

**PROMOTION TO PARTNER IN LARGE LAW FIRMS
OPERATING IN THE UNITED KINGDOM: TOURNAMENT
THEORY AND THE MONITORING OF THE IMPLIED PROMISE**

by

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ABSTRACT

This research is a study of the promotion to partner process in large law firms in the United Kingdom (UK). It is concerned with the application of tournament theory to such firms. In particular it is an examination of the ability of associate lawyers to monitor the implied promise that, in prescribed circumstances, they will have the opportunity of becoming a partner at their firms.

In order to identify whether or not the rules of tournament theory on promotion to partnership hold true when set against the experiences of lawyers in large law firms operating in the UK, I established a theoretical framework based on a review of the relevant literature. I then tested that theoretical framework with data from two sources: case study interviews with partners at a large UK law firm; and a questionnaire distributed to a wider sample group of partners across a number of large UK law firms.

The research found strong evidence to support the application of the core elements of tournament theory to large law firms in the UK. The research also found, however, that the implied promise envisaged by tournament theory was not the promise monitored by the individuals who took part in the research project.

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***Promotion to Partner in Large Law Firms operating in the United Kingdom:
Tournament Theory and the Monitoring of the Implied Promise***

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[M]ost of a lawyer's working life is filled with the mundane. It is unlikely that one of your clients will drop a smoking gun on your desk or ask you to have wild, passionate sex (or even unwild unpassionate sex). These things happen to lawyers only in John Grisham novels. Your life as a lawyer will be filled with the kind of things that drove John Grisham to write novels.

Patrick J Schiltz (1999)¹

Part I

Introduction

This thesis is all about "the kind of things that drove John Grisham to write novels". In considering these mundane but weighty matters my aim is to build a greater understanding of how and why progression to partnership within large law firms occurs the way it does. In my experience² much of the disquiet, lack of enjoyment and, at times, downright misery of lawyers working in large law firms stems from their lack of a basic understanding of the human dynamics of large scale legal practice. Plenty has been written and, more latterly, understood about the economics of a successful law firm but little study and explanation of the human dynamics of a law firm has been undertaken. This is especially the case in the United Kingdom (UK). A lack of knowledge of one's own situation can make people, especially lawyers, feel helpless and out of control of their lives at both professional and personal levels. My hope is that this thesis will: add to the general level of understanding of this area of legal practice; help lawyers to a greater appreciation of the positions in which they find themselves; and ultimately, allow them to feel more at ease with and in command of the choices they face in their professional and personal lives.

¹ Patrick J Schiltz, 'Symposium: Attorney Well Being in Larger Firms: Choices Facing Young Lawyers' (1999) 52 *Vanderbilt Law Rev.* 871.

² As a practising lawyer, law school tutor and as HR Director of a large City of London law firm.

The subject matter of this thesis is the economic theory of “the Tournament” and its application to career progression within large law firms operating in the UK.³ The tournament model is widely accepted as “the dominant academic model for analyzing the institutional structure of large law firms”.⁴

The Research Question and Thesis Structure

A key element of tournament theory, as applied to large law firms, is its explanation of the way in which lawyers “make partner”. Its major claim is that the implied promise made to associates that they have a chance of making partner at their firm supplies the motivational force that allows law firms to function in the way they do. If this theory is correct, it inextricably links the organisational structure of the firm with the dynamic of the promotion to partner process.

This thesis seeks to identify whether or not the rules of tournament theory on promotion to partnership hold true when set against the experiences of lawyers in large law firms operating in the UK. Specifically, the question I seek to answer is, whether or not such lawyers have the means by which they can monitor their firm's implied promise that a fixed percentage of them⁵ will be made up to partner in due course?⁶

³ To borrow from David B Wilkins and G Mitu Gulati, ‘Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labour Markets of Elite Law Firms’ (1998) 84 *Virginia Law Rev.* 1581, throughout this thesis I use the phrases “large law firm”, “elite law firm”, “firm” and “law firm” interchangeably. In the context of analysing existing research, these terms are used to denote the same types of firms considered by Marc Galanter and Thomas Palay, *Tournament of Lawyers, The Transformation of the Big Law Firm*, (1991) and, in the context of the field research itself, they refer to firms likely to be ranked in the top 50 firms, ranked by turnover, in *The Lawyer* top 100 rankings. These are the firms which I believe to be the UK equivalent of those studied by Galanter and Palay and, subsequently, by Wilkins and Gulati.

⁴ Wilkins and Gulati, op. cit., n. 3, p. 1581. For recent works where Tournament theory has been applied to the study of law firms and their workings see William D Henderson, ‘An Empirical Study of Single-Tier Versus Two Tier Partnerships in the AM Law 200’ (2006) 84 *North Carolina Law Rev.* 1691; Bruce M Price, ‘How Green Was My Valley? An Examination of Tournament Theory as a Governance Mechanism in Silicon Valley Law Firms’ (2003) 37 *Law and Society Rev.* 731; and Stephen M Bainbridge, ‘The Tournament at the Intersection of Business and Legal Ethics’ (2003) *University of St Thomas Law Journal*. See also Timothy Morris and Ashly Pinnington, ‘Promotion to Partner in Professional Service Firms’ (1998) *Human Relations* 51, 3.

⁵ Galanter and Palay, op. cit., n. 3, p. 100. That is, a fixed percentage of each “entering class” of lawyers.

⁶ Galanter and Palay, id., pp. 101-102. Also see Wilkins and Gulati op. cit., n. 3, p. 1625 for consideration of associates’ abilities to monitor the implied promise.

This thesis comprises six parts:

Part I	Introduction – including statement of the Research Question
Part II	Review of Literature Relevant to this Research
Part III	Research Methodology
Part IV	Summary of Research Findings
	Part IVA – Case Study
	Part IVB – Questionnaire
Part V	Conclusions Based on Research Findings
Part VI	Some Suggested Areas for Future Study

Ignorance is the curse of God; knowledge is the wing wherewith we fly to heaven.

Lord Say⁷

Part II

Review of Literature Relevant to this Research

This literature review has three main components. Firstly, it provides a retrospective of how tournament theory came to be used to analyse the institutional structures of large law firms. Secondly, it looks at the various critiques of the tournament model as applied to large law firms and how these critiques may have modified our understanding of tournament theory in that context. Thirdly, it draws together those elements of tournament theory of direct relevance to the Research Question.

The Tournament Model

At the start of the 1980s Lazear and Rosen, from the background of labour economics, developed the general economic model of tournament theory.⁸ In seeking to explain how wage structures of top executives work in circumstances where standard wage theory⁹ does not apply, Lazear and Rosen established that competitive rank order tournaments can distribute resources as efficiently as distribution on a marginal product basis.¹⁰ They give as an example the CEO/President of a company who on promotion to that role may triple his salary but where it “is difficult to argue that his skills have tripled in that one day period”.¹¹

⁷ William Shakespeare, *Henry VI, Part II*, Act IV, Scene 7.

⁸ Edward P Lazear and Shirwen Rosen, ‘Rank Order Tournaments as Optimum Labour Contracts’ (1981) 89 *Journal of Political Economy* 841. Subsequently developed through the works of others such as James M Malcomson, ‘Work Incentives, Hierarchy, and Internal Labour Markets’, (1984) 92 *Journal of Political Economy* 486 and Jerry R Green and Nancy L Stokey, ‘A Comparison of Tournaments and Contracts’ (1983) 91 *Journal of Political Economy* 349. See also Kevin A Kordana, ‘Law Firms and Associate Careers, Tournament Theory Versus the “Production Imperative” Model’ (1995) 104 *Yale Law Journal* 1907.

⁹ That is, a model where workers are paid on the basis of their productivity.

¹⁰ Lazear and Rosen, op. cit., n. 8, p. 846.

¹¹ id., p. 847.

In Lazear and Rosen's view, the winner of the tournament will receive a prize equal to their marginal product plus the difference between the marginal product and wages of all competitors.¹²

They also suggest that the high wages of CEOs of large corporations do not depend on their productivity as CEOs. Rather, this type of pay structure makes them (and all other competitors) more productive over their entire working lives. So, one of the key benefits of structuring rewards and career progression along tournament lines is the motivational impact this has on an entire workforce. Lazear and Rosen also posit a key proposition, as far as analysis of law firms is concerned, that tournaments will tend to exist where individual workers' outputs are not easily observed.¹³

Portfolio Theory and Agency Costs Analysis

In analysing the application of the tournament model to the workings of a large law firm it is important to understand the other economic forces with which the tournament model interacts in that context. The work of Gilson and Mnookin on how Portfolio Theory and Agency Costs Analysis apply to law firms is of particular relevance.¹⁴

In their analysis of **Portfolio Theory**, Gilson and Mnookin describe how and why lawyers will benefit from working together in diversified firms through the sharing of risks that apply to their own human capital investments. In their view, lawyers benefit from joining others in a diversified practice when it is uncertain which area of work (and therefore which lawyer) will prosper over a given period. The risk to a lawyer's investment in learning to practise in a certain area is mitigated if that lawyer agrees to share returns on lawyer capital with another lawyer who has invested in practising in an area which should do well when the first lawyer's practice is doing badly.

In circumstances where it pays for lawyers to work together as partners, they will usually enter into an agreement under which they agree how they will share the fruits of their respective labours. Gilson and Mnookin refer to this as the "sharing bargain" and characterise it as "agreement to allocate firm income on a basis other than their respective marginal products, entered into at a time before these marginal products are known."¹⁵

Agency Costs Analysis examines the difficulties of capturing the benefits of portfolio diversification. Agency Costs are those costs inherently associated with the

¹² id., p. 846.

¹³ id., p. 848

¹⁴ Ronald J Gilson and Robert H Mnookin, 'Sharing Among The Human Capitalists, An Economic Inquiry Into The Corporate Law Firm And How Partners Split Profits' (1985) 37 *Stanford Law Rev.* 313, and their detailed consideration of "up or out" career structures in law firms, 'Coming of Age in a Corporate Law Firm, The Economics Of Associate Career Patterns' (1989) 41 *Stanford Law Rev.* 567.

¹⁵ Gilson and Mnookin (1985), op. cit., n. 14, p. 338.

sharing bargain or, perhaps more accurately, the costs that arise when parties to the sharing bargain renege on it, commonly referred to as “cheating”.

Gilson and Mnookin name these inherent agency costs as:

- *Shirking* - a partner's failure to do their "fair share" of the work;
- *Grabbing* - a partner's extraction of a larger than previously agreed share of firm profits;¹⁶ and
- *Leaving* - a partner's departure from the firm with clients and business in tow.¹⁷

The parties are most likely to grab and/or leave once their individual marginal products are known while shirking would occur during the currency of the sharing bargain.

Given that sharing bargains are not legally enforceable,¹⁸ Gilson and Mnookin seek to understand how the structure of an organisation can function to restrain cheating and hold agents to the terms of their sharing bargain.¹⁹ In this respect, they consider “Firm Specific Capital” to be the key structural restraint that holds individual lawyers together in partnership by decreasing the chances of post-bargain cheating. They define Firm Specific Capital as “the difference between a firm’s earnings as an ongoing institution and the combined value of the human capital of its individual partners.”²⁰ Only partners remaining with the firm will derive the benefits of Firm Specific Capital. For example, if a partner cannot take a client with them when leaving a firm, that client is Firm Specific Capital but, if a partner can take a client with them when leaving, then the client is part of that partner’s individual capital. The more Firm Specific Capital a firm has the less prone it will be to grabbing and leaving.²¹

Gilson and Mnookin also consider the strategies that might mitigate shirking.²² They suggest that observing actual working hours, readily achievable as most firms insist

¹⁶ Usually attained by threatening to leave the firm, Gilson and Mnookin, id., p. 321.

¹⁷ id., p. 321.

¹⁸ id., p. 338.

¹⁹ id., p. 333 citing Jensen, ‘Organisation Theory and Methodology’ (1983) 58 *ACCT Rev.* 319 and Jensen and Meckling, ‘Theory of the Firm, Managerial Behaviour, Agency Costs and Ownership Structure’ (1976) 3 *Journal of Financial Economics* 305.

²⁰ Gilson and Mnookin (1985), op. cit., n. 14, p. 354.

²¹ id., pp. 371 - 377. One interesting point, though beyond the scope of this thesis, is that in their view Firm Specific Capital is more likely to accrue within firms that adopt a seniority (or lockstep) approach to profit division than in a firm that uses a marginal product based approach. This is because of the inability of marginal product firms “to design a productivity formula that does not induce individual lawyers to pursue their own, as opposed to the firm’s, best interests.” Marginal Product based firms should, therefore, be more prone to “grabbing” and “leaving” behaviours than their lockstep counterparts. At the same time, a Marginal Product firm should be better able to cope with shirking as they: “can better tolerate variations in performance because its method of allocating income can take these variations into account.”

²² For the reasons stated above Gilson and Mnookin believe that “shirking” will be more of an issue for Lockstep firms than Marginal Product based firms.

their lawyers record their time assiduously, will prevent shirking in terms of the time input of individual lawyers.²³ However, they are less certain of how to prevent shirking by lawyers as to the quality of their outputs. They suggest that “some combination of selection and socialization ... create a powerful internalized work ethic.”²⁴ Firm Specific Capital is important within the context of this thesis as, under the “rules” of tournament theory its accumulation by law firm associates in the latter stages of the tournament is one of the factors that bind them to the process.²⁵

The Tournament Model “Affiliated” to the World of the Large Law Firm

Marc Galanter and Thomas Palay, in their widely cited 1991 book *Tournament of Lawyers: The Transformation of the Big Law Firm*,²⁶ were the first to “affiliate”²⁷ Tournament Theory to the study of large law firms.²⁸ In order to explain why tournament theory might be of relevance to the study of the legal industry, they applied Gilson and Mnookin’s work on agency and portfolio theories to the world of the large law firm.²⁹ Galanter and Palay claimed that, in order to mitigate agency costs, law firms organise career progression as a tournament.³⁰

The Tournament structure, in their view, evolved to cope with the difficulty of monitoring the output of junior lawyers. In other words, it evolved to mitigate potential agency costs. In this scenario, the incentive of partnership is so huge (a “*super bonus*”) that associates work extremely hard with minimal supervision and are committed to producing quality work.³¹ So, by adopting a tournament structure to govern career progression, law firms reduce the chances of their associates shirking in terms of both hours worked and the quality of work produced. Moreover, the prize of partnership by providing the lure of tenure, prestige and high salary³² also serves to reduce the risk of the opportunistic behaviours of grabbing and/or leaving while still an associate.³³

²³ Considered further at page 9 of this work.

²⁴ Gilson and Mnookin (1985), op. cit., n. 14, p. 375 citing Amartya Sen, ‘Rational Fools, A Critique of the Behavioural Foundations of Economic Theory’ (1997) 6 *Philosophy and Public Affairs* 317; and Brill, ‘Toward a New Excellence, Strategies and Values for Tomorrow’s Successful Firms’ (1983) *AMLaw* November 31.

²⁵ Galanter and Palay, op. cit., n. 3, p. 97.

²⁶ University of Chicago Press 1991.

²⁷ Marc Galanter and Thomas Palay, ‘A Little Jousting About the Big Law Firm Tournament’ (1998) 84 *Virginia Law Rev.* 1683. The idea of “affiliation” rather than rigid application of a finite and fixed set of rules is of significance when I come to consider the critiques of Galanter and Palay’s work and their responses to such critiques.

²⁸ Their particular area of interest was in finding an explanation of the growth of large law firms.

²⁹ Galanter and Palay, op. cit., n. 3, p. 94.

³⁰ id., p. 100. They consider that inevitable by-products of using tournaments to mitigate agency costs are a need for continual growth, (via partner promotions and associate hires) and many of the characteristics of career progression in large firms.

³¹ id., pp. 99,100.

³² Bruce M Price, op. cit., n. 4.

³³ Galanter and Palay, op. cit., n. 3, p. 100.

Galanter and Palay posit that the “stylised” rules of the tournament are as follows:³⁴

- It is played over fixed period of time;
- All associates in an “entering class” compete for the prize of partnership;
- The prize is awarded to a fixed percentage of the top associates;
- The basis on which the award is made is the associates’ ranking – judged subjectively – in the possession of two goods:
 - High quality legal work; and
 - Their own human capital;³⁵
- The winners get a guaranteed and fixed amount of compensation - regardless of who wins;³⁶ and
- Associates are reassured that the firm is keeping its side of the bargain through:
 - consistent and readily observable partner promotion rates;³⁷ and
 - the continued hiring of new associates.³⁸

Tournament Theory and Law Firms – The Critiques

Galanter and Palay’s work has been widely considered, critiqued and applied. It is important, for the purposes of the Research Question, to carry out a detailed review here of these works in order to understand the evolution and current validity of the tournament model and its applicability to large law firms. This second section of Part II contains that review.

For a minority of writers³⁹ tournament theory has no application to the institutional structures of large law firms. The majority of those who have reviewed Galanter and Palay’s work draw attention to specific aspects of tournament theory, as applied to large law firms that do not seem to work satisfactorily or to perceived gaps in the model’s coverage. Wilkins and Gulati provide the most extensive and constructive critique of Galanter and Palay’s work.⁴⁰ After considering some of the more general

³⁴ *id.*, p. 100. See also by same authors, ‘Large Law Firm Misery, It’s the Tournament, not the Money’ (1999) 52 *Vanderbilt Law Review* 953, for a succinct exposition of the rules.

³⁵ The extent to which an individual is able to demonstrate their (and potentially their department’s or group’s) accumulation of capital is often embodied in the “business case” submitted as part of the documentation in support of an associate’s proposal for promotion to partnership.

³⁶ Galanter and Palay, *op. cit.*, n. 3, p. 101. In effect the firm commits to setting aside a prescribed amount of remuneration.

³⁷ *id.*, p. 101. For a view disputing Galanter and Palay’s empirical analysis see Kordana, *op. cit.*, n. 8, p. 1921.

³⁸ Galanter and Palay, *op. cit.*, n. 3, p. 101. To feed the pipeline of human resource that fills the gaps left in associate ranks by those promoted to partner (and those who leave having not made it) and to add the required leverage that makes the business profitable. See also David Maister, *Managing the Professional Service Firm* (2003).

³⁹ George Rutherglen and Kevin Kordana, ‘A Farewell to Tournaments? The need for an Alternative Explanation of Law Firm Structure and Growth’ (1998) 84 *Virginia Law Review* 1695 and Kordana, *op. cit.*, n. 8. See also Tom Ginsburg and Jeffrey A Wolf, ‘The Market for Elite Law Firm Associates’ (2004) 31 *Florida State University Law Rev.* 909, considered further at page 20 of this work.

⁴⁰ Wilkins and Gulati, *op. cit.*, n. 3.

critiques I will consider, in some detail, their main points and Galanter and Palay's response.

According to Kordana and Rutherglen tournament theory is not applicable to law firms.⁴¹ Their central claim is that the output of lawyers is neither difficult nor costly to monitor and, therefore, the fundamental reason for tournament theory's relevance to large law firms is undermined.⁴² Instead, they argue that client demands and the type of work conducted by law firms are better explanatory factors of the growth and internal structures of large law firms.⁴³ They say it is easy to monitor lawyer output due to the close supervision of this output by more senior lawyers, while hours worked are also recorded zealously by all lawyers. Further, they claim that it is inexpensive to monitor lawyer output, as the supervising lawyers will charge the client for the time spent on monitoring.⁴⁴

Wilkins and Gulati take a contrary view, noting that within the context of an environment where extremely tight deadlines are the norm and where the opportunity costs of partners spending time away from fee generation and business development are significant,⁴⁵ a firm has a disincentive to engage in anything but essential monitoring.⁴⁶ Moreover, they contend that:

- a document being reviewed by a senior lawyer in this way will be the work product of a number of more junior lawyers and, therefore, it is difficult for the supervisor to be sure whose work s/he is monitoring;⁴⁷ and
- for other types of work where the exercise of judgement is called for, such as legal research, a more senior lawyer will find it difficult and time-consuming to monitor the quality of the work without having to do the work again themselves.⁴⁸

In considering recorded hours as a basis for monitoring a lawyer's output Galanter and Palay point out that time spent on a task gives no indication of the quality or value of the output achieved during that time period.⁴⁹ The renowned practices of

⁴¹ Rutherglen and Kordana, op. cit., n. 39; and Kordana, op. cit., n. 8.

⁴² Kordana, op. cit., n. 8, p. 1914.

⁴³ id., pp. 1923 – 1933. See also Vincent Robert Johnson, 'On Shared Human Capital, Promotion Tournaments and Exponential Law Firm Growth' (1991) 70 *Texas Law Rev.* 537; and Frederick W Lambert, 'An Academic Visit to the Modern Law Firm: Considering a Theory of Promotion-Driven Growth' (1992) 90 *Michigan Law Rev.* 1719.

⁴⁴ Kordana, op. cit., n. 8, pp. 1914 – 1917. Price seems to back up Kordana's point regarding the close supervision of lawyers, see Price, op. cit., n. 4, pp. 8-9. Though it must also be borne in mind that this close monitoring will only last until such time as the associate is competent at this new type of work. Thereafter it is usual for such work to be monitored in a cursory fashion, if at all.

⁴⁵ Wilkins and Gulati, op. cit., n. 3, p. 1600.

⁴⁶ Any organizational structure that obviates the need for anything but essential monitoring will be an attractive option for law firms. This also has clear implications for skill and career development opportunities for lawyers.

⁴⁷ Wilkins and Gulati, id., p. 1597.

⁴⁸ id., p. 1599.

⁴⁹ Galanter and Palay, op. cit., n. 3, p. 96.

under- and over-recording also should be taken into account as calling into question the accuracy of time records.⁵⁰

Kordana also disputes Galanter and Palay's empirical findings that a "stable percentage" of associates are promoted to partner each year. He criticises the data Galanter and Palay use on the basis that they fail to take into account those in an "entering class" who leave the firm and that they include associates belong to other classes. This leads him to conclude that:

Considering the appropriate data - the percentage of a given incoming class that makes partner - one finds that firms do *not* have a fixed promotion rate. Instead, the percentage of each cohort that makes partner varies dramatically.⁵¹

Given the subject matter of the Research Question this is a particularly pertinent criticism and one that I deal with at the conclusion of this part of the thesis.⁵²

Other commentators, while not dismissing the applicability of the work, have also pointed out factors that, in their view, Galanter and Palay failed to consider or did not adequately address. These include:

- the importance of internal power structures and politics in partnership promotion decisions;⁵³
- the impact of external economic forces on the ability of law firms to promote a fixed percentage of associates to partnership each year;⁵⁴ and
- the significance of firm mergers and lateral hiring of associates and partners on the prospects of associates making partner.⁵⁵

Insofar as these critiques impact upon the Research Question I will consider them more closely at the end of this part of the thesis.⁵⁶

Reconceiving the Tournament – Wilkins and Gulati

This brings me to the most in-depth critique produced to date of Galanter and Palay's application of tournament theory to law firms, that of Wilkins and Gulati.⁵⁷ I

⁵⁰ Evidence of how difficult it is to decipher the content of time recordings can be found at any contested costs hearing in the English Courts.

⁵¹ Kordana, op. cit., n. 8, pp. 1921 - 1922. Though also see Wilkins and Gulati, op. cit., n. 3, p. 1603 for their view on promotion percentages.

⁵² Considered at page 24 of this work, footnote 142.

⁵³ Robert L Nelson, 'Of Tournaments and Transformations: Explaining the Growth of Large Law Firms' (1992) *Wisconsin Law Rev.* 733 pp. 748-9; Johnson, op. cit., n. 43 p. 537 and Rutherglen and Kordana, op. cit., n. 39. See also Wilkins and Gulati, op. cit., n. 3.

⁵⁴ Johnson, op. cit., n. 43 and Kordana, op. cit., n. 8.

⁵⁵ Johnson, op. cit., n. 43.

⁵⁶ See also Morris and Pinnington, op. cit., n. 4. for research in the context of UK law firms, considered further at page 19 of this work.

start with a review of this work and then go on to consider Galanter and Palay's response, which was produced for the same Symposium in 1998.⁵⁸ Their response also deals with the "omissions" referred to above,⁵⁹ many of which are also to be found in Wilkins and Gulati's work.

It is worth starting by setting out Wilkins and Gulati's conclusion, that:

Although basic tournament theory does not adequately explain the structure and operation of contemporary elite firms the competitive aspect that the tournament model captures is a vital building block for constructing a more nuanced model of the large law firm.⁶⁰

This provides an important acknowledgement of the significance of tournament theory to the analysis of large law firm structure, a point which can be lost when considering their many criticisms of Galanter and Palay's work.⁶¹

Seven Grounds of Criticism

Wilkins and Gulati level seven main criticisms.

1. *Not everyone is competing in the tournament* – Wilkins and Gulati rely on evidence of lawyers' attitudes in the early part of their training/careers⁶² to back up their argument. They contend that in the early stages of a lawyer's career some other means⁶³ are needed to provide motivation and limit monitoring costs and to identify those who are competing.⁶⁴

2. *There is not a level playing field* – Some associates will be more favoured than others due to the fact that they will have mentors who:

- are politically powerful within the firm;

⁵⁷ Wilkins and Gulati, op. cit., n. 3.

⁵⁸ Wilkins and Gulati op. cit., n 27.

⁵⁹ Considered further at page 18 of this work.

⁶⁰ Wilkins and Gulati op. cit., n. 3, pp. 1632 and 1634, where they suggest the tournament casts a "shadow" over the working practices of lawyers *not* competing in the tournament and see senior associates as "locked in a competition that resembles a tournament".

⁶¹ That significance is underlined in the use they make of the tournament in their earlier work David B Wilkins and G Mitu Gulati, 'Why are there so Few Black Lawyers in Corporate Law Firms? An institutional Analysis' (1996) 84 *California Law Rev.* 493; and the recent work of Mitu Gulati et al that, though critical of the applicability of standard tournament theory, further develops its application of tournament theory in the large law firm context, Scott Baker, Stephen J Choi and Mitu Gulati, 'The Rat Race as an Information-forcing Device' (2006) 81 *Indiana Law Journal* 53.

⁶² Wilkins and Gulati op. cit., n. 3, p. 1606, citing Robert Granfield, *Making Elite Lawyers: Visions of Law at Harvard and Beyond* (1992).

⁶³ Considered further at page 14 of this work.

⁶⁴ Stephen J. Doggett, 'Assistant Survey', *Legal Business*, November 2006 issue 169. The survey discovered that just under two thirds of the 2,186 assistants surveyed found the idea of being a partner attractive.

- provide them with beneficial “training work”;
- protect them from work which provides no benefit to their career progression;⁶⁵ and
- push for their promotion to partner.

Associates fortunate enough to be in such a position are likely to get more than their fair share of “training work” and correspondingly less routine “paper work”.

The concepts of “training work” and “paper work” are potentially important for analysing the pattern of work assignments experienced by associates in the run-up to partnership promotion decisions. Of relevance to the Research Question will be which work assignments provided associates with information on their chances of making partner.

Training work is the type of work that will help an associate develop their own human capital, as it is likely to be high profile and closely supervised. It allows an associate to display abilities that are important for partners to possess to a greater extent than if they were to work primarily on routine “paper work” matters. This means the associate is more likely to be noticed, placed on the training “track”⁶⁶ and to be considered as someone with partnership potential.⁶⁷

According to Wilkins and Gulati, once a material level of training work has been provided to an associate and successfully completed the recipient is likely to continue to receive significant levels of training work and the associated partner attention/supervision.⁶⁸ Due to the expense of partner supervision and the resulting reluctance to monitor junior lawyers any more than is necessary, this will continue to be the case even if those who receive no, or minimal, levels of training work have the skills and aptitudes to make better partners. In other words, in their view, once an associate is seen to be a potential partner they are highly likely to remain on that “track”.⁶⁹ In addition, Wilkins and Gulati suggest that firms “seed” those recruits that are believed to be “especially valuable” directly onto the “training track”.⁷⁰

⁶⁵ That is, unduly high levels of “paper work”.

⁶⁶ Wilkins and Gulati, *op. cit.*, n. 3, p. 1646.

⁶⁷ *id.*, p. 1610, their analysis sees the human capital accumulated from training work as of three types: general; firm specific; and relational. With “relational capital” being the development of strong relationships with partners who will give them good work “pass on important client relationships, and ultimately push for their promotion”. Their view is that “paper work” assignments can give rise to the creation of general and firm specific human capital but such tasks are unlikely to generate relational capital or to allow associates to exhibit the skills and attributes “that partners look for when evaluating associates for partnership.”

⁶⁸ *id.*, pp. 1645 – 1647.

⁶⁹ *id.*, p. 1647.

⁷⁰ *id.*, pp. 1653 – 1654. The “especially valuable” recruits they refer to are those at the ““superstar” end of the academic distribution”.

3. *There is no material evidence of sabotage by lawyers of their co-competitor colleagues' work and/or career progression*⁷¹ – This runs contrary to general tournament theory and is the more remarkable according to Wilkins and Gulati because lawyers, who often work in teams, have plentiful opportunities to engage in such behaviour.⁷²

4. *The political power of the partner(s) supporting a particular associate will have a significant impact on that associate's chances of making partner*⁷³ – This means that not necessarily the best lawyers will be chosen as partners. Partners are likely to promote only those associates on whom they can rely to support them and reinforce their political power base in the future. Associates will, in turn, have an incentive to seek work only from powerful partners and not from those who carry little political weight.⁷⁴ The self reinforcing provision of career enhancing “training work” will also be encouraged in this scenario with partners tending to provide such work to those who are “most likely to provide direct benefit to their practices”.⁷⁵

Clearly, these factors may lead to behaviour that is not in the best interests of the firm.

5. *There is very little evidence that partners “shirk” even though there is little or no direct monitoring of their output.*⁷⁶

6. *Firms select partners on their future potential as partners and not on past performance* – This runs contrary to standard tournament theory where selection of the prize-winner is based solely on past performance.⁷⁷ Wilkins and Gulati rely on evidence that shows partners value hours worked as of only limited significance in deciding whether an associate has the makings of a successful partner.⁷⁸

⁷¹ There may be a simple explanation for this in that, lawyers, other than trainees, working in teams will seldom be at the same level of qualification as others in the team.

⁷² *id.*, p. 1614.

⁷³ *id.*, p. 1613, “Partners are not neutral umpires.” Nelson, *op. cit.*, n. 53 and Johnson, *op. cit.*, n. 43, level similar criticisms.

⁷⁴ This scenario has parallels with the situations analysed by Gulati et al, *op. cit.*, n. 61, p. 9.

According to their work on the partnership promotion decision making process “the more discretion decision-makers have, the greater the incentives of the lower level employees to engage in influence activities – that is, paying rents to and garnering favour with the agents in control – and this potentially benefits the controlling agents to a greater extent than a system in which the promotion criteria are more transparent.”

⁷⁵ Wilkins and Gulati, *op. cit.*, n. 3, p. 1617.

⁷⁶ *id.*, p. 1619.

⁷⁷ This criticism is developed by Gulati et al, *op. cit.*, n. 61. They propose that the long hours worked by associates are significant, not in themselves, but because they provide concrete performance information (that is, how associates react under the pressure and stress of long hours – thus laying bare their true abilities) which is used to give an indication of future potential.

⁷⁸ Wilkins and Gulati, *op. cit.*, n. 3, p. 1596, citing Renee M Landers, James B Rebitzer and Lowell J Taylor, ‘Rat Race Redux, Adverse Selection In The Determination of Work Hours in Law Firms’ (1996) 86 *American Economic Rev.* 329. However, if their enquiry had been phrased along the lines of: “Would you consider for partnership an associate who has no record of achieving high billable hours?” They might well have come to a different conclusion on the importance of high billable hours

7. *Selection is not transparent and associates lack the ability to monitor the promotion to partnership promises made by the firm*⁷⁹ – Wilkins and Gulati maintain that the partner “make-up” percentage is neither clear nor credible enough to reassure associates that the firm is fulfilling its obligations.⁸⁰ Further, law firms’ partnership promotion processes and criteria are opaque and cannot be relied upon as to be fair.⁸¹

Multiple Incentives – Not just the Tournament

Wilkins and Gulati then provide suggestions as to the structures and processes that firms use, in addition to the tournament, to mitigate agency costs for lawyers at levels below senior associate. In their words, in order to extract high levels of effort from their lawyers:

elite firms pursue a multiple incentive strategy. Consistent with tournament theory, firms continue to hope that some lawyers will be motivated by the chance of making partner. For those who are not, firms create additional incentives through high wages, reputational bonds and the promise of general training. Moreover, these four incentive systems [including the tournament] are interconnected. The less credible a firm's partnership promises, the more it is likely to rely on high wages or promises of providing valuable external signals.⁸²

The predictions Wilkins and Gulati make in this area are crucial to the unpacking of the Research Question. If the predictions are correct, one would expect the research data to support the fact that these other incentives exist and have played a part in motivating associates. In such a scenario the periods during which they provide motivational incentives will be highly significant for the Research Question as it will only be at the point when the tournament becomes a material motivating factor that an associate’s ability to monitor the firm’s promotion percentage will become significant. At any given time, if other incentives are providing sufficient motivation for the associate to expend high levels of quality effort, the rules of the tournament and other factors associated with it are immaterial.

in making promotions to partner. The conclusion derived from asking this question would certainly give rise to a different conclusion if Gulati et al, op. cit., n. 61 is to be believed. While the hours worked, of themselves may be unimportant, as an indicator of partnership potential, the behaviour observed during the long hours is, in their view, crucial.

⁷⁹ Wilkins and Gulati, op. cit., n. 3, p. 1624.

⁸⁰ id., pp. 1623 – 1624.

⁸¹ id., pp. 1626 and 1667 – 1668. They refer to the partner promotion process as a “Black Box” and contend that an interesting by-product is that the opacity in relation to promotion criteria means that senior associates cannot tell which areas the partners really value in making up new partners. So, the senior associate is incentivised to work hard in all areas thereby bringing extra value to the firm. The tournament, on this view, seems to produce beneficial output as a by-product of the firm not managing their employees and having them exist in a state of uncertainty and without guidance.

⁸² id., p. 1635.

I will consider Wilkins and Gulati's views on each of High Wages, Reputational Bonds and General Training before outlining their views on the significance of the tournament for junior lawyers.

*High Wages*⁸³ – Lawyers' relatively high wages create a large pool of people qualified and competent to do the job which, in turn, motivates those in the jobs to work hard with little supervision as they know the firm would be able to hire willing and able replacements if they do not do so.

*Reputational Bonds*⁸⁴ – Such bonds exist where the fact that a lawyer has trained and/or worked at an elite law firm is taken by the market as a signal that skills that are hard to observe in the hiring process have been acquired by that lawyer. Thus it is easier for that lawyer to secure future employment outside their existing firm. Courtesy of this reputational bond the lawyer ensures that the educational and other human capital in which they have invested to date is at least preserved while they work for the large firm, irrespective of actual performance.

However, the existence of the reputational bond is something of a double-edged sword in that the "terminating" of a lawyer from their employment sends such a negative signal to potential future employers that the value built through previous investment in human capital may well be destroyed. This provides a hefty incentive for the lawyer to work hard without significant levels of supervision.⁸⁵

General Training – As opposed to firm specific training,⁸⁶ general training is a commodity that junior lawyers need and seek out in order to add to their stock of readily transferable human capital. Their increased human capital can then be utilised in the securing of and performance in future jobs.⁸⁷ They will work hard to preserve the opportunity of receiving this general training.

⁸³ *id.*, p. 1636 citing Paul Milgrom and John Roberts, *Economics, Organization and Management* (1992) wages that are higher than efficiency wages (that is, the wage that you would be prepared to do the job for).

⁸⁴ Wilkins and Gulati, *op. cit.*, n. 3, p. 1640.

⁸⁵ Some interesting by-products may result:

- a. If some associates are motivated to extreme efforts by the tournament – for example, extreme levels of billable hours worked – does that mean that those only interested in preserving the reputational bond of their employment are forced to adopt the standards set by those in the tournament? See Wilkins and Gulati *id.*, p. 1632, for reference to "the shadow of the tournament" and Galanter and Palay, *op. cit.*, n. 3, p. 1687.
- b. The existence of reputational bonds provides a reason why lawyers might leave their firm prior to partnership decisions being made rather than be pushed out at some later point in time, see Wilkins and Gulati, *op. cit.*, n. 3, p. 1633. Though in such circumstances query whether this might be just as detrimental to the signal of unobservable skills acquired as getting fired before the partnership decisions are made? Also see Gilson and Mnookin (1989) *op. cit.*, n. 14, p. 567.

⁸⁶ *id.*, p. 1641.

⁸⁷ Allied to the benefits provided by the Reputational Bond.

Significance of the tournament for junior lawyers – The tournament’s significance lies in the “tracking” behaviours outlined above.⁸⁸ As Wilkins and Gulati put it:

elite firms cannot afford for every associate to be strongly motivated to win the [partnership] tournament. ... the kind of training work and relational capital that associates need to win the tournament are scarce commodities. If every associate were to compete fiercely to acquire these goods, firms would have to expend substantial resources to guard against sabotage and other forms of costly strategic behaviour by associates.⁸⁹

All four incentives are interconnected; the less credible a firm’s partnership promises the more likely it is to rely on the other incentives.⁹⁰ The other incentives in play act to maintain a profitable number of associates in the firm’s work force until such time as the tournament takes over as the primary motivational factor or they leave the firm.⁹¹

Galanter and Palay Respond

Galanter and Palay’s response to Wilkins and Gulati’s critique is to embrace it as an “incisive and illuminating elaboration of our picture of the large law firm.”⁹² It is, in their view, a piece that adds contemporary context and depth to their own work. Galanter and Palay’s view is that their version of Tournament theory as applied to law firms is well able to accommodate Wilkins and Gulati’s criticisms. They point out that Tournament of Lawyers contained:

two levels of description. First there is the stripped-down skeletal description that is used in the tournament model [and second the] more contextualised, fleshed-out account of the big firm.⁹³

They go on to suggest that:

Many supposed differences between "our" tournament and that envisioned by David and Mitu seem to arise from the conflation [by Wilkins and Gulati] of these two levels of description.⁹⁴

They see Wilkins and Gulati’s work as providing a more in-depth description and contextualisation of how the big law firm may operate the tournament but they:

⁸⁸ id., p. 1647, potentially also the “seeding” phenomenon they outline. See also potential impact of imported work standards from the tournament at footnote 85a of this work.

⁸⁹ id., p. 1635.

⁹⁰ id., p. 1635.

⁹¹ The smaller the pool of potential partners the greater the amount of training work members of that pool can be provided with. Consequently they should accumulate corresponding amounts of relational capital, which will better equip that small pool to make partner.

⁹² Galanter and Palay, op. cit., n. 27, p. 1687.

⁹³ id., p. 1692, citing Galanter and Palay, op. cit., n. 3, pp. 77-120.

⁹⁴ Galanter and Palay, op. cit., n. 27, p. 1692.

do not think, however, that their richer account requires modification of the core of the tournament story.⁹⁵

The “core” they refer to is the “deal” struck between the firm and its associates that the associates will work diligently in producing a large volume of high quality legal work for the firm’s clients, in return for entry into the promotion to partner tournament. Developing this theme,⁹⁶ they see the tournament as “a cluster of devices” that serves to provide an institutionalised environment for enforcing the deal.⁹⁷ They contend that different combinations of the tournament’s “devices” will be observable in large law firm situations over time. As they put it, “A rough approximation” of the rules has always been enough to act as evidence of a tournament existing and “that approximation has varied over time”.⁹⁸

As a general matter, Galanter and Palay see the criticisms levelled at them by Wilkins and Gulati as based on a series of assumptions about conditions that, though often present when tournaments exist, are not, “descriptions of specific conditions necessary for a tournament”.⁹⁹ This relates back to Galanter and Palay’s point, noted above, about the conflation by Wilkins and Gulati of the two separate levels of analysis of the tournament presented in *Tournament of Lawyers*. This general point is important to bear in mind when considering Wilkins and Gulati’s specific criticisms and Galanter and Palay’s responses, which I set out below.¹⁰⁰ For convenience, I adopt Wilkins and Gulati’s numbering.

1. *Not everyone is competing in the tournament* – Galanter and Palay state that there was “probably always some of this” though possibly “more today than there used to be”.¹⁰¹ They further describe it as a “second-order phenomenon”¹⁰² that is likely to arise whenever individuals are able to exploit a set of circumstances to their own ends. In such cases, “Associates may join a law firm seeking money, training, or credentials.”¹⁰³

2. *There is not a level playing field* – Again, Galanter and Palay see this as nothing new and also not entirely surprising. Wilkins and Gulati contend that Galanter and

⁹⁵ *id.*, p. 1690.

⁹⁶ In effect they co-opt Wilkins and Gulati’s multiple incentives to their tournament.

⁹⁷ That is, an institutional structure that mitigates the potential agency costs associated with sharing the clients’ work with associates.

⁹⁸ *id.*, p. 1692.

⁹⁹ *id.*, p. 1692.

¹⁰⁰ *id.*, p. 1686, Galanter and Palay refer to the specific criticisms as “... a useful catalogue of features of the firm that have been little noted.”

¹⁰¹ *id.*, p. 1687.

¹⁰² *id.*, p. 1687.

¹⁰³ *id.*, p. 1687. They then go on to add a point that has potential significance as an area for further research, namely that: “They may not be competing in the tournament, but, nevertheless, we suspect that in important respects they are expected to (and do) act as if they were competing.” See also page 15 of this work, footnote 85a, regarding the “shadow” cast by the tournament over the working habits of those lawyers who are not competing in it.

Palay emphasised in *Tournament of Lawyers* that “associates can be confident that partnership decisions [are] being made on the basis of merit”.¹⁰⁴ However, Galanter and Palay see this as an inaccurate reflection of their work. Instead of being concerned with promotions on the basis of merit, Galanter and Palay say they are concerned with “devices that maximise associates' incentives to produce lots of what partners want.” They stress that the associates' final standing in the tournament is based on output that is “measured subjectively, not mechanistically”.¹⁰⁵

3. *No material evidence of sabotage by lawyers* – Galanter and Palay are silent on this point.

4. *Impact of the political power of partners on the promotion decision* – Galanter and Palay consider that various factors that impact on the promotion decision have been ever present in the world of the large law firm. In this category they place:

- patronage by politically powerful partners;
- business winning abilities of the associates;
- fluctuations in demand for legal services; and
- staffing requirements of particular specialties.¹⁰⁶

They go on to state that:

The operation of a tournament does not require that these factors be abolished. It only requires that a significant portion of a firm's associates have a reasonably accurate understanding of the rules of the game and a reasonably accurate perception of the partners' desires.¹⁰⁷

5. *Little evidence that partners “shirk” despite lack of monitoring* – Galanter and Palay feel that they addressed this very point in *Tournament of Lawyers*. They point out that in describing the “late big firm” they anticipate the continual testing of partners, with the tournament extended into the partnership phase with partnership becoming:

less of a plenary and permanent reward, necessitating the design of additional incentives for performance and loyalty.¹⁰⁸

6. *Firms select partners on their future potential as partners and not on past performance* – Galanter and Palay respond on this point, that their story:

¹⁰⁴ Galanter and Palay, op. cit., n. 27, p. 1687 citing Wilkins and Gulati, op. cit., n. 3, p. 1604.

¹⁰⁵ Galanter and Palay, op. cit., n. 27, p. 1687 citing Galanter and Palay, op. cit., n. 3, p. 100.

¹⁰⁶ They make no explicit reference to lateral hiring.

¹⁰⁷ Galanter and Palay, op. cit., n. 27, p. 1688.

¹⁰⁸ id., p. 1689 citing Galanter and Palay, op. cit., n. 3, p. 122. The incentives that partners have to retain their partnership status seem similar to those that junior lawyers have. That is they seek to preserve their “high wages” and “reputational bonds” as well as taking part in tournaments if they are looking for elevation within the firm's hierarchy (for example, seeking equity partnership or powerful positions). See also Wilkins and Gulati, op. cit., n. 3, pp. 1662 – 1664.

has always included an expectation that firms will promote those associates with the biggest bundle of human capital. The term "capital" does not refer to an accumulation of past merit, but rather to those attributes that can produce value in the future.

They also make the axiomatic but, in this context, entirely valid observation that:

While firm members who are selecting partners try to predict the future, the only thing on which they can judge the associates is the past.¹⁰⁹

7. Selection is not transparent and associates lack the ability to monitor the promotion to partnership promises made by the firm – Again Galanter and Palay are of the view that lack of transparency is hardly a new phenomenon and the fact that the process lacks transparency has never precluded the existence of a tournament. They say nothing specific on associates' abilities to monitor promotion to partner promises, although they note that:

Compared to an earlier day, it would be hard to make the case that associates have less information about their standing and partnership prospects.¹¹⁰

In this context it is certainly worthwhile repeating Galanter and Palay's general statement that; in order for a tournament to operate, the required level of knowledge is that associates:

have a reasonably accurate understanding of the rules of the game and a reasonably accurate perception of the partners' desires.¹¹¹

However, this still begs the question, *do* associates, in fact, have the requisite level of knowledge to be able to monitor the promotion to partnership promises made by the firm?

Having dealt with many of Wilkins and Gulati's main criticisms Galanter and Palay set out specific areas that Wilkins and Gulati have provided new and significant pieces of the tournament's jigsaw.

David and Mitu make a number of important additions to our picture of the large firm - the distinction between "paper work" and "training work" the observation that associates (and partners) cultivate "relational capital"¹¹² within the firm, their account of "tracking" and "seeding," and much else. They enlarge our understanding of how the tournament is contextually

¹⁰⁹ Galanter and Palay, op. cit., n. 27, p. 1688.

¹¹⁰ id., p. 1688.

¹¹¹ id., p. 1688.

¹¹² id., p. 1690, Galanter and Palay see relational capital as falling within their broad category of human capital.

embedded in the American setting and provide a rich portrait of the micropolitics of the law firm.¹¹³

Recent Applications/Critiques of Tournament Theory in Law Firm Context

Galanter and Palay's work has continued to be applied and critiqued from 1998 to date. For example, Morris and Pinnington, in their work on promotion practices in UK law firms, find the tournament model of career progression and promotion to partner prevalent in the largest UK law firms.¹¹⁴ Bainbridge, in his work on legal ethics and the impact that the promotion to partnership tournament has on lawyers ability to "whistle blow" on their clients, embraces tournament theory as a means of explaining why lawyers are unlikely to report actual or potential contraventions of the Sarbanes-Oxley Act.¹¹⁵ He notes that senior associates are those most likely to be embroiled in the tournament,¹¹⁶ and:

it is precisely senior associates who often have the sort of client contact in which potential misconduct may come to light.¹¹⁷

However, due to the tournament's need for them to please clients they are some of the least likely people to report this information.

Price, meanwhile, considers the impact on Silicon Valley law firms of extreme market conditions during the dot-com bubble of the 1990s.¹¹⁸ Specifically, he considers how those conditions affect the ability of the tournament model to control opportunistic behaviour by associates. In his conclusion he notes that:

the tournament seems to have worked as a disincentive to engage in opportunistic behaviours by the most senior associates and partners. From the literature on tournament theory, the cohort of associates most likely to be actively engaged in the tournament, and most disinclined to engage in opportunistic behaviours, is senior associates.¹¹⁹

A recent dissenting note comes from Ginsburg and Wolf in 2004.¹²⁰ Although their article is largely concerned with other matters to do with recruiting associates into

¹¹³ *id.*, p. 1690.

¹¹⁴ Morris and Pinnington, *op. cit.*, n. 4. Interestingly, their evidence suggests that outside the larger firms "up or out" is not a common promotion practice. They see the absence of "up or out" in these firms as an indication that no tournament exists in such cases.

¹¹⁵ Bainbridge, *op. cit.*, n. 4, p14. The Sarbanes-Oxley Act is American legislation passed in the wake of the collapse of Enron. It deals with, among other things, the general duties of care owed by those providing companies with legal, accounting and consulting services.

¹¹⁶ *id.*, p. 14 citing Wilkins and Gulati, *op. cit.*, n. 3.

¹¹⁷ Bainbridge, *op. cit.*, n. 4, p14.

¹¹⁸ Price *op. cit.*, n. 4.

¹¹⁹ *id.*, p. 16 citing Wilkins and Gulati, *op. cit.*, n. 3, p. 1633.

¹²⁰ Ginsburg and Wolf, *op. cit.*, n. 39.

law firms, as regards tournament theory they prefer the view that law firms merely seem to exhibit the characteristics of a tournament:

Firms do not choose to structure a tournament; rather, the attrition model [of associate recruitment] of the current large law firm may in part be forced upon them by the market in which they participate, and this model merely simulates the appearance of a tournament.¹²¹

Ginsburg and Wolf consider that these seeming characteristics of a tournament “may stem from the difficulty of predicting a lawyer's fit prior to his or her beginning with the firm.”¹²² They go on to consider works of Wilkins and Gulati¹²³ and state that they provide an excellent response and “direct rebuttal to Galanter and Palay”.¹²⁴

As noted above, though Wilkins and Gulati's work contains cogent criticisms of Galanter and Palay's application of tournament theory to large law firms they (Wilkins and Gulati) remain of the opinion that a tournament exists in law firms, albeit confined to the ranks of senior associates.¹²⁵

In 2006 Baker, Choi and Gulati posit that in law firms the partnership promotion process consists of a two round “Revelation Tournament”.¹²⁶ Associates qualify for the second round of the tournament (the promotion to partnership decision) based on accumulation of billable hours. The crucial revelation of the first round is the information that the firm discovers about a lawyer's true abilities by placing them under the stress of long hours.

Their main criticism of tournament theory as it applies to law firms is that:

standard tournament theory, fails to capture the realities and nuances of most law firm promotion decisions¹²⁷

They claim that, contrary to the standard theory,¹²⁸ associates are not judged for the purpose of promotion on objective bases, rather:

¹²¹ *id.*, p. 960.

¹²² *id.*, p. 959.

¹²³ Wilkins and Gulati, *op. cit.*, n. 3, and, *op. cit.*, n. 61.

¹²⁴ Ginsburg and Wolf, *op. cit.*, n. 39, p 960.

¹²⁵ In fact, the attrition model and the “difficulty of predicting a lawyer's fit” before they join the firm sits well with Wilkins and Gulati's nuanced model of the tournament. Junior lawyers, in their view, are motivated by a variety of factors up to the point when they and the firm decide there is a “fit” and the associates throw themselves headlong into the tournament.

¹²⁶ Gulati et al, *op. cit.*, n. 61.

¹²⁷ *id.*, p. 13.

¹²⁸ By which I take them to mean the works of Galanter and Palay as they are the only authors to have applied the theory to the world of the law firm in a comprehensive manner and in something resembling its standard form. Though see Galanter and Palay, *op. cit.*, n. 27, p. 1684 for their view of having the application of “standard” tournament theory ascribed to them.

it is unclear precisely what the associate needs to do to “win” the tournament.¹²⁹

This criticism of “standard tournament theory” as applied to law firms should be read, however, in the light of *Tournament of Lawyers*, where Galanter and Palay are at pains to stress that the prize of partnership is awarded on the basis of associates’ possession of two goods: high quality legal work; and their own human capital, *judged subjectively*.¹³⁰

Conclusion – The Rules of the Tournament Revisited

The aim of this third section of Part II is to draw together the elements of tournament theory that are of direct relevance to the Research Question. First I deal with those areas of tournament theory applicable to law firms where there appears to be a broad consensus. Then I set out the propositions that have some evidential basis but require further testing and validation. Finally, I consider the elements of tournament theory that give rise to propositions that have not, to date, been considered in any detail. That is, the areas relevant to the Research Question that pose unanswered questions.

Areas of Broad Consensus

A partnership promotion tournament exists for senior associates – Bainbridge and Price both explicitly adopt Wilkins and Gulati’s proposition and give examples of the effect that the tournament has on the participants, specifically: a reluctance to “whistle blow” on clients (Bainbridge)¹³¹; and a disincentive to indulge in opportunistic behaviours (Price)¹³². In addition, *Tournament of Lawyers* contains reasoning that might support the notion that the tournament is a device most relevant to senior assistants. In the context of agency costs, the particular concerns that Galanter and Palay ascribe to partners who lend their capital to associates appear to be specific to senior associates rather than their junior counterparts.¹³³ They envisage that the lending partners will be concerned that their associates will:

- demand more money in return for their labour by threatening to leave and take clients with them;
- leave and be difficult and expensive to replace, regardless of whether or not they are taking clients with them;¹³⁴ and
- damage the partners’/firm’s reputation by performing poorly or, worse, dishonestly.

¹²⁹ Gulati et al, op. cit., n. 61, p. 14.

¹³⁰ Galanter and Palay, op. cit., n. 3, p. 100 and repeated later in Galanter and Palay, op. cit., n. 27, p. 1687, emphasis added.

¹³¹ Bainbridge, op. cit., n. 4, p14.

¹³² Price op. cit., n. 4, p. 16.

¹³³ Galanter and Palay, op. cit., n. 3, pp. 95 – 96.

¹³⁴ The costs here are threefold: 1. the investment in training the departing associate which has yet to be recouped; 2. the time and money cost of finding a replacement; and 3. the cost of training that replacement.

All of these concerns will be most acute in the case of senior associates. The significant levels of client contact and trust that make lawyers hard to replace and give them opportunities to lure clients away or ruin their firms' reputations are the preserve of senior associates.¹³⁵ Overlaying Morris and Pinnington's work,¹³⁶ as it relates to large law firms in the UK, allows a conclusion that a tournament exists within large UK law firms, at least, once senior associate level is reached.

The partnership promotion decision-making process is opaque – There seems to be little difference of opinion between Galanter and Palay and those who criticise them on this issue. Indeed, not only is it common ground that the process is opaque but also that promotion decisions are based on subjective judgments of ability, potential and surrounding internal and external economic factors. Additional common ground is that such decisions are heavily affected by the levels of political power and influence wielded and exercised by an associate's supporters.¹³⁷

***Working Propositions Needing Further Testing*¹³⁸**

In this category I place some of the propositions advanced by Wilkins and Gulati in *Reconceiving the Tournament*, specifically:

- “seeding” and “tracking” of associates;
- the distinction between “paper work” and “training work” assignments and the importance of the latter in the promotion to partner process; and
- the role that multiple incentives play, alongside the tournament, in motivating associates.¹³⁹

If these propositions are valid I would expect the field research to be undertaken for this thesis to provide evidence of their existence.

The importance of training work type assignments should play a part in an associate's analysis of his/her chances of making partner, as should the reinforcing factors of seeding and tracking. Likewise, evidence of the existence of multiple incentives should become apparent when considering at what point the promotion to

¹³⁵ Indeed, a good working definition of “senior associate” might be that they exist only if these risks attach to their performance and behaviour.

¹³⁶ Morris and Pinnington, op. cit., n. 4.

¹³⁷ Galanter and Palay, op. cit., n. 27, p. 1689 and considered further at pages 13 and 18 of this work.

¹³⁸ I would also like to add to the propositions in this section the notion from Gulati et al, op. cit., n. 61, that billable hours act as an information forcing device as I find it makes intuitive sense.

However, though it is a neat theory it does not meet the criteria set for this section of having “some evidential basis”. Perhaps it fits best within the category of unanswered questions about tournament theory. However, I shall not consider it further in this Part II as it seems to be an untested hypothesis.

¹³⁹ Wilkins and Gulati, op. cit., n. 3. Galanter and Palay, op. cit., n. 27, p. 1695 see these propositions as providing “important additions to our picture of the large firm”. Considered at page 19 of this work.

partner tournament becomes the prime motivational force for associates. Both are matters considered below.

Some Unanswered Questions

There are many aspects of tournament theory as it applies to large law firms that remain untested to any great degree. That is, in part, what gives this area much of its interest. However, this thesis has, of necessity, to be confined to those questions that are of direct relevance to the Research Question. The accumulated literature reviewed above has not subjected the Research Question set out in Part I¹⁴⁰ to anything other than theoretical scrutiny. Additionally, through performing this literature review, further questions related to the Research Question have become apparent, specifically:

- When does the tournament become the prime motivating factor for associates?¹⁴¹
- Who comprises the “entering class” of associates for the purposes of monitoring partnership promotion rates?¹⁴²
- If promotion percentage and continued hiring of junior lawyers are not the whole of the story, how *do* associates weigh up their chances of becoming a partner?

Researching these questions should help answer the Research Question and shed some light on Galanter and Palay’s general argument that, for a tournament to be effective, associates need only to:

have a reasonably accurate understanding of the rules of the game and a reasonably accurate perception of the partners' desires.¹⁴³

Though the Research Question and those set out above are, as yet, unanswered, it is clear that the perceptions of those engaged in the tournament are crucial to its efficacy. Such perceptions are the subject matter of the field research outlined in Part III.

¹⁴⁰ That is, whether lawyers in large law firms in the UK have the means by which they can monitor their firms’ implied promises that a fixed percentage of them will be made up to partner in due course.

¹⁴¹ Logically, until then the rules of the tournament, including the monitoring of partner promotion rates, should be of little or no relevance to the associates.

¹⁴² Given that the “monitoring” is done by the associates themselves, it is the perception of the associates that is important in this context and not arid academic debate of which figures provide the “best” measure.

¹⁴³ Galanter and Palay, *op. cit.*, n. 27, p. 1688.

Part One: Life

XI

MUCH madness is divinest sense
To a discerning eye;
Much sense the starkest madness.
'T is the majority
In this, as all, prevails.
Assent, and you are sane;
Demur,—you 're straightway dangerous,
And handled with a chain.

Emily Dickinson¹⁴⁴

Part III

Research Methodology

Aims of the field research

The broad aim of the field research is to provide qualitative data regarding the perceptions of lawyers in large law firms operating in the UK in order to ascertain whether or not the rules of tournament theory, as they relate to promotion to partnership, hold true in the light of that data. In more detail, the aim of the research is to elicit qualitative data relevant to the Research Question set out in Part I, that is:

This thesis seeks to identify whether or not the rules of tournament theory that focus on promotion to partnership hold true when set against real life experiences of lawyers in large law firms operating in the UK. Specifically, the question I seek to answer is, whether or not such lawyers have the means by which they can monitor their firm's implied promise that a fixed percentage of them will be made up to partner in due course?

Further, the goal of the field research is to ensure that the qualitative data gathered addresses the questions that were generated as a result of performing the literature review. These questions, which were conceived with a view to testing the theoretical

¹⁴⁴ Emily Dickinson, *Complete Poems* (1924).

framework within which the Research Question is set, are summarised in the conclusion to Part II and are set out below for ease of reference.

- When does the tournament become the prime motivating factor for associates?
- Who comprises the “entering class” of associates for the purposes of monitoring partnership promotion rates?
- If promotion percentage and continued hiring of junior lawyers are not the whole of the story, how *do* associates weigh up their chances of becoming a partner?

The research data should also have the potential to shed light on two further aspects of tournament theory as applied to law firms. Though they are subsidiary to the main Research Question in terms of importance for this thesis, they may have significance for the context within which that question exists.

First, the conclusion to Part II also posits that data generated by field research on the specific questions set out above could be expected to provide data on those areas referred to as “Propositions Needing Further Testing”. Specifically they are:

- the “seeding” and “tracking” of associates;
- the distinction between “paper work” and “training work” assignments and the importance of the latter in the promotion to partner process; and
- the role that multiple incentives play, alongside the tournament, in motivating and controlling the behaviour of associates.

Second, the field data, in theory, should also support those propositions that are well settled among those commentators who have conducted research and ventured opinions in this area. The conclusion to Part II states that these areas of “broad consensus” are that:

- A partnership promotion tournament exists for senior associates.
- The partnership promotion decision-making process is opaque.

The Realities of Gathering Data to Meet the Aims of the Field Research

There are a number of challenges inherent in designing a research methodology that ensures that the data generated is as relevant as possible to the aims stated above. The two fundamental questions are easy enough to identify but harder to answer with precision. They are:

- from what sources can I generate the qualitative data I am seeking; and
- by what means can I elicit that information once the sources have been identified?

The challenges presented by each potential answer to the questions will determine which research methodology I adopt.

The Sources

The literature review revealed no research directly relevant to the key elements of the Research Question, that is, the perceptions of those involved in the promotion to partnership process. It is worth re-emphasising here that it is these perceptions that are fundamental to understanding whether the rules that are the subject matter of this thesis hold true. They are the aspects of life as a lawyer in large UK law firms that the field research needs to uncover.¹⁴⁵

In the absence of relevant data on the perceptions of lawyers regarding their experience of the promotion to partner process the only viable means of generating such data is to ask the lawyers themselves. This conclusion then begs the question: which lawyers should be approached?

In defining further who might comprise the relevant survey group I concluded that only those lawyers who had been through the full range of experiences thrown up by the promotion to partnership process would have the necessary knowledge to provide pertinent data. They would be the only individuals who knew how accurate their perceptions of their chances of making partner turned out to be. Unsurprisingly, the most readily identifiable individuals who have been through the promotion to partnership process are partners in law firms.

Individuals who have been through the promotion to partnership process but who have not been promoted are difficult to identify.¹⁴⁶ Only those candidates who are seen to have a good chance¹⁴⁷ of making partner¹⁴⁸ are put forward by their sponsoring departments/partners, since to do otherwise would mean:

- expenditure of, high opportunity cost, partner time on individuals with relatively low chances of being promoted;¹⁴⁹

¹⁴⁵ Though industry surveys might be drawn upon to provide broad indications of how lawyers feel about their career prospects, for example the *Legal Business Assistant Survey* November 2006 (Doggett, op. cit., n. 64), none have specifically explored the perceptions of individual lawyers who have experienced the promotion to partner process and certainly none have done so as a means of highlighting the role that tournament theory might play in the way law firms are organised.

¹⁴⁶ Such associates are unlikely to wish to broadcast information that shows them in a poor light, see Gilson and Mnookin (1989), op. cit., n. 14, p. 567.

¹⁴⁷ Just how good a lawyer's chance of making partner must be before they are put through the PPP will vary between firms. It should be noted here that having a "good chance" does not necessarily mean that the individual will be made partner the first time that they go through the process, rather that they will be very likely to make partner in due course which may be after one or more times through the whole process. Anecdotal evidence suggests that some firms use an initial run through their partnership process as an opportunity for the would be partner to gain wider exposure within the firm and to allow the decision making committee to see them in action without having to make a once and for all decision at the first time of asking.

¹⁴⁸ Their chance of making partner will largely be determined by the combination of their own attributes as a lawyer and the business case for making them a partner.

¹⁴⁹ An anathema to the notion of the low level of worker monitoring found within the tournament model.

- loss of credibility for the department/partners which may prejudice their chances of securing future partnership promotions for their departments; and
- the negative impact such a result would have on the associate in question and other associates within the group with partnership aspirations, would lead to a risk that these individuals would leave and the department/partners lose valuable members of their team.

Even where such individuals do exist, they are unlikely to publicise the fact that they have failed to make partner due to the negative consequences this may have in their ability to secure another position.¹⁵⁰

A further issue to be considered is whether or not I should confine data gathering to “equity” partners only, “fixed share” partners only or whether to include both in the exercise?¹⁵¹ I concluded, for three reasons, that confining the research to one group or the other was unnecessary. Firstly, tournament theory suggests that the structure works where the prize for winning is sufficiently greater than the reward for not winning. This is likely to be the case whether the type of partnership on offer is “equity” or “fixed share”. Secondly, the true value of achieving partnership in any given firm is very difficult to ascertain and gaining an “equity” partnership in one firm may well be a lesser prize than achieving a “fixed share” elsewhere. Thirdly, to date, the literature published on tournament theory and its application to law firms has made no such distinction.

Existing partners then, regardless of whether equity or fixed share, appear to form the best potential source of the data sought. Having reached this conclusion, in order to ensure that the data generated is both as reliable as possible and relatively up to date, a further refinement of the potential data source is necessary, that is, to confine the research to partners promoted in 2000 and later. This survey group, in my view, provides a sufficient number of potential subjects on which to base the research and their reflections on the promotion to partnership process will be relatively reliable as the events in question happened in the recent past.

However, the selection of such a survey group is not without its own major issues – most significantly that the survey group comprises individuals who are notoriously short of time for anything but their professional duties.¹⁵² Partners made up since

¹⁵⁰ Gilson and Mnookin (1989), op. cit., n. 14, p. 567 “If the associate tries to leave her current firm after not being promoted to partner, any other potential employer receives an obvious signal about the associate's abilities. The firm with the best knowledge concerning the associate's abilities declined to make her a partner.” p. 577.

¹⁵¹ Equity partners are those who own part of the business and receive a “share” of the profits of the business, they are true “partners” under English law. “Fixed share”, sometimes referred to as “salaried partners”, have the title “Partner” but receive a fixed amount of remuneration which is usually independent of the financial performance of the firm.

¹⁵² An indication of the time paucity of junior partners was revealed in the response of one HR Director to an enquiry as to the possibility of conducting the Case Study interviews at their firm, they commented, “see if you can't limit it [the interviews] to 30 minutes”.

2000 are those most likely to be under pressure to perform and prove themselves in their role as junior partners.

If fixed equity they may well have one eye on (and may already be competing in) the next round of the tournament, promotion to equity partner. If already an equity partner they may feel under pressure to justify their new level of remuneration.¹⁵³ In all cases they will have taken on the greater responsibilities and powers of being a partner together with the stresses and strains that imposes. Typically, though they will now have a slightly lower target for chargeable hours, they will acquire managerial and business generation responsibilities that far outweigh this modest allowance. On top of these professional pressures many junior partners will have competing interests from their families.

My second concern relates to being able to provide those taking part in the research with sufficient comfort regarding the confidentiality of their data and the non-attributable nature of the reporting of their data. These are, naturally, major concerns for those who would be volunteering potentially sensitive information about themselves and their firms in circumstances where they are reliant on that institution for their livelihood. My approach and methodology would, therefore, need to convince them that the data they provided would be treated in a confidential manner and reporting of the data would not lead to them or their firms being identifiable in any way. In short, the subjects of the research would need to trust me.

Taken together, my concerns meant that it would be potentially difficult to convince members of the survey group of the benefits of participating in my research study. I would need to find some form of leverage to overcome resistance to them taking part and all these factors would necessarily influence my choice of research method.

The Means

Moving on to the question of by what means I could generate relevant data from the chosen sources, there are further matters to consider. Two field research methods were potentially suitable for the qualitative data generation referred to above:

- interviews with individual partners; and/or
- a questionnaire issued to individual partners.

My preferred method of generating a rich set of qualitative data was face-to-face interviews. However, financial and time constraints meant that this was not practicable. However, interviews by telephone were a real possibility. The major downside of any sort of interview is that they are time consuming for the

¹⁵³ Galanter and Palay, op. cit., n. 3, p. 122, and recent publicity surrounding the de-equitisation of partners in large UK law firms, Husnara Begum, *The Lawyer* (23 October 2006) <http://www.thelawyer.com/cgi-bin/item.cgi?id=122551&d=11&h=24&f=23> and Helen Power and Emma Vere-Jones, *The Lawyer* (24 March 2003) <http://www.thelawyer.com/cgi-bin/item.cgi?id=82141&d=11&h=24&f=23>.

interviewees and, given the time pressures on junior partners outlined above, there was limited potential for sourcing and speaking to a large enough number of willing lawyers in the time available for the completion of this research project. Without face-to-face contact the issue of trust regarding confidentiality and attribution was also likely to remain a live one.

Gathering data via a questionnaire is attractive, in that it would open up a potentially wider subject group. It is also an inexpensive and time efficient way to gather data. The major drawback of using a questionnaire when seeking qualitative data is that there is no control over the quality and relevance of the responses. This is notwithstanding the fact that, without prior research effort to test the efficacy of the questions posed, the questions themselves may not be effective. In addition, a “cold call” survey does nothing to address the issues relating to confidentiality/ attribution and the number of responses likely to be achieved from such a survey is likely to be low.¹⁵⁴

After considering the factors outlined above I decided to adopt the following field research methodology:

1. Conduct a pilot case study via telephone interviews with a limited number of partners, in this case six, from a single firm – the “Case Study”.
2. Issue a questionnaire to a wider number of partners from within the chosen survey group (the “Questionnaire”) based on the questions used in the Case Study and amended to take into account the knowledge and data derived from the Case Study.

The Case Study

I decided that the interviews would be semi-structured and of approximately one hour in duration. The aim was that they should provide high quality data relevant to the Research Question and the subsidiary matters outlined above. They would also, I hoped, shed light on the type of question and lines of enquiry that could best be utilised in the Questionnaire.

To overcome issues relating to the time paucity of the partners to be interviewed for the Case Study and trust regarding confidentiality/attribution the sample would be generated via an e-mail request to a number of HR Directors of major UK Law firms that were known to me. They would be asked if they would contact partners at their

¹⁵⁴ See D.A. Asch, M.K. Jedrzejewski and N.A. Christakis, ‘Response Rates to Mail Surveys Published in Medical Journals’ (1997) 50 *Journal of Clinical Epidemiology* 1129 for an examination of relatively low response rates common in surveys of busy professions. See also Penny Brooker, ‘Construction Lawyers’ Attitudes and Experience with ADR’ (2002) *Construction Law Journal* 18(2), 97-116 for an example of the response rate (just above 24%) for a survey of solicitors; and M. Gill and J. Hart, ‘Private Security: Enforcing Corporate Security Policy Using Private Investigators’ (1999) 7 *European Journal on Criminal Policy and Research* 245 where a postal questionnaire distributed to 1,500 solicitors yielded a response rate of 6.4%.

firm from the survey group with a view to them taking part in the interviews. The assistance of the HR Directors would:

- lend credibility to the research study in the eyes of the partners;
- endorse the credentials of the researcher; and
- lend weight to the promises relating to confidentiality and non-attribution of data made in the research materials.

I hoped these factors would, cumulatively, increase the chances of partners being willing to give up their time to be interviewed.

In the event, two law firm HR Directors offered to assist me by approaching relevant partners at their firms with a view to them taking part in the Case Study. I made the choice between the two firms on the basis of the availability of the HR Director to assist and their enthusiasm for the project. All partners within the survey group were e-mailed by the HR Director and I interviewed six of the eight partners who stated that they were willing to take part in the case study.

The Questionnaire

After analysing the data derived from the interviews I was able to draft the Questionnaire for distribution to a wider survey group. In seeking to make the final Questionnaire as unambiguous as possible I edited the questions in the light of my experience with the Case Study interviews. In the event, no substantive changes were needed. A small number of questions were omitted; the wording of some questions was slightly amended to meet the revised format; and the order in which the questions appear on the Questionnaire was altered when compared to the document used to structure the interviews.

To overcome issues relating to time paucity of partners and trust issues regarding confidentiality and non-attribution, I decided to approach a number of former colleagues and other contacts working as partners and HR Directors in large UK based law firms with a view to them completing the Questionnaire themselves (provided they were within the survey group) and then forwarding the Questionnaire to individuals they knew who were also in the survey group. The Questionnaires would then be returned to me directly by the individual members of this “snowball” sample.

This means of establishing a survey group can introduce bias into a study due to the fact that the sample is not representative of the whole of the constituency but rather the survey group tends to be a discrete grouping or network within that entire constituency. However, the lack of an appropriate and effective alternative method of gathering relevant data that would overcome the difficulties outlined above and allow the generation of a sufficiently large sample mean that it was necessary to take such a risk.

A young associate was invited to a party at the home of an august senior partner at his firm. The associate wandered awestruck through the house, especially amazed at the original artworks by Picasso, Matisse and others adorning the walls. As the associate stood gazing at one Picasso, the senior partner approached, and put his arm around the associate's shoulder. "Yes," he said, "if you work long and hard, day in and day out, six, seven days a week, ten, twelve hours a day ... I could buy another one!"

Marc Galanter¹⁵⁵

Part IVA

The Case Study – Analysis of Case Study Data – Testing the Theoretical Framework

The Questions Used to Test the Theoretical Framework

Having performed the field research in the manner described in Part III, I then analysed the data in accordance with the theoretical framework established in the conclusion to Part II. More specifically, I used the questions set out in the conclusion to Part II to test the theoretical framework. In order to provide a more effective structure within which to report and analyse the data, I made minor adjustments to the questions, details of which I set out below.

Firstly, I amended the question:

If promotion percentage and continued hiring of junior lawyers are not the whole of the story, how *do* associates weigh up their chances of becoming a partner?

so that it was split into two separate questions, the first being:

Do associates, when weighing up their chances of becoming a partner, take into account the partner promotion percentage and/or continued hiring of junior lawyers?

and the second being:

¹⁵⁵ Marc Galanter, 'Tournament of Jokes: Generational Tension in Large Law Firms' (2006) 84 *North Carolina Law Rev.* 1691.

How *do* associates weigh up their chances of becoming a partner?

I decided that it would be more useful to use this second question later on in the analysis rather than in its original position as set out in the conclusion to Part II.

I also chose to include, as part of my analysis the final quotation from Galanter and Palay in the conclusion to Part II and to pose it in the form of a question, that is:

[do associates] have a reasonably accurate understanding of the rules of the game and a reasonably accurate perception of the partners' desires?¹⁵⁶

I found, through conducting the analysis, that a further question needed to be addressed if I was to fully test the theoretical framework I had developed, namely:

What implied promise/deal¹⁵⁷ do the associates monitor?

Consequently, with a view to answering the Research Question, the questions I used to interrogate the Case Study data were as follows:

1. *Unanswered Questions* – Does the research data provide us with a better idea of:
 - a. when the tournament becomes the prime motivating factor for associates?
 - b. who are the “entering class” for the purposes of monitoring the partnership promotion rate?
 - c. do associates, when weighing up their chances of becoming a partner, take into account the partner promotion percentage and/or continued hiring of junior lawyers?
2. *Propositions in need of further testing* – Does the research data provide any evidence of:
 - a. the “seeding” and/or “tracking” of associates?
 - b. a distinction between “paper work” and “training work” and the importance of the latter in the promotion to partner process?
 - c. the role played by multiple incentives, alongside the tournament, in motivating associates?
3. *Areas of Broad Consensus* – Does the research data support or negate the propositions that:
 - a. the tournament exists for senior associates?
 - b. the partnership promotion process is opaque?
4. *How do associates weigh up their chances of becoming a partner?*

¹⁵⁶ Galanter and Palay, op. cit., n. 27, p. 1688.

¹⁵⁷ In this context, the terms “promise”, “deal”, “transaction” and “contract” are used interchangeably by the various writers on this subject. I will attempt to confine myself to the use of “promise”, “bargain” or “deal” in the remainder of this work. Whatever term is used to denote the “bargain” between associates and their firms, it is always an implied promise and never an express one.

5. *What promise are the associates monitoring?*
6. *Do associates have a reasonably accurate understanding of the rules and partners' desires?*

Questions 1, 2 and 3 involve the straightforward analysis of the Case Study data in order to discover whether or not it sheds light on the matters in hand. Questions 4 and 5 seek to unpack what implied promise the interviewees are monitoring during the pre-partner period. In order to work out which implied promise they are monitoring it is first necessary to consider what the associates actually monitor and specifically whether or not the “fixed percentage of entering class” statistic is of importance to them, as is envisaged in the Research Question. In Galanter and Palay’s view the readily observable “fixed percentage” is a key factor in giving associates quantifiable reassurance about their chances of becoming a partner.¹⁵⁸

Describing the Data

As indicated above I have sought to use the theoretical framework established in Part II to structure my description and analysis of the Case Study data. For ease of reading and reference I have included my “Preliminary Comments” after considering each question. In addition, I have attempted, wherever possible and appropriate, to let the individuals interviewed for the Case Study (the “Interviewees”) speak for themselves. Where they make a good point or illustrate some issue particularly well, I rely on their comments rather than describing what they have said.

Why is the Research Question important?

Before dealing with the Case Study data itself, I feel it is important to re-emphasise why the Research Question is significant when it comes to analysing the application of tournament theory to law firms. According to tournament theory, the implied promise is that each associate has a chance, in defined circumstances, of making partner at their firm.¹⁵⁹ It is this implied deal that provides the motivational force underpinning the organisational structure firms use to mitigate the agency costs associated with paying their workers on a basis other than productivity. In short, it allows large law firms to operate in the way they do.

¹⁵⁸ Galanter and Palay, op. cit., n. 34, p. 960.

¹⁵⁹ Galanter and Palay, op. cit., n. 3, p. 100, that is, the firm will make up a fixed percentage of the associate’s entering class.

Testing the Theoretical Framework

1. Unanswered Questions

These questions address core issues raised by the Research Question. I first consider the matters that may be revealed by addressing each question and then move on to examining what the research data actually reveals.

Question 1(a) – when does the tournament become the prime motivating factor for associates? Those associates who are motivated by the prospect of making partner will be the group that are concerned with monitoring the implied promise. This question seeks to identify at what level of post qualification experience (“PQE”) they start to be concerned with such issues. Logically, unless and until an associate is motivated by the chance of becoming a partner they should be disinterested in any implied promise relating to partnership potentialities.

Question 1(b) – who are the “entering class” for the purposes of monitoring the partnership promotion rate? This question should address whether or not those monitoring the implied promise actually use such a ratio as a marker of their chances of making partner. It is worthwhile recalling that it is the perceptions of those involved in the promotion to partner process that are crucial to establishing whether or not the rules of the tournament, as they relate to the monitoring of the implied promise, hold true.¹⁶⁰

Question 1(c) – do associates, when weighing up their chances of becoming a partner, take into account the partner promotion percentage and/or continued hiring of junior lawyers? This question covers similar ground to Question 1(b) above. In addition, it should indicate whether or not associates *do* derive comfort from the factors described by Galanter and Palay as providing them with reassurance that the firm will continue to meet its implied promise.¹⁶¹

Question 1(a) – when does the tournament become the prime motivating factor for associates? – Analysis

The Case Study interviews revealed that a distinction could usefully be made between the period when becoming a partner *starts* to be a motivating factor for the associate and the period during which it is the *prime* motivating factor for that associate. For four of the six Interviewees partnership was a motivating factor from very early on in their careers. Three said it was a motivation from day one of their careers and the fourth from very soon thereafter.¹⁶² The remaining two Interviewees

¹⁶⁰ Promises/bargains are only capable of providing motivation if their outcome is monitored and cared about by the recipient. An unmonitored and uncared for promise has no motivational value.

¹⁶¹ Galanter and Palay, *op. cit.*, n. 3, pp. 101-102.

¹⁶² Interestingly this percentage reflects the findings of the *Legal Business* survey of law firm associates (Doggett, *op. cit.*, n. 64) which included questions on their attitudes toward achieving partnership. As noted at page 11 of this work, of 2,186 Respondents, just under two thirds were attracted by the idea of being a partner. Being attracted by the idea of partnership is clearly not the

found promotion to partner to be their prime motivation at more or less the same time that it became a motivating factor at all. For them this was after five and a half years and seven years PQE.

Overall, the data on when promotion to partner became the individual's prime motivation did not reveal any particular pattern. The commencement of that period varied from two years PQE up to seven years PQE with the time gap between the start of that period and when the individual made partner varying from one and a half years, in two cases, to up to five years in another.

Preliminary Comments

Data from the Case Study interviews suggests that the relevant group for monitoring the implied promise comprises associates (and even possibly trainees) from very early in their careers and not just senior associates. It is also clear that once promotion to partner becomes their prime motivation the importance of the implied promise being kept and their ability to monitor the firm's commitment to it becomes ever more important.

Question 1(b) – who are the “entering class” for the purposes of monitoring the partnership promotion rate? – Analysis

There was no evidence derived from the Case Study interviews to suggest that Interviewees took any interest in the percentage of the “entering class” that was made up to partner each year. One Interviewee felt that they were in direct competition for partnership slots with those in their own “entering class” while five Interviewees felt there was never any direct or “head to head” competition. One Interviewee summed up the situation by saying that, to the extent that there was competition:

it's not like running a race where you are in the same stadium

Preliminary Comments

For this sample, monitoring based on promotion percentage of “entering class” either did not take place or was regarded as insignificant as a marker of the firm meeting the implied promise. This finding is based on the lack of a perception of competition between peers and no evidence of any form of calculation of promotion percentage based on “entering class” numbers.¹⁶³

same as being motivated to achieve that status, however, it is interesting to note that many young lawyers continue to be attracted by the thought, at least, of making partner.

¹⁶³ Even though the statistics allowing this calculation to be performed with relative ease are readily available.

Question 1(c) – do associates, when weighing up their chances of becoming a partner, take into account the partner promotion percentage and/or continued hiring of junior lawyers? – Analysis

Partner Promotion Percentage – Though the promotion percentage of “entering class” seems to be of little importance to the Interviewees, they saw the absolute level of promotions to partnership as extremely significant when it came to working out their chances of making partner and in consequence being able to monitor the firm’s promise. Again, no detailed analysis of relative promotion rates was revealed by the data. A typical statement was:

I observed a steady promotion of partners. Never large numbers, but usually there were very few people that I was aware of had been through the process and not got it.

At this firm, continued commitment to partner promotion, where a sound business case could be made for that promotion, was taken as a given, though there was a definite perception among the Interviewees that making it to partner had become tougher. There were two specific comments along the lines of this one:

I was just aware that people were saying it was getting harder to make partner and the rates [of partner promotion] weren’t as big. I mean there were times that it was up in the high teens [each year], now in the last couple of years it’s been sort of twelveish, that sort of figure.

The following comment illustrates how important this continued commitment to making up partners was to the Interviewees:

[the partner promotion rate] was good. Therefore, I didn’t feel there was a block. But had I been at a firm where there had been announcements that we’re not making up any more partners I’m sure I would have felt differently

Continued hiring of junior lawyers – The continued hiring of junior lawyers (and especially trainees) was seen as significant by five of the Interviewees in terms of giving an indication of their firm’s long term confidence in its business via the commitment to growing the business and providing the necessary levels of staffing and future partnerial talent to do so. However, it was regarded as a less important marker of the firm’s commitment to keeping the implied promise than the continued promotion of partners. Two Interviewees stated outright that it had no impact on their perception of their chances of making partner and a further Interviewee intimated the same. One Interviewee commented that the continued hiring of junior lawyers:

Looks to the longer term survival and prosperity of the firm and that is only sustainable through continually getting the very best people in so that they can keep that tradition going.

Another stated that it was:

just part and parcel of overall feeling of confidence about the [firm]

Preliminary Comments

At this firm both the partner promotion rate and continued hiring of junior lawyers were perceived as auguring well for the firm's continued commitment to making up partners in the future and to growing the business further. This was the case notwithstanding the fact that the Interviewees attached a more uniformly and specific level of importance to the number of partners promoted year on year than they attached to the continued hiring of junior lawyers. The monitoring of both phenomena was, however, far from sophisticated and concerned with bald numbers per annum rather than any more qualitative measures.

2. Propositions in Need of Further Testing

Interrogating the research data through the use of these questions might reveal further elements of professional life that the Interviewees considered important factors in their career progression and in influencing their chances of making partner. Though the Research Question does not demand direct investigation of these questions, as noted in Section III, what the research data may reveal about them may influence our appreciation of the context in which the Research Question is set. In itself, this might have a bearing on the findings relating to the Research Question.

As per the analysis of Question 1 above, I first consider what matters may be revealed by addressing each question and I then move on to examining what the research data actually reveals.

Question 2(a) – does the research data provide any evidence of the “seeding” and/or “tracking” of associates? No questions specific to these matters were asked of the Interviewees. However, given the nature of the areas being covered, it was likely that data relevant to these questions would be revealed and that the questions themselves would be a useful means by which to interrogate that data. The importance of analysis along these lines is that the data may indicate whether “seeded” or “tracked” individuals were at any advantage regarding the monitoring of the implied promise and their own chances of making partner.

Question 2(b) – does the research data provide any evidence of a distinction between “paper work” and “training work” and the importance of the latter in the promotion to partner process? Questions here were aimed at discovering how important the Interviewees perceived their history of work assignments to be in providing information on their chances of becoming a partner.

Question 2(c) – does the research data provide any evidence of the role played by multiple incentives, alongside the tournament, in motivating associates? These questions should reveal whether and to what extent forces other than the opportunity for promotion to partner were at play in influencing the Interviewees performance and any interplay between the various incentives.

Question 2(a) – does the research data provide any evidence of the “seeding” and/or “tracking” of associates? – Analysis

Seeding – No data was obtained relevant to the phenomenon of “seeding”.

Tracking – It was evident that two Interviewees had experienced strong, though informal, mentor relationships, which provided guidance and support through the partner promotion process and earlier on in each individual’s career. One of these individuals provided conclusive evidence during their interview that “tracking” had taken place during their career:

X: ... anyway, he [the mentor partner] played an important role in making sure I stayed here and that I should view myself as having a long-term future here.

DS: And to what extent was he instrumental in you getting on to those deals [that you saw as crucial to your career progression]?

X: Very much so.

A further Interviewee seemed to have experienced a “tracking” style of career development:

From very early on I was given very testing assignments and was assumed [by the partners] as being one of those able associates

However, for the majority of the Interviewees it was only during the formal partner promotion process (the “PPP”) that they perceived that the partners in their group were starting to assist them in furthering their careers, that is, by supporting them in their bid to become a partner.

Preliminary Comments

No conclusion can be drawn from the absence of data on “seeding” as no specific questions were asked on this area. Evidence of “tracking” was revealed by the data, for two Interviewees at least, but no pattern of experiences emerged as to indicate whether or not “tracking” was an essential element in making partner or in providing greater insight as to the firm’s commitment to meeting the implied promise or to an individual’s chances of making partner. Inferences regarding the prevalence of

“tracking” behaviour might be justified after considering the data relevant to the next question on the distinction between “paper work” and “training work” and how such work comes to be allocated. However, the only explicit evidence of “tracking” was that set out above.

Question 2(b) – does the research data provide any evidence of a distinction between “paper work” and “training work” and the importance of the latter in the promotion to partner process? – Analysis

All Interviewees stressed that the diet of work assignments they undertook was a key factor in how they viewed their chances of making partner. Two, of the many, comments on this issue provide particularly good summaries of the Interviewees’ opinions. One Interviewee stated that they were receiving:

increasingly important roles on increasingly premium deals of the firm. So, that confirmed that I was still viewed positively

and the second Interviewee commented that:

[the work being carried out] was driving the assumption that I would be put up for the partnership process, The quality of work which I was doing which was placing me in that position, I think.

In terms of showing progression towards partner, the data reveals that the Interviewees perceived that work assignments that provided them with increasing levels of responsibility and which they were left to manage by themselves were of the greatest significance. As well as providing an indication of how well regarded they were, four Interviewees specifically mentioned the fact that doing “quasi partner” work had given them the confidence that they had the abilities needed to be a partner. The following two quotations illustrate this point.

And that whole exercise, [a particular work assignment] which turned out successfully and well for the client, was - I felt - a result where I could see that leaving aside what anyone said, I could see that my work ... had direct input into us successfully defending a case. ... I could recognise myself that I had an ability to do things which ... could contribute and make a difference in that environment. So, I was certainly fit to belong there [the partnership] even if there were things to work on. I had at least some of the skills that were appropriate.

and

the first year [put up for partnership] I wasn’t ... particularly confident. By the second year, and having done my secondment and because I was getting my own work, and effectively was ... de facto carrying out the role of a partner. I was much more confident about it [making partner].

All the Interviewees contributed comments that reinforced the perception that during their period as an associate they realised their performance during their work assignments had established that they were able to do the work of a partner. Having established to themselves and the partners in their group that they had the necessary partner credentials they entered a period where they needed simply to keep on doing what they had been doing.

There wasn't anything different expected of me I just kept on doing my job.

During this period there was evidently a strong feeling of the need to avoid making significant mistakes or errors of judgment that might detract from the favourable perception of their abilities that the partners had formed.

I suppose the only thing that I thought of was that I had to keep my nose clean.

Another Interviewee commented that:

If you do one piece of bad work, then there's no two ways about it, that will come up. So, it was making sure that I never got a bogey hole. And that was achievable.

The most blunt summation of this scenario is encapsulated in a comment made by one Interviewee who, having proved themselves to have partner level abilities in the execution of their assignments and with a "complete business case" behind them felt that they then entered a period when:

It was really down to me to fuck it up.

Preliminary Comments

The importance attached by the Interviewees to the type of work assignments they were undertaking was one of the most striking features of the interviews. It is clear that this was a source of information that all the Interviewees saw as providing a clear indication of how their progress toward making partner was proceeding. The work they undertook enabled them to demonstrate their partner credentials. No specific references to or, comparisons with, "paper work" type assignments were evident. Although the Interviewees' inherent concern with the quality of their work assignments suggests that ambitious associates did not seek out "paper work" type assignments.

The feeling that partner credentials had been established by the time the partnership promotion process got underway is significant when analysing the structure and

timing of the tournament¹⁶⁴. In addition, the importance of the way in which work assignments are allocated might allow some inferences to be drawn regarding how the “tracking” of associates takes place, though it is beyond the scope of this thesis to do so.

Question 2(c) – does the research data provide any evidence of the role played by multiple incentives, alongside the tournament, in motivating associates? –

Analysis

High Wages – None of the Interviewees regarded high wages as a motivating factor in itself. Two Interviewees made the point that if money was a main motivating factor, other careers in the City of London were potentially more lucrative. Examples cited were investment banking and management consulting. Four Interviewees stated that a key factor for them in selecting the law as a career was the combination of good pay and relatively good job security. The following comments were typical:

But the promise of a decent living, the promise of a more secure professional living than being a banker or something along those lines, I think that is quite important actually.

and

But I think fundamentally that’s what’s drawn me to a profession. I’m very security minded and I expect with a lot of the people you interview, we’re prepared to pay a lot, or forsake a lot, for that security.

One Interviewee mentioned that the importance of pay was in the level of pay received relative to peers at the same firm. Being at the top of a pay band gave an indication of being seen as “on track” as regards partnership.

[T]he level of pay at least internally within banding was important in as much as it set down a marker as to how I was perceived

Preliminary Comments

Given the high degree of motivation to become partners within the Interviewee sample it is not surprising, perhaps, that high pay was not of itself a motivating factor.¹⁶⁵

¹⁶⁴ The Interviewees perceived that their only opportunity from this point on was to detract from their reputation for high quality performance.

¹⁶⁵ Allen & Overy’s recently announced new career/wage structure for associates is a tacit admission of the importance of remuneration as a motivational incentive for those who may not want to be partners or, where the prospect of partnership has become too remote to be an incentive to promote exceptional effort, see Husnara Begum, and Vanessa Arora, *The Lawyer* (23 October 2006) <http://www.thelawyer.com/cgi-bin/item.cgi?id=122602&d=11&h=24&f=23>). See also Wilkins and

Firm's Reputation

Three Interviewees regarded their firm's reputation as especially important when they were choosing a firm at which to train. As an ongoing factor four Interviewees said they wanted to be working with a firm perceived to be a market leader. Relevant comments were that moving elsewhere would be "taking a step down in calibre" and one partner, using a sporting metaphor, wanted to be working in a firm that was "competing for the championship".

Two Interviewees referred specifically to the perception that their firm's reputation would provide a good signal of their abilities in the external job market, should they ever leave, with one Interviewee commenting:

I can benchmark my achievements in a tangible way and if, ultimately, I move elsewhere and decide to do something else well I have achieved a standard which is recognisable to an external community.

Preliminary Comments

Again, given the high degree of motivation to become partners within the Interviewee sample it is, perhaps, not surprising that the reputational benefits in the external employment market gained by working at a prestigious law firm would not be overly motivational for them. If their view is that they are going to make partner at this firm then the signals that their firm's reputation sends to the external employment market about their abilities are largely irrelevant.

General Legal Training – The availability of general legal training was largely taken as a given by the Interviewees. One Interviewee stated that they were motivated to stay with the firm due to the training they were receiving but this related to a specific qualification that the firm was supporting them through rather than general legal training available to all. Of the other Interviewees three considered the availability of general legal training an important factor for the two year period of their training contract and two Interviewees specifically referred to finding learning on the job from practitioners who were the best in their field especially beneficial.

Preliminary Comments

Availability of general legal training was seen as part of the package that the Interviewees signed up to on joining their firm and, for them, was clearly not a motivating factor. They expected such training to be available at all large law firms.

Opportunity for promotion to partner – The data relevant to this question is already set out under Question 1 above. It is sufficient to repeat here that the opportunity for

Gulati, op. cit., n. 3, p. 1635 "The less credible a firm's partnership promises, the more it is likely to rely on high wages or promises of providing valuable external signals."

promotion to partner was the strongest motivational factor for these Interviewees by a significant margin.

Preliminary Comments

The Case Study data clearly indicates that being in with a chance of promotion to partner was, for these individuals, the most important motivational factor in their careers. There was no evidence of any interplay between this and the other incentives covered though some were considered to be of relevance during defined periods. For example, the firm's reputation and availability of general legal training being of material importance when selecting a firm to train at and during the two year training contract period respectively.

Only the opportunity for promotion to partner was regarded by all the Interviewees as a significant motivating factor and, for four of them, this was from very early on in their careers.

3. Does the research data support or negate the propositions that:

- a. the tournament exists for senior associates? and**
- b. the partnership promotion process is opaque?**

As noted in the conclusion to Part II, the research data could be expected to reinforce the aspects of the application of tournament theory to law firms that already appear well settled. No specific questions on these matters were asked during the Case Study interviews, however, given the areas covered during those interviews I would expect much of the data generated to be of relevance to these questions.

Analysis based on these questions addresses specific issues raised by the Research Question and should also provide information on the wider contextual framework within which the Research Question is set. As per the analysis of Questions 1 and 2 above, I first consider what matters may be revealed by addressing each question and then move on to examining what the research data actually reveals.

Question 3(a) – does the research data support or negate the proposition that the tournament exists for senior associates? This question seeks to identify which individuals are taking part in the tournament with specific attention paid to senior associates. As with Question 1(a) above the data may provide useful information about just who are the relevant constituencies for the purposes of monitoring the implied promise.

Question 3(b) – does the research data support or negate the proposition that the partnership promotion process is opaque? The degree to which the data supports or negates the view that the promotion to partnership process is opaque has direct relevance to whether or not the associates are able to build up a picture of the promotion process sufficient to contribute to their reasonably accurate understanding of the “rules” and the “partners’ desires”.

Question 3(a) – does the research data support or negate the proposition that the tournament exists for senior associates?– Analysis

The data reveals that partnership was a motivation for the majority of Interviewees from very early in their careers and that this motivation was not just limited to their time as senior associates. The three comments below were typical of the views expressed.

[F]rom day one as a trainee and probably before that, my personal working assumption was that if I was there then I ought therefore, to be working towards partner and would therefore be doing that.

When I was a trainee there was a still a general belief that if you were a trainee you were here to try and be a partner. ... I don't think that's true for everybody but that's kind of what I had in my mind.

I didn't have a huge long-term plan but I suppose that's because I always expected or wanted to be a partner.... I kind of always assumed that was the reason I'd been hired, to be part of the firm.

Though, in the early stages of their careers, there was a certain coyness about admitting to having partnership ambitions.

[H]ad I been asked as a trainee, "Do you think you'll be a partner?" I wouldn't have said, "Yes, definitely". But I'd probably have said, "I don't see why not".

A feeling expressed clearly by one of the Interviewees was that during this early stage they had not undertaken the type of work that would allow anyone to assess whether or not that had the abilities or aptitudes required of a partner.

At my appraisal at the end of my second year - so at two years PQE, and much to the amusement, I learn, of those who were supervising me - I asked the question as to whether I was at least making early strides in the right direction, i.e. showing the relevant aptitude and skills. Which, of course, they were all no doubt all sniggering about hugely because at two years who knows. But it was certainly, I'd felt that that it was a bit rich to have asked any earlier than that. So, in terms of knowing that I was, you know, in the whatever, upper decile percentile that was what was required, then I wanted some assurance that I was at least doing what I could to do that. So, it [partnership] was kind of on my agenda first at about two years.¹⁶⁶

All Interviewees then experienced a period during which they sought to establish sound partnership credentials. This period followed on from the early stages of

¹⁶⁶ Note the relevance of Gulati et al's work on this point, Gulati, et al, op. cit., n. 61.

associateship considered above and, though exact timings differed between individuals, some common elements experienced by the Interviewees during this period emerged. Firstly, the importance attached to the type of work they were doing. This phenomenon has already been considered above¹⁶⁷, its significance was stressed by all Interviewees. Secondly, this period also gave the Interviewees their first serious opportunity to weigh up their chances of making partner. The point at which this occurred varied between individuals from one and a half to four years prior to making partner. The common theme regarding timing that emerges from the data is that this serious weighing up of chances took place once individuals felt that, through their work assignment experience, they had developed their partnerial skill sets. Thirdly, it was clear from the interviews that high levels of chargeable hours were worked by each Interviewee during this period. All Interviewees were content that their hours record had more than met any *de minimis* level that might be expected of them by their firm, to the extent that they did not consider hours worked to be an issue for them as a qualification for becoming a partner. This was the case even though there was evidently some confusion as to what exactly was expected of them in terms of hours put in and notwithstanding the firm's formal target of 1700 chargeable hours per annum for associates.

My view on that [chargeable hours] is that you have to achieve a certain minimum. I don't know what that minimum is or was. But I'm sure you had to demonstrate that you did a certain level of chargeable work. In fact, I probably, what I did way exceeded that and to the detriment of doing other things which would have been better for me.

Three partners remarked that it was easy to achieve high levels of billable hours because they had such a lot of work to do and never struggled to find it. The two comments below illustrate these points.

It was very easy to be doing seven and a half [chargeable hours] a day. At times ... I had some real mega deals where I had to work my arse off. But on the whole I felt it was more balanced. I could turn up at 8.30am and work until 7.30 pretty much straight through and you would have achieved an awful lot of chargeable hours

I made sure that I checked from week to week to make sure that I was hitting kind of seven and a half hours a day which ... was the target for assistants, which works out at 1700 hours a year. I thought, well I'm never going to make partner if I'm not at least hitting my 1700 hours. So, I made sure that I did that and that wasn't actually difficult because I've got lots of work.

It was evident from the data that the period in the immediate run-up to the partnership promotion decision formed a further distinct period as far as the Interviewees were concerned. This period commences after the individual has established their partner credentials and once the partners in their group have

¹⁶⁷ See page 40 of this work.

decided they should be put forward for the formal partnership promotion process (the “PPP”).¹⁶⁸ At this firm this period is characterised by collaboration between the group’s partners and the associate being put forward, so as to maximise that associate’s chance of making partner.¹⁶⁹ It is also the time when the associate feels compelled to “keep their nose clean”.¹⁷⁰

Several instances that provided evidence of this collaborative approach were given by the Interviewees. I set some out below, grouped by theme.

1. Specific preparation for PPP

And then there were discussions, of course, with my sponsoring partner and other partners in the group about the process. Because I mean some of them had sat on the relevant committee and, therefore, they had insights into things I could usefully do. And so, it was a fairly collaborative process but it was once I had been told in the summer ... “We’re putting you forward for promotion in April”. So, that nine months had been fairly open dialogue.

In retrospect, at the time I was sort of confused about exactly what was expected of me. But I’m actually very well prepped. And then a further partner who was in my group who I’d worked for quite a lot spent a lot of time talking me through the kind of things I could be asked. And not giving me answers, but just saying, “These are the things you should think about”. So, I was amazingly well prepared.

2. Expressions of support – formal and informal

The people I immediately work for were basically lining me up. And overtly lining me up...

[T]he feedback [from partners] became more focused and more informal in the sense of not sending out the appraisal forms but more about ... noting strengths and weaknesses.

3. Pointers on areas where performance could be improved

It [training] was partly targeted at the area which was highlighted to me [for improvement] which was projecting myself more. Coming in for more

¹⁶⁸ In the vernacular applied at this firm once their “names were on the slate”.

¹⁶⁹ Though it is often the case that an associate may not be promoted at their first attempt. At some firms, it may even be part of a group’s strategy to put an associate through the PPP with a view to being made up the following year if they feel that that associate needs to have their profile increased via exposure to the partner promotions committee.

¹⁷⁰ Considered further above at page 41 of this work.

presentations and so on ... the training was made available to me and then I probably tailored it to what I wanted it for.

4. *Explicit attempts to give associate exposure to wider number of partners with and outside own group*

Part of the planning [was] that I worked for more than my historic relationship partners. I worked with other people as well ... That was for my benefit and for their benefits, so more than one or two partners actually had a look at me.

[W]hat I think was done for me was to give me opportunities to work with people outside my immediate structural group

5. *Development of sound business case by group in support of associate*

[Y]ou have to be put forward by your own practice area. You have to have a business case for the promotion of X number of partners in that practice area has got to be made out. And then it's about assessment of the candidate.

[O]ur economics are stand and fall with the division's economics in terms of the micro-business case that says, can this group of six partners and however many associates sustain seven or eight partners and what will the consequence be? That was clearly important and this firm makes no bones about that. If the business case doesn't work you don't even get to find out whether you were up to it at a personal level.

[T]hey [other law firms] have got very good people who are being held up just because of the lack of business case or whatever, I mean I had a complete business case behind me

Preliminary Comments

The widely held view that the tournament, insofar as it exists, is largely confined to senior associates does not seem to be borne out by the data gathered during the Case Study interviews. At this firm and for these individuals, partnership was a motivational force existing at all levels of seniority and underpinned the working practices of these individuals long before they reached senior associate level. For these individuals, performance during the three stages of the process was influenced by the chance of making partner. These periods and the influence of the implied promise might be summarised as:

- Early years – establish skills as good lawyer with view to receiving and completing “training work” assignments;
- Middle period – establish personal partner credentials by performing increasingly responsible “training work” roles

- PPP period – establish, in combination with practice group, that they have sufficient combined human capital to support a further partner without diminishing the returns of existing partners.

It is interesting to note how the dynamic of the overall promotion to partner process changes over time. It seems clear that, at this firm, the process is not governed by a static set of “rules” that apply throughout. However, the end result of the process is consistent with Gallant and Palay’s proposition that it is those with the greatest combination of “high quality legal work and their own human capital”¹⁷¹ that will be promoted to partner. This is subject to a significant rider, however, as the Case Study data implies that it is the human capital of the individual **in combination with that of their group** which this firm is interested in when considering who should be promoted and not solely the human capital of the individual. The significance of the business case, made on behalf of the would-be partner, is that it should show that there is a sufficient level of human capital to support the promotion without diminishing the returns to existing partners.

Question 3(b) – does the research data support or negate the proposition that the partnership promotion process is opaque?– Analysis

From the data provided by the Interviewees it seems that the promotion to partnership process, in its broad sense, commences only once associates have started to establish their partnership credentials via the work assignments that they undertake. During this “middle” period of their career as associates the requirements for attaining partnership, or even progression along the partnership track were unclear to the Interviewees. The feeling amongst the Interviewees was that they needed to continue to carry on accumulating work assignments as a means of demonstrating their partner qualities.

The advice I was always given was, sort of, keep on doing what you’re doing

This advice was clearly followed by one of the Interviewees who commented that, during the whole period of the promotion process

I just carried on doing my job

Specific guidance as to what the required partner qualities might be was, however, notable by its absence. Though the criteria for partnership were published and available to associates they were not perceived as useful by the Interviewees. One commented as follows:

there is a statement of the criteria by which you’ll be assessed.... There’s no weighting within them...[and] it doesn’t give you any ultimate yardstick. And maybe one wouldn’t expect it to, but in one sense it [the criteria] is

¹⁷¹ Galanter and Palay, op. cit., n. 3, p. 100.

unhelpful because it tells you everything you'd expect to be on there..... but it doesn't answer ultimate issues.

Once the third phase of the Interviewee's careers as associates commences, the formal PPP, the process is perceived by them as a collaborative one. A business plan is created by the group to back their partner candidate and any areas that need to be worked on by the individual to get through the PPP are identified and often relevant assistance provided. One Interviewee summed up the demarcation between the middle phase and the PPP neatly when they commented that:

In terms of actual day to day work I didn't feel as if I had to up my game in a particular area ... In terms of going through the process, I knew I needed to work on a couple of things.

So, during this phase of the process the things that the individual partner candidate needed to work on became explicit.

Preliminary Comments

During the "middle phase" of the Interviewees' career the standards and achievements expected of them as potential partners were vague. They had no clear idea of what standard they were being judged against notwithstanding the fact that the partnership criteria were published and available to them. However, the Interviewees did have a general idea of what was expected of them, that is, they were to accumulate work assignments that allowed them to demonstrate their partnerial capabilities. Though the advice they were receiving from the partners to this effect was lacking in detail it does seem, in fact, to have been what the partners wanted them to do. Tellingly, the associates were all allowed the opportunity to prove they could do partner level work.

Moving on to the formal PPP the procedure is a more collaborative one. Though the aspects of individual performance for purposes of the PPP are made explicit, the associate still has to rely on the partners in their group to put forward the most compelling business case they can in support of the promotion of an additional partner.

Overall, the promotion to partner process is characterised by the proto-partners having just enough knowledge and understanding of the process at each stage to allow them to work effectively in the pursuit of the partnership goal. However, at no point are they aware of what exactly they are able to do to influence their chances of becoming a partner.¹⁷²

¹⁷² Wilkins and Gulati, op. cit., n. 3, p. 1667, for and explanation of how this might encourage maximum effort in all areas. Considered further at page 14 of this work and in footnote 81.

Question 4 – How do associates weigh up their chances of becoming a partner? – Analysis

As noted at the start of this section, the aim of Question 4 is to unpack what implied promise or deal the Interviewees are monitoring during the pre-partner period. The Research Question envisages that the implied promise that the associates are interested in monitoring is; that a fixed percentage of an associate's "entering class" will be promoted to partner in due course and that monitoring of this promise takes place via the associate's observation of the "fixed percentage" statistic over time. Another way of characterising the monitoring is that it forms part of how the associates weigh up their chances of being promoted to partner.

As considered in some detail in Questions 1(b) and 1(c) above, the data shows that the Interviewees did not use the partner promotion percentage as a means of weighing up their chances of becoming a partner, it was not a statistic they felt warranted consideration. Hence the significance of this Question 4 lies in asking how did the associates weigh up their chances of becoming a partner and does this translate into any form of implied promise? However, in order to deal comprehensively with this Question 4 we first need to consider those factors that may or may not have assisted associates weigh up their chances and which were revealed by the research data but which have not been subject of any consideration or analysis above.

The factors for consideration fall under three headings:

- inter/intra departmental politics;
- external economics; and
- information and feedback from individuals – formal and informal.

Inter/intra departmental politics – The existence of inter/intra departmental politics was acknowledged by all of the Interviewees. However, the prevailing view, summed up by one Interviewee in the comment set out below, was that there was little to be gained by being concerned with them.

I think I would say I was substantially oblivious to it [politics] most of the time. And subconsciously worked on the basis that the only thing I could control was working hard and doing the best job I could one day after the next. And so, whether there were politics that were, you know, in play, there was nothing I could do about that.

One factor having political overtones that the Interviewees did attach some significance to was the influence wielded by their supporters. Their comments suggest that they had a good idea of the relative political strengths of their supporting partners and of the importance of their role. One commented that:

I thought I was being supported by the right people within the ... division, yes. Definitely.

Another summed up the extent of their supporters' influence by stating that the partnership promotion process:

was collaborative with the head of the department who ... had a much better feel for the likely numbers of promotees... They call it the pipeline. So, judging the pipeline was part of what they were doing on my behalf ... I was guided very much through it by the partners who knew what was going on.

External Economics – Three of the Interviewees regarded external economics as significant and part of the reason why partnership was becoming increasingly difficult to attain. The following comment was typical:

It [external economic factors] probably did [impact] on the firm ... people were saying it was getting harder to make partner and the rates [of partner promotion] weren't as big.

However, there was a perception that there was little to be done about these external events, summed up by one Interviewee when they stated that:

you have an underlying fear that the market may do something terrible, but I'm quite fatalistic about things like that. There's nothing I can do about that.

The Interviewees did, however, monitor external economic factors if they thought they would have a direct impact on their individual business case.

Preliminary Comments

Though both political and external economic factors were acknowledged as capable of influencing the Interviewees chances of making partner the overriding feeling was that, as these factors were largely outside their control then they would not spend time analysing them or worrying about them unduly. Their efforts were, rather, concentrated on monitoring and seeking to influence those aspects of their career progression that they had a degree of control over. Analysis of the relative influence wielded by supporting partners seems to be the only area where any material level of energy was expended by the Interviewees.

Information and feedback from individuals – formal and informal information flows – Formal and informal information flows derived from processes and individuals were deemed, by the Interviewees, to be significant for the weighing up of their partnership chances.

As regards formal feedback, five of the Interviewees regarded one of either their appraisals and/or the five year PQE development centre run by the firm for associates as providing key information on their progress towards making partner. The two comments below illustrate their feelings.

Well, I always thought they [chances of making partner] were good. I thought it was a matter of time. I mean I'd always had outstanding appraisals. ... I kind of felt I was on track. And knowing what the criteria were, knowing that I was consistently ranked at the top and had been since a trainee, I presumed it [promotion to partner] was a quality test.

[A]t about five years qualified I went on what was described as a senior associate's development centre ... where you are encouraged ... about, you know, the sorts of things that you were doing and were doing currently and could do differently or better if you were interested [in partnership]. I responded to [it] quite well and found [it] useful. Others may or may not have done. I know I did.

According to the Interviewees, partners were their prime source of informal information on career prospects. In respect of informal feedback, as noted earlier in this work¹⁷³, two Interviewees had experienced strong informal mentor relationships and three further Interviewees commented on the strong collaborative efforts of the partners in their groups during and in the immediate run-up to the formal PPP.

So, I had reliable information [from the partners] and that information was very promising in terms of the gap, the lack of other senior associates, the nature of the business at that time and also the fact that, as I said, I liked these people and would be happy to work with them.

Preliminary Comments

All information of relevance to their career progression was eagerly seized upon by the Interviewees, whether it was received via formal or informal channels. The information provided via formal channels was largely confined to how the individual was progressing in establishing their partner credentials, whereas the informal information flows provided them with data both on progress in establishing partner credentials and on the potential strength of the business case within a particular group for the promotion of additional partners.

¹⁷³ See page 39 of this work.

Having covered all aspects of the research data that are of possible relevance to this Question 4, I can now address the question itself; how do associates weigh up their chances of becoming a partner? I adopt a three step approach:

1. outlining the factors the Interviewees did not use when they were associates;
2. outlining the factors they did use; and
3. summarising the consequential gaps left in the, then, associates' understanding of the partner promotions process.

Factors Not Used

Partner promotions as a proportion of "entering class" – Though the Interviewees expressed great interest in the absolute number of partners made up each year they were not concerned with analysing this number as a function of their "entering class" as a means of weighing up their chances of making partner.

Inter/Intra departmental politics – This factor was acknowledged as present but ignored by the Interviewees as a means of monitoring their chances of making partner as they could not influence it. Rather they had to trust that their sponsoring partners would act in their best interests. The one exception here was the importance attached by the Interviewees to the political influence wielded by their supporters.

Factors Used

I list these factors in approximate order of significance, derived from the importance attached to them by the Interviewees

Continued promotion of partners – The bedrock of the Interviewees' assumptions that they had a chance of making partner at their firm.

Type of work assignment performed – This was considered by the Interviewees to be the strongest indicator that they were building their partner credentials.

Feedback - formal and informal – The Interviewees saw this factor as providing the essential underpinning of their chances of partnership promotion. Receiving good feedback in their appraisals and supportive feedback from the partners gave the Interviewees comfort that they were, at least, not out of the running for partnership.

Continued hiring of junior lawyers – Though not of first order importance to the Interviewees, this factor was regarded as an important indicator of long term business confidence on the part of their firm, signalling that the firm would continue to be an environment where partners were regularly promoted.

External economics – This factor was treated fatalistically by the Interviewees and only seen as of relevance when it had a clear influence on an individual's business case for promotion to partner. It was a factor that the Interviewees saw as the

backdrop to their bid for partnership and which was monitored, just in case, anything untoward occurred that might affect their promotion chances.

Gaps in the associates' understanding of the career progression process

It is useful at this point to summarise those parts of the career progression process that associates have little understanding or appreciation of. Given the dynamics of the three stages of their pre-partner career, these gaps are best analysed as they arise during each of those stages.

Early Years – The Interviewees had very little information as to their partner credentials or possible business case for partner promotions within their group during this period. This is understandable in the case of a potential business case which relates to a period perhaps five or more years in the future. In the case of partner credentials, feedback specifically on this topic was not provided, even during formal appraisals until the “Middle Period” of the Interviewees’ associateship. Some information regarding the relative standing of the associates may have been evident from relative pay levels after salary review.

*Middle Period*¹⁷⁴ – During this period the Interviewees were seeking to establish their partner credentials but were given no objective measure of the standards they were expected to attain. Rather, they had to rely on the diet of work assignments they undertook and the vague assurances of the partners that they should simply keep on doing what they had been doing.

Formal PPP – Though a period characterised by the Interviewees as a “collaborative” one, they had little idea of the political manoeuvrings involved in their being proposed as a partner. This was especially the case as regards any inter-departmental trade-offs that might occur. The Interviewees also had to trust that the partners in their group would present the best possible business case on their behalves.

Question 5 – What promise are the associates monitoring? – Analysis

From the analysis based on the research data and carried out above, it is possible to say that the Interviewees did not monitor quite the implied promise envisaged by tournament theory.

So does the data suggest that they were monitoring any promise at all, and if yes, what was the promise? In considering these questions it is important to revisit two elements of tournament theory.

1. The *raison d'être* of the implied promise is to provide associates with the motivation to work hard and to high standards with minimal supervision. The

¹⁷⁴ From approximately two years PQE.

associate's motivation is, in tournament theory, derived from them having a readily quantifiable chance of winning the prize of partnership.

2. No actual promise is made to the associates. They have to rely on their perception of what is on offer to them. Therefore, what they rely on as the basis of their perception embodies the "implied promise". That is, they perceive that if they do "X" then "Y" will be forthcoming from the firm, this bargain being the "implied promise"

So what promise are they monitoring, or perhaps it would be more accurate to say, what "deal" do they perceive to be on offer? The analysis above indicates that while the Interviewees were not concerned with monitoring partner promotions based on a percentage of "entering class" they were very concerned with observing that partners continued to be made up and in what absolute numbers. Given the factors that the Interviewees perceived as being important to their chances of being promoted to partner, the revised "implied promise or, the deal on offer, might be something along the lines set out below.

We, the firm, will promote to partner those associates who:

- have established their partner credentials through the execution of their various work assignments; and
- in combination with their group/department have sufficient human capital to add a further partner to the partnership without diluting returns to the existing partners.

Having analysed the Case Study data against the theoretical framework, there is circularity, but undeniable logic, inherent in stating that the Interviewees did have the ability and the means by which they could monitor their firm's implied promise. If the implied promise/deal is all in the perception of the associates and that perception is dependent on what they observe/monitor then they have the means to monitor the promise. That is not to deny, however, the existence, at each stage of their pre-partner career, of significant uncertainties that they are powerless to resolve. So, they may be able to monitor the promise/deal and work out, with a degree of accuracy, their chances of becoming a partner but they can never be certain of their promotion until it takes place. Further, because the promise/deal is only ever "implied", the associates can never be entirely sure that their perception of what is needed for them to become a partner is correct and that the promise they are monitoring is the right one. This leads us on to the consideration of Question 6.

Question 6 – Do Associates have a reasonably accurate understanding of the rules and partners' desires? – Analysis

In Question 5 I concluded that associates are able to monitor the promise/deal but it is a promise/deal perceived by them with no guarantee that it is the correct one. However, Galanter and Palay in setting out the requirements for the working of the

tournament model suggests that for these purposes associates need only have “A reasonably accurate understanding of the rules [of the tournament] and the partners’ desires”.¹⁷⁵

As the implied promise/deal underpins much of the superstructure of the more detailed rules of the tournament and, if the tournament does work as a model when applied to large law firms in the UK, there is an implication that the associates should be able to work out and then go on to monitor the correct promise/deal.

So, I conclude this section by considering whether the research data and the analysis thereof, enables us to infer anything about the Interviewees’ state of knowledge and understanding of the rules and the partners’ desires.

The Rules

I use the Galanter and Palay stylised version of the Rules¹⁷⁶ and make comment only on those aspects of the rules that the research data has some bearing upon.

1. *The tournament is played over a fixed period of time* – No relevant data gathered.¹⁷⁷
2. *All associates in an “entering class” compete for the prize of partnership* – The Interviewees perceived only limited competition for partnership slots during their careers and there was definitely no feeling of “head to head” competition within their “entering class”.
3. *The prize is awarded to a fixed percentage of the top associates* – The Interviewees were concerned that partners continued to be made up but did not base any analysis of their chances of making partner on the “fixed percentage of entering class” formula. The Interviewees’ key concern was focussed at group level rather than firm wide. That is, that their group would have sufficient human capital to be able to put forward a compelling business case in support of the promotion of additional partners. Firm wide levels of partner promotion, perversely, became less significant for the Interviewees as they became increasingly senior.
4. *The basis on which the award is made is the associate’s ranking – judged subjectively – in the possession of two goods:*
 - *high quality legal work; and*
 - *their own human capital.*

¹⁷⁵ Galanter and Palay, op. cit., n. 27, p.1688.

¹⁷⁶ Galanter and Palay, op. cit., n. 34, p. 953.

¹⁷⁷ The notorious lack of senior non-partner lawyers at large law firms, see *Legal Business Assistant Survey* November 2006, Doggett, op. cit., n. 64, which seems to support this proposition. If an associate has not made partner by a certain level of PQE the firm is unlikely to keep them on as a senior associate and even if they are kept on they are extremely unlikely to make partner. The tournament is no longer ongoing and has effectively ended for them.

The Interviewees were acutely aware and had a deep understanding of this particular rule. Subject to one important caveat, it correlates with their perception and experience of what they needed to do to have a chance of becoming partners. The need for a diet of high quality legal work is borne out by the research data. The caveat is that the relevant measure of “human capital” for the purposes of promotion to partner is that of the individual in combination with that of their group. Much of the formal PPP is dedicated to proving that the combined human capital of individual and group is sufficient to support a further partner without diluting the returns to the existing partners.

The subjectivity of the judgments being made is especially evident when considering how the then associates established their partner credentials and the lack of an objective “yardstick” against which they could measure their performance/abilities. Judgements as to the necessary level of human capital possessed by the associate’s group may be less subjective than those relating to an individual’s partner credentials due to the business case approval process.

5. *The winners get a guaranteed and fixed amount of compensation – regardless of who wins* – No relevant data gathered.
6. *Associates are reassured that the firm is keeping its side of the bargain through:*
 - *consistent and readily observable partner promotion rates; and*
 - *continued hiring of new associates*

This rule certainly accords with the perceptions of the Interviewees. Partner promotions were ranked considerably higher in importance than continued hiring of new associates as a form of reassurance.

Partners’ Desires

The desires of the partners provide the basis for the existence of the rules. Put another way, the rules of the tournament are a function of the desires of the partners that their business should function in a certain manner. The partners’ desires might be summarised as the desires:

- to have a work force comprised of assistants who are motivated to work hard in the production of quality legal output with the minimum of supervision; and
- to promote only those associates who, as partners, will maintain or improve the existing partners’ level of return from their business

The Interviewees understanding of these partner desires is reflected in the importance they attached to: the amount and quality of the work assignments they performed; and the business case to be presented on their behalf by their group during the PPP.

Preliminary Comments

It is evident that the Interviewees had an accurate understanding of those rules relevant to the Research Question. This is the case notwithstanding the fact that their monitoring of partner promotion rates is less sophisticated than that envisaged under the tournament model; and the relevant measure of human capital for the purposes of promotion to partner is that of the proto-partner in combination with their group and not solely that of the individual.

Conclusion – Addressing the Research Question

Do lawyers at large UK law firms have the means by which they can monitor their firm's implied promise that a fixed percentage of them will be made up to partner in due course?

The Case Study data and the analysis of that data suggest that the Interviewees did have the means to monitor the ‘implied promise’ or ‘deal/bargain’ relating to their chances of being promoted to partner. This is the case notwithstanding that the ‘implied promise’ differs in some respects from that envisaged by tournament theory. The revised ‘deal’ seems to be just as effective as the ‘bargain’ envisaged by the rules in providing the Interviewees with plenty of motivation. Further, the Interviewees’ understanding of the rules and partners’ desires as they relate to that promise/deal indicates that the promise they are concerned with monitoring is the one impliedly offered by their firm.

That associates would overwork is unsurprising: they have to show they deserve to become partners. This is a central element of the ‘tournament theory’ advanced by Galanter and Palay. Indeed, the five to ten years of ‘grinding’ that large-firm associates endure ... is just the latest stage of a treadmill these lawyers stepped on two or even three decades earlier – some in kindergarten – in order to demonstrate that they had internalised Weber’s Protestant ethic: the ability to postpone gratification, to keep their noses to the grindstone now so as to demonstrate their election to enjoy rewards in the after-life of partnership.

Richard L. Abel¹⁷⁸

Part IVB

The Questionnaire – Analysis of Questionnaire Data – Testing the Theoretical Framework

Structure used for analysing the data

Having gathered the field research data in the manner described in Part III, I set about analysing it using the structure set out below.

1. Describe the data and provide preliminary comments.
2. Use the data and the revised questions set out in Part IVB to test the theoretical framework.
3. Comment on the interplay of the Questionnaire and Case Study data.

Describing the Data

I have made use of tables wherever possible to describe the data. I believe this makes it quicker and easier for the reader to derive information from the data and it makes referring back to particular results within this section a much simpler task. For the majority of the tables I have grouped responses under five main headings. The headings vary depending on how each specific question is worded, though I have sought to keep the groupings as uniform as possible between all relevant data sets. The five types of headings I use are:

¹⁷⁸ Richard L. Abel, ‘Varieties of Social Discipline: Collective Action in a Law Firm’ (2004) 31 *Journal of Law and Society* 624.

- Very Important/Significant/Relevant
- Important/Significant/Relevant
- Moderately Important/Significant/Relevant
- Not Important/Significant/Relevant
- Not Applicable/Other/No Response

As the questions themselves are open and do not specify the form that answers are bound to take there is a degree of interpretation required in placing answers under one particular heading or another. I did not, however, encounter any material difficulty in placing responses under the various headings. In the limited situations where I did find the task troublesome I either draw the reader's attention to it in the commentary or do not use a table format for describing that data set. Where I have used a different style of table its content is either self explanatory or I have provided explanatory notes as necessary.

The data set comprises thirty Questionnaire responses from twenty male and ten female Respondents. The Respondents came from ten different firms.

Though the Questionnaire data does not have the depth or richness of the Case Study data I have again attempted to let the Respondents speak for themselves wherever possible and appropriate. If they make a good point or illustrate some issue particularly well, I rely on their comment rather than describing what they have written.

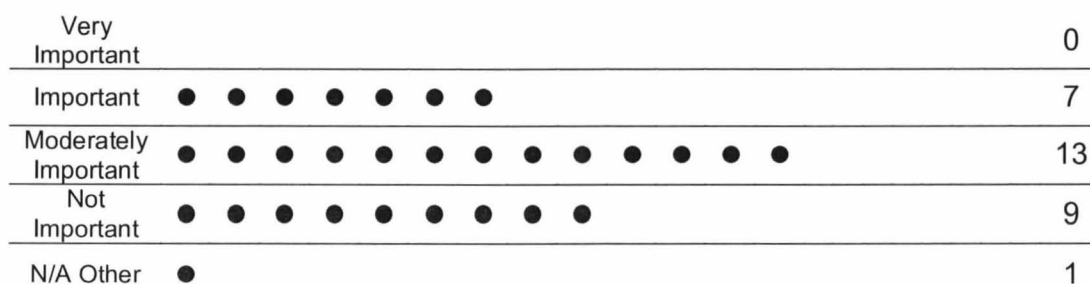
Description and Analysis of Questionnaire Data

Question A1(i)

As a junior lawyer, how important to your level of motivation were high wages?

Describing the data

Fig 1



Preliminary Comments

The clear message from those who responded to the Questionnaire (the “Respondents”) is that their wages as junior lawyers were not a major motivational factor for them. The key concern that emerges from the responses, and mentioned specifically by ten Respondents, is that wages were important only to the extent that they were being paid a market rate for their type of firm and the type of work they were employed to undertake. The two comments below portray the attitude typical of those Respondents who found their wages to be moderately or of no importance.

Not a major factor. Important to feel as though I was being remunerated at market levels but not that I was the highest paid

Not imperative – but did not want to be underpaid.

Salaries were seen by most Respondents as comparable across large firms in the City of London and individuals were usually making choices between such firms rather than between those firms and other careers. As long as firms were paying a market rate, wages clearly had little motivational impact. However, it is almost certainly the case that the potentially demotivating effects of feeling underpaid provide the underpinnings of these results. One Respondent summed up this scenario neatly.

One expects to be paid a decent going rate for their efforts. So, if one believes one is being paid below market level then that does have an adverse impact on motivation. Certainly, when the firm has, in my opinion, got my salary review wrong in the past it has adversely affected my motivation because your immediate thoughts are “why bother” with any extra effort when you are not being remunerated for it.

Question A1(ii)

As a junior lawyer, how important to your level of motivation was the reputation of the firm?

Describing the data

Fig 2

Very Important	● ● ● ● ● ● ● ● ● ● ●	11
Important	● ● ● ● ● ● ● ● ● ● ● ● ● ● ●	15
Moderately Important	● ●	2
Not Important	●	1
N/A Other	●	1

Preliminary Comments

The reputation of their firms was clearly of “critical” importance to these Respondents. One Respondent illustrated this point by stating that it was:

Very important - if not good then I would have moved as soon as I was experienced enough to be able to identify a strong firm.

Even the One Respondent who ranked the motivational impact of reputation as unimportant commented that it had been:

A factor in getting into the firm initially but not one that I thought about ... motivating me thereafter.

Question A1(iii)

As a junior lawyer, how important to your level of motivation was availability of a general legal training – skills non-specific to your firm?

Describing the data

Fig 3

Very Important	● ● ● ●	4
Important	● ● ● ● ● ● ● ●	8
Moderately Important	● ● ● ● ● ● ● ●	8
Not Important	● ● ● ● ● ● ● ● ●	9
N/A Other	●	1

Preliminary Comments

A wide range of views was evident from the Questionnaire responses. Of those who attached little importance to the motivational impact of the availability of a general legal training there was a strong theme that receiving good training was a given when working for a major UK firm. Two typical comments are set out below.

[T]his was taken as read

I assumed I would receive good training if I worked for a high quality firm.

Those Respondents who rated this factor as important or very important to their motivation tended to stress that it was of most significance to them as very junior lawyers.

Before I was around 4yrs PQE this was the most important factor, I thought being a really good all round lawyer with good technical and commercial skills was what the firm I was with should be providing so that I could turn my hand to any product as needed and if necessary I could go out of the law into commerce.

Very important in my motivation for joining the firm where I trained and qualified.

The comments of two Respondents who rated this factor as highly important to their motivation are also worth quoting here to illustrate the breadth of the views expressed.

[I]f one has ambition to be a good lawyer, the training to get you to that level is an integral factor in this. There must be a structured training program ... combined with good on-the-job experience

[My firm] offered a high level of formal and informal training and I felt challenged throughout and therefore able to learn

Perhaps all that can be safely said on the basis of the data is that the availability of a general legal training had at least some motivational impact on most of the Respondents, though those who found it to be a highly motivational factor were the exception rather than the rule.

Question A1(iv)

As a junior lawyer, how important to your level of motivation was the opportunity for promotion to partnership?

Describing the data

Fig 4

Very Important	● ● ● ● ● ● ● ● ●	9
Important	● ● ● ● ● ● ●	7
Moderately Important	● ● ● ●	4
Not Important	● ● ● ● ● ● ● ● ●	9
N/A Other	●	1

Preliminary Comments

Significant numbers of Respondents occupied either end of the opinion spectrum with regard to this question, though the data points overall to this factor being motivationally important. Typically, those Respondents who did not perceive partnership to be a motivating factor as junior lawyers gave answers along the lines of:

Very early on this [promotion to partnership] was less of a concern.

Another Respondent in this group commented that it was:

Not hugely important but became increasingly important once I decided not to move to a bank or industry at about 3 year PQE stage.

The last quotation illustrates why it is important to consider the data from this question in conjunction with the data derived from Question A2, in order to determine how the significance of partnership opportunities changed for these Respondents over time. The importance attached, by the Respondents to the other motivating factors already considered above is also of relevance and I consider this issue further now.

Of the nine Respondents who rated this factor as not motivationally important, the overwhelming majority (eight) ranked the reputation of their firm as the most important motivational factor for them as junior lawyers.¹⁷⁹ Given the level of significance attached by the Respondents as a whole to the reputation of their firm this is not a surprising finding. However, the importance of the finding lies in the fact that it strongly suggests that those junior lawyers who may not be committed to a career in large-scale private legal practice are concerned that they are working for a firm that will provide a positive signal of their abilities should they leave. This reinforces views expressed by Wilkins and Gulati.¹⁸⁰

There are a number of interesting aspects that emerge from the analysis of the data on the motivational impact of promotion to partner prospects. I briefly consider: those aspects relating to how law firms might best set about motivating their associates and two points of more general interest.

From a motivational perspective firms should pay particular attention to and bolster, wherever possible, their reputation as a firm and especially their reputation for turning out good lawyers. This should prove attractive and motivational for those junior lawyers not yet committed to a career in a large-scale legal private practice but who may well go on to become partners in due course. It will, of course, provide

¹⁷⁹ The remaining Respondent ranked the availability of general legal training as their most important motivational force.

¹⁸⁰ Wilkins and Gulati, *op. cit.*, n. 3, p. 1640 and considered further in Part II at page 15 of this work.

an additional source of motivation for those lawyers who already see the chance of promotion to partnership as an attractive and motivational proposition.

The data also suggests that many junior lawyers are sensitive to messages as to their chance of making partner from early on in their careers. Negative or, the absence of, messages in this regard might well have a demotivating effect on these junior lawyers.

Moving on to the two more general points, it is interesting to note, though beyond the scope of this thesis to develop, that there was also a clear gender split in the data on the motivational impact of the prospect of partnership on junior lawyers. Of the nine Respondents highly motivated by partnership, eight were men. Of those who were not motivated by partnership in the early stages of their careers six were female out of a total of ten female Respondents.

Further, while acknowledging the small size of the sample and the difficulty of comparison between the questions posed, it is interesting to note that, as with the Case Study data, the levels of interest shown by the Respondents in the prospect of partnership resembles that found in the November 2006 *Legal Business Assistant Survey*,¹⁸¹ which solicited responses from current law firm associates.

Question A2

How did the general level of importance of the factors set out in Question A1 change over time?

Describing the data

The importance of partnership was noted by eighteen of the Respondents as increasing over time. Nine Respondents felt that there was no or very little change in the relative motivational impact of the various incentives. Three Respondents saw the firm's reputation as an increasingly important motivational factor. The remainder of the responses provided little clear data. One Respondent felt training had become more important while four commented that it had become less important. Seven Respondents felt wages became less important to them over time but two felt they became more important. It is important to note that some Respondents gave more than one area as increasing or decreasing in importance to their motivation over time.

Preliminary Comments

The increasing importance attached to partnership prospects over time is to be expected given the career profile of the Respondents. Equally unsurprising is the fact that seven out of the nine Respondents who were not motivated by the prospect of partnership as junior lawyers were in the majority group who found this prospect of

¹⁸¹ Doggett, op. cit., n. 64.

partnership increasingly motivational over time. The other two relevant Respondents indicated that the relative importance of the various incentives had remained unchanged, for both of these Respondents their main motivation under Question A1 was the reputation of their firm.

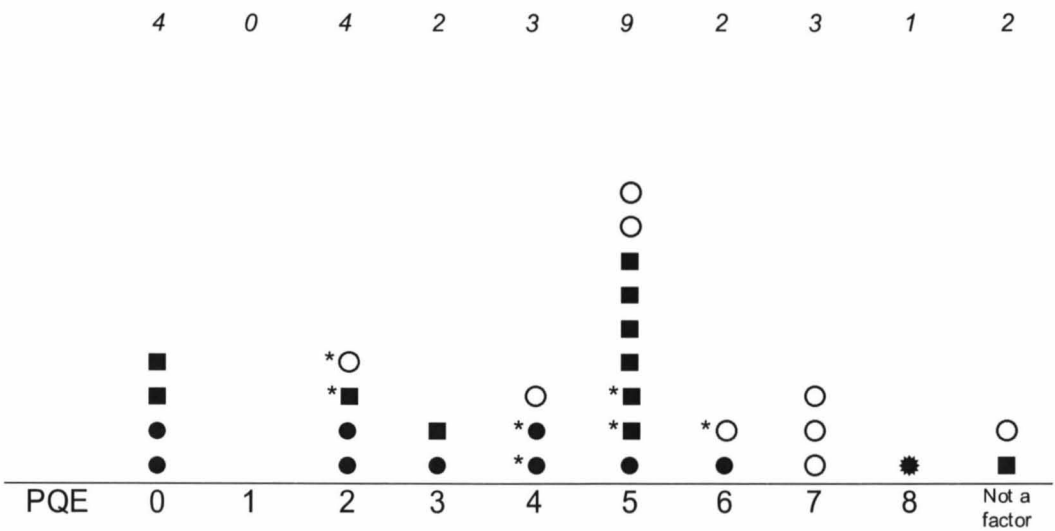
Question A3

When did becoming a partner start to be your prime motivation?

Describing the data

Fig 5 below sets out, along the horizontal axis, the level of PQE at which each Respondent felt promotion to partner became their prime motivation. The final right hand column indicates those Respondents for whom partnership was never a prime motivating factor.

Fig 5



Key

Respondents who, as junior lawyers, rated promotion to partnership as:

- very important
- important or moderately important
- not important
- ★ no response to Question A1(iv)

Where a Respondent has indicated a range of dates during which partnership became their prime motivation I have used the earliest date indicated and placed an * asterisk next to the relevant symbol.

Preliminary Comments

The data shows a definite peak around five years PQE when partnership started to become a prime motivation for the Respondents. Notably there are a significant number (eight) who had partnership as a prime motivation from very early on in their careers, that is, between zero and two years PQE.

It is also worth noting the points in time at which those Respondents who did not feel partnership was a motivating factor early in their career (and represented in Fig 5 by symbol “O”) found that it had become their prime motivation.¹⁸² Given the data, and as one might expect for individuals who did not find partnership promotion a motivating force as junior lawyers, the point at which partnership did become a prime motivation for them was significantly later than for the majority of the Respondents, while for those who found it to be a very important motivating force as junior lawyers the relevant point in time was correspondingly earlier.

A further point of interest is that five of the Respondents indicated that a particular incident prompted their focus to be directed at their partnership prospects. This is considered further in the analysis of Question C3.

Question A4

Once becoming a partner became your prime motivation, how, if at all, did your behaviour at work change?

Describing the data

Unsurprisingly, the one Respondent who at no point in time ever had partnership as a prime motivation indicated that the question was not applicable to them. Twelve Respondents commented that no change occurred in their behaviour once partnership became their prime motivation. Those who did change their behaviour mentioned a variety of areas in which this occurred, namely:

- Preparedness to work harder and seek and take on greater responsibilities (8)
- Working harder on developing their own clients (5)
- Achieving greater exposure to other partners within their firm (5)
- Taking on management roles (2)

¹⁸² One of these Respondents continued to feel that partnership was never a prime motivation and the Respondent included in the 2 years PQE column actually stated that partnership became their prime motivation “Between 2 and 5 years PQE”.

Three Respondents also noted that they had become more “stressed” and irritable once they had decided to go for promotion to partnership. Their comments follow.

[I]n my drive for partnership I believe I became somewhat self-obsessed, tense, suspicious and focussed too much on detail and not the big picture

I probably appeared less approachable; bit more grumpy with junior lawyers.

I became racked with uncertainty. You really didn't know whether you'd get there. It all became linked to the last Q[uarternal]’s results. Business cases evaporated and reappeared in short order.

Preliminary Comments

The data suggests that many of the Respondents were either: confident enough in their own abilities to achieve the role of partner without feeling they had to change the way in which they went about their work; or had a good grasp of what was needed of them if they were to gain promotion. The changed behaviours mentioned are in areas that exhibit a combination of the accumulation of human capital and finding opportunities for demonstrating their partner credentials, all essential elements of their “partnerial package”.

Questions B1 and B2

1. At what point in time, if ever, did you feel that you were competing with others for a limited number of partnership slots? (please consider the whole of your legal career – not just run-up to partnership)

2. Who was the competition?

Describing the data

Given the nature of the data sets for these questions I have chosen to consider Questions B1 and B2 together. Fig 6 sets out, along the horizontal axis, the level of PQE at which the Respondents felt they were in competition with others for partnership slots. The final two right-hand columns indicate those Respondents who, respectively:

- felt they had not experienced such competition; or
- experienced competition but gave a response too vague to identify when it had occurred.

Fig 6

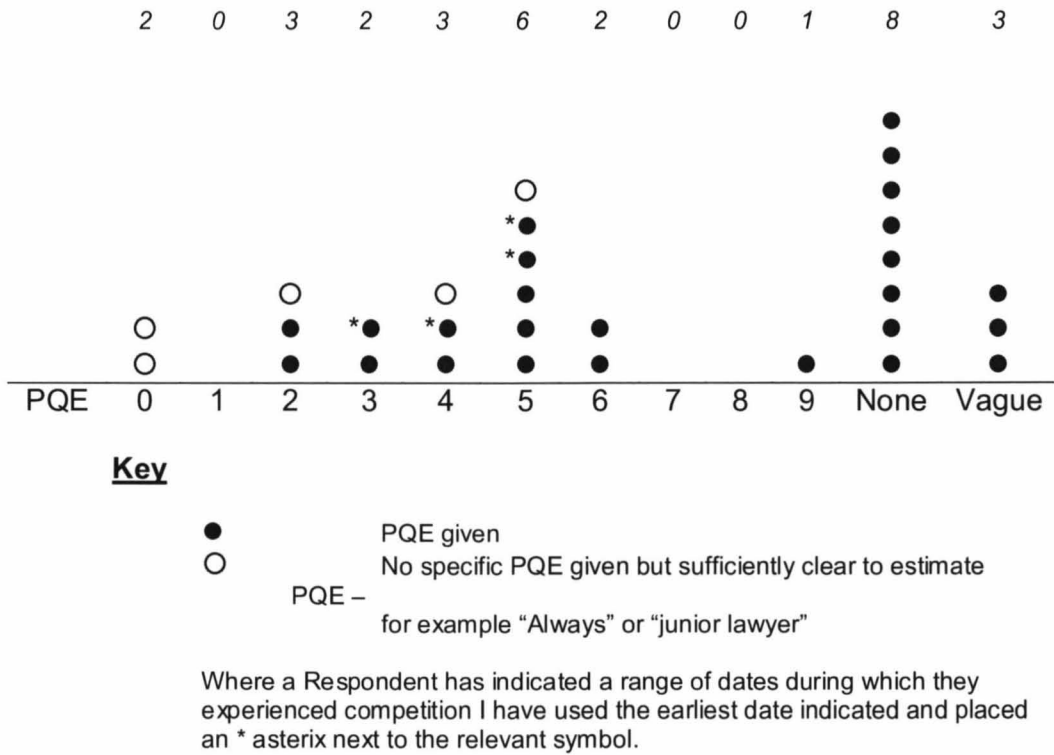


Fig 7 shows the sources of competition experienced by the Respondents. Note that some Respondents identified competition as coming from more than one source.

Fig 7

Colleagues within own depart.	● ● ● ● ● ● ● ● ● ● ● ● ● ● ●	15
Firm-wide	● ● ●	3
Lateral Hires	● ●	2
Peers/ Contemporaries	● ● ● ●	4
None/N/A	● ● ● ● ● ● ● ●	8

Fig 6 indicates that eight Respondents felt that they experienced no competition during their pre-partner careers. In Fig 7 the same eight Respondents, unsurprisingly, appear in the very bottom row as not having identified any competitors. Of these Respondents it is worth noting that, for a variety of reasons, they had had a “clear run” at partnership promotion. The following two comments are good examples.

A number of senior associates left early in my ... [career] so I always had a fairly clear run together with 1 other associate who also made partner at same time and indications were always that there was 2 places available

I was in an expanding area ... and there were few competitors for the partnership slot within the firm at the time

The remainder of the Respondents all experienced some degree of competition at some time during their pre-partner career and, three Respondents aside, they were quite specific as to when this occurred.

The fifteen Respondents who indicated they had felt intra-departmental competition identified a variety of potential competitors and not just departmental peers. The comments below illustrate how both more junior and more senior lawyers as well as direct contemporaries, were all variously seen as the competition.

In the run-up to partnership I felt I was in competition with 2 others in my department (one was several years more qualified and the other the same level of qualification)

Other corporate partner candidates at same level PQE.

As a middle assistant, there were two more senior assistants working in a similar practice area to me ... I did not feel that there were any more senior fee earners "blocking my way". However, there were two more junior fee earners who I felt viewed me as competition and, to an extent, I was aware that they were coming up behind me.

It is worth pointing out that the four Respondents who mentioned that they felt competition from their peers/contemporaries did not, between them, have a consistent view of who their contemporaries were. For example, one of the four saw them as:

My contemporaries within a 2-3 yr band of my PQE

While another felt that they were:

lawyers who were both senior and at the same level as me

Which encapsulates virtually all lawyers within the firm.

Preliminary Comments

The data indicates that it was relatively rare for the Respondents to experience competition from the outset of their careers. For those who felt they had experienced competition, and there a significant number who did not, their experience occurs in a

variety of ways and on a variety of time scales. The two statements set out below provide comprehensive examples of where Respondents felt competition came from at various points in time.

When I was about 4 years PQE I was concerned by the number of more qualified assistants in my dept and felt I would have to wait a long time before my "turn". I was assured that others wouldn't be given priority simply because they were more qualified in terms of years PQE. In the run up to partnership I felt I was in competition with 2 others in my department (one was several years more qualified and the other the same level of qualification) and also the others on our senior assistants development programme.

In the first 3 to 4 years there were about 20 associates in my department. Most of these were very strong ... Of these I regarded my competition as: 3 lawyers at the same level PQE, 2 who were 1 year more qualified, 1 who was 6 months more qualified, and 1 who was 6 months less qualified. I regarded these as my main competition. Some of these gradually fell away for one reason or another ... and it also became clear that I was pulling ahead of the competition ... At this stage (i.e. at about 4/5 years PQE) my competition became 4 of the 5 or so lawyers who were about 3 years more qualified than me. I was aware that if more than 1 of these was made up, then I would probably not be. At about 6 years PQE I also became aware that, the firm would limit the number of partners generally and therefore I had to compete with those in other departments to demonstrate the stronger business case.

Where it did arise, competition was often an intra-departmental phenomenon, peaking during the years in which the associates might be expected to have established or be establishing their partnership credentials, around the five years PQE mark. Though some of the competition comes from direct peers within the same departments the Respondents certainly do not focus on their, or anybody else's, "entering class" as the source of competition.

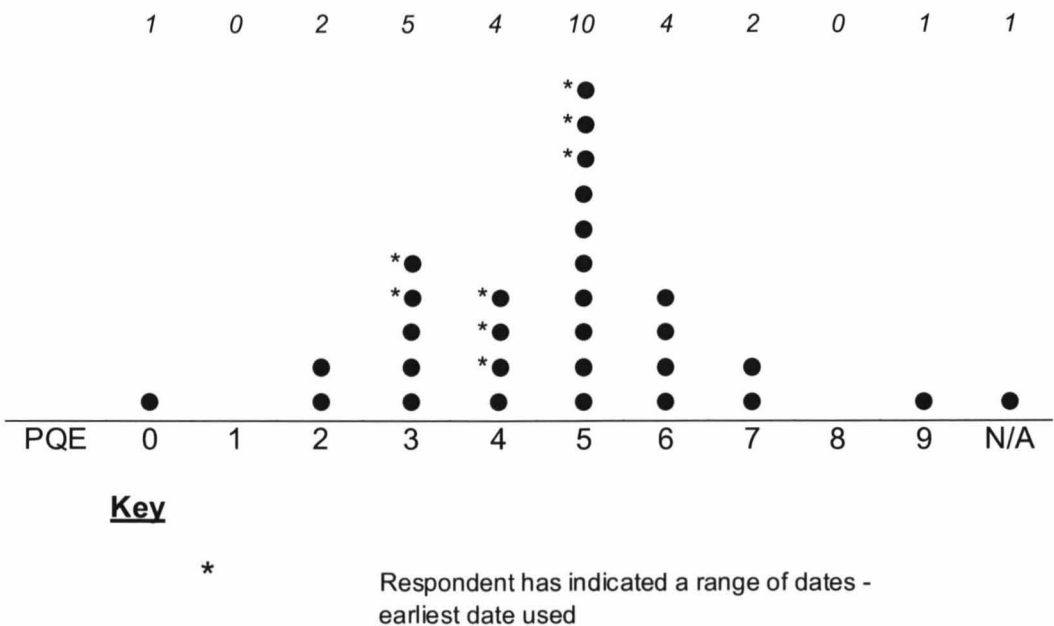
Question C1

At what point did you start to weigh up, in earnest, your chances of becoming a partner?

Describing the data

Fig 8 sets out, along the horizontal axis, the level of PQE at which the Respondents indicated that they started to weigh-up, in earnest, their chances of becoming a partner.

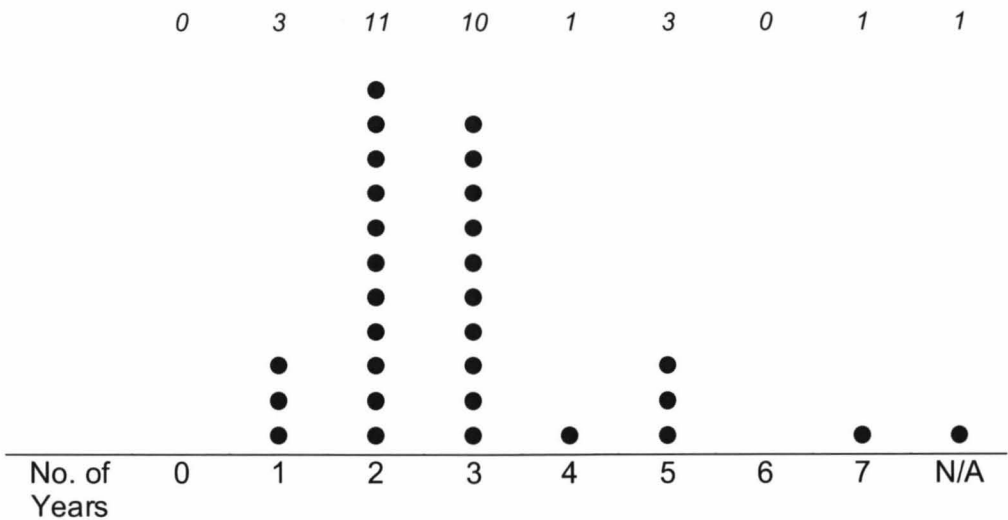
Fig 8



It is striking that when the level of PQE in Fig 8 is compared, for each Respondent, with the PQE level at which promotion to partner becomes their prime motivation (Fig 5) there is very little divergence. Of the thirty Respondents there are only four instances where the two dates differ by more than one year. This coincidence suggests that, as associates, most of the Respondents were not primarily motivated by the opportunity for promotion to partnership until such time as they were able to weigh up their chances in a meaningful way. The cluster of responses around the five years PQE mark, in Fig 8, indicates that the advent of serious consideration of partnership prospects peaks during the period when the Respondents might be expected to have established or be establishing their partnership credentials.

Fig 9 illustrates another interesting aspect of the data. Set out along the horizontal axis is the difference in years, for each Respondent, between the point where promotion to partnership became their prime motivation and the point at which they were made partner. Where a Respondent has indicated a range of dates during which partnership became their prime motivation I have used the earliest date.

Fig 9



The data provides a striking illustration of the relative uniformity of the time lapse. Twenty one of thirty Respondents weighed up their chances of promotion, in earnest, two or three years prior to being promoted.

Preliminary Comments

Considering the data sets illustrated in Figs 6, 7, 8 and 9 as a whole, we can say that these Respondents weigh up their chances of making partner broadly during the same period when partnership becomes their prime motivation. These occurrences, for many of the Respondents, take place at a point when they have had some opportunity to establish their partnership credentials and peak around the five year PQE level. This also happens to mirror the points in time when the force of competition for partnership slots was felt by those Respondents who experienced such a situation. The coincidence in time of these elements of the Respondent’s experiences, namely:

- opportunity to establish partner credentials and thereby accumulate human capital;
- earnest weighing up of partnership chances, indicating they have an understanding of their position and what is needed of then if they are to be promoted to partner; and
- for some, the experience of competition for partnership slots

appear to indicate the presence of significant aspects of the “tournament” for a majority of the Respondents once they have reached the level of senior associate. However, it is very important not to lose sight of the fact that there is still a sizeable minority, within the context of the sample, who are motivated by the prospect of partnership from early on in their careers and who weigh up their promotion chances correspondingly early.

Question C2(i)

What information did formal appraisals provide you with as to your chances of becoming a partner?

Describing the data

Fig 10

Very Important	● ● ● ●	4
Important	● ● ● ● ● ● ● ● ●	9
Moderately Important	● ● ● ● ● ● ●	7
Not Important	● ● ● ● ● ● ● ● ● ●	10
N/A Other		0

Of note is that eight Respondents commented that the feedback they received at appraisals was usually of a very general nature.

I got general warm noises but I suspected that everyone got these.

Specifically, four Respondents mentioned that the feedback they got was generally:

“you’re on the right track” type comments

Question C2(ii)

What information did salary level and any bonus you received each year provide you with as to your chances of becoming a partner?

Describing the data

Fig 11

Very Important	● ● ● ●	4
Important	● ● ● ● ● ● ● ● ● ●	10
Moderately Important	● ●	2
Not Important	● ● ● ● ● ● ● ● ● ● ● ● ● ●	14
N/A Other		0

Of those who felt that salary/bonus levels provided no useful information to them on their chances of promotion to partner, three mentioned that this would continue to be the case unless and until the salaries/bonuses paid to their contemporaries were known to them. The comment below from one Respondent neatly illustrates this point.

Not generally [useful] because I had no way of telling what this reflected. I was aware it was the same as at least one of my peers in terms of PQE, until about 5 or 6 PQE when I became aware I got slightly more than her, and this suggested I was ahead.

A further four Respondents commented that they felt there was no link between being well paid compared to one's peers and one's chances of making partner. The following two comments are illuminating.

[N]ot a good indicator as it was clear getting top salary and bonus did not favour you because there would be people who would not make it but would get the same because the firm wanted to keep them on as good work horses.

I knew that I was always paid at the top of my band and I took encouragement from this. However, in hindsight I can see that level of pay as an associate does not necessarily equate to your prospects as a partner.

Preliminary Comments

One possible explanation for the variation in importance ascribed to salary/bonus levels by the Respondents is that their respective firms attach differing levels of importance to them. However, a more detailed consideration of the data scotches this theory. There is no consistency in the importance attributed to salary/bonus levels by as between Respondents from the same firm.¹⁸³ So, it seems that the divergence in opinion illustrated in Fig 11 is probably down to individual perception.

Question C2(iii)

What information did work assignments you undertook (including the feedback you received on the work you did) provide you with as to your chances of becoming a partner?

¹⁸³ In one case, even as between two Respondents within the same department.

Describing the data

Fig 12

Very Important	● ● ● ●	4
Important	● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●	16
Moderately Important	● ● ● ● ● ●	6
Not Important	● ●	2
N/A Other	● ●	2

The comment set out below is typical of those who attributed high levels of importance to the diet of work they received.

Very clear in banking during that period, the premium, high profile work was in leveraged finance. Very hard to make it without receiving a steady diet of this work and not enough of it to feed all associates.

Three Respondents referred specifically to the importance of receiving a steady flow of demanding work assignments in giving them the confidence to feel that they could work at partner level. Two specific comments are set out below.

My role on certain projects and the fact that I was acting "as a partner" when still an associate, was important to my confidence in my ability to operate at partner level.

I became aware that I was comfortable taking responsibility for increasingly significant transactions which would typically be overseen by a partner, and I think this improved my self-confidence (and made me think that I could take on the responsibilities of partnership) and the confidence of the partners in my abilities.

Of interest is that two Respondents commented that all associates in their group were treated equally when it came to work allocation. One of them then, however, goes on to develop their answer by indicating that, equal treatment notwithstanding, how they performed on those work assignments still provided an important source of information as to their partnership promotion prospects.

Preliminary Comments

The data here really speaks for itself. Work assignments were perceived as a significant source of information on partnership chances by the majority of the Respondents.

Question C2(iv)

What information did individuals at your workplace (e.g. partners, HR, peers, mentors formal or informal) provide you with as to your chances of becoming a partner?

Describing the data

Fig 13

Very Important	● ● ● ● ● ● ● ● ● ●	10
Important	● ● ● ● ● ● ● ● ● ● ● ● ● ● ●	15
Moderately Important	● ●	2
Not Important	● ●	2
N/A Other	●	1

Twenty-one of the twenty-five Respondents who found information from individuals at their work place to be an important, or very important, source of information on the partnership prospects indicated that the source they most relied upon for relevant information were partners at their firm.

Preliminary Comments

The data here is unequivocal. Information from individuals was regarded by the Respondents as providing significant intelligence as to their chances of promotion to partner. Equally clear is that this information was almost exclusively provided by the existing partners at the firm. While this may not be a surprising result, the uniformity of the responses is noteworthy.

One further interesting aspect of the data is that three individuals contrasted the significance of formal appraisals with that of information supplied informally by partners. The two following comments sum up this sentiment.

A partner in the department who acted as an informal mentor gave me encouraging messages on the lines that I was a favourite, from about 4 years [PQE], and from this I became aware that "the competition" was receding. The message was consistent with appraisals but more frank/with fewer caveats.

Inevitably this [informal dialogue with partners] was the most important source of information. People will always say more informally than they will say "on the record".

This may go some way to explaining why the Respondents do not hold formal appraisals in particularly high regard as a source of information on their partnership prospects.

Question C3

Do any particularly important incidents spring to mind when you think of how you came by the information that helped you weigh up your chances? If yes, what were those incidents?

Describing the data

Six Respondents stated that no particular incident was particularly significant in providing information to them on their chances of promotion to partner. Two Respondents indicated that an incident had taken place but their answers failed to indicate what information had been elicited from it. One Respondent did not provide an answer.

The remaining twenty-one Respondents reported various specific instances as having provided them with information on their chances of making partner and some Respondents cited more than one incident. The broad types of incidents experienced by the Respondents and which provided them with information on their partnership chances are set out below.

- Twelve Respondents mentioned informal discussions with partners, four of these Respondents reported that these discussions occurred as a result of them resigning from the firms where they eventually became partner. A further Respondent stated that it was their welcome on returning to their firm after working abroad for a time that made them realise “I was held in high regard.”
- Four Respondents cited specific formal appraisals.
- The remainder of the specific instances covered a variety of scenarios ranging from:
 - being informed that contemporaries had been “given a message to look elsewhere”;
 - to an administrative “cock-up” which disclosed to associates “precisely how to go about it [the promotion to partner process]”;
 - to the carrying out of a “cull” of “natural “rivals”.

Preliminary Comments

The most telling pieces of information revealed by these responses is how important the non-formal channels of communication (primarily with partners) are in providing information to the associates on their partnership chances and on how few occasions

their appraisals provided specific and memorable information. The role of formal appraisals in a broader sense has been considered under Question C2 above.

Question D(i)

To what extent did you feel departmental and/or inter-departmental politics were relevant when weighing up your chances of becoming a partner:

Describing the data

Fig 14

Very Relevant	● ● ● ● ● ● ● ●	8
Relevant	● ● ● ● ● ● ● ● ●	9
Moderately Relevant	● ● ● ● ●	5
Not Relevant	● ● ● ● ● ●	6
N/A Other	● ●	2

Preliminary Comments

The extent to which intra or inter-departmental politics was perceived as having an influence on the Respondents’ chances of becoming a partner depends on their individual circumstances and mind set. However, a clear majority identified politics as a relevant influencing factor. It is also significant to note that six of the Respondents identified the strength of their department relative to that of others within their firms as a crucial inter-departmental political factor. The three following comments are typical and the final two illustrate the point from each side of the issue:

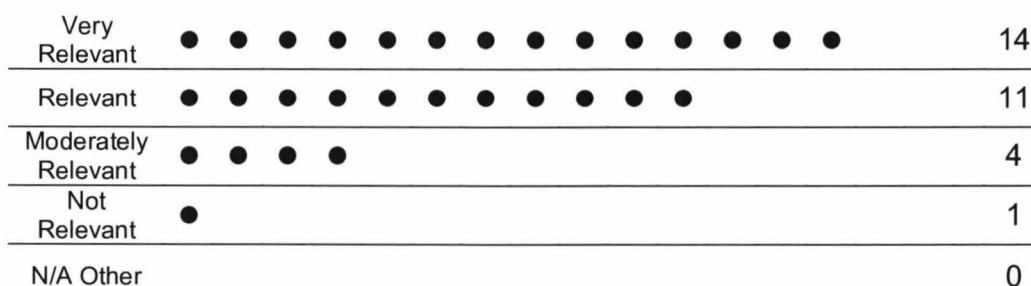
- Undoubtedly departmental politics mattered a great deal, it continues to be true that “strong” departments will be able to get more candidates through the process, whether it is strength in financial performance or historical client links, senior partners etc
- Relevant to some degree, in the sense that we are a corporate firm and hence the largest number of partners are corporate partners, whereas those of us in support departments have to manage on worse ratios.
- Very important - corporate is the leading department of the firm, so obtaining its backing was instrumental.

Question D(ii)

To what extent did you feel that the influence wielded by your supporter(s) (i.e. patronage) was relevant when weighing up your chances of becoming a partner?

Describing the data

Fig 15



Preliminary Comments

The data provides a clear picture: the Respondents felt the influence wielded by their supporters was a significant factor in how they weighed up their chances of promotion to partner. With few objective measures by which to judge the performance of lawyers (billable hours being the notable exception¹⁸⁴) it is almost inevitable that the support of powerful individuals within the business is crucial to an associate's career progression.

The following comments illustrate just how important some of the Respondents considered this factor to be.

Very important. It is always a risk to make someone up – therefore you need a partner to stick their neck out and put you on the agenda

Yes I had one particularly influential champion. Without him pushing I wouldn't have got there. Again, an excellent candidate with no champion won't get there anytime, not just in current market conditions.

This was absolutely key and perhaps the single most important factor. Put simply, I would not have stood a chance of partnership promotion if I did not have support from the partners in my department ... the backing of my head of department was key in terms of persuading the partners in other departments that it was a good move to promote me.

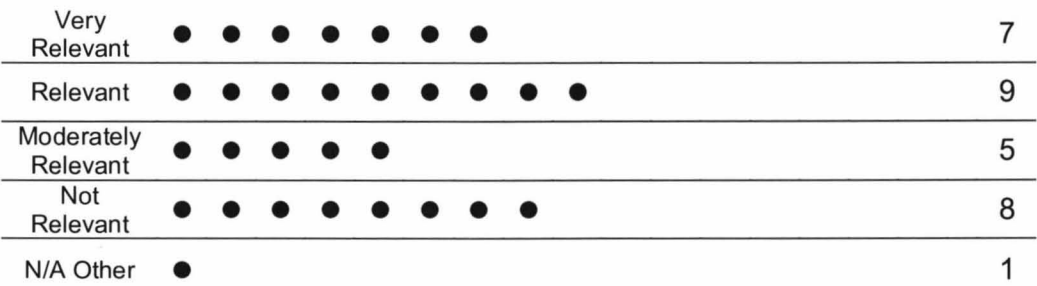
¹⁸⁴ Considered further at page 46 of this work and see Gulati et al, *op. cit.*, n. 61.

Question D(iii)

To what extent did you feel external economic factors were relevant when weighing up your chances of becoming a partner?

Describing the data

Fig 16



For those who felt strongly that external economics were a relevant factor the comment set out below was typical.

I was aware this was highly relevant because the size of the partnership profits dictated to some degree how many partners would be made up. During the economic downturn when corporate deals fell and profits suffered there was not much willingness to share a small pie!

Four Respondents made a direct connection between external economics and the impact they might have on their own business case. There were discrepancies, though, between Respondents as to what constituted external economic factors and what constituted internal economic factors.

A variety of reasons were cited by those who did not consider external economics as a relevant factor in weight up their chances of promotion to partnership. Among them were the following two comments:

Not very important. I was made up in the midst of the start of the Iraq War. The managing partner made it clear they were taking a "long term view".

Not as important as internal assessment of business needs. Law firms are very slow to react to market pressures.

Preliminary Comments

Though there is a clear emphasis on the importance of external economic factors there is also a wide divergence in opinion and experience evident from the data. Overall the data illustrates a distinction between those Respondents who felt that

external economic factors would impact on their chances of making partner and those who were working in an environment where the internal business case was strong enough to make external economic factors irrelevant for them. This might be the case, for example, where the firm had taken a commercial decision to invest in a particular practice area or where an area was perceived as needing “new blood.”

[T]he firm had decided to invest in the bank finance area hence their willingness to take lateral hires into the partnership

Very relevant now, but less so at the time (when the department needed to be reinvigorated).

Question D(iv)

To what extent did you feel the rate at which partners were made up was relevant when weighing up your chances of becoming a partner?

Describing the data

Fig 17

Very Relevant	● ● ● ● ●	5
Relevant	● ● ● ● ● ● ● ● ●	9
Moderately Relevant	● ● ● ● ●	5
Not Relevant	● ● ● ● ● ● ● ●	8
N/A Other	● ● ●	3

Preliminary Comments

It is worthwhile noting that a significant number of Respondents did not consider this to be a relevant factor when weighing up their chances of making partner.¹⁸⁵

None of those Respondents who ascribed at least some relevance to partner promotion rates mentioned that they were concerned with the rate of partner promotions as a function of the size of all the relevant “entering classes” or equivalent. Five Respondents mentioned, specifically, their departmental promotion rates as being particularly significant and the following comment is typical:

¹⁸⁵ It would have been nice to have had the opportunity to ask them a follow-up question along the lines of “how would you have felt if your firm had had a very poor record of making-up partners over the last five years?”

Mixed – regular promotions to partnership are a positive sign that the team is growing but can count against further partners if there is a perception that too many have been made up in a particular area

Two Respondents made particular reference to the fact that a recent lack of partner promotions within their departments was beneficial to their chances of being promoted:

Helpful that lack of senior associates ahead of me so few partner promotions in team before mine

within my department I think I benefited from there having been few recent internal promotions.

One particularly interesting comment sets out, according to the Respondent, how the nature of the partnership promotions process and rates of promotion themselves have changed at their firm.

This was highly relevant. When I first qualified, partners were being made up across the firm at a rate of 6/7 a year. Later this fell to 1 or 2 a year. I was aware that this reflected a desire to limit the number of partners and a greater focusing on the business case: I would need to show a compelling business need to make me up and being a good lawyer would not be enough, whereas a few years before, there was more "he/she is a good chap, we don't want to lose him/her, so we'd better make him/her a partner"

This comment and one other make a particular point about the importance attached, latterly, to the strength of an individual's business case in contrast to the lesser importance attached to a firm's rate of partner promotions.

Yes [a relevant factor] - but my personal business case was more critical.

Question D(v)

To what extent did you feel that the continued hiring of trainees and other junior lawyers was relevant when weighing up your chances of becoming a partner?

Fig 18

Preliminary Comments

Same as above [not significant] - all a sign of growing economic confidence when hiring is occurring and usually a sign of impending recession.

Testing the Theoretical Framework and Interplay with Case Study Findings

In this section of Part IVB I test the Questionnaire data against the theoretical framework developed in Part IVA. I have already analysed, in Part IVB, the nature of the questions that I use to test the theoretical framework and refer the reader to that analysis for an explanation of the purpose and importance of each question.¹⁸⁶ In order to render the data more digestible, I describe the interplay between the Questionnaire findings and the Case Study findings for each element of the theoretical framework. With regard to the interplay of the two sets of data, it is important to bear in mind that the Questionnaire data and findings will not possess the richness and depth of their Case Study counterparts. What I have attempted to do is point out areas where differences exist between the two sets of data/findings and/or where points made in one data set are reinforced or amplified by the findings of the other.

Testing the Theoretical Framework

Question 1(a) – when does the tournament become the prime motivating factor for associates? – Analysis

Theoretical Framework

Equal numbers of Respondents occupy either end of the spectrum on this question. The actual timing of when the tournament, in this context promotion to partner, becomes their prime motivation seems to depend, unsurprisingly, on the Respondents motivations as junior lawyers. It is very clear, however, that the prospect of promotion to partner becomes increasingly important to the Respondents over time and that by the five or six years PQE level it is the prime motivation for a significant majority (24/30) of them. This still begs the question as to how the tournament and the behaviours of the significant minority motivated from early in their careers¹⁸⁷ by the prospect of partnership influence the working practices of others who do not share those motivations.

Interplay with Case Study Data

The Questionnaire data backs up the preliminary comments on the Case Study data in that the relevant group for the purposes of monitoring the “implied promise” includes a significant number of associates from very early on in their careers and is not just confined to the ranks of senior associates.

¹⁸⁶ See Part IVA, at page 35 onwards, of this work.

¹⁸⁷ See Question A3 at page 67 of this work.

Question 1(b) – who are the “entering class” for the purposes of monitoring the partnership promotion rate? – Analysis

Theoretical Framework

Two aspects of the data warrant consideration, namely: what competition, if any, was felt by the Respondents; and did any of them use “entering class” as a comparator when considering partner promotion rates?

On the first question a significant minority (8/30) indicated they had not felt competition, while the remainder had felt at least some competition at various points in time (peaking at five years PQE) and from a variety of sources. Competition from within their own department was the most frequently cited source. As to the second aspect of the data, there was no evidence to indicate that the Respondents were concerned with competition coming from their own “entering class”, nor any evidence that they considered the ratio of “entering class” to partner promotions as of any significance.

Interplay with Case Study Data

The Questionnaire data reflects the Case Study data on this point. Though a significant number of Respondents perceived that they had experienced some form of competition there was nothing to suggest that: they perceived their, or anyone else’s, “entering class” as the corps with which they were competing; nor that they used the promotion percentage of “entering class” as a means of monitoring their own chances of promotion to partner.¹⁸⁸

Question 1(c) – do associates, when weighing up their chances of becoming a partner, take into account the partner promotion percentage and/or continued hiring of junior lawyers? – Analysis

Theoretical Framework

Partner Promotion Percentage – Few of the Respondents (4/30) considered this to be a highly relevant factor when considering their own chances of promotion to partner and a significant number (8/30) gave it no importance in this regard. However, given the depth of analysis evident in some of the comments regarding the “double-edged” nature of positive firm-wide and departmental promotion rates, a number of the Respondents had obviously paid close attention to the rate of partner promotions and what it meant for their chances.

Continued hiring of junior lawyers – This was not generally perceived by the Respondents as a relevant factor though the importance of departmental leverage

¹⁸⁸ Also, as considered later in this section, when questioned on the relevance of partner promotion rates to their chances of promotion, none of the Respondents made any reference to “entering class” or similar as a useful factor for comparative purposes.

(that is, the partner to non-partner ratio) to the firm's ability to promote partners in the future was noted by several Respondents.

Interplay with Case Study Data

Partner Promotion Percentage – No analysis by the Respondents of promotion rates relative to “entering class” was revealed by the Questionnaire data. Aside from this finding, the Questionnaire data exhibits a markedly more equivocal stand on the importance of partner promotion rates than does the Case Study data. Given the significant number of Respondents that did not regard this as a relevant factor, the Questionnaire data cannot be said to provide the clear-cut and positive opinions on the relevance of partner promotion rates that is evident in the Case Study data. However, the obvious level of analysis undertaken by some Respondents and the fact that an overall majority of the Respondents did perceive promotion rates to be of, at least, some relevance means that the importance of this factor should not be discounted.¹⁸⁹

Continued hiring of junior lawyers – The Questionnaire data complements the Case Study data with regard to the relevance of this factor for the Respondent's chances of promotion to partner. Sentiments, in the Case Study data, to the effect that the continued hiring of junior lawyers provides an indicator of business confidence are echoed in the Questionnaire data. Although, the feeling that continued hiring is not directly relevant to their chances of promotion is, perhaps, borne out more emphatically in the Questionnaire data.

Question 2(a) – does the research data provide any evidence of the “seeding” and/or “tracking” of associates? – Analysis

Theoretical Framework

Seeding – No data was obtained relevant to the phenomenon of “seeding”.

Tracking – Though a small number of Respondents mentioned aspects of “mentor” style relationships the Questionnaire data provides insufficient depth to infer any material incidence of “tracking”. Equally, the Questionnaire data on work allocation considered under Question 2(b) is of insufficient depth to allow any inferences to be made as to its impact on potential “tracking” scenarios.

¹⁸⁹ One explanation for the differences between the data sets may stem from the strong cultural commitment to continued partner promotions that is evident at the Case Study firm. This may be at odds with the culture of the majority of the firms from which the Respondents are drawn. Further investigation to substantiate this point is needed. It is also worth noting that the Research data lies somewhere between the views of Galanter and Palay (op. cit., n. 34) regarding the importance of the “entering class” percentage and Wilkins and Gulati (op. cit., n. 3, pp 1623 – 1624) who regard the partner percentage as neither clear nor credible enough to reassure associates. Considered further at page 14 of this work.

Interplay with Case Study Data

No data on “seeding” was revealed by the Case Study data and no useful analysis of the interplay between the data sets can be undertaken regarding ‘tracking’ given the paucity of the Questionnaire data on this topic.

Question 2(b) – does the research data provide any evidence of a distinction between “paper work” and “training work” and the importance of the latter in the promotion to partner process? – Analysis

Theoretical Framework

The Respondents attach a clearly expressed importance to the diet of work that they undertake as a marker of their chances of promotion to partner. Though there is little evidence of comparisons being drawn by the Respondents between “training work” and “paper work” it is clear that “training work” is deemed crucial to an associate’s career development and their chances of partnership.

Interplay with Case Study Data

The Questionnaire data reinforces the findings of the Case Study data regarding the high levels of importance attached by associates to the type of work assignments they undertake as a key indicator of their chances of promotion to partner. It also echoes the Case Study finding on the importance of the increasing responsibilities tied to work assignments in giving the associates confidence that they could operate at partner level. As with the Case Study, no specific comparisons are made with “paper work” type assignments. However, in both instances, the inherent concern with the “quality” of work assignments undertaken indicates that “paper work” style assignments were not those sought by ambitious associates.

Question 2(c) – does the research data provide any evidence of the role played by multiple incentives, alongside the tournament, in motivating associates? – Analysis

Theoretical Framework

High Wages – Provided they were paid at market rate for large law firms, the Respondents did not regard high wages as a motivational factor. One Respondent noted that not being paid at market rate was seen as a demotivating factor.

General Legal Training – In general, this was rated as having a very low level of motivational impact with very few Respondents citing it as a highly motivational factor. The availability of general legal training was often taken as a given.

Firm's Reputation – This was a strong motivating factor for the Respondents early on in their careers. It was an especially significant factor for those not motivated by the potential for promotion to partnership at this point.¹⁹⁰

Opportunity for Promotion to Partner – Overall, this was regarded by the Respondents as an important motivational factor during their early career, although there were also a significant number of Respondents who did not perceive it to be motivational.¹⁹¹

Interplay with Case Study Data

High Wages – The Questionnaire data and the Case Study data provide a near identical view of the relative lack of importance attached to high wages as a motivational factor.

General Legal Training – Again the Questionnaire and Case Study data are consistent in their findings.

Firm's Reputation and Opportunity for Promotion to Partner – The Respondents generally give a higher rating to their firm's reputation as a motivational factor than do the Interviewees. This can probably be explained if we consider, for both groups, the findings on the motivational impact of promotion to partner.

The Case Study data on prospects of promotion shows a very strong bias towards this factor as the majority of the Interviewees' main source of motivation. As noted in Part IVA:

given the high degree of motivation to become partners within the Interviewee sample it is, perhaps, not surprising that the reputational benefits in the external employment market gained by working at a prestigious law firm would not be overly motivational for them. If their view is that they are going to make partner at this firm then the signals that their firm's reputation sends to the external employment market about their abilities are largely irrelevant.¹⁹²

The Respondents are, as a whole, more equivocal about the motivational impact of partnership promotion during the early stages of their careers. Given these results, it is not surprising that the relative importance of the firm's reputation as a potential signal of quality to the external recruiting market place would be greater for the Respondents than the Interviewees.

¹⁹⁰ See Wilkins and Gulati, op. cit., n. 3, p. 1640 and considered further at page 15 of this work.

¹⁹¹ Note how its significance increases to the point at five/six years PQE when 24/30 Respondents consider it to be their prime motivation.

¹⁹² See page 43 of this work. This reinforces the contention that the Case Study firm, when compared to the firms from which the Respondents are drawn, has an unusually strong cultural bias towards its associates feeling motivated by their prospects of achieving partnership. See page 88, footnote 189, of this work.

Question 3(a) – does the research data support or negate the proposition that the tournament exists for senior associates?– Analysis

Theoretical Framework

The Questionnaire data roundly confirms that the tournament exists for senior associates. By the time they reach senior associate level it is rare for any of the Respondents to be outside the tournament. At five to six years PQE, twenty-four of the thirty Respondents consider promotion to partnership to be their prime motivation.

The Questionnaire data reinforces the feeling that the tournament is at its liveliest for senior associates given that, competition from other associates was most keenly felt at around the five to six year PQE mark and that this is around the time when the Respondents also started to weigh up their chances of promotion.

Interplay with Case Study Data

Though the Questionnaire data fails, when compared to the Case Study data, to provide as comprehensive a picture of the stages through which the Respondents' careers progress it does complement the Case Study data. Over half of the Respondents held partnership to be an important or very important motivational force from early in their careers and the data gives no reason to suspect that these Respondents would be any different from the Interviewees when it comes to how the prospect of promotion to partner influenced their working practices over time. So, for many of the Respondents, the tournament is not just confined to their time as senior associates. Notwithstanding this finding, it is clear from the convergence of the phenomena consistent with the existence of a tournament, noted earlier, that the tournament peaks in observable intensity around the five to six year PQE level. This "noisy" convergence, perhaps reinforced by the seemingly large proportion of junior lawyers apparently not motivated by the prospects of partnership, may go some way to explaining why commentators have tended to focus on senior associates as the prime constituency of the tournament.

However, given the dynamic nature of the tournament posited in the analysis of the Case Study data it is probable that the tournament, within its own set of time specific parameters, influences the behaviour of many junior lawyers.¹⁹³ A significant number of the Respondents who were disinterested in their partnership prospects as junior lawyers, did go on to become partners. This indicates that the behavioural norms associated with maintaining one's position as a junior lawyer allow for the acquisition of experience and skills to a level that is sufficient for them to enter the tournament at a later stage without having been disadvantaged by their earlier disinterest. The other explanation for this phenomenon, of course, is that the tournament does not start, for any associate, until later in their careers.

¹⁹³ Considered further at page 48 of this work.

Question 3(b) – does the research data support or negate the proposition that the partnership promotion process is opaque?– Analysis

Theoretical Framework

The Questionnaire data contains few comments that address the partnership promotion process directly and only very limited inferences can be drawn from the data relating to the factors that the Respondents find important when weighing up their chances of promotion to partnership. The one point of note is, perhaps, that the lack of reliance placed on formal channels of communication (such as appraisals) when contrasted to that attached to informal channels (work assignments undertaken and, especially, the informal communications with partners) suggests the process is unlikely to be a transparent one.

Interplay with Case Study Data

The Questionnaire data provides very little information on the partnership promotion process. Though there are similarities between the Questionnaire and Case Study data regarding the importance they both attach to work assignments and information provided on an informal basis by partners, it is not possible to make any worthwhile inferences as to whether or not the Questionnaire data supports or contradicts the Case Study data.

Question 4 – How do associates weigh up their chances of becoming a partner? – Analysis

Theoretical Framework

Set out below, in approximate order of importance attached to them, are the factors that the Respondents used as sources of relevant information on their partner promotion prospects. Three main groupings were evident from the data in terms of the level of importance that the Respondents attached to them. Although there are significant differences between the groups as to level of importance, there is very little difference between the individual items within each group.

Highly Significant Factors

- Influence of supporters
- Information from partners – via informal channels
- Work assignments undertaken

Significant Factors

- Inter/intra departmental politics
- External economic factors
- Rate of partner promotions
- Formal appraisals
- Salary/bonus levels

Non-significant Factors

- Continued hiring of junior lawyers
- Partner promotions as a percentage of “entering class”

Interplay with Case Study Data

Like the Interviewees the Respondents did not use the rate of partner promotions as a percentage of “entering class” as a source of information on their chances of promotion to partner. Further, the lists of factors deemed to provide such relevant information are consistent between the data sets. However, there are significant differences in the level of importance/relevance attached to them when the two data sets are compared.

Firstly, the Respondents attach a noticeably greater degree of significance to the influence that their supporters wield within the firm than do the Interviewees. This also applies to the role that inter/intra-departmental politics plays in their prospects of promotion to partner. These findings appear to indicate that the Case Study firm is generally a less politicised environment than the firms from which the Respondents were drawn.¹⁹⁴

Secondly, the level of significance attached to the rate of partner promotions by the Respondents is significantly lower than that attached to it by the Interviewees. However, it is clear from the data that a number of the Respondents did perform detailed analysis of how the partner promotion rate might affect them and their department’s ability to successfully promote partners in the future. This indicates an awareness, on the part of the Respondents, of the political ramifications of partnership promotion decisions. This fits with the analysis, set out above, that is suggestive of the existence of a more politicised environment in the Questionnaire firms than in the Case Study firm.

Given the relative lack of depth to the Questionnaire data, it is not possible to go on to consider, at a sufficient level of detail, the gaps that exist in the Respondents’ understanding of the career progression.

¹⁹⁴ These findings also support the views of Wilkins and Gulati (op. cit., n. 3, p. 1613) “partners are not neutral umpires” and considered further at page 13 of this work.

Question 5 – What promise are the associates monitoring? – Analysis

Theoretical Framework

From the analysis of the Questionnaire data it is possible to state that the Respondents did not monitor quite the implied promise envisaged by tournament theory. So does the Questionnaire data allow us to infer what they perceive to be on offer in return for the chance of promotion to partnership? ¹⁹⁵

The Questionnaire data analysis (especially the evidence of the factors that the Respondents regarded as significant indicators of their chances of promotion to partner) suggests that, alongside their interest in establishing partner credentials through accumulation of quality work assignments, the Respondents were concerned with monitoring the political aspects of the promotions process centring on dialogue with partners and the influence wielded by their partner supporters and departments. Partner promotion rates achieved a degree of significance within this matrix of concerns but were not of first order importance. ¹⁹⁶

Interplay with Case Study Data

As noted above and in common with the Case Study data, the promise being monitored by the Respondents is certainly not quite that envisaged by tournament theory. From the importance attached by the Respondents to the quality of the work assignments they undertake, it is not too difficult to propose that the first limb of the alternative promise for the Interviewees, outlined in Part IVA, is equally valid for the Respondents. Given the quality of the Questionnaire data, however, it is more difficult to establish that the second limb of that alternative promise is valid for the Respondents. There are a number of factors, set out below, that support the second limb of the alternative promise. However, the Questionnaire data provides insufficient information on the role played by the Respondents' departments/groups in demonstrating that sufficient human capital exists to promote a further partner without diluting returns to the present partners.

Eleven Respondents did mention, at various points in the Questionnaire, the importance of having a sound business case. Two of them specifically linked the assistance they received from their department/group with putting together a compelling business case. One of those comments is set out below.

[Y]ou would get more complex deals or deals with major clients and also greater autonomy on deals if partners felt you were good and also if they felt you were on track and there was a need for the practice area to help build your business case [by providing you with this type of work]

¹⁹⁵ It should be noted that the two elements relevant to this question, as it applied to the Case Study data, are just as relevant here, see pages 55 and 56 of this work.

¹⁹⁶ Query to what degree the Respondents view the partner promotion rate as simply a function of the relative levels of political power wielded by supporting partners and the individual's department.

There is also a suggestion in the Questionnaire data that at least some Respondents were concerned to measure the levels of human capital that their departments might be able to provide to them. This is derived from the fact which six Respondents noted that the relative “strength” of their departments within the firm would have a direct impact on their chances of promotion to partner. In this case I take the references to “strength” of their departments to mean the level of available and demonstrable human capital within the department which might support the Respondent’s bid for promotion. However, as foreshadowed above, there seems to be insufficient evidence on which to base a proposition that the second limb of the alternative “promise” outlined in Part IVA holds true for the Respondents just as well as it does for the Interviewees.

It should, of course, be noted that the above analysis does not mean that the proposition for an alternative “promise” does not apply to the firms that provided the Respondents for the Questionnaire.¹⁹⁷ However, it is also evident that some acknowledgement of the political factors that the Respondents feel are significant would also need to be integrated into any such alternative “promise” if it were to be applicable to the Respondents. In the same vein, additional investigation of the nature of human capital accumulation and extent to which departments cooperate with the Respondents in providing evidence of combined levels of human capital would be needed before the alternative “promise” might be applied, as is, to the Respondents.

In summary, for the Respondents, the implied promise to promote to partner seems to be dependent on:

- having established their partner credentials through the execution of various work assignments;
- strength of the their business case; and
- how the “political” elements inherent in the promotion to partner process affect the first two factors.¹⁹⁸

Question 6 – Do Associates have a reasonably accurate understanding of the rules and partners’ desires? – Analysis

Though the quality of the data prevents us from proposing a fully formed alternative “promise/bargain” for the Respondents it should still be possible to consider whether or not the monitoring which they undertake, as revealed by the Questionnaire data, provides them with a “reasonably accurate understanding of the rules [of the

¹⁹⁷ It is clear that, just as with the Interviewees, establishing partner credentials through the execution of various high quality work assignments forms part of the bargain for the Respondents.

¹⁹⁸ Given the comments of some of the Respondents, my view is that the political factors outlined by them would have their greatest effect on how compelling the would-be partner’s business case is seen to be. As regards the extent of an individual’s partner credentials, subjectivity will exist for all would be partners and is not confined to those firms where political factors are particularly relevant.

tournament] and the partners' desires"¹⁹⁹ for the purposes of the application of tournament theory. If the tournament does work as a model when applied to large law firms in the UK, there is an implication that associates (in this case the Respondents) do, in fact, monitor something very like the correct "promise". In considering this question I will deal with the Questionnaire findings and the comparison with the Case Study data at the same time, rather than taking each in turn as I have done in the preceding parts of this section. I again use Galanter and Palay's stylised version of "the rules"²⁰⁰ to assist in addressing this issue.

The Stylised Rules

1. *The tournament is played over a fixed period of time* – no relevant data gathered.
2. *All associates in an "entering class" compete for the prize of partnership* – Though the Respondents perceived the existence of competition for partnership slots during their careers (peaking at around five to six years PQE) no feelings of competition specific to their own "entering class" were evident.
3. *The prize is awarded to a fixed percentage of the top associates* – As with the Interviewees, the Respondents did not base any analysis of their chances of promotion to partner on the "fixed percentage of entering class" formula. Overall, the Respondents were not as concerned as the Interviewees with monitoring the partner promotion rate, though some of the comments made by the Respondents indicated that they had undertaken detailed analysis of the impact of partner promotions on their own chances of promotion. At a departmental level at least, a good record of recent partner promotions was not necessarily viewed as a positive sign.
4. *The basis on which the award is made is the associate's ranking – judged subjectively – in the possession of two goods:*
 - *high quality legal work; and*
 - *their own human capital.*

In common with the Case Study data the Questionnaire data shows that the Respondents are concerned that they achieve a diet of high quality legal work, this indicates a close understanding of the first limb of the rule. As already noted, however, the Questionnaire data is less clear-cut than the Case Study data on the matter of human capital acquisition. There is, however, in my opinion, sufficient evidence provided by the Questionnaire data to indicate that the Respondents well understand the second limb of the "rule". The evidence I rely upon in making this statement comes from three sources:

- the number (11) and nature of the references to the importance of establishing a business case for promotion;

¹⁹⁹ Galanter and Palay, op. cit., n. 27, p.1688.

²⁰⁰ Galanter and Palay, op. cit., n. 34, p. 960.

- the behaviours identified under Question A4, by the Respondents, as those on which they placed more emphasis once promotion to partnership became their prime motivation; and
- Respondents' comments on the impact that the relative "strengths" of the various departments within their firms might have on their own chances of promotion.

These sources indicate that the Respondents were aware of the need to cultivate their own human capital and that they acknowledged the role that the departments might play as a source of human capital for their partnership promotion bid. Though this data lacks the detail and specificity of the Case Study data, it does, in my view, allow the point to be made that the Respondents well understand the second limb of this "rule".

5. *The winners get a guaranteed and fixed amount of compensation – regardless of who wins* – No relevant data gathered.
6. *Associates are reassured that the firm is keeping its side of the bargain through:*
 - *consistent and readily observable partner promotion rates; and*
 - *continued hiring of new associates*

The Respondents were more equivocal on the importance they attached to partner promotion rates than were the Interviewees. The Respondents seemed to adopt a more individualised and ambivalent view of how partner promotion rates might affect their chances of promotion. On the other hand, the Respondents were unequivocal, to a significantly greater degree than the Interviewees, when it came to the lack of significance they attached to the continued hiring of junior associates. In summary, the Respondents' views seem somewhat at odds with the implications of this "rule".

Partners' Desires

The desires of the partners provide the basis for the existence of the rules analysed above and were summarised in Part IVA as the desire to:

- have a workforce comprised of assistants who are motivated to work hard in the production of quality legal output with the minimum of supervision; and
- promote only those associates who, as partners, will maintain or improve the existing partners' level of return from their business.

As with the Case Study data the Respondents understanding of the first of the partners' desires is reflected in the importance they attach to the amount and quality of the work assignments they have performed. It is more difficult to assert that the Questionnaire data provides conclusive evidence of an understanding, on the part of the Respondents, of the second element set out above. Though there is evidence to

indicate that the Respondents have a grasp of the need to accumulate human capital, the level of detail contained within the Questionnaire data does not reveal whether or not they appreciate the full extent of the second element of the partners' desires as formulated here.

Notwithstanding the above analysis, given the high level of importance that the Respondents attach to the impact that "political" factors may have on their chances of promotion to partner, it might be necessary to amend the second element of the partners' desires formulation to read:

- promote only those associates who, as partners, will maintain or improve the existing partners' level of return from their business; *and preserve the partners' vested interests.*²⁰¹

Conclusion and Addressing the Research Question

Do lawyers at large UK law firms have the means by which they can monitor their firm's implied promise that a fixed percentage of them will be made up to partner in due course?

Though, for the Respondents, it is not possible to propose a definitive alternative to the promise outlined in the Research Question it is possible to contemplate with a degree of certainty their perception of the core ingredients of the Respondents part of the promise/deal. Again, though the reasoning is somewhat circular, it is undeniable that the Respondents have the means to monitor these core ingredients of the promise. It is less clear for the Respondents than the Interviewees that their perceptions reflect the overall content of the "rules" of the tournament as promulgated by Galanter and Palay.²⁰² However, there is evidence that the Respondents have a good understanding of, what for them is, the central "rule" of the tournament. That is, the basis on which the promotion to partner decision will be made. Though an understanding of the other "rules" might possibly provide comfort to associates that they have a chance of making partner, it is surely this rule that, at the very least, must be understood if an associate is to have:

A reasonably accurate understanding of the rules [of the tournament] and the partners' desires²⁰³

There is one especially telling set of data that, in my view, illustrates the acuity of the Respondents monitoring skills and their underlying understanding of the process.

²⁰¹ A clear illustration of the preservation of partners' vested interests is provided by the following comment from a Respondent: "I saw numerous highly talented lawyers leave from other parts of the firm (particularly corporate) because of a lack of business cases. It was galling because they were so much better than the incumbents."

²⁰² *id.*, p. 960.

²⁰³ Galanter and Palay, *op. cit.*, n. 27, p.1688.

That is, the data comprised in Figs 6, 7, 8 and 9 which shows, for many of the Respondents, the convergence at around the five years PQE level of:

- the weighing up of their chances of becoming a partner;
- partnership becoming their prime motivation; and
- an acute awareness of their competitors for partnership slots.

For me, this indicates that, at least from that point on, the Respondents are confident that they have established their partner credentials and have a clear idea of what is needed for them to give themselves the best chance of fulfilling their part of the promotion to partner promise/deal. The fact that it takes Respondents a fairly uniform two to three years to gain promotion to partner once they had weighed up their chances of promotion and made it their prime motivation suggests that their monitoring abilities were acute and that their knowledge of the process they were part of was accurate. This leads me to conclude that, overall, they had a reasonably accurate understanding of the rules and the partners' desires.

The temptation to form premature theories upon insufficient data is the bane of our profession.

Sherlock Holmes²⁰⁴

Part V

Conclusions Based on Research Findings

The Research Question

Analysis of the field research data allows us to reach a number of interesting conclusions pertinent to the Research Question. The most obvious conclusion, widely previewed in Part IV, is that the implied “promise/deal” being monitored by associates is not the one envisaged by tournament theory and set out in the Research Question. This initial finding begs the question: what is the implied “promise/deal” that the associates are monitoring? In answering this question we reach the most significant of this thesis conclusion, which is that the implied “promise/deal” being monitored by associates is likely to bear a close resemblance to one of the “stylised rules” of the tournament proposed by Galanter and Palay, specifically that:

The basis on which the award [of partnership] is made is the associate’s ranking – judged subjectively – in the possession of two goods:

- *high quality legal work; and*
- *their own human capital.*²⁰⁵

In Part IVA I posited that for the Interviewees the implied “promise/deal” might be phrased as:

We, the firm, will promote to partner those associates who:

- Have established their partner credentials through the execution of their various work assignments; and
- In combination with their group/department, have sufficient human capital to add a further partner to the partnership without diluting returns to the existing partners.²⁰⁶

²⁰⁴ Sir Arthur Ignatius Conan Doyle, *The Valley of Fear* (1915).

²⁰⁵ Galanter and Palay, op. cit., n. 34, p. 960, their rule four.

²⁰⁶ See page 56 of this work.

For the Respondents there was less evidence to support the validity of the second limb of this alternative “promise/deal” and, more specifically, regarding the role of the Respondents’ departments in supplying human capital in support of their bid for partnership. In addition there were “political” factors evident for many of the Respondents that did not appear to exist for the Interviewees. This factor led me to suggest that, in coming to an understanding of the partners’ desires, the Respondents may have perceived them as the desire to:

- have a work force comprised of assistants who are motivated to work hard in the production of quality legal output with the minimum of supervision; and
- promote only those associates who, as partners, will maintain or improve the existing partners’ level of return from their business; *and preserve the partners’ vested interests.*²⁰⁷

The relevance of these various findings is that they all act to support Galanter and Palay’s “rule” regarding the basis on which the award of partnership is made. This “rule” serves as a broad expression of the implied “promise/deal” that associates are intent on monitoring. The field research data and analysis thereof indicate that, with some further investigation, it may be possible to refine this broad statement.

So, at the heart of the Research Question is the implied “promise/deal” and the research indicates that the promise actually being monitored constitutes the core of the theory of the tournament. That is, it provides the motivational impact that defrays the potential agency costs that arise when lawyers share their excess human capital.

The data analysis provides strong evidence to support a further conclusion that the Respondents and Interviewees had a close understanding of Galanter and Palay’s “stylised rule” set out above and, therefore, an understanding of the basis of the implied “promise/deal”. In consequence it is realistic to answer the Research Question in the affirmative by concluding that the Respondents and Interviewees, when they were associates, did have the means by which they could monitor the implied “promise/deal”.²⁰⁸ This conclusion is reached notwithstanding the acknowledged fact that the implied “promise/deal” is not that originally envisaged. Given the nature of the implied “promise/deal” and its significance, I believe it is also reasonable to state that the Respondents and Interviewees, as associates, had a reasonably accurate understanding of the rules of the tournament and the partners’ desires relevant to them. Therefore they had, following Galanter and Palay, the pre-

²⁰⁷ See page 98 of this work. Such an amendment might also be sensibly made to the alternative “promise/deal”, set out at page 56 of this work, so that it better reflects the experience of many of the Respondents. It should also be noted that the existing rule can cope with the introduction of political factors as it envisages judgements will be made on a subjective basis.

²⁰⁸ As considered in Part IVA, see page 56 of this work, there is a circularity, but undeniable logic, inherent in answering the Research Question in the affirmative in this way. If the implied “promise/deal” is all in the perception of the associates and that perception is dependent on what the observe/monitor then they must have the means to monitor the promise.

requisite level of understanding for participants that allows the tournament to function.²⁰⁹

This research has provided strong evidence that the core motivational force of the tournament model exists within large law firms based in the UK. What a more detailed description of the model might consist of, however, must still be open to debate. Certainly, the perceptions of many of those who contributed to this research are not reflected in the more detailed features of the tournament model described by Galanter and Palay²¹⁰ and the various other writers on this subject. I set out in Part VI some of the areas for future study that might assist in this regard.

²⁰⁹ Galanter and Palay, *op. cit.*, n. 27, p.1688.

²¹⁰ *id.*, p. 1692 and as noted at page 17 of this work. Galanter and Palay's view is that, at the core of the tournament lies the "deal" struck between the firm and its associates. That is, the associates will work diligently in producing a large volume of high quality legal work for the firm's clients, in return for entry into the promotion to partner tournament and that the other "devices" of the tournament will be observable in different combinations in large law firm situations over time.

It's been a hard day on the planet
How much is it all worth?
It's getting harder to understand it
Things are tough all over on earth.

Loudon Wainwright III²¹¹

Part VI

Some Suggested Areas for Future Study

In conducting this research numerous issues and areas for future study were revealed that are of relevance to tournament theory and its application to law firms but which are outside the scope of this thesis to develop. I set out below the most significant of these issues.

The key significance of work assignments as a means of establishing partner credentials – Further research on this issue would be a fruitful way of building on the 2006 work of:

- Gulati *et al* on the role that work assignments (and specifically the accumulation of high numbers of billable hours by associates) play in establishing the partner credentials of associates;²¹² and
- Wilkins and Gulati regarding the nature of “training work” and its relationship with the “tracking” of associates via work allocation practices.

The role departments play in demonstrating the sufficiency of human capital, via the preparation of a business case, in support of an associate's bid for promotion to partner – Specific investigation of this phenomenon may lead to a useful refinement of tournament theory as it relates to the accumulation and sharing of human capital and the basis on which promotion decisions are made. With hindsight, this is an area where the Questionnaire could have elicited more and better quality data if it had had a focussed more on the role of the Respondents' departments in the provision of human capital.

The changing dynamics of the tournament – The Case Study data provided an interesting insight into this aspect of the tournament model and the possible career

²¹¹ Loudon Wainwright III, 'A Hard Day on the Planet' (1986) *More Love Songs*.

²¹² Gulati *et al*, op. cit., n. 61.

phases through which an associate may pass prior to reaching partnership. Any research, which enlarges our understanding of this topic, will have ready practical application in law firms.

Gender specific motivations – This topic was only very briefly touched on in the analysis of the Questionnaire data.²¹³ However, the starkness of the statistics revealed among this small sample of lawyers who went on to become partners cries out for further investigation, given the under-representation of women within the ranks of partners in major UK law firms.

Impact of below market rate pay and discontinuance of hiring of junior lawyers – Given the relative lack of importance attached to these aspects of large law firm life, it would be valuable to identify instances where these phenomena have occurred to ascertain the impact that they had on the perceptions of associates at those firms. Such an investigation would, I believe, provide a more comprehensive picture of the importance of these factors.

The impact of senior non-partner roles on the motivations of associates – Recent announcements by a number of leading UK law firms that they have established, or, intend to establish, this type of role and career path as an alternative to partnership²¹⁴ make this a topical issue. Though only briefly touched upon in the body of this thesis,²¹⁵ the potential for this type of development to affect the workings of the tournament would be a fruitful topic for future study.

The “shadow” of the tournament – This is perhaps the most intriguing aspect of tournament theory as it applies to law firms that might form the subject matter of future research. The “noisy” convergence of tournament specific phenomena at around five years PQE illustrates why many commentators have focused on senior associates as those most closely involved in the promotion to partner tournament. However, the question of what impact the tournament has on the working practices and behaviours of those not motivated by the prospect of promotion to partner is an stimulating one. From the Questionnaire data there is a suggestion that those not motivated by the prospect of partnership in the early stages of their careers are not prejudiced by this in their later pursuit of promotion. Whether this indicates that the tournament does not exist for junior lawyers or, that all junior lawyers are forced into tournament compliant types of behaviour, would be a fascinating question for further investigation. It is only when we have at least partially answered this question that we will have an accurate idea of just how important the tournament model is to the workings of large law firms.

²¹³ See page 66 of this work.

²¹⁴ Caroline Binham, *The Lawyer* (12 March 2007) <http://www.thelawyer.com/cgi-bin/item.cgi?id=124642&d=122&h=24&f=46> and News Section *Legal Week* (1 February 2007) <http://www.legalweek.com/Articles/1004403/CC+set+to+create+new+career+path+in+fresh+worklifc.html>

²¹⁵ See page 57 of this work.

I hope that this thesis has achieved its overall goal: that by exploring the experiences and perceptions of lawyers in large law firms in the UK and drawing out common themes relating to their career progression, it has added to the general level of understanding of the human dynamics at play in such firms. I also hope that, through further research and the practical application of some of the findings of this research, lawyers might achieve a greater appreciation of the situations in which they find themselves, enabling them to feel more at ease with and in command of the choices they face in their professional and personal lives.

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