights/gender-equality/women-in-the-workplace-2017>.

³⁴ This is despite reports such as the ABA Commission on Billable Hours Report which concludes that: "It has become increasingly clear that many of the legal profession's contemporary woes intersect at the billable hour." as quoted in Susan Saab Fortney, 'The billable hours derby: Empirical data on the problems and pressure points' (2005-2006) 33 *Fordham Law Review* 171, 176.

who remains free of any caring obligations.³⁵ Consequently, most men and women who chose to have a family or who care for a family member are not equally affected.³⁶

This disparity is supported by one study which indicates that while both mothers and fathers report family and work conflict, only mothers reduce their labour supply to respond to these conflicts.³⁷ For this reason, in the case of children, it is mothers, much more than fathers, who are suddenly seen as being less committed to work.³⁸ The belief is still that once women have children, they will most likely take on primary care of them, and therefore they will lack in this 'open ended availability'.³⁹ On the other hand, men benefit from having children, not only in salary but also in how they are perceived as suddenly more serious and in greater need of income as the family's main 'breadwinner'.⁴⁰

Stereotypes relating to commitment that benefit men and disadvantage women are hard to dislodge for a number of reasons. However, a notable one is that the experience of women at large City law firms tends to prove them in the eyes of those who believe in them. Every time a woman with children leaves a large firm it 'proves' lack of commitment; that she is prioritizing childcare above the firm.⁴¹ These women lawyers, whose aim is often to find a balance in their personal and professional lives, are often made to feel uncommitted in their attempt to do so. Female role models who have steered the course are few and far between. Arguably, this makes it all the more difficult for time conflicted women to visualize a successful legal career.⁴² One diversity manager put it this way:

One of the biggest challenges we face is one that we can't control, and that is the perspectives that our men and women come into the workplace with. They're both equally ambitious and equally talented but when things are tough, we develop our boys as breadwinners and our women as caregivers. We do that in our homes from birth with our children. Then you're sending messages from the moment you walk in about what it

³⁵ Paula Patton, 'Women lawyers, their status, influence, and retention in the legal profession' (2005) *Wm & Mary J Women & L.* 173.

³⁶ Donald Nicolson, 'Democracy, discrimination and diversity: A new dawn for the British legal profession?' (2005) 12(2) *ILJP* 201. Nicolson adds that this is also deemed true of women without families as they are seen as "potential mothers".

³⁷ Catherine Colebrook, Charlotte Snelling and Sarah Longlands, *The State of Pay: Demystifying the gender pay gap*, May 2018, IPPR, <https://www.ippr.org/files/2018-05/state-of-pay-may18.pdf>.

³⁸ Nicolson note 36. Otherwise known as the motherhood penalty and the fatherhood bonus.

³⁹ Reichman and Sterling, note 3, 70.

⁴⁰ Michelle J. Budiq, 'The fatherhood bonus and the motherhood penalty: Parenthood and the gender pay gap', *Third Way*, September 2014. <https://www.thirdway.org/report/the-fatherhood-bonus-and-the-motherhood-penalty-parenthood-and-the-gender-gap-in-pay>

⁴¹ Eli Wald, 'Glass ceilings and dead ends: professional ideologies, gender stereotypes and the future of women lawyers at large law firms' (2009-2010) 78 *Fordham L. Rev* 2245, 2274. See also Reichman, *Sticky Floors*, note 3, 71. Within the context of large law firms Wald states that this lack of commitment can also be seen as a form of disloyalty to the firm and its clients.

⁴² Mary C. Noonan and Mary E. Corcoran, 'The mommy track and partnership' (2004) *ANNALS, AAPSS* 596. who state that the most cited reason for women leaving the practice of law has to do with childcare responsibilities.

takes to get ahead. The women see that some women are checking out, so [...] that becomes their reality, and the men see that what you need to get ahead is to be the alpha male, and they become that. That's the cycle we need to break.⁴³

Even when women indisputably prove their commitment, one study shows that they continue to face discrimination. Highly successful women, with and without children, continue to be discriminated against because they are viewed as less warm, less likeable and more interpersonally hostile than otherwise similar workers who are not mothers and women.⁴⁴

A number of interviewees discussed the notion of commitment to work and all associated this commitment largely with the legal profession's hours' culture. I return to my findings in Chapters 3 and 4 where I highlighted how, in contrast to women, few men commented on being personally conflicted with respect to work-life obligations. This is likely because personal constraints seldom featured on their professional radar screens. Also in Chapter 3, I showed how men respondents were less likely than women to dispute or criticize this invariable tie between commitment and time - most saw it as an inevitable part of their job. In contrast, my findings in Chapter 4 showed that many women commented on their commitment to the firm being regularly tested when responsibilities outside of work came into conflict. For most, these responsibilities were to do with caring for young children. Within this cohort certainly, no male interviewee mentioned being conflicted to the point where he would consider anything other than a linear career path. Yet a significant amount of the women interviewed had taken on alternative career opportunities within their firm or outside of it. These findings I maintain, attests to the continued existence of a masculinist culture within large City firms which benefits men.

But perhaps the most vivid image of the struggle to prove commitment when hours at work conflict with those required at home, was given by a female senior associate who stated she was made to feel less committed by colleagues when she would leave the office to go home in the evenings to relieve her nanny:

I worked from 9:30am until 7pm, which, you know, is pretty late. I would really struggle to leave at 7pm but the worst was the looks I got. I called it the 'walk of shame' - when I had to walk down the corridor and pass all of my colleagues' offices on my way out.⁴⁵

The ever-present link between the notion of commitment and hours is evidence that a systemic masculinist environment continues to run through leading law

⁴³ Interview 29.

⁴⁴ S. Benard and S. Correll, 'Normative discrimination and the motherhood penalty' (2010) 24(5) *Gender & Society*. Benard and Correll's concur with this concept by showing that even women without children suffer discrimination at work as they are seen as "less likable" and lacking warmth. Hilary Sommerlad and Peter Sanderson, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (Ashgate 1998).

⁴⁵ Camille Joly, 'The Attrition of Women Lawyers' (MA Res. thesis, Queen Mary University of London 2013).

firms operating in the City. This systemic masculinist climate, which gives little or no consideration to the needs and insights of groups, other than the white middle class man with no or little caring duties, is very difficult to challenge at the individual level. For those unable or unwilling to meet these demands, there seems to be little choice but to leave the firm or to move to a supporting role, with all of the professional consequences that decision brings. This was the conclusion of a diversity manager from a leading City legal employer:

If I had a magic wand I would get rid of the billable hour. I think, because it promotes a certain culture. You're rewarding people based on the hours they spend at work. Women can work with that up to a certain point in their career and then it becomes very difficult.⁴⁶

3. Hegemonic working practices: Business development and the partnership process

Women ought not to be satisfied with being allowed into male created big law firm practices and playing by *their* rules, or with being given less empowered, less prestigious, less remunerative options. We should not commend law firms for offering permanent part-time, temporary part-time or dead-end tracks to accommodate those of us not willing or able to make our careers our entire lives. We ought not to accept the implicit assumptions of the current construction of the law practice that depend on dichotomies between devotion to family and to career, and that require unswerving fealty to work over all else. Women should demand no less than an opportunity to redefine the meanings of lawyering, law firm practice, professionalism, and professional success, all of which were created without our input, insights, needs and gender culture taken into account. The elimination of sex discrimination is not enough. We must have gender equality.⁴⁷

This passage, written more than a quarter of a century ago, is a reminder of how little Big Law working practices have changed. As I have argued above, the environment of these firms, with their notion of commitment so closely linked to that of time spent at work, remains overwhelmingly masculine, reinforcing gender dualism. In this part, I turn to the third element of the workplace cycle of patriarchy – hegemonic working practices. I maintain that the binary culture, ever present in top firm masculinist environment, feeds into and promotes day-to-day working practices that also continue to cater mostly to the male narrative. I focus on two practices chosen because of their ties to career advancement and the organizational functioning of large City firms: business development and the partnership process. I contend that, although different to a degree within each firm, these organizational practices are defined and mostly continue to operate on the basis of the male optic on working life, which I contend results in advantaging men's career progression and disadvantaging women's.

⁴⁶ Interview 29

⁴⁷ Leslie Bender note 5, 945.

Stephen Whitehead notes that masculinist work environments often translate into dominant managerial practices. These practices tend to strongly endorse performance measurements.⁴⁸ He explains these are modeled on a type of hegemonic masculinity that values performative appraisal systems. These systems emphasize a fixation on audit and accountability, outcomes over processes, and they are often legitimized as ‘scientific’, objective, and an impartial assessment of employees’ achievements.⁴⁹ There is a strong resonance between Whitehead’s notion of dominant male practices to those of current Big Law working practices. Billable hours, as I have already argued in Chapter 3, for example, tie in with what Whitehead describes as a ‘preoccupation with audit and accountability’ and are passed off as akin to science.⁵⁰ Similarly, as I advance below, practices around business development and the partnership selection process are promoted as objective and impartial, regardless of both being opaque in terms of their functioning.

However, I highlight an important distinction between masculinist work practices and those who perform them. The promotion and performance of these practices is perhaps too readily associated with men. This, I remark, can stop us from seeing that women engage in them as well. I return to this salient point in Part 4 of this chapter when I discuss invisibility and hidden masculinities.

(i) Hegemonic working practices: Business development and networking

An example of a dominant or hegemonic male practice which supports and sustains the workplace cycle of patriarchy is business development and networking.⁵¹ Although viewed as distinct practices, lines can be blurred depending on the event. But generally, business development targets existing or potential clients. Although most large BD events are instigated at partner level, from the first year of joining, junior solicitors are expected to market the firm’s services to clients or to acquaintances, friends and peer groups who may be in a position to send work to the firm. For this purpose, they are given a budget and a relatively free rein as to the choice of activity they put on. The idea is to organize a social activity to create a bond and develop or nurture a client-lawyer relationship outside of the workplace, which will either encourage clients to continue sending work to the firm or convince new clients to instruct it. BD initiatives are usually held in the evening around a social event to which clients are invited.

⁴⁸ Whitehead argues that these practices are often based on certain types of masculine behaviour associated with the gender binary and various hegemonic ways of being a man. They include competition, individualization, emotional distancing, strong assertiveness and aggressiveness. Whitehead, note 25.

⁴⁹ Whitehead, note 25.

⁵⁰ Performativity, Whitehead adds, is a discourse on how to manage and control. But he claims that it can also backfire in that it also has the potential to negatively impact employee motivation and commitment and increase anxieties and stress. Whitehead note 25.

⁵¹ Savita Kumra ‘Busy doing nothing: an explorations of the disconnect between gender equity issues faced by large law firms in the United Kingdom and the diversity management initiatives devised to address them (2015) 83 Fordham Law Review 2277.

Networking is a broader concept, the aim of which is also to bring in clients to the firm but in perhaps less overt ways. It includes attending and speaking at conferences, for example, in order to meet potential new clients or raise a lawyer's profile within a certain area of practice. Its aim is also to develop a working relationship and gain exposure to anyone who may be in a position to help the firm. This could include, for example, meeting other lawyers who work in a similar field and who will give work to a firm if there is conflict of interest, or meeting members of the legal press who may feature an article on the firm or on a lawyer in a particular area of practice.

Both business development (BD) and networking are highly encouraged by large City private practices as an indirect way of generating revenue and growing the business. This is even more the case, according to some interviewees, since the 2008 financial crisis, as competition for clients between firms has become acute. Both will be key elements considered by the partnership selection committee when looking at a lawyer's business case for partnership.

Therefore the ability to develop business is now considered a crucial 'skill' to have as a lawyer. One corporate consultant thought it had surpassed good technical ability and knowledge of the law in terms of essentials to have under one's belt for career advancement:

The market has become more specialized and so again, it's more about the business generation, less about real legal skills or innovation. It's more difficult for women to compete in that environment.⁵²

Being 'good' at BD was for one female counsel something that was inherently needed to make partnership and, according to her, that it was gender neutral. But, she explained that firms often did not provide training for it because:

[...] you're either good at it or you're not, depending on what type of person you are and there are some people who frankly aren't good at it and never will be. It's not in their DNA and they are ultimately the ones who shouldn't become partner.⁵³

However, most other interviewees recognized that there were gender implications to 'being 'good at BD and networking' one of which was that most activities were masculine in nature. Attitudes to this reality were split between men and women with a significant proportion of men justifying this practice on the basis that these activities were geared to please male clients. But all were quick to add that women lawyers now had their own all female BD events and that things were changing.

Almost all women respondents on the other hand mentioned some form of feeling of unfairness and or discomfort when discussing their firm's business development initiatives, also known as 'client entertainment.' Many women

⁵² Interview 17

⁵³ Interview 3

interviewed had a story of a bad BD experience due to their gender biased nature. Others, however, recognized that efforts were being made to promote women networks and to develop business for female clients. But some men and most women felt this was often a patronizing exercise. Others thought it to be of limited value as there were still too few women clients willing to appoint women counsel. One former partner who was now a consultant said:

My experience is, and maybe I'm being prejudiced, but I think women clients find it more difficult to appoint women lawyers [...] because they're insecure [...] and because they want to fit in [...] it's easier for them not to buck the trend in any way.⁵⁴

Notwithstanding the growing efforts to establish female networks, it seemed a fact of life within large City firms that, as clients are most often men, the activities chosen to entertain them (often by male lawyers) will be of a masculine nature. These include anything from rugby, cricket and football matches to golf days, racecar driving and paintballing. The interests of women lawyers who may be joining in the business development effort are largely disregarded. This leads women to feeling isolated or excluded or simply uninterested whilst their male colleagues benefit from the 'fit' with the clients in sharing in the enjoyment of a shared interest. However, remarkably, and in keeping with my findings in Chapter 4, female respondents did not consider looking to their employers with a view to challenging this practice. Instead, they attempted to find ways of working around them on an individual basis.

One former female partner stated:

My advice to female solicitors now would be to find yourself a niche department where you can be the go to person on tax or employment rather than compete with the boys in an environment where your just one of any number of finance partner.⁵⁵

It is not only the nature of these events that made them male oriented working practices. Female respondents also raised their timing as difficult due to these events taking place in the evening, thus conflicting with caring:

BD still generally happens in the evening. The firm can't change that norm. It's related to motherhood and maternity leave. When you have a young baby, it's not really easy to go out in the evenings.⁵⁶

Certain women from this sample also noted how most BD initiative were centered around alcohol. This, they highlighted, led some men to feeling disinhibited around female lawyers who, as a result, felt vulnerable as possible targets for inappropriate behavior. One junior associate expressed her concerns:

⁵⁴ Interview 18

⁵⁵ Interview 18

⁵⁶ Interview 8

I hate work drinking events. I can't bear them. I either feel a little bit unsafe or just uncomfortable. I don't want unlimited alcohol around my bosses. I just don't want that!⁵⁷

Another senior associate added that in order to do away with some of the awkwardness or sexual tension that she had experienced at these boozy evenings, she would often ask a male colleague to come along. The problem with this solution, she noted, was that the men would then bond and the contact would be between them going forward.⁵⁸

This same female lawyer, from a BAME background, mentioned another important impediment to her growing her business through networking. In addition to facilitating the development of professional relationships between men, it also helped, she noted, if you were from a white middle class background:

The job is also more difficult for women from diverse backgrounds because of the networking, and the friends you need to have and connections you need to have.⁵⁹

Men interviewed did not deny on the whole the masculine nature of BD and some recognized it to be problematic for women. One male partner admitted that:

I think there is something to the sexual thing where it's hard to draw the line as to where the [professional] interaction starts and ends. I think it can be somewhat controversial. Marketing involves a certain amount of flirtation. I think it becomes easier then to inadvertently cross lines. There is definitely an element of that I think.⁶⁰

Regardless, most male respondents were not apologetic for how they conducted their BD. Although in taking that view, they were often quick to point out that things were changing, with women also organizing their own female client events:

In any community, men do certain things with men and other things with women. For example, going to the rugby or the football. Certain things are more masculine so maybe that leads to some sort of 'club' environment.⁶¹

In explaining why BD was more challenging for women, one banking partner in a leading finance practice explained that the profile of the clients also posed a problem. He mentioned that two things were crucial to these clients:

⁵⁷ Interview 27

⁵⁸ Interview 4

⁵⁹ Interview 4

⁶⁰ Interview 12

⁶¹ Interview 9

[...] accessibility - which means being there all the time - and likeability, the social aspect that requires time and effort. Because they are very young, most investment bankers we work with don't have families yet.⁶²

But it was the almost unanimous reference male interviewees made to women also preferring 'female type' activities as a justification for their own masculine choices, which was notable. One example was given by a male senior associate:

If someone said to me: "Come to the Chelsea Flower Show", I have no interest in flowers but I would go along because I would think: "Wow, this is a really good experience." I think if you're not into football, going to football is an experience. If you're not into cricket going to Lords is an experience. No one is asking you to go every week, it's just a one off. [T]hese aren't [an example of]: "C'mon chaps, lets go watch some cricket, no women allowed." But there are things I have been aware of my organization putting on events for female partners taking senior female clients, to what I guess traditionally would be a more female oriented event...I am aware that that happens and I don't have an issue with that.⁶³

The problem with this last response, of course, is that there are considerably fewer female clients to entertain and although these male oriented events don't happen 'every week', they occur often enough and are known to be key to developing a lawyer's practice. One senior associate who'd recently left her firm thought so in respect of the business development activities organized by her large employer:

I think the issue that a lot of females will face is that it's quite difficult to make long lasting client relationships when most of the time, certainly in the finance world, clients are male. You're limited in terms, or maybe you feel slightly awkward in trying to suggest outside work activities. There is a whole emphasis on football and sports. Because the partnership is so male focused, the opportunities for client marketing and business development are mainly male led. It becomes socially awkward for women to be present.⁶⁴

A former female partner of a major firm agreed:

I think a fundamental problem is that it's more difficult for women in the market City firms occupy to generate business [...] in an environment where the clients want to go and play football and go to strip clubs.⁶⁵

She added that her firm had conducted a survey amongst women partners in order to explain the surprisingly high level of attrition amongst that group:

⁶² Interview 12

⁶³ Interview 15

⁶⁴ Interview 21

⁶⁵ Interview 18

In fact they did a survey here among female partners a few years ago and they all said the same thing: the biggest barrier is the business development environment as a woman. It's more difficult to market, because there is always a sort of sexual agenda. [...] I think the way the market has changed has made it more difficult for women to become partners rather than easier.⁶⁶

Aware of the issues noted above by respondents, some firms are now supporting all-female BD and networking events where women lawyers invite women clients.⁶⁷ One counsel noted that there were pockets of good practice in her firm. Although her BD calendar showed a few golf days coming up, her female colleagues were organizing events for women clients which included fashion galas and theatre evenings. Yet one junior associate at a top firm lamented the choice of events for women saying that many gave the impression that "[...] women are only interested in designer shoes and designer clothes."⁶⁸

Finally a male managing partner of a leading City firm expressed this strong view about female BD blatantly calling it 'weird' and suggested it was up to women to adapt to them:

You don't have all male networking. Women must find ways around the sexual tension with men and some use the fact that they are women to their advantage.⁶⁹

This last comment is of significance given the senior position of this relatively young managing partner in one of the leading law firms in the City of London. It infers that it is not only older male partners who believe it is up to women to navigate their way through this masculine terrain, without assistance from their employers, but also some of the younger men who represent the generation now acceding to positions of power.

At face value, generating business by meeting with clients on a social basis is not gendered. However, I argue that as the practice now stands, it contributes to gender inequality in career advancement. Leading law firms must concede that the City's legal industry and the London financial market it feeds on both remain predominantly masculine. Until there is a critical mass of women in the higher echelons of finance, including large City law firms, men lawyers will continue to benefit from current business development initiatives based on their affinities and comfort levels with the nature of the activity and the mostly male clients they invite. For this reason, business development and networking events either need to become more inclusive or else they should not feature as a measure of success in terms of career advancement. The fact that today both remain a very

⁶⁶ Interview 18

⁶⁷ See, for example Debevoise & Plimpton's efforts in setting up all women programmes, <https://www.debevoise.com/news/2016/03/launches-website-devoted>.

⁶⁸ Interview 11

⁶⁹ Interview 24

salient part of the business case when becoming a partner points to the existence of masculine hegemonic practices within City firms.

(ii) Hegemonic working practices: The timing of promotion to partnership

In Chapter 3, I explain how, in the course of a lawyer's career, only one truly significant promotion is to be had, that of partnership, be it salaried or equity.⁷⁰ A legal career allows for little other than 'up or out'. Unlike corporate structures where hierarchy is often multilayered, young lawyers entering the profession are often rewarded only once for their efforts, approximately eight to ten years down the line, through partnership.⁷¹

This single promotion approach to progress is challenging for both men and women lawyers. Incentives are few and far between and associates complain that they are often left in the dark as to their prospects or led up a garden path. One senior associate about to go through the selection process with his firm described it as "[...] a pretty arcane process. I don't know what goes on there...there is still a degree of opacity about all that stuff."⁷²

But for many women, the timing of this process greatly adds to its difficulty.⁷³ Those who have gone through law school, professional training courses and the required two year training contract with a law firm find themselves, on average, in their late twenties.⁷⁴ With an added seven to ten years of work to make it to the ranks of eligibility for partnership, many women who by now are on average in their mid to late thirties, either have very young children or wish to start a family.⁷⁵ This conjuncture is particularly problematic and it can put women in a position where they must make difficult choices between their career and their desire to have children.⁷⁶ A few women respondents admitted to having given thought as to whether they should have their children before or after the partnership selection process. One senior associate shared her experience on why she believed this was a material consideration:

⁷⁰ As mentioned in Chapter 3, law firms have recently created positions that sit between associate and partner, such as of-counsel and salaried partner. Also, there are now alternatives to the 'up or out' structure such as joining a firm's legal support team, (often heavily populated by senior female associates). But these positions do not offer the same financial and advancement rewards. In fact, as I argue in Chapter 4, they are often seen as career limiting.

⁷¹ Joshua Johnson, 'Associate attrition and the tragedy of the commons' (2008) 1 Crit. 48, 51, 66.

⁷² Interview 15

⁷³ Megan Erb, 'Red light, green light: assessing the stop and go in the advancement of women in the legal and business sectors' (2008) 14 William & Mary J Women & L. 393, 402. This timing can pressure women to choose between pursuing career opportunities or starting a family and risking the loss of a promotion.

⁷⁴ Erb, note 73, 402.

⁷⁵ Erb note 73, 402. "...[m]any women associates drop out of large law practices by their fourth year", Noonan and Corcoran, note 42.

⁷⁶ One study states that 42% of female solicitors attrite within 10 years of qualification, *Setting the Agenda for Change*, 2012 report *International Women in Law Summit*, whereas another study puts that figure as high as 60% compared to 27% of male solicitors, S. Nada-Arfa, 'Female solicitors in UK private practice', *Women in Law*, 2010.

That is mainly because as you advance to senior associate there are different views about when one should have children. For those that had children pre-moving up [to partnership], you were definitely, definitely, pushed back.⁷⁷

One junior associate attested to this practice:

I know a lot of women partners here, especially the newest one in our department; she put having a family on hold.⁷⁸

One female partner, although reticent, alluded to the decision women who wanted children were faced with. She said the following when asked why she thought women did not progress as quickly or as much as men:

I think there is an element of women tending to make career decisions earlier in life [...] than men [...] and if you're 30 and still four or five years away [from partnership], then you might think long and hard about what your options are, and whether there might be someone offering you something a little bit different.⁷⁹

This extremely difficult decision leads some women to exit private practice. One senior associate remarked on how many of her peers had not pursued their careers with private legal City employers on this basis:

If I think of my friends who started in private practice from university, I think there's one left, and everyone else has dropped out.⁸⁰

This same female associate admitted she wished she had been more "strategic" about her own career in that she should have "calculated" when to have her three children. She thought women needed to "[...] get a solid client base and then have them [children]".⁸¹

This reality is much less likely to affect fathers' careers, as one senior female associate stated:

I don't see the same pattern in men who have, for example, children during the time they are going through that [partnership] process. They, on the whole, remain probably more focused, more willing to do the hours.⁸²

⁷⁷ Interview 22

⁷⁸ Interview 11

⁷⁹ Interview 10

⁸⁰ Interview 8

⁸¹ Interview 8

⁸² Interview 2. Indeed it is quite possible that men in this position are under even greater pressure to stay focused on their career and earnings if their partner, whether a lawyer or not, has a drop in a salary after having a baby.

Indeed, the position women lawyers find themselves in if considering parenthood is not lost on men. When asked why he thought fewer women progressed to partnership than men, this male senior partner said:

I think the principal reason is that the partnership track coincides with women being at an age when they want kids. By the time you go through to partnership... it's probably 10 to 12 years that puts you into your early to mid thirties, right? That's classic childbearing time.⁸³

One male partner admitted discouraging his future wife to become a lawyer in order to avoid the work life conflict which he'd seen female colleagues struggle with.⁸⁴ Finally, another remarked:

[...] we probably lose a number of... and I'm sure we do... really high quality, but also really ambitious women, but they're ambitious maybe to be very successful, but that success doesn't need to be as a partner in a magic circle firm. They're thinking about broader options earlier than men do.⁸⁵

This passage suggests that despite having women candidates for partnership who are 'ambitious and successful', top-tier firms seem prepared to lose them and to accept that they will move on rather than put into question and rethink their hegemonic masculine working practices relating to the timing of their partnership promotion system.⁸⁶ Given legal talent is something firms openly compete for, this reasoning is an indication of just how deeply embedded masculine working practices are at such firms. This practice also ties in with arguments set out in Chapters 3 and 4. Namely that these law firms' pyramid structure relies on a bottom heavy workforce, which ultimately requires attrition so that partnership remains exclusive and lucrative. In addition, that despite the narrative on diversity, firms are generally not willing to go as far as risking profitability in order to meaningfully improve women and other non dominant lawyers' career paths. Bolton and Muzio's work on the gendered segmentation of the legal profession supports this. The scholars conclude that those who hold power at the top of large City firms have every interest in maintaining a feminized segment, women associates who, through hard work and limited career advancement, serve to increase profitability without disturbing the partnership structure. – forming a "reserve army' of legal labour with lesser terms and conditons".⁸⁷

⁸³ Interview 28

⁸⁴ Interview 9

⁸⁵ Interview 10

⁸⁶ Hilary Sommerlad, 'Minorities, merit, and misrecognition in the globalized profession' (2011-2012) 80 *Fordham Law Review* 2481, 2512. Sommerlad notes that in many respects having these 'lesser professionals' locked out of higher jobs suits law firms as they represent the transient working pool which today's global law firms need to complete large cross border transactions.

⁸⁷ Sharon Bolton and Daniel Muzio (2007) 'Can't live with 'em, can't live without 'em: Gendered segmentation in the legal profession 41(1) *Sociology* 47

4. Invisibility: Hidden masculinities, the double bind and the 'gender neutral' workplace

I now turn to the fourth element of the workplace cycle of patriarchy. Here I advance that City law firms' inability or unwillingness to recognize their structures, including many of their key working practices, as invariably connected to the masculine narrative results in the invisibility of men's power and men as the norm.

The historical relationship men have to management within law firms continues to provide a masculine template from which partners are identified, measured and recruited. This results in the maleness of these organizations largely being concealed. Raewyn Connell suggests that what is performed as male dominant working practices can appear gender neutral, not least, in the case of high ranking firms, because all partners, including women partners, are expected to impose them when in fact they draw heavily on masculine ways of being. Connell adds that if gender is systematically de-emphasized or denied within an organization, it can quickly give a false impression that gender equity is achieved.⁸⁸ Gender neutrality then becomes more apparent than real.

Feminist discourse disputes the existence of gender neutrality and warns against its appearance. Patricia Lewis for example writes that in fact the reality can be quite the opposite. Generally, women who enter management can find themselves exposed to expectations, actions, languages and behaviours which range from gendered stereotyping to outright bullying and misogynistic behaviour from men. On the other hand, she adds that "[...] for men to enter management is merely to locate themselves in a work arena that has come to be largely defined by male practices and men's presence."⁸⁹

According to Lewis, part of the challenge women face within the masculine workplace is contending with the association made between their gender and the role of caring for others. She argues that no matter how hard women try they cannot prevent others from seeing them as female and therefore more caring. Women's sense of self and confidence can thus be impaired as they are discouraged from seeing themselves as operating on a level playing field to male colleagues. This Lewis concludes offers greater 'authority space' to men.⁹⁰

Women moving in high masculinist work environments such as law firms will be constantly reminded of their femininity in ways in which men will not be reminded of their masculinity. This according to Stephen Whitehead can create a 'schizogenic' relationship to management where women are expected to retain

⁸⁸ R.W. Connell, 'Glass ceilings or gendered institutions? The gender regimes of public sector worksites' (2006) 66(6) *Public Administration Review* 837.

⁸⁹ Patricia Lewis, *Voice, Visibility and the Gendering Organizations* (Palgrave Macmillan 2007).

⁹⁰ *Ibid.*

'femininity' whilst also practicing masculine codes of management.⁹¹ Lewis determines from this that women are always visible under a 'gender gaze' that can subject them to sexist comment and behaviour. Men managers conversely are locked in a state of apparent invisibility as to their gendered behaviour.⁹²

Despite this impossible balance women are expected to master between feminine warmth and masculine assertiveness, we should not assume that they will challenge these masculinist management practices. In fact, in City outfits, many women partners or senior lawyers engage in masculine working practices as a way to achieve validation. The very act of being a partner requires a sense of being which is assured and confident. So arguably, being a leader who is gentle, feminine and empathetic, would not only be difficult to perform but would unlikely be easily accepted by those who are its intended recipient. Both men and women interviewees recognized that women can engage in what is thought to be typically male behaviour, whether consciously or subconsciously. Of those who expressed this view, some saw it as a form of survival mechanism in a male dominated financial industry. One female consultant had experience of this:

I can think of a particular partner in the banking department who has essentially chosen to play with the boys, and... be treated as one of the boys. It's a strategy that I can see has lots of advantages because there's none of the sexual tension, and externally with clients either. If you have an honorary man badge, it just makes life a lot easier.⁹³

One female counsel added:

I think the boundaries are quite blurred because when you've taken a woman and put her in what has typically been quite a male dominated environment for a long time, rightly or wrongly, that woman gives in and starts to display some of those traditionally masculine qualities. Personally sometimes I hate myself for it but when you have to get a job done and you're under pressure the default is to just display those characteristics which you might traditionally associate with being a man.⁹⁴

But when women displayed these male characteristics, a number of interviewees noted that they were often reprimanded for it – an indication of the double bind women can find themselves in. One senior male manager, who thought women ought to be more empathetic and less 'demanding' than men, resented women for being too much like men:

⁹¹ Stephen Whitehead, 'Masculinities in Management: Hidden, Invisible and Persistent' in S. Kumra, R. Simpson and R. Burke (eds.) Oxford Handbook of Gender in Organisations (Oxford University Press 2014)

⁹² Ibid.

⁹³ Interview 18

⁹⁴ Interview 3

Women partners can be no better at times. They can often not have families and be just as bad as men, if not worst.⁹⁵

One interviewee, a female senior associate, had lived through the experience of both being accused of being too weak and being too aggressive. First, she was told she was too emotional in how she handled problems:

I was being referred to as too emotional in the way I dealt with things, as compared to men just getting on with it... It's about the view men have of the way women handle a legal problem. Men just never say when they don't know something. I've always been the sort of person that said if I didn't understand something, if I didn't know the answer. I was told that in a partnership, that doing that showed weakness. Technically, to admit I didn't know something showed I was not technically strong enough. I guess compared to those that didn't admit it.⁹⁶

Having adapted her behavior to address this issue, this same senior female associate, by then working for another organisation, was told she was overly aggressive and required coaching:

This was the view of all the men on the executive committee, that I needed coaching.... Because I was too aggressive in the way I was addressing issues, that I was 'ramming my technical knowledge down people's throats'. I needed a coach to present things to an audience without them seeing my technical skills as threatening. Basically, it came down to being able to tell men the issue without coming across like I was a 'know it all.'⁹⁷

Women across all levels of seniority who had been perceived as taking on masculine characteristics recounted how they were told they were being 'cold', other women's 'worst enemies', 'feisty' or 'bossy'. One junior associate stated she was accused of being feisty all the time. And when trying to instigate a pro bono committee in her firm, she was told she was acting in a manner that was 'above her station.'⁹⁸

One male partner opined that things had changed and he felt that women no longer needed to take on typical male characteristics. Those who continued to do so, according to him, were being bad role models to other women:

There was a generation in our firm of women who felt they had to have male characteristics to get ahead and they were more male than the males. And two women who are a little bit in that category run our women's network and they are not very good role models.⁹⁹

⁹⁵ Interview 12

⁹⁶ Interview 22

⁹⁷ Interview 22

⁹⁸ Interview 27

⁹⁹ Interview 28

In order to address reproaches for being either too weak or too feisty, a number of women turn to coaching to help them either adopt these more masculine characteristics or to 'tone down' the ones they naturally display. One female counsel who was a proponent of coaching said:

I think there needs to be more coaching for women because I think a lot of it is quite easily fixed... the right way to come into a room and present new ideas, the way to come across as assertive without seeming bossy. Taking the female edge off of it. It sounds awful that people need to be coached on how to present themselves, but it really helps women to think consciously about the way they present themselves. A lot of it is quite simple. It's about keeping your hands physical, not looking nervous or shifty in meetings, looking at people, firm hand shakes, tone of your voice. All that can be taught. A lot of senior women in the City have coaching.¹⁰⁰

However, others thought that lawyers, regardless of gender, ought to be appreciated for who they are inasmuch as they display different qualities to those of their male colleagues. One senior male associate thought:

For me, as the father of three daughters and seeing the fighting spirit they have... I recognize that the first step is being aware of the issue. When you see women who have made it to the top of their profession – they stand out anyway and to the extent they are also assertive or confident [...]the lazy categorization is that they are 'bossy' or 'pushy'. But I look at my daughters now and I think that is quite a sobering thought because the last thing you want is to get them to temper that in order to get on in life.¹⁰¹

One woman, who is not a partner but a senior manager in a magic circle firm stated:

There are other qualities and other ways to lead organizations. I think the problem with the model is that, I'm speaking very personally here, that the other qualities are not necessarily recognized... The City, for example, is full of people who think that in order to achieve, you have to work in a certain way. Yes, there may be qualities that you need but you also need other qualities. You need other people who have decided to – who have made an active choice, that they don't want that, they don't want to compromise their families or other interests that they have in order to achieve that one thing because they think they are better people for having a more balanced and rounded life.¹⁰²

¹⁰⁰ Interview 16

¹⁰¹ Interview 30

¹⁰² Interview 23

One senior manager and partner of a magic circle firm noted that women had different skill sets to men that had to be ‘managed’ differently. The inherent problem he thought was to “[...] get men to talk to women.” He added:

Law firms need to be more conscious of this and manage women differently. For this we need partners and line managers to be more proactive in a conversational kind of way. But it’s a challenge to get many of the male partners, especially the older ones, who were often law school geeks afraid to talk to women, to engage in a conversation with young female associates about something that can often be personal. So we need to focus on the younger male partners.¹⁰³

My data indicates that for a number of reasons some women will engage in behavior that tends to be associated with men. In order to avoid the male gaze or to escape stereotypical views that pins them as carers before anything else, women will distance themselves from behavior that is perceived as feminine. Nonetheless, they are seldom left to do so without incurring criticism for either letting other women down, or for ‘aggressive’ over performance. Men’s behavior on the other hand is not put under this magnifying glass. It is noteworthy that at no time during the course of my interviews were men’s actions or reactions questioned for being weak, aggressive, feisty or anything at all. Men did not need coaching on how to behave at work. This I maintain shows the extent to which women and other non-dominant groups continue to represent ‘otherness’ in City legal workplaces whilst men, in all of their being and behaviour, remain invisible.

C. Conclusion

Each element of the workplace cycle of patriarchy, the conceptual framework that I have presented in this chapter, is useful in exposing the extent to which patriarchy and male privilege are still deeply embedded in the organizational structures of City law firms. It has also allowed me to test third hypothesis; that as an extension of cultural norms set out in Chapter 5, major City law firms operate as gendered organisations, with gendered working practices, generally creating organizational advantages for men, which also in part explain why men dominate top positions within large City law firms.

Indeed, white middle class men continue to dominate a majority of pinnacle positions in most firms with the help of an unconscious bias to hire and promote in their image. The mutually reinforcing elements of masculinist environment and male dominant working practices also contribute to this disproportion. Together, these conceal and perpetuate the use of the male template in much that has to do with career advancement within City these firms, contributing to male over representation in their higher echelons.

Gender equality is likely to be successful only to the extent it becomes engrained in organizational life. For this to prevail, senior managers of leading City law

¹⁰³ Interview 24

firms must recognize that women's entry into the legal professional workplace has triggered the need for complex adjustments, which have thus far been largely overlooked.¹⁰⁴ They must acknowledge that their organizations (and not just the people within them) create and reproduce gender stereotypes and norms which lead to gender inequality.¹⁰⁵ In order to address this inequality, leaders of these law firms must revisit the foundations of their organizational environment and their working practices and identify how they produce exclusionary outcomes both in terms of time norms discussed in Chapter 4 and other structural working practices discussed above in this chapter. Finally, they must mend the gap with innovative solutions based on practical insight from women (and male) employees from all socio-ethnic backgrounds.

But perhaps most importantly, there is a need to move beyond the analysis of men and leadership in terms of leadership styles. Firms must embrace an inclusive approach to how people work and lead.¹⁰⁶ Labeling management performance as feminine or masculine anchors what masculine and feminine might mean. As Whitehead states:

[...] masculine performance is not the exclusive province of men. To assume so is merely to reinforce the gender binary and fail to recognize that both men and women are ultimately discursive subjects taking up, knowingly or not, those gender signifying practices at their disposal.¹⁰⁷

However, this will represent a substantial challenge. In Chapter 7, I present data which points to men and women lawyers' widely held belief that gender differences in performance exist and that women, at least, think they are partly to blame for masculine over representation.

¹⁰⁴ This is particularly relevant when we look at women's entry into the legal profession and large practice.

¹⁰⁵ Connell note 88.

¹⁰⁶ Stephen Whitehead advances, for instance, the importance of putting it in a context which includes both genders and other intersectionalities so that leaders and managers are no longer seen just as men and women, but as part of other categories such as age, class, ethnicity, sexuality or even the new category of 'father managers', Whitehead, note 25.

¹⁰⁷ Ibid.

CHAPTER 7

A. Towards greater gender fluidity?

This study has theorized as to why men continue to be significantly overrepresented in positions of power within large City law firms. In my discussion on the resilience of patriarchy and masculine over representation, I have thus far focused on masculinity as a dominant collective and men as a gender class within the ambit of a gender system. I have advanced the importance of a continued engagement with structural gender inequality in order to better monitor and address the broader dimensions of gendered power relations and patterns of masculine advantage. However, there is another important facet to consider in this study on gender disparity at the top of the legal industry and that is the agency of men. Overlooking the question of individual men's practices and behavior is to risk not fully appreciating the complexity of gender and its role as a possible beacon of progress. Below, I therefore turn to my final research questions: To what extent should we, and can we, pin our hopes for equality within the legal profession on Millennial¹ men as individual agents of change?

As this is not a longitudinal study it can only provide a snapshot view of the career progression, conditions and experiences of City solicitors. Nonetheless, it does so at a time when, in Western society, ideas of gender identity, the social assignment of gender roles and the gender order overall are being challenged more than ever. This is especially true, some feel, with respect to Millennials.² In this Chapter, I therefore query whether this changing landscape has had implications for the working life of City lawyers. I do so by building on my discussion of masculinity in Chapter 2 and reviewing some key literature on men's agency. Within this body of scholarly work is the message that gender ought to be regarded as fluid and that masculinity and femininity are neither biologically determined nor static and that there is no such thing as one essential or intrinsic gender identity. Second, I turn to whether this change has made its

¹ Millennials, also defined as 'Generation Y', is the generational cohort that follows Generation X (1965-1984). Although dates vary for when this group begins and ends, typically they will have been born in early to mid 1980s to late 1990s. However, some definitions of Millennials extend this to 2001 whilst others distinguish this later branch by referring to it as 'Generation Z'. In any event, as the children of Baby Boomers (1946-1964), for the purposes of social and other fields of research, this cohort is deemed to represent 21st century trends.

² Although they are often criticized as 'entitled' or the 'me' or 'snowflake' generation, Millennials are also identified as having the potential to disrupt traditional social norms within the workplace, Crystal Kadakia, *The Millennial Myth* (Berett- Koehler 2017), Ben Whitticome 'What happens when Millennials run the workplace' 19th March 2016, *The New York Times*. However, it is important to note that, despite their greater involvement in household and caring tasks, only 10 per cent of millennial graduates have children. Consequently, it is perhaps too early to know whether Millennial men will be true agents of change for gender inequality. J Ely, Pamela Stone and Colleen Ammerman, 'Rethink what you "know" about high-achieving women' (2014) Harvard Business Review.

way into individual lawyers' ideas on professional identity. In this regard, I present data on City lawyers' views regarding gendered behavior within the workplace. I examine whether this data shows any signs of an alignment with notions of gender fluidity or an inclination that gender roles are shifting within leading private legal practices. Finally, I explore whether there are any indications that the younger generation of Millennial men lawyers are engaging with the idea of blurring the lines of traditional gender norms by engaging in the practice of masculine self reflexion.

B. Masculine and feminine behavior?

Perhaps the greatest hope we have as a society to attain gender equality is by breaking down preconceived ideas of what it means to be a man and a woman. Indeed, throughout this study I have maintained that the gender binary plays a central role in sustaining the cycle of patriarchy, both in society and in the workplace and leads to inequality. In chapter 2, I discussed post structural feminists' and pro feminists arguments in favour of a more individual approach to gender that exposes the contingent, fluid and multiple aspects of being a man or woman across varying intersectional axes. These scholars posit that gender should be seen as a spectrum where individual women and men can identify with varying aspects according to their lived experiences. This is because, they argue, how it feels to be a man or a woman is actively produced through day-to-day interactions and is contextual.³

Based on my empirical data, the narrative on encouraging greater fluidity and the need for the recognition of diverse masculinities has yet to reach the mainstream City legal workplace. When asked whether they thought gender played a role in professional advancement, no interviewee questioned the normative binary categories 'man' and 'woman' and no interviewee, whether male or female, provided insight as to whether there may be external factors outside of their immediate environment which affect professional progression. Rather, interviewees overwhelmingly focused on the performance of typically polarized gendered behavior and how impacts legal careers. Interview responses indicate that there is still a strong belief amongst this cohort that gender inequality in terms of career development and progress is largely based on 'masculine' and 'feminine' differences in behaviour. Jeff Hearn is one of many scholars who highlights how adopting such an approach leads to the reproduction of stereotypes. In a recent study on leadership, he notes that:

There is an iterative or self-reproducing process here by which labeling leadership as such in turn solidifies what the masculine and the feminine might mean.⁴

³ Patricia Lewis, *Voice, Visibility and the Gendering Organizations* (Palgrave Macmillan 2007), Carol Smart, 'Law, feminism and sexuality: From essence to ethics?' (1994) 9 *Can L. J. & Soc.* 15.

⁴ Hearn 2012, 424

Applied to the legal profession, Bolton and Muzio argue that identifying women as different to men has become a 'defence mechanism' within an increasingly segmented the legal profession, ensuring that power structures which benefit men are not disrupted.⁵

Nonetheless, varying 'types' of behavior were cited as examples by respondents as, at the very least, a partial reason why men progress more rapidly in large City firms. Respondents felt that for men these included 'competitiveness' and 'ruthlessness' and being 'sharp elbowed'. Women on the other hand were referred generally as having a 'different skill set', as being 'more technically able' and 'diligent'. But the two types of behavior most mentioned by respondents were confidence at work and self-belief in the ability to progress professionally.

But before turning to perceptions of specific gendered behavior, this comment by a senior female associate illustrates how such perceptions were seen to generally play to men's advantage by women. When asked what personal characteristics she believed firms looked for when promoting someone to partnership, she proclaimed that women and men acted out their roles as lawyers differently:

The partnership is still made up mainly of men. That inevitably means that when it comes to appraising qualities for partners (a) the appraising is done by men and (b) they tend to look for what has made them successful partners. I think there is overlap between the qualities that make a man and a woman a successful partner but it is only an overlap. It is not a binomial correspondence. There are traits in men which they believe, rightly or wrongly, make a good partner that tend not to be present in women and which they therefore tend to assume would make a woman not a good partner.⁶

Over half of the men and women interviewed referred to some kind of difference between male and female behavior being displayed at work. Junior female lawyers were generally more outspoken on the matter than their male counterparts. Both junior and senior female associates were much more likely to express ideas around how men and women were different in how they approached their legal careers and practiced law generally. A number of these female associates also perceived that it was typically male characteristics or qualities that tended to be more valued by the management of law firms and hence facilitated access to partnership for those who displayed them.

Interestingly, women partners (as well as male members of firm management) did not follow this trend as clearly. Female partners were more cautious in their answers and seemed to go out of their way to emphasize the gender neutrality of the process to partnership. A few also expressed views on how masculine character traits did not play a pivotal role in career progression. On the other

⁵ Sharon Bolton and Daniel Muzio (2007) 'Can't live with 'em, can't live without 'em: Gendered segmentation in the legal profession 41(1) Sociology 47

⁶ Interview 13

hand, seniority in male interviewees did not seem to impact responses. Men, both junior and at partner level, agreed that men were generally more confident than women at work and displayed greater self-belief in respect to their advancement within the firm.

1. Confidence at work

The most cited difference in behavior between men and women City solicitors mentioned by interviewees was to do with confidence. It was felt that men display more confidence than women at work. In an assessment context, for example, a number of interviewees thought women were quicker to criticize themselves whereas men were more likely to justify any weakness highlighted by assessors. One partner explained how he had experienced this a number of times:

In assessments women are the first to point to where they need to improve and highlight their weaknesses. Men on the other hand will promote their strengths and hide the cracks.⁷

Confidence was also thought by interviewees to affect ways men and women approach their work. One female associate expressed the following:

I think he was taking a more male approach in terms of backing what he was doing. In the sense that, if he came in and expressed an opinion, he would never admit that he was wrong, even if you said: "Actually, I think it is this..." He would give an explanation as to why what he originally thought was grounded in some sort of thesis. Whereas I think the female, or my approach, was more to say: "I think this. I'm not 100 per cent sure. I'll need to check."⁸

A female senior associate mentioned how she believed she lacked confidence in her work in comparison to some of her male colleagues:

I would like to become counsel because I would like to stay at the firm and I think technically I'm good enough. It's taken me over a decade to realize that but today I'm able to say it. Some days I have to remind myself of it and I still often say to myself: "What would so and so (inevitably a man) do in this situation?" Because you know, when something goes wrong, it's never their fault.⁹

A senior female associate, who has been in the role of professional support lawyer for over fifteen years also noted:

⁷ Interview 17

⁸ Interview 8

⁹ Interview 13

If you see someone who is over confident and trying to make out that they know it all, that is far more likely to be a man. I am much more likely to have someone come in my room and think he has the answer when actually he hasn't got a clue what he's talking about.¹⁰

Another female associate put it this way:

I sometimes see with male lawyers I work with, if I were generalizing, you could call it 'big picture thinking' and risk taking, they are common. I think a lot of women in the department would not stop a piece of work until they checked it multiple times and they were absolutely convinced that what they had done was the right thing. I think the people who are the most successful are the people who can draw a line and say 'I've checked it once, that's enough' or 'I've checked it twice, that's enough' make the decision and then just move on to the next thing. Perhaps those sorts of qualities are maybe more associated with men. Neurotic checkers are extremely highly valued up until about six years PQE. They are the ones everyone wants on their team. Partners want the person who is going to worry about it until it is right so they don't have to. It is almost as though you see people doing really well and being very highly regarded and then it starts suddenly to become clear that they are never going to get the final promotion up to partnership. I reckon that at about six or seven PQE, you are no longer seen as a team member. Up until that point you are one of the team and the key is that you have to be reliable, you have to be thorough, you have to be accurate, you have to get it right. Beyond that point, you are being almost groomed to be a future leader and that is when the different sets of qualities start to be valued. You have to start taking risks with your own work. Winging it is not the right word ... but just taking risks and some people find that easier to do than others.¹¹

Reflecting on her experiences with two female associates, one female partner noted that one of the significant consequences of the difference in confidence in work between men and women associates was that male associates tended to over report on their hours, confident that most of their time in the office was useful to the client and hence eligible for billing. Female associates on the other hand tended to be more critical of the value and efficiency of their work and hence were inclined to under reported on their hours, billing less time than men.

Because of this difference in billing, some law firms perceive women as less hard working than men and therefore less committed. As I have discussed in Chapters 3, 4 and 6, this can have profound implications on women's career progression and their pay, as hours remain law firm's main measure of commitment to work. Of equal importance is the question raised in Chapters 2 and 5; how women's behavior is so often benchmarked to men's, whose own comportment remains invisible. The responses above demonstrate this point with respect to

¹⁰ Interview 5

¹¹ Interview 2

confidence. Rather than value women's cautious and conservative approach to advising clients in a world where professional negligence claims are on the rise, and use this as a measure of success, women are seen to fall short whilst risk taking and superficial knowledge of the law are rewarded with professional progress.

2. Self-belief in career prospects

A number of female associates, but also a significant proportion of the female partners and some male partners noted that generally men come to the table in the early years of their careers with a greater self belief than women regarding their chances of being promoted to partnership. Interviewees noted, for example, that men seemed more aware of the requirements they needed to meet for partnership. Whereas certain female associates interviewed said they were unsure of the partnership process and what it entailed or what they had to do to express interest in it. One female partner put it this way:

Right from the start, I see there's a self-belief element with a lot of female associates. For many of them, it genuinely hasn't occurred to them that they might be considered potential partnership material whereas our male associates tend to come to it very much from a junior position. You often find with women, if you sort of float it to them...they've kind of disqualified themselves because they think: "I won't survive" or think: "I wouldn't necessarily be good enough for that" or "That's a long way off." Part of it is encouraging women that might want to be partner to think why they shouldn't get there as opposed to the guy sitting in the office next door to them.¹²

One female partner also noted:

There's a study that was done about just senior associates, women senior associates, and men senior associates and how aware each of them were about the partnership process in their respective firms and men were much more in the know about what was happening. Even the junior male associates were aware whereas women were slower to enquire, a bit more reticent to enquire.¹³

A senior associate (who asked to be interviewed a second time after having left the law firm she worked at when I first interviewed her) confirmed this with respect to her own experience:

[When we first met] you asked me what the career progression was at my law firm and I suddenly thought: "I've got no idea! That's really weird."¹⁴

She now was pleased to say that advancement at her new place of employment

¹² Interview 20

¹³ Interview 19

¹⁴ Interview 26

was a very transparent process.

An example of how men seem to approach career progression differently was also highlighted by a senior female associate who had recently left her magic circle firm to work in a large financial institution. She compared the way she had approached her career whilst at the firm versus a male colleague (who had eventually made it to partnership):

He just approached it in a completely different way, almost through the whole process. Also I think his confidence in what he thought of his work and in his ability to become a partner was almost completely opposite to my thoughts about what I was doing and whether it was possible for me. I don't know whether that has a lot to do with the fact that he was also looking ultimately at a partnership within a group that was almost all male, apart from one female. He never needed to think anything about his gender. That was just not a factor.¹⁵

Interestingly, one senior associate noted that when women lacked self-belief, they are written off as potential partner material. But she recounted that when a male associate sitting with her was thought to suffer from lack of belief in his prospects, it was something she was assigned to help him with.

I have had this guy put in with me. I know why he has been put in with me, because he has confidence issues. It is so interesting on so many levels because, admittedly, I have been realizing this myself as I have been progressing that the default position between men and women tends to be that men think they are better than they actually are and women tend to think they are worse than they actually are. So that being the default position it is (a) really strange for me to be sharing an office with a guy who I would consider quite insecure even by female standards and (b) this is also slightly infuriating, the partners realize he is slightly insecure so they have done the right thing and tried to look for a solution for him. They haven't shut him down because insecurity is not allowed in a place like ours, they have tried to find a solution for him.

There is an equivalent female story in my group, of a partner who had treated this girl who had confidence issues so badly that she had a full on panic attack for which she had to seek medical help. The girl has now been talked to and she has been told that she may wish to consider if my organization is the kind of place she wants to carry on working at in the long term. I don't think they are pushing her out because she is technically very good but I think they have started thinking that as good as she is technically, she is too much trouble.¹⁶

The above data is another example of how gender discrimination occurs based on normative ideas of how individual men and women behave or should behave.

¹⁵ Interview 21

¹⁶ Interview 13

In the case of self-belief, gendered working practices described above did not take on board how believing in one's ability to progress may be an easier goal for a man to achieve when surrounded by other 'successful' men who display not only similar physical attributes but also shared interests and approaches to work.¹⁷ It follows that the perception that women tend not to have as much self-belief as men is also gendered. This is made all the clearer by the reaction to a man thought to have little self-belief, as set out in the above anecdote.

C. The agency of men, male resistance and non-reflexive men

In addition to critiques as to the essentialist nature of masculinity and femininity categories, some feel that the use of 'masculinity' risks leaving little agency to men who can quickly disassociate 'masculinity' from what they actually do and treat it as "[...] some kind of thing in itself."¹⁸ Jeff Hearn, for example, warns us that this can result in men's attention being diverted from their practices, or in men struggling with the meaning of 'masculinity' rather than asking themselves the crucial question of whether they should modify their behaviour.¹⁹ Stephen Whitehead also criticizes the model of masculinity on a similar basis. He warns that the individual can quickly be lost in the concept of masculinity "[...] because it leads to the prioritisation of an 'ideological apparatus' over men's concrete 'identity work'."²⁰ Whitehead contends that the term offers little understanding of resistance, male diversity nor ways in which men who are marginalised can become powerful.²¹

Collier adds that the concept of masculinity (including hegemonic masculinity) conjures insufficient texture to account for the complexity of the male identity.²² He holds that an overarching social structure or gender norm cannot entirely account for what men do. Collier advances that we need to take on board a more complex notion of the gendered male subject and within it the interconnected, interrelated and interdependent lives of women, children and men.²³ Similar to Hearn and Whitehead, Collier highlights a disconnect between the rhetoric

¹⁷ This brings to light the importance of achieving a critical mass of women from all intersectionalities in the higher echelons of law firms in order for them directly and indirectly to act as role models to other women.

¹⁸ R.W. Connell, 'Masculinities, power and alliance politics' in Fidelma Ashe (ed.) *The New Politics of Power* (Routledge 2007), 154. In this article Connell summarises a number of CSMM scholars' views on the term masculinity and what it means.

¹⁹ Jeff, Hearn 'A multi-faceted power analysis of men's violence to known women: From hegemonic masculinity to the hegemony of men' (2012) 60 *The Sociological Review* 589
²⁰ Ibid.

²¹ Stephen Whitehead, 'Masculinities in management: Hidden, invisible and persistent' in Savita Kumra Ruth Simpson and Ronald Burke (eds.) *Oxford Handbook of Gender in Organisations*, 443. This point is also addressed by Patricia Lewis note 2, where she explains why certain women don't resist patriarchy when they reach positions of power.

²² Richard Collier, 'Masculinities, law, and personal life: Towards a new framework for understanding men, law and gender' (2010) 33 *Harvard Journal of Law and Gender*, 431.

²³ Ibid.

around masculinity and how men actually behave.²⁴ He argues that if it is masculinity, existing prior to its production through social agency, that appears to be 'the problem', the question of how gendered norms, identities and so forth are structurally reproduced through particular social practices easily fades from view.²⁵

Claire Duncanson argues that adopting a more subtle understanding of how men behave and the impact those actions can have on gender relations allows us to theorize the potential for change.²⁶ It can also encourage men to be more reflexive about their own behavior. This in turn can promote gender fluidity and provide boys and men with wider options when deciding how to be a man.

Certainly, individual men actions must not be lost in essentialist ideology around masculinity. Men as individuals ought to be taught and encouraged to reflect upon their behavior and practices and to own what they do, not only with respect to how these actions and attitudes affect women but also how they impact other men (and children) across all intersectionalities.

Men's agency opens up the discussion in gender and inequality not only to what individual men do but also what they don't do. When asked why he thought women did not progress as quickly as men in his firm, this partner responded as follows:

The reality is that there are a lot of women who drop out not because of children, not because they're getting married, not because of any reason actually to do with 'biology' in inverted commas. It's to do with how they see the future and what it holds for them. They don't want to operate in an increasingly competitive environment or an increasingly sharp elbowed environment or an environment where they are going to be put in a position where they have to maybe change their behavior or their personality. They'd rather step aside than confront that.²⁷

²⁴ Collier advocates the need for a dialogue on men's everyday invisibility from family practices and a focus on the broader family practices of men. He encourages greater research into men's invisibility from the perspective of an everyday routine and the day to day care of children and what that tells us about politics, society and value of ethics of care and caring within contemporary advanced capitalist society. Richard Collier, 'A hard time to be a father? Reassessing the relationship between law, policy and family (practices)' (2001) 28(4) *Journal of Law and Society* 520. In later work, Collier extends this idea, referring to Carol Smart's book *Personal Life: New directions in sociological thinking*, to the everyday complexities of family life and what individuals 'do' and 'feel', which he holds is a focus on the reality and not the rhetoric, avoiding the diversion of focusing on policy and the social problem rather than the content and consequences of men's actions where the experiences of the individual "[...] become lost and what is privileged is an 'ideological apparatus' of masculinity. Richard Collier, note 6. See also Richard Collier, 'Researching men, masculinities and law: On sources, methods and the 'man question' (2015) 15(1) *Legal Information Management* 19.

²⁵ Connell and Messerschmitt respond to this in a later article conceding that indeed a positive form of hegemony must be developed which is less oppressive. R.W. Connell and J. W. Messerschmidt, 'Hegemonic masculinity: Rethinking the concept' (2005) 19(6) *Gender & Society* 829.

²⁶ C. Duncanson note 54.

²⁷ Interview 29

This comment is representative of a number of other responses I collected throughout the course of my interview process, where men generally showed no ownership and seemed to feel no responsibility regarding women's marginalization in City law firms. Although men generally expressed sympathy for women with regards to gender equality, this is as far as they went. Not only, as I posit in previous chapters, do these men see gender disparity in the partnership of their respective firms as a women's problem to be resolved by individual women (on a case by case basis) but they gave the impression the issue was completely unrelated to what they, as men, do or beyond the realm of what they could do. Returning to the comment above, the partner did not question the environment he describes, but rather he sympathized as to why women would not want to be a part of it.

Scholars hold that the distance men can put between themselves and gender inequality is borne of both resistance and lack of self-awareness or blocked reflexivity. Men's resistance comes in many forms and I have touched upon key examples in this study; maintenance of power, patriarchal practices, complicity in current arrangements and preference for men's company, not to mention outright sexism. The reasoning behind men's resistance is rooted in them benefiting from a system of privilege and exclusions, where equal rights for men and women are still too often thought of as a zero sum game and where insufficient emphasis is put on how individual men can gain from gender equality.²⁸

Richard Collier posits that within the context of a hyper competitive legal market and the polarization of the legal workforce, a process of gendered segmentation may be happening "where men's resistance to change as a defence mechanism of an embattled profession leads to continued male domination." Collier suggests that through this resistance, male lawyers tend to succeed in maintaining their positions of power within law firms "while still formally aligning with gender neutral, progressive equality policies".²⁹

Adjusting the conversation on gender to include masculinities and men's actions and behavior is often thought to equate to negative discourse. In popular culture, this can be referred to as 'male bashing', especially when it is women drawing attention to men's behaviour. This is likely an instinctive reaction based on resistance to sharing power and borne of trepidation of change. After all, inclusiveness from a position of power usually means giving something up. But what it fails to recognize, and what many scholars are increasingly pointing to, is that many men feel constrained by normative concepts of masculinity and the codes of conduct it demands of them as individuals. Many wish and would benefit from opening the debate on masculinity with the objective of gaining

²⁸ Whitehead note 15, 449.

²⁹ R. Collier, 'Rethinking men and masculinities in the contemporary legal profession: The example of fatherhood, transnational business masculinities and work-life balance in large law firms' (2013) 13 Nevada Law Journal 410, 428.

societal acceptance of greater gender fluidity. This would go along way in men and women working together to shift existing gendered power structures.

Yet perhaps even more important than male resistance is men's inability to recognize their own practices of gender identity as being a contributing factor to gender inequality. Men may verbally support gender equality and express a strong desire for it but be unable to make the leap to become more self aware and reflexive as to how their own masculine identity remains founded on gendered assumptions and practices which have long sustained women's marginalization.³⁰

Men, as individual agents need to engage with what Hearn describes as 'transformational leadership.'³¹ By changing the quantity of men leaders and the quality of men's leadership Hearn maintains that resistances and blocked reflexivity can be more adequately challenged. This of course is a tall order. Some scholars maintain that this type of change can only be achieved by replacing older forms of masculinities by new ones.³² But others believe change can come from men's leadership which could, for example, engage with programmes that actively aim to include men in the conversation on gender parity in order to make them understand that everyone benefits from gender equality.³³ A European study shows that although such initiatives do exist, such as the Navigator Development Programme in the UK³⁴ which helps men identify clear steps they want to take towards gender equality, they are far from widespread.³⁵ Whether this translates into a generational question is something I now turn to by asking if Millennials may be this beacon of change and progress, so needed.

E. Millennial men

Some scholars believe hope for gender parity lies with future generations. For Richard Collier, the binary optic where men and fathers easily (if not happily) shun their family responsibilities in favour of work commitments (whilst women embrace them) may be coming increasingly unaligned with what many men,

³⁰ Whitehead note 15, 450.

³¹ Jeff Hearn, 'Contextualizing men, masculinities, leadership, and management' in Savita Kumra Ruth Simpson and Ronald Burke (eds.) *Oxford Handbook of Gender in Organisations* 417, 431

³² Connell and Messerschmidt also address this point in responding to Collier's critique that hegemonic masculinity should be imagined as taking on a positive form as well as a negative one, see Connell and Messerschmidt, note 18.

³³ Studies show that, aside from gender discriminatory attitudes, some men do not engage with gender equality because they feel it is somehow 'not their place' to do so, see Elad Shurf et al., 'It is not my place! Psychological standing and men's voice and participation in gender parity programmes' (2017) 28(2) *Organizational Science*.

³⁴ <https://www.springboardconsultancy.com/product/navigator/>

³⁵ European Institute for Gender Equality, *The Involvement of men in gender equality initiatives in the European Union*, 2012.

especially fathers, at least aspire to. In a study of male lawyers, Collier found that some men are conflicted, at different times in their lives and their children's lives, between their professional identity formation- still tied to long hours - and the new discourse around the idea of a present and engaged father.³⁶ However, Collier also found that in order to reconcile the two, male lawyers can use their work to help define "[...] a distinctive gender identity as a kind of 'family man' and good lawyer." He further writes that "[...] crucially, any recognition of these tensions between work and home for fathers did not necessarily result in a sense of personal dissatisfaction with such a model of working".³⁷ This 'package deal' as Collier refers to it, shows that although men may have become more self reflexive about their role within the family, it nonetheless allows many to continue pursuing careers and ambitions under the guise of the traditional 'good provider' ideal and reinforcing existing gender norms.³⁸

A number of recent studies show Millennial men participate more in domestic labour and the management of it than Gen Xers did.³⁹ Another study found that almost as many Millennial working fathers as working mothers say they'd like to stay home with the children but have to work because they need the income.⁴⁰ But does this apparent Millennial quality and change in attitude toward domesticity and caring translate into the workplace? Do Millennial City lawyers, for instance, display signs of adopting a different set of values and behaviors than their predecessors? Do they show greater self-awareness and reflexivity, which might give way to greater gender equality in the near future? This study did not consist of sufficient Millennial lawyers to come to any definitive conclusions but respondents perceptions regarding this generational cohort provide some answers.

The first question is whether interviewees from my cohort bought into the idea of Millennials as something distinct from older lawyers? Of those interviewed a few were skeptical. One male senior associate thought the 'buzz' around this new generation of lawyers and their behaviour was 'self fulfilling'. Even if they held different attitudes, he wondered whether Millennials were likely to change the way City law firms operate:

I think as soon as there is a buzz around Millennials, they will behave that way because they know all of a sudden there is a cultural perception that they exist. There is still going to be someone who leaves university and comes into a law firm at 22 and their only goal in life will be to get their head down and work hard to achieve as much as possible. I don't think it

³⁶ Richard Collier, 'Fatherhood, gender and the making of professional identity in large law firms: Bringing men into the frame' (2018) *International Journal of Law in Context* 1, 11, Richard Collier, 'Rethinking men and masculinities in the contemporary legal profession: The example of fatherhood, transnational business masculinities and work-life balance in large law firms' (2013) 13 *Nevada Law Journal* 410, 430.

³⁷ *Ibid*, 12.

³⁸ *Ibid*, 14.

³⁹ Judith Shulevitz, 'Mom: the designated worrier' *The New York Times*, (New York, 8 May 2015).

⁴⁰ The Modern Families Index 2017, https://www.workingfamilies.org.uk/wp-content/uploads/2017/01/Modern-Families-Index_Full-Report.pdf

just changes from one generation to the next. My organization talks a lot about them but I think it's dangerous to think everyone coming through the door is like that.⁴¹

Others were also skeptical about distinct behavior being attributed to the new generation; one male partner believed firms had an interest in the idea that Millennials did not buy into partnership as a prize worth having:

Maybe it suits firms to have a pool of hard working young associates who they've tagged, based simply on their age, as not being interested in partnership because they want to move on to 'other things'. We know how the law firm pyramid model works; there has to be natural wastage, not everybody can make it to the top. And so coincidentally, in this very competitive environment, we have law firms pedaling these guys as not wanting to be partner...⁴²

But many did believe Millennials behaved differently especially with regards to valuing the quality of their personal lives above their professional life. Certain respondents felt this equated to Millennials being less interested in the prospects of partnership and therefore being less willing to work long hours. One male partner commented on the existence of the phenomenon disputed above and said:

It's a very old fashioned idea amongst young people now that you will be in one place all your life. We are now dealing with graduates who expect probably to do several different things during their careers.⁴³

A female senior associate thought Millennials were perhaps more in tune with what they wanted from life than previous generations:

Many of the more junior associates have left the firm, they're committed authors, you know, chefs, things like that. They very quickly pegged that this City wasn't for them.⁴⁴

Another male partner concurred:

I think their mindset is very different to our mindset. I think that they have so many more options open to them now than we did.⁴⁵

One male partner of a magic circle firm added:

There is a generation question as well. I've certainly seen that with the younger guys coming in today, I think their view on long term

⁴¹ Interview 15

⁴² Interview 1

⁴³ Interview 3

⁴⁴ Interview 2

⁴⁵ Interview 23

possibilities in law is probably very different to when you and I were associates at that level. I think you and I probably took a view that: "If I'm not close to being partner at some stage in my career, I'm leaving." I think the view today of people is not even leaving for that reason but leaving because the lifestyle question is more important than the end game. I've seen it. The guys who are in their mid twenties and thirties, you can see their choice of what to do next is not driven by a decision to become a partner, it is do they enjoy what they are doing.⁴⁶

He continued to explain that one male associate who he thought was a good lawyer and seemed to be progressing in the right direction decided to leave to spend more time with his family:

[...] But he didn't even have a family! He made a projection that: "If I stay here, I'll never have a family because I'll never meet somebody because I don't have time and if I do I'll never have kids." [...] I think he ended up joining another law firm but a more mid level sized firm with probably more flexible hours.⁴⁷

One female senior associate would have admired the associate referred to above as she commended what she saw as Millennial equanimity towards partnership and career progression generally:

At a place like this, if you don't want to be a partner you're a loser, there is something wrong with you. I think it takes quite a lot of strength of character to say you don't want this.⁴⁸

One female associate also noted a change in Millennials and their level of involvement at home:

I think there has been a shift in male attitude toward child care because I have lots of friends whose partners are very keen on sharing maternity, taking longer unpaid leave and also having working arrangements where they have a four day week and have the day off and so does the partner so they only need three days of child care. The new generation are assessing things from a quality of life perspective in terms of what they're doing and whether it's worth them being there to do it. I think they are more intolerant of long hours and especially when they feel they are there for reasons that are not important. I think they have more of a sense of entitlement than we ever did.⁴⁹

One senior male partner noted:

⁴⁶ Interview 9

⁴⁷ Interview 9

⁴⁸ Interview 13

⁴⁹ Interview 21

I think Millennials are forcing it through on their own terms, coming through and saying: 'If that's the choice you're going to give me, you made it, fine. You can cry over the 18 years of missed time [with] your son or daughter. I'm not going to do that. I can do it on my terms" or... it's my way or the highway.⁵⁰

Other believed them to behave differently, in that they shunned long hours. One female partner valued some aspects of their attitude to work, but she also believed 'they could not have everything':

I think definitely [Millennials] are a phenomenon. There's a lot about them I admire. I think it is good that people are more self aware and a bit more critical of what's being offered to them. It can only be a positive thing. I think that there is a less attractive side of that mentality though which I also see and I don't like. There's a huge sense of entitlement. They want all the benefit: "I want a hundred and fifty thousand pounds and I want a gym in my office [...] but I don't want to have to work on weekends and I don't want to do that and I shouldn't have to do that." There is a reason why there are so many benefits for these roles. You can't decouple them.

One female consultant in a very busy practice area was also opposed to what she believed was a sense of entitled behavior with respect to working long hours:

I think once we have that kind of attitude they don't tend to come back to the department. We don't want them and they don't want us, because long hours are an inescapable part of banking. They can go to tax or litigation or employment.⁵¹

More research is needed to better understand if and the extent to which Millennial City lawyers hold notably different attitudes towards gender equality and whether they believe in their agency as men to change things. My data suggests that there is a notable belief amongst lawyers that Millennials hold different attitudes towards their professional advancement and that unlike previous Baby Boomers and Generation X generations in some ways, they are less interested in acceding to partnership. However, this data is unclear as to whether this holds true of both Millennial men and women. My data also does not allude to a perception that this behavior translates into lesser resistance on the part of Millennial men towards gender equality or greater reflexivity with respect to the importance of individual men's participation in attaining this equality.

⁵⁰ Interview 29

⁵¹ Interview 18

F. Conclusion

The empirical evidence I have presented in this chapter, in order to answer the last of my research sub questions, suggests that the narrative on gender fluidity and the blurring of lines around gender stereotypes is not being led by City lawyers nor even truly adopted by them. This is partly because, at the outset, respondents still seem to hold beliefs that men and women behave differently at work. My data shows that there is still a strong belief that gender inequality is to do with a binary roles – that individual men and women lawyers behave differently, at least with respect to confidence at work and self-belief in advancement– where men are viewed as generally confident at work and assured about their career prospects and women are not. Gender fluidity is also still a distant objective because of the resistance men continue to engage in, be it consciously or unconsciously, and the lack or little reflexivity they seem prepared to practice with respect to their potential contribution to gender inequality.

Millennial men were perceived to be different but arguably not in a way that can necessarily help women lawyers progress. At best, it can be conceived that these younger men’s attitudes could assist women indirectly. Because they seem to openly value personal life over professional life, (much more, apparently, than previous generations), they may be giving renewed credence to the importance of home life – arguably something the City hasn’t seen since the 1980s despite women’s best efforts. Certainly, Millennials seem to have convinced the private legal community that they are not that bothered about partnership and therefore happy to move on if the personal life they prize becomes overly compromised by work. This seems to have got law firm management thinking:

So we used to talk about this in terms of family, when they used to make it a moms’ issue, and it used to be the moms we’d see leaving. Generation Y men and women, they just have a very different attitude to life when they come into they workplace. They want more from life from day one. They don’t see why they can’t have amazing careers and balance it with other things in life. At a certain point it is family, but earlier than that and for some people it’s about other interests. So interestingly, what we’re seeing now is Generation Y men saying: “This is not what I want from life.” So it used to be the women we were losing. I think now we’re going to start losing, well we are losing, the Generation Y men.⁵²

Women hitching their cart to a new generation of men (and women) who value work-life balance in order to reach gender equality is perhaps not the outcome feminists might have hoped for. And in this regard, perhaps Millennials may prove to be a disappointment to those who’d pinned them as advocates of social justice and parity in all aspects of life. But when compared to men from previous

⁵² Interview 29

generations, many of whom still believe the answer to gender equality is patience, it's perhaps better than nothing. It certainly better than this:

Surely change will come, because once upon a time women weren't allowed to vote and who thinks women shouldn't vote now? I know that's glum but I do think over time...⁵³

⁵³ Interview 15

CHAPTER 8

Conclusion

This empirical study has aimed to shed light on why men continue to dominate large City law firms' higher ranks, despite these firms' efforts to champion women lawyers' career progression. Focusing on what leads to men's over representation in positions of power, rather than on women's under representation, provides a new optic onto why gender inequality persists within large City law firm. The cycle of patriarchy, the conceptual model presented in this study, assists in this regard by unpacking how masculine dominance is sustained and perpetuated in western society. This cycle of exclusion, which remains to this day largely unbroken, shows us how male power and privilege lead to greater opportunity for men to realize their full potential, including their professional potential.

I have advanced the argument that City firms are based on this patriarchal model inasmuch as they follow a masculine template founded on the currency of time and the related culture of long hours. This centrality of time as a key measurement of employee value and management tool is at the root of masculine advantage and hence male over representation in large City firms.

Findings

First I find that time spent at work remains City firms' primary measure of success, not least because their profits are almost exclusively generated by the hours lawyers work. City law firms' evolution has led to the commercial professionalization of law in the City of London and today's large City private legal practices form part of a global business community. This development has had a significant impact on lawyers' identity as well as law firm structures and working practices and together they have led and they maintain the billable hour's status as City law firms' holy grail.

Second, I argue that diversity programmes are often based on reduced time at work, encouraging users to do less of what firms value most. Rather than identifying time targets imposed on lawyers as the cause of gender inequality within the profession, I find that firms have pointed to women's inability to meet them as the key problem. In order to address this, effort has gone into accommodating women (and some men) with caring responsibilities largely through flexible and part-time working programmes. However, there exists a striking paradox between these diversity initiatives' primary focus on relieving women from excessive time pressures and City firms demand for full temporal availability from their employees. The result is that, in a hyper competitive neo-liberal legal market where time is the most prized commodity, diversity

initiatives undermine women's capacity to compete, thus diminishing their value as lawyers and their career prospects.

Third, I posit that despite their shortcomings in terms of career limitation, women lawyers remain the main consumers of diversity initiatives due to the persistence of a domestic gendered division of labour. Housework, caring and emotional work and the mental load associated with this work, are still predominantly performed by women. This is despite scholars largely agreeing that domestic and caring tasks are not innate to women. On the whole, this type of labour also continues to be invisible and undervalued, particularly in relation to the work of men. This lack of recognition by society leads many women to experience a number of workplace inequalities, namely because women have less time for the workplace than their male colleagues.

Fourth, I maintain that as gendered organisations, City firms operate on the basis of male open availability. White middle class men continue to dominate a majority of pinnacle positions in most firms due to a conscious or unconscious bias to hire and promote in their image, that of the unencumbered or less encumbered lawyer. The mutually reinforcing elements of this masculinist environment and resulting male dominant working practices, such as firms' promotion process and business development initiatives, contribute to gender inequality within City private practices.

Finally, I find that the narrative on gender fluidity and the blurring of lines around gender stereotypes is largely absent within City firms. Certainly, it is not being led by a younger generation of City lawyers nor even truly adopted by them. My data shows that there is still a strong belief that individual men and women lawyers behave differently, at least with respect to confidence at work and self-belief in advancement – where men are viewed as generally more confident at work and assured about their career prospects than women. This perception of binary behavior is the cornerstone to many men and women's views as to why gender disparity persists within the legal workplace.

Discussion

If gender equality is ever to become a reality within the legal industry, large City private practices must move away from the facile work-family narrative, currently foundational to many of their diversity initiatives, but which essentialises gender disparity. Instead, they must turn to the more deep-rooted cultural and structural issues around the notion of time. Rather than pinning the problem of gender inequality on women not being able to meet long hours demands, City firms must acknowledge that this inequality is rooted in men's greater ability to adhere to these socio temporal norms than many of their female counterparts on whom child bearing, rearing and caring responsibilities still largely fall.

Decisions about working time are in many ways decisions about the values law firms chose to promote. In that regard, time is part of the problem and also part of the solution. The link between time and valuable work is not innate or

inevitable and structural norms can be de-gendered. To do this, firms need to put the onus on themselves as employers, rather than on the individual employee, and question how they perceive and reward working time and how the link they have made for decades between time and the normative concept of the 'ideal worker' can be broken. This change could take the form of a new organisational culture for firms, where for example, partners sacrifice short-term income in favour of investing in programmes that focus on long-term benefits for employees and promote diversity. It could also represent an opportunity for firms to abolish the billable hour, finally eschewing the tie made between the value of a lawyer and time spent at work by endorsing pluralism of working arrangements, allowing firms to focus on more meaningful measures of success such as output and client satisfaction. These changes would need to be legitimized by management through reward such as responsibility and career advancement.

To do this, City legal employers must also invariably begin the uncomfortable work of addressing unchallenged assumptions about gender roles and the traditional division of labour and how these have a profound impact on men and women lawyers who work for them. They must revisit the prevalence of full-time positions within their organisations as the dominant form of employment and work to change attitudes towards non-linear careers. This would go a long way towards enabling people to balance their employment and family commitments. If taken up by men on an equal footing, it would also arguably address issues around stigma and career progression. This will require them to examine their external structures, for example how they bill clients for lawyers' work, as well as their internal structures related to promotion and career advancement.

Shifting norms is a gargantuan task and although it is clear that these legal employers cannot alter a whole gender culture, arguably they have sufficient influence and resources to effect significant change, at the very least for the men and women lawyers who work for them. As the biggest employers of solicitors in England and Wales, large City firms also have a responsibility to do so.

For years now, City firms have been vocal about the 'significant investment' they are making and the effort they put into their gender initiatives. However, in addition to being circumspect about the outcome of these programmes, they are also guarded about the actual financial investment these represent. Given the size and turnover of City law firms, and the extent to which profitability remains a primary objective, it would be interesting to reflect on what a 'significant investment' in economic cost might actually look like. It might involve, for example, investing large sums to meaningfully pilot part-time partnerships and other non-linear career paths, perhaps incentivizing senior members to enlist in order to break down stigma. It might also take the form of a willingness to risk losing considerable revenue by developing policies and practices that put employee interests above client interests.

Because of the limited success of existing initiatives and firms' closed-lipped approach to their actual cost and success, it is easy to take a skeptical view that firms are still engaging in rhetoric rather than action. One could be forgiven, for

example, for thinking at worst that these efforts are simply a response to the changing economic needs of firms or at best that they are made to fit in or tucked around firms' main agenda of increasing profits. Is the relatively new full flexibility as to where and when lawyers work, for example, introduced to ensure lawyers' 24/7 availability, whether at home or at work? Similarly, are consultancy arrangements first and foremost a means to smooth out the peaks and troughs of workflow for firms so that they don't have to keep people on the books during the quiet times? Is it a super-efficient arrangement which presumably has the added bonus of allowing employers to opt out of pension arrangements, sick pay, maternity and paternity leave, etc.?

Perhaps firms can point to the significant economic cost of these initiatives. If so, and within the context of a narrative that conveys a strong desire to convince that gender parity is a top priority, City law firms should be significantly more transparent about the stakes they have invested in the gender equality game. This would at the very least allow for much needed further research into the value of existing diversity programmes and the potential new forms of work, such as consultancies, represent in leveling the playing field.

For now though, the convergence of persistent male power and cultural gendered division of labour, as well as what seem to be immutable firm structures which translate into excessive time demands, all go to producing an ever growing alienating environment for many women whilst remaining welcoming to most men. A bittersweet possibility for feminists is that Millennial men, who seem to attribute greater value to quality of life, including time spent with family, than previous generations of men, will change things for women. Another ironic scenario is that gender parity may be imposed on the legal industry, as well as others, by governments not because of equality but because women's increased participation in the workforce is one of the last policy levers available to increase national productivity rates in an era of aging populations.

What is clear is that, for all the effort and investment City firms say has gone into gender diversity for at least a decade, they have not been prepared to secure it simply because it is the right thing to do in terms of social justice. So it may well be that if masculine over representation is ever to be put to an end within large City law firms, it will be because firms' hands have forced to do so.

Appendix 1

INTERVIEW QUESTIONS FOR LAWYERS

I. CAREER PROGRESSION

(1) How does career progression for solicitors work within your organization?

Possible probes:

- Do you feel accession to partnership has changed in the last 10 years or so?
- Do you see career progression within your firm (or more generally) playing out differently for men and women?

(2) What characteristics do you think your firm looks for when considering someone for partnership?

Possible probes:

- Do you think these characteristics are in line with your firm's culture and values?
- In your mind, and from your experience, how much of the notion of 'commitment to the firm' is involved in becoming a partner?

(3) In 2016, women made up more than 50% of newly qualified lawyers and most City firms' intakes have a balanced male to female ratio from year to year. But when you look at the partners of most City law firms, women make up only 15 to 20%. What do you think is behind this?

Possible probes:

- Do you think those figures can change in the next 5 to 10 years? If so, do you have any ideas as to how?

(4) What do you see as the main reasons behind people leaving City firms?

Possible probes:

- In what way does your organization nurture/support its employees to encourage them to stay?
- What is it that makes a career in your firm/city law firms attractive to some people but less so to others?

II. WORKING CONDITIONS

(5) We hear a lot about the working hours for City lawyers. What are your thoughts on the hours' lawyers work in City firms?

Possible probes:

- How does this aspect of working life play out in your organization?
- Are there gender implications to the hours asked from lawyers?

(6) Flexible/agile working or part-time work is one way some lawyers balance work-life issues. What are your thoughts on alternative working schedules and people who use them?

Possible probes:

-Do you think there are gender implications to agile or part-time work?

III. WORKING EXPERIENCES

(7) What are your thoughts on mentoring? Do you think it is a useful tool with respect to career progression?

(8) Many City law firms encourage business development and networking. In your mind, are there gender implications to the practice of these?

(9) We hear a lot about work-life balance and lawyers. To what extent would you say your job is compatible with the rest of your life today? What factors have helped hindered in making it compatible or incompatible?

MASCULINITY

(10) A number of articles have been written about how leadership qualities within large organisations are valued to the extent they are, consciously or unconsciously, thought to be masculine. These include assertiveness, strategic thinking and individualistic working practices. What are your thoughts on that?

Possible probes:

-Some also say that when women adopt assertive and overt directive behavior, they are seen to be 'bossy' or 'aggressive'. Any views?

(11) IS THERE ANYTHING ELSE I SHOULD HAVE ASKED YOU ABOUT WOMEN AND MEN'S CAREER PROGRESSION IN LARGE FIRM?

INTERVIEW QUESTIONS FOR LAW FIRM MANAGEMENT

Career progression

- a. How would you explain the **continued disparity** between men and women's career progression in large City firms given how much attention and investment the issue is receiving from City law firms?
- b. What are the **greatest barriers** to improving numbers of female partners for an organization like your own?
- c. How has your firm addressed discrepancy in career advancement between men and women lawyers? What have been its greatest success stories and its greatest challenges?
- d. In your view, amongst the following, what are the most effective initiatives large City firms can take to further encourage gender diversity in the higher echelons of private practice?
 - Unconscious bias training
 - Mentorship
 - Networking
 - Agile working policies
 - Consultancy - Peerpoint
 - Returnship programmes
 - Targets/quotas (30% club)

Appendix 2

*C=caucasian

**M/C=married/children - S/NC= single/no children - M/NC= married/no children -DIV/C= divorced/children

Interview no	Gender	Ethnicity	PQE	Social status	Working arrangement
1	M	C	PARTNER	M/C**	FULL-TIME
2	F	C	SR ASSOCIATE	M/C	FULL-TIME
3	F	BAME	COUNSEL	M/C	FULL-TIME
4	F	BAME	PARTNER	M/C	FULL-TIME
5	F	C	SR ASSOCIATE	M/C	FULL-TIME
6	M	C	PARTNER	DIV/C	FULL-TIME
7	M	BAME	P/MANAGER	M/NC	FULL-TIME
8	F	C	SR ASSOCIATE	M/C	FULL-TIME
9	M	C	PARTNER	M/C	FULL-TIME
10	F	C	PARTNER	M/C	PART-TIME
11	F	BAME	JR ASSOCIATE	M/NC	FULL-TIME
12	M	C	PARTNER/ MANAGER	M/C	REDUCED CONTRIBUTION
13	F	C	SR ASSOCIATE	S/NC	FLEX
14	F	C	COUNSEL	M/C	PT (3 DAY/WK)
15	M	C	SR ASSOCIATE	M/C	FULL-TIME
16	F	C	COUNSEL	M/C	PT (3 DAY/WK)
17	M	C	PARTNER	M/C	FULL-TIME
18	F	C	CONSULTANT	M/C	FLEX
19	F	C	PARTNER	M/C	FULL-TIME
20	F	C	PARTNER	M/C	FULL-TIME
21	F	C	SR ASSOCIATE	S/NC	FULL-TIME
22	F	C	COUNSEL	M/C	FLEX
23	F	C	CONSULTANT/ MANAGER	M/C	FULL-TIME
24	M	C	P/MANAGER	M/C	FULL-TIME
25	M	C	PARTNER	M/C	FULL-TIME
26	F	C	JR ASSO	S/NC	FULL-TIME
27	M	C	PARTNER	M/C	FLEX
28	M	C	DIVERSITY COMMITTEE	UNKNOWN	FULL-TIME
29	F	C	DIVERSITY COMMITEE	UNKNOWN	FULL-TIME
30	M	C	PARTNER	M/C	FULL-TIME

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