



City Research Online

City, University of London Institutional Repository

Citation: Empson, L. (2007). Your partnership - Surviving and thriving in a changing world: the special nature of partnership. In: L. Empson (Ed.), *Managing the Modern Law Firm*. (pp. 10-36). Oxford, UK: Oxford University Press. ISBN 9780199296743

This is the draft version of the paper.

This version of the publication may differ from the final published version.

Permanent repository link: <http://openaccess.city.ac.uk/15429/>

Link to published version:

Copyright and reuse: City Research Online aims to make research outputs of City, University of London available to a wider audience. Copyright and Moral Rights remain with the author(s) and/or copyright holders. URLs from City Research Online may be freely distributed and linked to.

City Research Online:

<http://openaccess.city.ac.uk/>

publications@city.ac.uk

Published and to be cited as:

Empson, L. (2007) "Your partnership - Surviving and thriving in a changing world: the special nature of partnership" In *Managing the Modern Law Firm: New Challenges, New Perspectives*, Empson, L. (Ed), Oxford: Oxford University Press.

"The *special nature* of a partnership is that you've got a commitment and buy in that is so special. People over-achieve the whole time ... they feel that being a partner is very special and very empowering. So you have these amazing people who really feel they can sort of take on the world and feel part of a club, part of a very, very, very special club. And I think in a way that's really what partnership means to me ... it's quite a personal and emotional thing."

(Practice Head: Law Firm)

2.1 Introduction

All around us partnerships are dying. Whilst the partnership form of governance continues to thrive in the highly regulated and protected legal profession, its survival within other professional sectors is looking increasingly precarious. The legal profession is not immune to the pressures that other professions are experiencing, as Jack Gabarro argues in his Preface to this book, and lawyers would be foolish to take the ongoing health of the partnership form of governance for granted.

With an endangered species of animal the plan of action is clear. We study it in detail to understand what is threatening it. We analyse how the species sustains itself (i.e. its methods of feeding, protection and reproduction), explore alternative habitats in which it might thrive, and take steps to help it to adapt and survive. In this chapter I set out to do much the same for partnership, by presenting the results of a major UK government-funded research study into the governance of law, accounting, and consulting firms¹.

I begin by exploring the evidence for the decline of partnership and I identify the economic and sociological explanations for why partnership remains the optimal legal form of governance for professionals. I examine the threats to partnership which are challenging its ability to survive. I identify what exactly professionals mean by the term 'partnership' and go beyond the basic legal definition to define the ethos of partnership. I build a framework to explain how this ethos is created and sustained. I demonstrate how it is possible for valuable aspects of partnership to survive and thrive within alternative legal forms, specifically the publicly-quoted corporation. I conclude by reflecting upon what the managers of professional partnerships can do to help their partnerships evolve and enjoy healthy and productive futures.

2.2 Decline of partnership

Twenty years ago the partnership was the pre-eminent form of governance in most major professional sectors. Within the established professions, such as law and accounting, it was traditionally viewed as the only legitimate mode of organising. Firms within aspiring professions, such as consulting and investment banking, often chose to organise themselves as partnerships, thus assuming the mantle of professionalism that it conveyed.

In the 1980s everything began to change. The Big Bang in 1986 ultimately wiped out most of the stockbroking partnerships in the City of London (Augur 2000) and the flotation of Goldman Sachs in 1998 signalled the end of an era in investment banking. By the start of the twenty-first century, 32 of the 50 largest consulting firms were publicly quoted. Only eight remained partnerships, compared with double the number ten years previously (Greenwood, Li, and Deephouse 2003). Recently, accounting firms have sought to separate and incorporate their non-audit activities (the regulatory regime in many countries still requires auditors to remain partnerships). As a result, almost 50 of the top 100 accounting

firms are now organised as privately-held or publicly-quoted corporations (Greenwood and Empson 2003).

Insert Figure 1 here

Law firms have been slower to change than other professional service firms (see Figure 1). Although UK law firms have been permitted to incorporate since 1992², relatively few have exercised this option. By contrast many have converted to limited liability partnership (LLP) status after this became possible in 2001. Further change was signalled by the Clementi Review (2004) which recommended the lifting of restrictions on the ownership of law firms, making it possible for law firms to be acquired by publicly-quoted companies or to go public themselves.

In the USA, partnership remains the only legitimate mode of law firm governance within all major state jurisdictions, yet there is no reason to be complacent about the future of partnership in America. For example, in 2002, Judge Posner argued that the partners of Sidley Austin Brown & Wood could be deemed to be employees (rather than self-employed) and were, therefore, eligible for protection under employment law³. Whilst they had shared in the profits and had unlimited personal liability for the debts of the firm, Posner argued that they had been ‘at the mercy’ of a small, unelected and self-perpetuating executive committee which could ‘fire them, promote them, demote them, raise their pay, lower their pay, and so forth.’ These partners ‘were defenceless ... they had no voting power.’ In this context, the partnership remained as a legal form but did not exist in practice in any meaningful sense. Does this matter? Should we care? The answer is unambiguously, yes.

2.3 Why partnership works

As the quotations at the start of this chapter demonstrate, lawyers get emotional about partnership. Beyond the hot emotional rhetoric, however, there is a fairly cool piece of logic.

In the following analysis I draw together (in highly summarised and simplified form) more than 50 years of sociology and economics research into the professions and professional service firms to identify why exactly partnership works. Ultimately, partnership works for professional service firms because it is the optimal method of balancing the competing claims of three sets of stakeholders: professionals, owners, and clients (see Figure 2). Each of these stakeholders are discussed in turn below.

Insert Figure 2 here

2.3.1 Professionals

The sociology of the professions literature emphasises the extent to which professionals expect and enjoy high levels of personal autonomy within their working environment (Heydebrand 1973; Meiksins and Watson 1989) and the problems that can arise when this is denied them (Raelin 1985; Sorenson and Sorenson 1974). This emphasis on autonomy derives in part from the nature of professional work. In order to deliver a customised service of the appropriate quality, expert workers must be free to exercise their independent judgment. The desire for autonomy may go even further than this. Professionals seek opportunities to self-actualise (i.e. to pursue personal fulfilment) by taking on assignments which they find intellectually rewarding, or which satisfy their altruistic impulses. Maximising income is not necessarily a professional's primary objective.

A sociological perspective suggests that partnership is an effective governance mechanism for delivering the degree of autonomy required to motivate senior professionals. In a partnership, ownership is confined to an elite group of professionals within the firm. Typically, the partners retain the right to vote on key management decisions and to elect representatives from among their ranks to perform senior management roles on a fixed term basis (Dirsmith *et al.* 1997; Greenwood, Hinings and Brown 1990; Tolbert and Stern 1991).

Within this context, partners may have considerable scope to pursue their professional objectives (for example, to satisfy their professional pride by delivering a superior quality of service to clients). Consequently partners are not necessarily required to focus exclusively on commercial imperatives. Whilst this may satisfy their desire as professionals to self-actualise through their work, it may not satisfy their desire as owners to accumulate wealth.

2.3.2. Owners⁴

A property rights perspective emphasises that in a professional service firm it is not clear who owns the most critical assets, the fee earners or the 'shareholders'. The key income-generating assets are expertise, client relationships, and reputation. These may be proprietary to (or at least strongly associated with) individuals and may represent a potentially significant source of power and income for these professionals. There is a clear incentive for a professional to protect rather than share these assets, thus limiting the possibility of maximising the value of the firm. Property rights theory argues that, when the key income-generating assets are proprietary to individuals, they should share in the ownership of the firm and participate directly in decision-making. This implies a partnership form of governance (Hart and Moore 1990).

An agency theory perspective, which explores the costs associated with different governance structures, recognises that it can be difficult and costly to apply formal controls to the monitoring of non-routine activities such as the provision of professional services (Jensen and Meckling 1976). Professionals are offering a complex and intangible service; management are unlikely to be directly involved in, or have specialist insight into, the more technical aspects of their work. The partnership form of governance emphasises informal practices of mutual- and self-monitoring, which are backed up by unlimited personal liability. These will be more effective than formalised managerial controls at minimising 'free-riding

and shirking' (Fama and Jensen 1983; Leibowitz and Tollison 1980).

Overall, therefore, in a professional service firm, the interests of the owners are best served when they are aligned with the interests of the professionals. The partnership form of governance is designed to achieve this outcome. Both sets of stakeholders (i.e. owners and professionals) may still represent competing claims on the firm. However, by combining the roles in each partner, the partnership structure ensures that the conflict is ultimately reconciled at an individual *and* organisational level.

2.3.3 Clients

Just as managers of a professional service firm need to balance the competing claims of owners and professionals, so too must they balance the competing claims of owners and clients. Given the distinctive characteristics of professional work the client must be certain that he or she can trust the professional to focus on maximising quality of service rather than on maximising profits.

When clients approach a professional service firm they may not fully understand the nature of their problem and cannot sample the firm's services prior to purchase. This puts the professional in a position of considerable power relative to the client. The client's trust of the professional will be based upon a complex set of factors, such as personal relationship and organisational status or reputation (Alvesson 2001; Podolny 1993; Uzzi, Lancaster and Dunlap, in Chapter Five of this book) but the partnership form of governance has traditionally represented an important source of reassurance. Unlimited personal liability, combined with the emphasis on internal ownership, ensures that partners share their clients' financial interests in maintaining quality standards and are not expected to prioritise the interests of external shareholders over those of their clients (Shafer, Lowe and Fogarty 2002).

Partners may, of course, choose to prioritise their own interests over those of their clients, but the intensive inculcation of standards of professionalism through formal training and informal socialisation supposedly militates against such a tendency (Sharma 1997; Tolbert 1988). This embodies the ‘social trusteeship’ model of professionalism which Royston Greenwood describes in Chapter Nine of this book. The protracted system of promotion to partner is designed to ensure that an individual's professionalism can be trusted by clients and partners alike (Anderson-Gough, Grey and Robson 1998; Galanter and Palay 1991).

2.4 Pressures on partnership

In theory, at least, the partnership seems unambiguously to be the optimal form of governance for professional service firms. However, as discussed in detail by Greenwood and Empson (2003), a variety of forces are at work that threaten the professional partnership. These are present to varying degrees across a range of professional sectors and in part help to explain the variation in the extent to which different professions have moved away from the partnership form of governance.

2.4.1 Increasing size and complexity

The partnership form of governance has been a victim of its own success. As partnerships have expanded into multiple service lines and multiple countries, the traditional processes of collective decision-making and informal methods of mutual monitoring have proven impractical as large professional service firms adopt more ‘corporate’ methods of hierarchical and bureaucratic control. These trends of ‘creeping corporatism’ have been particularly marked in the largest accounting firms, which were among the first professional service firms with more than 1000 partners.

2.4.2 Increasing demand for capital

Partnerships find it difficult to raise substantial loans and investment capital. In the past this was not a particular problem as the capital needed to run a professional service firm was typically not significant, at least relative to those other forms of business where incorporation and outside ownership were common. But by the mid 1980s, investment banks were finding it increasingly difficult to meet the rapidly rising capital demands of their underwriting and trading activities. In the 1990s, the requirement to invest in sophisticated IT infrastructures and knowledge management systems increased the need for capital within global management consulting firms. In the past two decades, therefore, there has been a large-scale flight from partnership within the investment banking and consulting sectors. For law firms the demand for capital has been less significant so it has been easier for them to retain the partnership structure.

2.4.3 Increasing commodification

The development of sophisticated firm-wide information management systems has facilitated the trend towards commodification in certain professional service firms. This trend is not associated with any specific professional *sector* but reflects strategic choices made by specific professional *firms*. As the expertise of professionals becomes commodified and knowledge is no longer proprietary to individuals, there is less need to secure their cooperation by offering them a share of ownership and a say in the management of the firm. In this context, the limitations of partnership start to outweigh its benefits.

2.4.4 Increasing litigation

In certain professional sectors, where fault can be unambiguously established (e.g. accounting), the dramatic increase in litigation has prompted increasing numbers of

partnerships to convert to LLP status in order to avoid the crippling costs of partner indemnity insurance. Within the consulting sector in particular the changes in the legal form of governance reflect trends in litigation. For example, the clients of actuarial consultants are becoming increasingly litigious and there are no longer any partnerships among the top ten actuarial firms. By contrast, in the strategy consulting sector, where it is relatively difficult to demonstrate actionable negligence, the partnership is more common.

2.4.5 Changing social trends

The lure of partnership persuades junior professionals to make personal sacrifices for the prospect of future rewards in the ‘heaven’ of partnership (i.e. the principle of ‘deferred gratification’ embodied within a legal structure). However, current economic and social trends are challenging this orthodoxy. Those junior professionals who are motivated primarily by the need for money and status find that both can now be obtained more quickly by joining investment banks. Those junior professionals who seek a more balanced lifestyle turn away from the prospect of partnership as they observe the extraordinary pressures under which partners are now required to operate.

The partnership, therefore, appears to be the optimal form of governance for professional service firms but it is struggling to adapt and survive in the changing competitive environment. With this in mind, I wanted to understand better what exactly partnership was. It seemed unlikely that the lawyer quoted at the start of this chapter could feel so committed to – and get so emotional about – a legal construct. There was certainly nothing in their firm’s Partnership Agreement which seemed likely to inspire such passionate feelings. If there was an ethos of ‘partnership’ that existed beyond the legal definition, how exactly was it created and sustained? In answering this question, I could begin to understand how partnership might be encouraged to survive and thrive in an increasingly hostile environment.

Recognising the partnership ethos as distinct from partnership as the legal form opens up two possibilities. The first is that partnerships can continue to operate as a legal form long after the partnership ethos has ceased to exist in any meaningful sense. The second is that publicly-quoted corporations can embody the most meaningful and valuable aspects of the partnership ethos whilst avoiding the legal trappings of partnership.

2.5 The research study

Together with my Oxford colleague, Chris Chapman, I undertook a two year empirical study into the implications of changing forms of governance in professional service firms. We set out to explore forms of governance in three major professional sectors: law, accounting, and consulting. Over the two year period of data collection we conducted 215 interviews and recorded 350 hours of interview material. We also conducted a detailed analysis of the archives of the relevant professional associations in order to understand changing attitudes towards governance over the previous 20 years.

We studied four firms. One was a US-based consulting company that had gone public four years previously. The remaining three were partnerships: a leading UK-based accounting firm, a major European consulting firm, and a global law firm. All the partnerships had recently converted from unlimited liability to LLP status. They provided a rich context for data collection as the partners had gone through a period of careful reflection on the nature of partnership as part of their conversion to LLP. For reasons of confidentiality we are required to anonymise the identities of all four firms.

The partnerships varied considerably in terms of size (from 50 to over 500 partners), geographic spread (from one to 33 countries), methods of growth (from primarily organic to merger-driven), and partner remuneration (from pure lockstep⁵ to performance-related). It is perhaps surprising, therefore, that we found a remarkable degree of consistency across firms

in terms of how the partnership ethos was articulated and how it was created and sustained. In each firm the partnership ethos was strong and highly prized. This may in part reflect one factor which each firm had in common. Although all the firms had grown rapidly in recent years, each contained a significant and influential group of senior professionals who had joined at the start of their careers and had worked together for two or more decades.

In the research study I asked interviewees in the law, consulting, and accounting firms, ‘what does partnership mean to you?’ and, based on their answers, began to build a framework which identified the dynamics of partnership. As this chapter appears in a book about managing law firms, in the following analysis I draw primarily on my interviews with lawyers to illustrate the framework I developed. However, it is important to emphasise that the framework itself was derived from the much broader-ranging analysis across all three professions.

2.6 Dynamics of partnership

As a legal form, the partnership is highly geographically and institutionally specific. Typically, however, a partnership is distinguished from alternative legal forms by two key characteristics (beyond the basic fact that the firm does not have a legal identity independent from its partners). First, ownership is confined to an elite group of professionals within the firm. Second, partners share unlimited personal liability for the actions of their colleagues. It quickly became clear to me, however, that when professionals talked about what partnership meant to them, they were not referring to the legal form of partnership but to its ‘ethos’ (i.e. the ‘characteristics beliefs and behaviours of a community’: Oxford English Dictionary). It was this ethos of partnership that inspired strong sentiments.

The core tension encapsulated within the partnership ethos is represented by Figure 3a. The elements of partnership through which that ethos is created and sustained are

represented by Figure 3b. This Dynamics of Partnership framework is explained in more detail in the following sections.

Insert Figure 3a and 3b here

2.6.1 Partnership ethos

The two legal features of collective ownership and unlimited personal liability represent the foundations upon which the partnership ethos is constructed. As owners of the firm, partners have a clear imperative to maximise their individual autonomy. They are, after all, effectively shareholders and what is the point of a firm if it is not to serve the interests of its shareholders? This individualistic impulse is tempered by unlimited personal liability, which serves to bind all partners together by making them individually liable for the actions of their colleagues (though the partners I interviewed were keen to stress that becoming an LLP did not constitute a licence for individualism). Partners, therefore, have a clear financial imperative to operate collectively and to monitor and support each other, both at a personal and professional level.

This tension between individualism and collectivism is fundamental to understanding the dynamics of partnership. The legal form of partnership creates the tension – the ethos of partnership resolves that tension.

In some partnerships, the balance may be tipped strongly towards individualism – partners are free to pursue their personal priorities, whether it is income-maximisation or self-actualisation. In such an environment, partners can make their own lifestyle choices. Rather than argue that the partnership ethos is absent in such firms, it is more accurate to recognise that the partners in such firms have chosen to strike the balance between individualism and collectivism in such a way that favours the individual.

In other partnerships, the balance may be tipped strongly toward the interests of the collective (i.e. the firm). Senior management will have a clear mandate from the partners to manage the firm on their behalf for their common financial gain. In such firms, constraints on individual partner autonomy may be quite extensive, with clearly defined rules within which a partner must operate, clear performance targets, and serious penalties for failing to achieve these targets. Rather than simply dismiss these firms as ‘corporate’, it is more accurate to recognise that the partners in such firms have, at some point in their history, chosen to strike the balance between individualism and collectivism in such a way that favours the collective (Tony Angel develops this argument in far more detail in the concluding chapter of this book).

In each of the firms I have studied, however, there is a strong and dynamic tension between the interests of the individual and the interests of the collective. The management of partnerships are in effect engaged in a constant struggle to identify and resolve the tension between the individual and the collective. In this context, a commonly-understood partnership ethos represents a powerful unifying force which serves to counteract the potentially self-serving impulses that drive each partner individually.

In firms with a large group of long-serving partners, this sense of collectivity is associated with strong personal relationships. This may partly reflect the long hours worked together over the years and the absence of opportunities to build relationships outside work.

“One of the things my wife always says – ‘All your best friends are your partners, you’ve got hardly any friends who aren’t your partners’ – I always say ‘Rubbish, what about X and Y?’ – and she says ‘But when did you last see them?’ “(Practice Head: Law Firm)

When personal friendship is not practical or possible, strong social norms of mutual support have much the same effect on behaviours.

“The partners really do look out for one another. I might be working flat out day and night but if one of the others comes in to my office and says – ‘Look, I’ve got a personal issue. I need to drop this hot potato and go and deal with it’ – I will take it on.” (Salaried Partner: Law Firm)

Rather like brothers and sisters in a family, the expectation of mutual support is not necessarily associated with harmonious relationships. But the common bond of partnership holds the partners together in an obligation to each other, even if that obligation may sometimes seem irksome.

“The sense of community can become strained at times but it is strained in a constructive way. You’ve got several hundred individuals, each has their own ideas and their own ego – there are difficult and sometime abrasive people in any organisation such as this – but if you can harness their skills it can be fantastically effective.” (Salaried Partner: Law Firm)

When I ask the partners in all of the firms I studied to explain what partnership meant to them they sometimes reverted to literary references. The ones I heard most frequently were ‘One for all and all for one’ (*The Three Musketeers*: Dumas) and ‘Band of brothers’ (*Henry V*: Shakespeare). It is worth noting that both references are military in origin and are, by definition, exclusively male. Whether it is the Three Musketeers’ rallying cry or Henry V’s speech to his troops on the eve of the Battle of Agincourt, both embody the sense of a collection of individuals coming together to defeat a common enemy. The Three Musketeers

and the English Army at Agincourt are famous for winning fabulous victories against seemingly impossible odds. If this is what partnership really means to the people I interviewed, no wonder it is something they prize so highly.

While the partnership ethos is clearly associated with partnership as a legal form, it is not explained by it. Three additional elements help to create and sustain the partnership ethos: the structures, the systems, and the socialisation processes with which the legal form is typically associated.

2.6.2 Socialisation

The dictionary definition of to socialise is ‘to prepare for life in society’ (Oxford English Dictionary). Within a partnership, socialisation is the process by which an individual is evaluated and prepared to join the society of partners. The process begins in the initial recruitment phase at entry level, where interviewers may be asked to consider whether they could imagine the candidate as a potential partner of the firm. Thereafter, socialisation follows the traditional apprenticeship model. The professional observes the partners and learns the appropriate technical and interpersonal skills. Socialisation typically culminates in a protracted and intensive process of partner selection.

“I have a friend who is a member of the SAS⁶. When I told him what I had to go through at our partner selection conference he said it sounded horribly like what he went through ... the whole process is intended to strip away the natural barriers you are allowed to build up in your everyday communications with people, to get you to basically make a quick-fire judgment.” (Salaried Partner: Law Firm)

During the process of socialisation, a professional is developing the requisite technical skills to make partner. Whilst these are essential, they are not sufficient. It is the personal qualities of the professional, specifically the extent to which he or she is valued by clients and colleagues, which represent the deciding factors.

“You may be working with a lawyer over a ten year period. We spend a lot of time working in groups together and on the road so you see what people are really like. Do they have good client skills? How are they at mentoring the juniors? Can they hold their own over dinner? Can they have a few beers in the bar and make sense the next day? Have they got the intellectual stamina to keep going through two or three all-nighters? Can they withstand criticism? Are they able to take the knocks?” (Practice Head: Law Firm)

Throughout this apprenticeship period, the potential partners are learning to subsume their own identity into that of the profession, the organisation and, ultimately, the partner group. They are becoming a professional, learning to identify themselves as a member of their firm and their profession as a necessary precursor to becoming a partner. When they reach this goal the sense of pride in their achievement is phenomenal.

“How did I feel the day I made partner? I was over the moon. It was something I had worked for eight years to achieve and I had achieved it as quickly as I had dared to think possible. It was a real landmark in my career. So, yeah, I was ecstatic. I still do cherish that achievement. I know it’s not like winning gold at the Olympics, but it’s the closest I am ever going to get to it.” (Partner: Law Firm)

This process of socialisation is fundamental to the partnership ethos, which requires the interests of the individual to be reconciled with those of the collective. The individual must demonstrate that he or she has the necessary confidence and strength of character to exercise independent judgment and to behave with authority towards clients. At the same time, the prospective partner must show that he or she can be trusted to act in accordance with the wishes of the partnership as a whole.

As part of this process of socialisation, professionals come to believe that partnership is superior to the corporation as a form of governance. It is necessary that they develop this somewhat rose-tinted view of partnership in order to become fully committed to the partnership ethos. As a consultant and a lawyer both explained to me:

“People here are generally doing things in the best interests of the firm as a whole. In a corporation, you hear stories emerging about how people can get ahead by doing other people down. It’s that kind of internal competition, cynical behaviour that we do not experience in the partnership.” (Partner: Consulting Firm)

“One of the great things about being a partnership rather than a corporation is that we’re all sort of shareholders, which means we’re answerable to ourselves and to each other ... directly and on a daily basis, not at an AGM once a year, but daily.” (Partner: Law Firm)

Through the process of socialisation, the professional, in effect, learns to become self-regulating. The lawyer who told me: ‘I became a lawyer because I never wanted to have a boss’ is perhaps unaware of the extent to which he will have internalised an extensive set of norms through his professional and organisational training and is, therefore, constrained in his capacity to exercise truly independent judgment. These norms do not seem oppressive to

him because they have become an integral part of his own identity. This attitude, in an extreme form, is summed up by a partner in an accounting firm whom I interviewed as part of a previous study (Empson 2004):

“As a partner I have a huge amount of personal independence. No one tells me what to do ... I do what I want, but the things I want are likely to help the firm because that is the way I have been trained. At one level we are completely independent, but we all march to the same tune without even thinking about it.” (Partner: Accounting Firm)

2.6.3 Systems

Traditionally, becoming a partner has been rather like getting into heaven – you have to be very good to get in but once you are admitted you are very unlikely to be thrown out. Whilst some partners take this as an opportunity to brush up on their harp playing, the innate drive of most professionals, together with their sense of commitment to the partnership, ensures that they continue to generate and maximise profits on behalf of the firm.

“Do I feel pressure to bring in work? Yes I do. I think I have a responsibility to the firm to keep feeding the machine, and I personally take that responsibility very seriously and I do go out and get work. But I don’t think the machine is forcing me to do that. No I don’t. I think it comes from inside. It comes from a sort of desire to prove myself and the only way I can really prove myself, once I have become a partner, is to keep bringing in the work.” (Partner: Law Firm)

In order to make partner, a professional must demonstrate his or her ability to be self-regulating. However, partnerships do not rely upon this entirely. The systems for evaluating,

rewarding, and sanctioning partners are fundamental to creating and sustaining the partnership ethos, and are backed up by informal processes of peer pressure.

Under a lockstep system, rewards are shared equitably amongst the partners on the basis of time served rather than individual contribution. In those law firms which have retained this method of remuneration, lockstep is seen as fundamental to the partnership ethos. The reward system is the practical embodiment of the desire to reconcile the interests of the individual with the interests of the collective.

“I don’t think the partners here are in it for their personal gain – well not solely for their personal gain. I think we’re here to build a business and there is almost like a sort of co-operative feel to it. This stems from the lockstep. Lockstep means we are all working for the common good.” (Salaried Partner: Law Firm)

“It comes down to ‘What is your purpose in life?’ If your purpose in life is to achieve short-term personal gain then why would you spend time helping another lawyer with something? But with lockstep someone else’s success is my success.” (Practice Head: Law Firm)

The attachment to lockstep amongst several of the most successful UK and US law firms may perhaps reflect their exposure to the extreme alternative form of remuneration, ‘eat-what-you-kill’. They look at the eat-what-you-kill Wall Street firms and resolve that they would never want to be like that.

“The worst thing you can have in a partnership is the cult of the individual. We don’t want people who are motivated by what they personally earn or who feel it is important to earn more than other people.” (Partner: Law Firm)

This extreme dichotomisation of lockstep versus eat-what-you-kill is peculiar to law firms. In other professional sectors, neither extreme form of remuneration is particularly common. A study of firms of consultants and accountants found a different rhetoric, of a strong sense of partnership ethos thriving within modified lockstep and performance-based methods of remuneration (Chapman and Empson 2005). In spite of what many lawyers believe, lockstep is neither a necessary nor sufficient condition for the creation and maintenance of the partnership ethos.

Whilst lockstep may help to ensure that the interests of the individual coincide with those of the collective, when it is allowed to operate without sanction it can become a licence for individualism. Partners can free-ride on the effort of their peers. The intense socialisation process prior to partnership is intended to guard against this, but cannot prevent it.

“I had a partner come into my office recently saying – #I am sick to death of getting in the office at 7:30 every morning and watching X walk in at 9:10 and leave at 5:00 after doing buggger-all all day. I want him out. Get him out of here because he is pissing me off and if he doesn't go soon, I will'.” (Practice Head: Law Firm)

Traditionally partnerships have dealt subtly and informally with under-performing partners. As the Senior Partner of a consulting firm explained:

“There is a limit to what I can do because I need to respect their rights as a partner. So, I put it to them very diplomatically and subtly that people would appreciate it if they did this or stopped doing that. Or, do they realise that this is what people think about them, and what are they going to do about it? If somebody has dug their feet in, I don't think I've got the right to

try and force them to do something. This is delicate stuff ... I need to use a mixture of encouragement and suggestion without causing emotional upset.” (Senior Partner: Consulting Firm)

With flagrant under-performers, partners signal their displeasure with their colleagues in much the same way that school children marginalise and ostracise their peers who do not conform to their norms of behaviour.

“It’s usually the judgment of the peer group which is the most lethal, not anything that the management does. I mean, management might put questions into the frame but it’s when the peer group gives up on someone that he is really sunk.” (Partner: Law Firm)

Occasionally partners go beyond peer pressure to employ more extreme methods of exclusion. As a Senior Partner in an accounting firm I studied put it, ‘We are like a wolf pack. We hunt together but, when a partner is seriously wounded, the rest of us will turn and savage him’. When partners have ‘grown up’ together they will understand the subtle ways in which they are being punished and are likely to feel shame at being excluded from the group. With a less stable and more heterogeneous partner group, such informal processes are less likely to prove effective. More formalised systems of evaluation and sanction become necessary. As one law firm partner reflected somewhat nostalgically:

“When we were a smaller firm you could get rid of partners by saying – You’ve lost the confidence of your peers old boy. You either piss off now and we’ll give you a year’s money and be nice to you, or you can stay and we’ll make it bloody uncomfortable for you’ ... It isn’t so simple nowadays.” (Partner: Law Firm)

2.6.4 Structures

Whereas the partner management systems define how the partners are managed by the management, the governance structures define how the management is managed by the partners. In a publicly-quoted corporation, managers must act in the interests of shareholders who delegate authority to them to build and sustain shareholder value. The priorities of governance are, therefore, relatively unambiguous. Not so in a partnership, where the ‘shareholders’ or owners are working within the firm. In a global law firm there may be many hundreds of owners and each one may simultaneously embody multiple competing objectives. Senior managers must not make the mistake of reifying the organisation. They must not lose sight of the fact that the interests of the collective are made up of the interests of multiple individuals and that at any moment these individuals may stop thinking as part of the collective and start acting on the basis of their self-interest. The following comment from a lawyer caricatures the differences in managerial authority between a corporate and a partnership structure.

“In a normal corporate hierarchy where, in theory at least, there is no questioning of authority – he’s my boss, he can tell me what to do whether I like it or not, I’ve got to do it or I can get fired – I’m assuming that’s the basic corporate premise, right? – but in a partnership it’s, ‘I don’t like what you’re telling me and I’m not going to do it so you can just bugger off’.”

(Practice Head: Law Firm)

A key task for management, therefore, is to arrive at a clear understanding of the collective interests of the partners and to communicate these coherently and consistently so that they become the established ‘truth’ within the firm. Leadership in this context may need

to be subtle and indirect, guiding partners towards an understanding of how their individual interests can be reconciled with those of the collective.

“The partners want leadership, but a leadership that reflects rather than directs the general tenor of the partnership. It’s a very difficult thing to get right.” (Practice Head: Law Firm)

“The key is to understand the currents that flow around this place – the surface may be fairly wave free – four foot waves, five foot waves – but it’s the currents going backwards and forwards underneath that you really need to be aware of. Every now and then a big wave will break and cause the place to change. That’s something that is primarily in the hands of the leadership team. They need to create enough waves going in the right direction for people to say – okay, if that’s what we’ve got to do then let’s just get on with it.” (Partner: Law Firm)

The ability of senior management to exercise effective leadership in a partnership is severely hampered by the ambiguous nature of their authority and the highly contingent governance structures within which they must typically operate. They have been elected by a majority of their peers and can be deposed by them at any time. The following comments by two Practice Heads express this dilemma:

“It’s like I’m the eldest brother. I’m not the Dad; there is no Mum and Dad. It’s like I’ve got to the top because I’m the oldest or the tallest or whatever, but I’m still their brother.”

(Practice Head: Law Firm)

“I am responsible for a large group of partners, all of whom are very bright, at least as bright as I am, all of whom have big egos, all of whom are owners of the business with as much

right to vote and draw profits as I have. The process of being in charge or leading is about building consensus – it's not easy because most people are attracted to this business because they are independent, they like doing their own thing. Essentially they want to be left alone until it's something that kind of connects them and then it's – ‘why wasn't I consulted?’”

(Practice Head: Law Firm)

My studies identified three components of the formal governance structures which are particularly important in determining the nature and extent of managerial authority in a partnership. The first is formally delegated authority - specifically, what issues require a full partnership vote and what size majority is required for key decisions? What decisions can be decided by the Managing Partner and his or her team? The second is the process by which the management team is selected. Is the Managing Partner able to nominate or select practice heads? Is he or she required to work with whoever the partners in that practice choose to elect? The third key component of the governance structure is the delineation of roles of Managing and Senior Partner. Specifically, to what extent is the Senior Partner, or anybody else, formally tasked with monitoring the actions of the Managing Partner and the management team on behalf of the partnership group?

But the formal governance structures only represent one aspect of managerial authority. My analysis identified various personal factors which distinguished effective managers in partnerships from their less effective peers. When partners praised their senior managers to me in interviews they spoke in the following terms. First, the individual was an exceptionally gifted professional, either with clients or in technical terms. Being perceived as ‘cleverer’ than your peers, or at least harder working, is an important source of your authority as a manager in a professional service firm. Second, it is equally important not to be seen to seek or enjoy power. Many successful senior managers in my study had led their colleagues

to believe that they were more interested in the advancement of the firm than in their personal advancement. Whether this was true or not is irrelevant – the point is that their fellow partners believed it to be true. Third, the most effective senior managers were able to combine a clear sense of direction with a tolerance for ambiguity. They were able to step back from the day-to-day complexities presented to them by their fellow partners and retain a clear sense of purpose, both for themselves and the firm as a whole.

Earlier in this chapter I referred to the phrases ‘One for all and all for one’ and ‘Band of Brothers’ as expressions of the partnership ethos. It is worth remembering that, while the English knights at Agincourt submitted to the authority of their brilliant and inspirational leader, the Three Musketeers were an extremely heterogeneous and ill-disciplined collection of individuals who won through because of their remarkable skills with the sword. Some law firms resemble the Three Musketeers – others have more in common with Henry V and his knights. A partnership ethos may operate very powerfully and effectively in either case.

There were only Three Musketeers (and D’Artagnan), whereas the English Knights at Agincourt numbered 900. If a large partnership must inevitably adopt more ‘corporate’ practices, should large partnerships simply bow to the inevitable and incorporate? If partnership is the optimal method of balancing the competing claims of its professionals, owners, and clients, then it is logical to conclude that professional service firms should make every effort to remain partnerships. Contemporary management writing on corporations would support such an argument.

2.7 Imitating partnership

There is anecdotal evidence to suggest that the flotation of professional service firms has had damaging consequences for clients, professional staff, owners, and even society as a whole (Augur 2000; Shafer, Lowe, and Fogarty 2002; von Nordenflycht 2003).

In recent years, as Gerson (2005) has shown, management writers have exhorted corporations outside the professional services sector to emulate professional partnerships. They see such firms as embodying many characteristics essential for operating within the knowledge-based economy. Some corporations have deliberately set out to imitate aspects of partnership, to try to create the ethos of partnership within a corporate form.

McKinsey & Company, for example, incorporated in the 1950s but, to the outside world and to the consultants within it, still embodies many of the qualities of a partnership. As Marvin Bower (Managing Director, 1950-1967 and described on McKinsey's website as 'the soul of McKinsey') says 'we find it takes intensive and continuous effort to preserve the real and useful partnership spirit.' (Bower 1997: 59). McKinsey does not rely simply on the 'spiritual' approach but seeks also to mimic the structure of a partnership. For example, the Managing Director is elected by 270 of the most senior 'partners'. The term partner is still used informally within McKinsey because 'even though it may not be legally accurate it can bring out some of the best qualities in people' (Bower 1997: 60). Whether McKinsey is genuinely like a partnership is not the issue – what matters is that it has sought to create the impression of partnership amongst its clients and professional staff because it can be 'useful' in business terms. McKinsey has succeeded in effect in 'imitating' partnership.

McKinsey was once a partnership, albeit 50 years ago, and has remained privately-owned. Is it possible to create and sustain a partnership ethos within a publicly-quoted firm with no history of partnership? My research suggests that the answer is yes, up to a point, but it is not easy.

As part of a study of governance in professional partnerships I studied a consulting firm (the "Company") which had floated on the New York Stock Exchange in 2000 (for full details of this study see Empson and Chapman, 2006). Although the Company had never been a partnership, its shareholding structure closely resembled one at the time of the

flotation (i.e. initial public offering, or IPO). Shares were held internally by a broad cross-section of employees, with no individual owning more than 1.5 per cent. Post IPO, 50 per cent of the Company transferred to external investors.

Reflecting attitudes associated with traditional professional partnerships, the CEO recalls a time prior to the IPO:

“I remember eight years ago having conversations with people who would say things like, “Do we really need to be in business to make a profit? Aren't we here to serve our clients?””

(CEO: Consulting Company)

Preparation for the IPO prompted a more overt emphasis on commerciality and a drive for growth and revenue enhancement, which has become stronger post IPO. These changes are subtle, however, with the emphasis on encouraging professionals to develop a more explicit focus on cost control and revenue growth, within the Company's broad strategic agenda – sound management practice in any context, partnership or corporate. A Practice Head explains how management has sought to contain the impact of the IPO:

“There's been less change than one would imagine. We've been maintaining a balance between long- and short-term benefiting employees and benefiting shareholders and so far that's turned out very well ... I thought the recession would test it, but the CEO told the analysts that we were reserving a fair amount (of profits) for the bonus pool – the reaction from the analysts was, ‘Good, your product is your employees and if you try to pay out too much in dividends you blow the whole thing’.” (Practice Head: Consulting Company)

Just as in a partnership, the CEO has recognised the inherent tension between the needs of the individual and the needs of the collective. However, in the Company the ‘collective’ has been expanded to embrace external shareholders. The CEO recognises his responsibility to act in the interests of the shareholders but he also knows that for his ‘decisions’ to be effective, he must first build consensus among his colleagues.

“We don’t have a classic management structure that says ‘you shall’. The CEO creates opportunities and platforms for new ideas, but he very rarely says ‘you shall’ – he says ‘you should listen to what John has to say about XYZ’, but he will rarely ever say, ‘we’re going to do this programme’ – it doesn’t work like that. So it becomes a very time-consuming process of selling your ideas to people.” (Functional Head: Consulting Company)

The painstaking process of consensus-building is embedded within the organisation structure. The Company is structured as a matrix, with each member responsible to dual reporting lines of practice and geography. All key decisions require approval from both sides of the matrix. Where agreement on management issues cannot be reached between peers, the decision is moved up to the next level of the matrix. Consultants argue that better quality decisions get made after careful consultation and consensus-building. However, as often happens in a partnership, there is frustration about the time taken to reach decisions. By substituting the word ‘partnership’ for ‘matrix’ in the following comments, it is possible to see how the matrix structure in the Company has been used to imitate some of the best and worst aspects of a partnership.

“The nice thing about the matrix is that you can bounce decisions back and forth, very freely and openly. It is not like you have to hide anything ... In the matrix we know we are all in this together.” (Practice Head: Consulting Company)

“I have laid off senior people and it has been ferociously difficult. The quantitative information on them was categorical. In other words there was no ambiguity about whether they were terrible or not or whether we were losing money on them, but it still took months, and in one case years, to get rid of a person because of the inherent conservatism of the matrix.” (Practice Head: Consulting Company)

Whilst the matrix prevents professionals from acting unilaterally with regard to internal management issues, professionals have considerable autonomy with regard to client issues (e.g. which clients to serve and how to deliver the service).

“There is a certain amount of flea market mentality here. Each senior consultant has their own booth at the flea market, renting space from the flea market operator.” (Practice Head: Consulting Company)

“This place gives me room. It is very trusting. It relies on my entrepreneurial spirit to move forward ... this place lets you use your brain cells and lets you try; it gives you the opportunity to sell, to persuade.” (Functional Head: Consulting Company)

For these consultants, the autonomy they prize is not about resisting managerial control but about acting entrepreneurially – in other words, the freedom to make money any way they like. The management of the Company have recognised that, as long as their

professionals are left alone to do what they most care about – to serve their clients – they will accept many of the internal management constraints associated with being part of a large corporation.

Will the incorporation and flotation of a partnership inevitably have damaging consequences for its shareholders, the professionals that work within it, and the clients they serve? This study says no. The pressures to change may be strong but they are not inexorable. Within alternative legal forms of governance, it is possible for professionals to imitate the most valuable aspects of a partnership without necessarily being restricted by its legal form. However, for this process to be effective, professionals and their managers must be strongly committed to the partnership ethos and work actively to create and sustain it. While it is possible to reconcile the competing claims of owners, professionals, and clients within a corporate structure, this is not a stable equilibrium. Incorporation and flotation may not automatically destroy the partnership ethos, but they certainly do not encourage its survival.

2.8 Conclusion: evolution of partnership

The partnership ethos can survive within the challenging contemporary context in which professional service firms must compete, but only under certain conditions. Managers of professional service firms must develop a sophisticated and subtle understanding of what exactly the partnership ethos means within their firm and how to use their systems, structures, and socialisation processes to ensure that this ethos adapts and survives. In other words, it is up to the managers of professional service firms to ensure that the partnership evolves rather than simply becoming extinct.

2.8.1 Partnership ethos

Whilst the partnership ethos reconciles the tension between individualism and collectivism within a professional service firm, the precise manner in which it is manifested and enacted will be highly context-specific. It is important for managers to understand what it means within their own particular firm and just where the balance should be drawn between the needs of the individual and the needs of the collective.

Perceptions of the partnership ethos may vary considerably within the firm, between junior and senior professionals, among junior and senior support staff, as well as externally with clients and with potential recruits. Whilst the partnership ethos can meld a disparate group of senior professionals into a collective entity, the very exclusivity which makes it attractive to those within the partnership serves to exclude, and potentially alienate, all those outside the partnership. Do salaried partners, for example, feel included or excluded from the partnership? Do junior professionals understand the partnership ethos and do they aspire to be partners? Does the partnership ethos relegate high quality senior professional managers to the status of second class citizens? Are junior support staff expected to tolerate extreme and inappropriate behaviours from partners who view themselves as owners of the firm? Are clients and potential recruits aware of the partnership ethos and do they understand its significance?

By addressing these questions carefully, managers can develop a clearer understanding of what partnership means to the key stakeholders. What has it meant traditionally? What is challenging traditional attitudes? What aspects of partnership are vital to preserve? How can the partnership ethos adapt to the changing competitive marketplace? With this foundation of understanding in place, the next step is to understand how the systems, structures, and socialisation processes can be managed to ensure that the most valued aspects of the partnership ethos evolve - to survive and thrive in a changing world.

2.8.2 Socialisation

As socialisation processes cannot easily be observed, they are also very difficult to change. Formal processes can be redesigned but individuals may struggle to articulate the plethora of informal ways in which they signal to their colleagues what is and what is not legitimate within the firm.

As well as being difficult to change, these socialisation processes represent a potentially serious block to change more generally. By socialising and selecting individuals to join the elite company of partners, a partnership risks becoming a self-perpetuating collection of ‘clones’. Evolutionary psychology (Nicholson 1998) argues that we humans are ‘hardwired’ to be drawn to people who are like us and to distrust people who are different. In contemporary partnerships this is no longer an adequate or appropriate basis for partner selection. In the next chapter of this book David Wilkins describes the compelling economic and ethical rationale for introducing greater racial and gender-based diversity into partnerships. Geographically dispersed and diversified partnerships need the ability to recognise high quality professionals working in different countries and in different kinds of businesses.

In this context, it is vital to make the processes for socialising and selecting potential partners explicit. The partnership ethos can be strengthened not just by promoting those professionals who embody it, but by dealing with those partners who do not – and making this obvious to their fellow partners and to aspirant partners. Partners may grumble that more explicit procedures for selecting and sanctioning partners smack of bureaucracy and will inevitably lead to partners becoming corporate ‘clones’. It is ironic that these developments may instead encourage heterogeneity, by making it easier to recognise and accommodate the strengths of idiosyncratic individuals who nevertheless embody the partnership ethos. In seeking to promote professionals from diverse backgrounds, partnerships can still remain

exclusive and homogenous, but the homogeneity and exclusivity will no longer be based on class, gender, racial, or religious grounds. Instead it will derive from the extent to which individuals embody the partnership ethos.

2.8.3 Structures

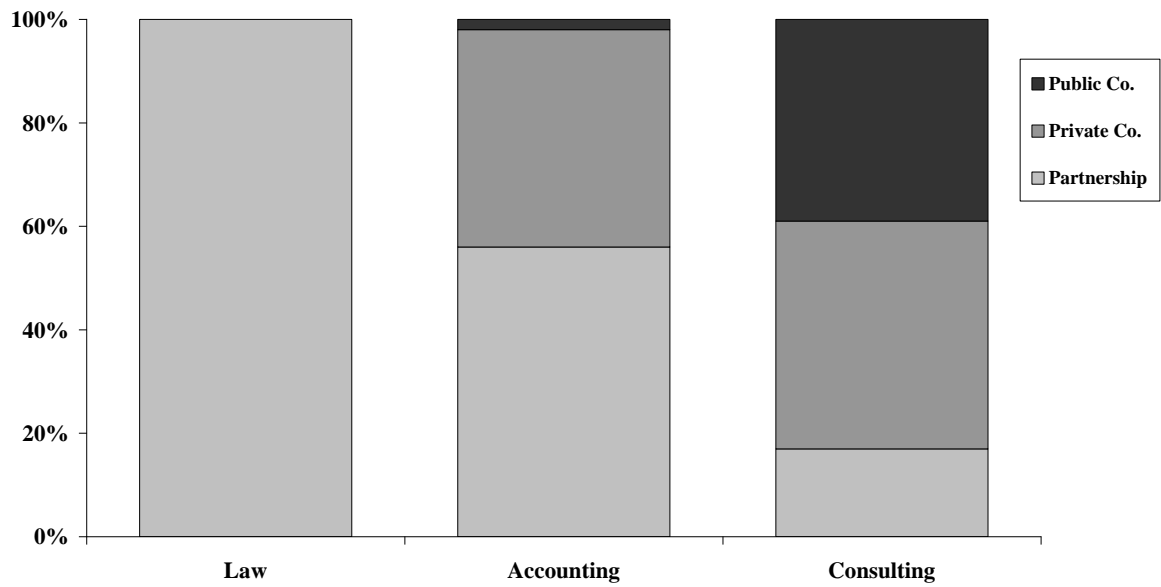
As partnerships grow large it is inevitable that governance structures will evolve, requiring partners to delegate authority to a select group to manage the firm on their behalf. This is a necessary precondition for growth. This delegation of authority need not lead to the destruction of the partnership ethos, however. As already discussed, the worst elements of 'corporate' style management structures can be held in check by retaining and developing socialisation processes and partner management systems which support and sustain the partnership ethos (a point developed by Tony Angel in his concluding chapter of this book). If the systems and socialisation processes are strongly aligned with the needs of the partnership, then greater authority can be safely delegated to management through the governance structures. Management will not act against the interests of the partnership as a whole because they have been socialised appropriately and know that they will be rejected by their fellow partners if they overstep their mandate.

Managers of publicly-quoted companies are subject to increasingly stringent oversight of their activities. By contrast, in some growing partnerships, management are formally delegated authority without a concomitant increase in the oversight of their activities. The roles and responsibilities of non-executive directors of corporate boards are clearly defined and are becoming increasingly onerous. The roles and responsibilities of Senior Partners and Partnership Boards in relation to Managing Partners and Management Committees are resolved on an ad hoc basis through each firm's partnership agreement. As partnerships

evolve, one of the key responsibilities of the Senior Partner should be to exercise this oversight of management and to act as a custodian of the partnership ethos.

There is much, therefore, that managers of professional partnerships can do to preserve the partnership ethos within their firm, whether they choose to retain the partnership in its legal form or to move towards incorporation or flotation. The key is to recognise what exactly the partnership ethos means in the context of their own firm, what is threatening it, and specifically how it can remain valuable in a changing competitive context. As a firm grows, and its structures, systems, and socialisation processes evolve, senior managers are responsible to their professional colleagues, owners, and clients to ensure that such changes serve to support, rather than undermine, the partnership ethos. Ultimately it is up to the firm's management to ensure that the ethos of partnership survives and thrives in a changing world.

Figure 2.1 Governance of professional service firms by sector (global top 100, 2003)



Source: adapted from Greenwood and Empson, 2003

Figure 2.2 Resolving stakeholders' competing claims in a professional service firm

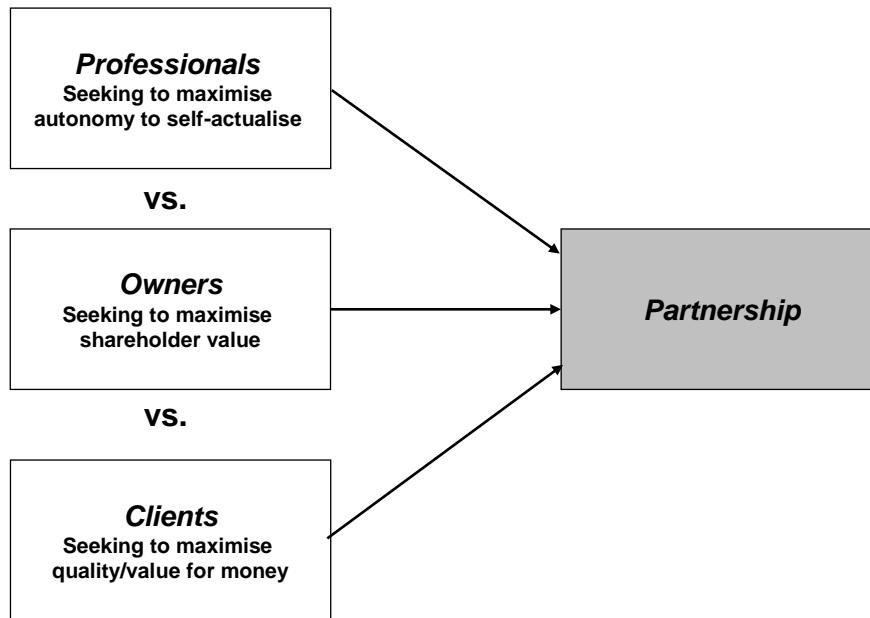


Figure 2.3a Partnership ethos

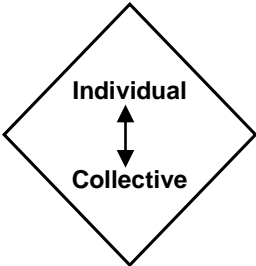
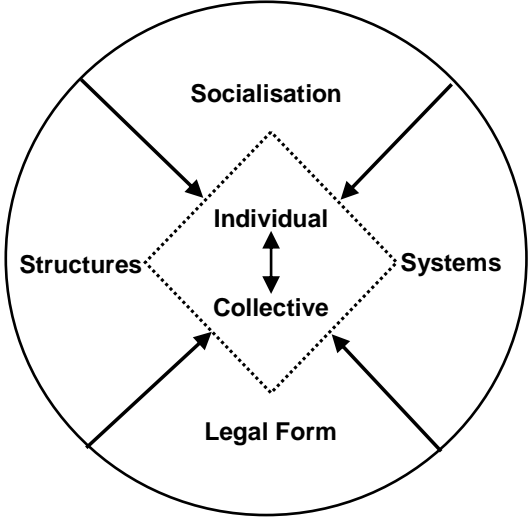


Figure 2.3b Dynamics of partnership



Notes

¹ Empson, L., and Chapman, C. 'Consequences of changing forms of governance for the management of professional service firms', Economic and Social Research Council of Great Britain, ([RES-000-22-0204](#)).

² Sections 9 and 10 of The Administration of Justice Act, 1985 amended The Solicitors' Act of 1974, enabling solicitors' practices in England and Wales to incorporate. These provisions ultimately came into force in 1992.

³ Equal Employment Opportunities Commission v. Sidley Austin Brown & Wood, 315 F.3d 696 (7th Cir. 2002).

⁴ For the sake of simplicity the term 'owner' rather than 'shareholder' is used generically in this chapter to describe the owners/shareholders of all professional service firms, whether corporate or partnership.

⁵ Under a lockstep system each partners' compensation is based on chronological seniority (i.e. how long they have been a partner).

⁶ The Special Air Service is an elite British special forces army unit noted for its exceptionally tough selection and training programmes.