

Corporate Lawyers and Corporate Clients

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DOI:

[10.1080/1460728x.2016.1189675](https://doi.org/10.1080/1460728x.2016.1189675)

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Document Version

Peer reviewed version

Citation for published version (Harvard):

Vaughan, S 2016, 'Corporate Lawyers and Corporate Clients', *Legal Ethics*, vol. 19, no. 1.
<https://doi.org/10.1080/1460728x.2016.1189675>

[Link to publication on Research at Birmingham portal](#)

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This is an Accepted Manuscript of an article published by Taylor & Francis in *Legal Ethics* on 1st July 2016, available online:
<http://www.tandfonline.com/10.1080/1460728x.2016.1189675>

Checked 26/7/2016

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Editorial

STEVEN VAUGHAN, GUEST EDITOR

SPECIAL ISSUE

‘Corporate Lawyers and Corporate Clients’

At 3 Noble Street in the heart of the City of London sits a large and imposing glass office block, one of many in the area. It is home to the London office of DLA Piper, the largest law firm in the UK, which traces its English roots back to 1833 when Thomas Townend Dibb became a partner in Barnard & Bolland in the Yorkshire town of Leeds.¹ From these small beginnings, today more 4,000 DLA Piper associates and more than 1,200 DLA Piper partners work from over 80 offices in 30 countries. In 2014/2015, the firm’s turnover was £1.6bn. Six further law firms in the top 10 in the UK also all have turnovers above £1bn. Indeed, just the top 10 law firms in the UK account for more than one third of the turnover of the *entire* legal services sector. These ‘mega’ law firms, servicing global clients from multiple continents, have significant economic clout and significant international reach. Despite this, and despite the shiny glass in their imposing office blocks, much of what they do is hidden. This *Special Issue* focuses on those lawyers, on their clients, and on the lawyers who work in-house for those clients, and seeks to hold their practices up to the light.

When the first special issue of *Legal Ethics* was published in 1999, Kim Economides and John Flood wrote in their own Editorial that:

“Our intention is to engage with experience outside the normal boundaries of current academic law and legal practice in order to open up new vistas and choices which hold the potential to inform, or direct, developments within ethical legal theory and policymaking.”²

My aim is to carry this baton with this current *Special Issue*. The papers that follow originated in a two-day symposium I held at the University of Birmingham in June 2015 as part of my three year, UK government funded project *The Limits of Lawyers*.³ Over two days last summer, we explored various aspects of large law firm practice: the relationships between corporate lawyers and their clients; lawyer independence and the rule of law; legal professional privilege; law firms, businesses and human rights; legal risk; the changing role of General Counsel; bribery and corruption; lawyers’ duties etc.⁴ Paul Philip, Chief Executive of the Solicitors Regulation Authority, opened the symposium and the keynote address was by Richard Moorhead,

¹ Roger Lane Smith, *A Fork in the Road: From Single Partner to Largest Legal Practice in the World* (Icon Books 2014)

² Kim Economides and John Flood, ‘Editorial’ (1999) 2(2) *Legal Ethics* 105, 105

³ You can learn more about the project here: <https://limitsoflawyers.wordpress.com/> last accessed 10 May 2016

⁴ The full programme can be found here: <https://limitsoflawyers.files.wordpress.com/2015/01/june-symposium-programme3.pdf> last accessed 10 May 2016

Professor of Law and Ethics at University College London.⁵ I will return to Richard's work below.

The papers, speakers and delegates at the 2015 symposium intentionally reflected a broad church: academics, students, private practice solicitors, in-house lawyers, law firm General Counsel, regulators, consultants and members of the public. The more than 100 delegates and 35 speakers also represented a wide geographic spread, drawing on experiences of corporate lawyers and corporate clients in the UK, the wider EU, north America, Australia and Indonesia.⁶ The eight papers chosen to form this *Special Issue* primarily relate to corporate lawyers in the UK but, such is the global reach and impact of these large firms, the issues those papers speak to will no doubt resonate in other jurisdictions.

We begin with a paper by *Laurence Etherington*, an empirical study into the signals sent out via graduate recruitment processes by law firms to would-be solicitors about what matters if those students want to enter the profession. He finds stronger messages as to the need for 'Commercial Awareness' than for 'Ethics and Professionalism'. We may not be surprised by this finding, but as Loz sets out, we should perhaps be concerned given that the primary site of regulation of new solicitors is no longer to be found in The Law Society or the newer Solicitors Regulation Authority, but lies instead with the more than 2,000 law firms who take on, educate and inculcate trainee solicitors.

I mentioned earlier that *Richard Moorhead* gave the keynote speech at the June 2015 symposium. His contribution to this Special Issue with *Rachel Cahill-O'Callaghan* explores the empirical validity of a 'client-first' ideal among corporate lawyers through a value-based analysis of zeal in lawyering. Their data suggest plausible differences in ethical decision-making related to those values. The data is consistent with more zealous lawyers having stronger self-interested rather than client-interested motivations. Richard and Rachel suggest that, if their results are valid, then the claim that zeal is motivated by placing a high value on the interests of the client is false. As such, their paper is a potentially very powerful counterpoint to some of the existing theoretical work on lawyers' ethics.

My own contribution, written with my colleague *Emma Oakley*, is (sadly) equally bleak. Drawing on our own empirical work, we suggest that corporate lawyers are, by and large, ethically apathetic and espouse, almost en masse and without exception, the 'standard conception' of legal ethics in which their role is to do that which the client asks of them (provided such is within the bounds of the law). We found a lack of ethical infrastructures in large firms, and also a lack of ethical leadership from law firm partners for the associates and trainees working for them. The picture painted by these three initial contributions to this *Special Issue* is of a profession, at the corporate end, where serious questions can and should be asked about the importance of professionalism and ethics to practising solicitors.

⁵ Richard's keynote ('Corporate Lawyers: Values, Institutional Logics and Ethics') was recorded and can be viewed here: <https://www.youtube.com/watch?v=P9QPpNV7W7E> last accessed 10 May 2016

⁶ A number of the speakers produced Working Papers following the symposium. These can be accessed here: <http://www.birmingham.ac.uk/facilities/CEPLER/working-papers/index.aspx> last accessed 10 May 2016

The next two papers in the *Special Issue* take a somewhat different, more sociological approach. Drawing on work by Georg Simmel, *John Flood's* contribution asks us to think of the lawyer-client relationship not as a simplistic dyad, but rather as a complex triad in which, 'in most cases the practices of lawyers and banks add noise and interference to the [lawyer-client] relationship.' He persuasively suggests that we should recast the lawyer-client relationship as one fraught with ambiguity and instability, which in turn then raises questions about the nature of professionalism. John's piece starts with the story of the failed attempt by Brascan (advised by Freshfields Bruckhaus Deringer) to buy the West London central business district site Canary Wharf in the early 2000s for over \$6bn. In a rather odd quirk of fate, I happened to be the Freshfields trainee in the firm's Real Estate team on that particular matter, and have memories (some fond, some not so fond) of papering my office walls with copies of Land Registry certified maps trying to work out if there were any parcels of land over which security had yet to be taken. I can, quite categorically, say that I was not thinking, at that time, of Georg Simmel and triads.

In his contribution, *Rob Rosen* looks at the recent GM ignition switch scandal. Like a number of other current corporate scandals, such raises the question, 'Where were the lawyers?' Rob frames a response to this question by use of C. Wright Mills' 'sociological imagination' that suggests creative deconstruction of issues according to their history, biography, values, milieu and social structure. Rob argues that a 'bureaucratic legal department' at GM is partly to blame for the company's ignition switch issues, and that the main problem at GM was not one of bureaucracy, but poor organization of team management (in that GM was not organized for accountability without hierarchy). The GM lawyers, Rob suggests, did not exercise a sociological imagination.

As I set out above, my summer 2015 symposium had contributions from a wide variety of speakers inside and outside of the academy. I was equally keen that this *Special Issue* take the same approach. *Jonathan Kembery* is the Chief Legal Officer at Freshfields Bruckhaus Deringer, the magic circle law firm that John Flood talks about at the start of his contribution and the place where I spent three years as a trainee and then associate solicitor. The world of corporate lawyering, though vast, is often also very small. I asked Jonathan to write an autoethnography of his experiences as a lawyer inside a law firm advising the lawyers of that firm. As he sets out, such a specific, dedicated role (rather than the task being one part of, say, the work undertaken by a litigation partner in a law firm) is relatively new. That role (and in-house law firm legal departments) have emerged, Jonathan suggests, as a response to greater legal and regulatory challenges, changes in the profession and a quest for professionalism and cost effectiveness. His insights are a rare and much appreciated opportunity to peek inside the nuts and bolts of how large law firms work, in the voice and through the eyes of a current employee.

Jonathan's contribution also shows an increasingly prominent focus on risk management inside large law firms, which chimes with *Joanna Gray's* contribution to this *Special Issue*. Joanna asks why such little focus has been paid on the role of transactional lawyers in the global financial crisis, and whether those lawyers could (and should) now contribute to macroprudential regulation of the financial industry. Given that financial services regulators now have positive obligations to detect, minimize and prevent systemic risk in the financial sector, Joanna suggests that

transactional lawyers could also have a role to play. She links this role into the societal license granted to banks and other financial institutions and how that license plays out for transactional lawyers. It's an argument I have great sympathy with, and is powerfully made out, but not one I imagine that would find favour with many practising solicitors.

Crispin Passmore is the Executive Director of Policy at the Solicitors Regulation Authority (SRA). In November 2015, the SRA announced a root and branch review of its Handbook, which is the regulator's prime rulebook for the more than 130,000 solicitors and more than 10,000 law firms in England & Wales. 16 versions of the Handbook have been published between 2011 and 2016. It is currently more than 400 pages and 180,000 words long. It is also complicated, confusing and lacks internal coherence and consistency; it applies largely in a 'one size fits all' manner (when the sites of legal practice are now fragmented, and varied); and in many ways fudges the extent to which it applies to in-house lawyers (who, as a population, have more than doubled in number in the last fifteen years). As such, this review by the SRA is to be welcomed with open arms. In his contribution, Crispin sets out the drivers for reform and the likely future direction of travel for the SRA, including a simpler and shorter Code of Conduct, focused separately on the individual solicitors and the firms that the SRA authorizes.

The final paper in this *Special Issue*, but appearing in the subsequent volume of *Legal Ethics*, is by *Joan Loughrey*. Her paper examines the use of meta-regulatory techniques such as entity regulation and principles based and outcomes focused regulation (OFR) by the Solicitors Regulation Authority and the implications of professional and organizational culture for these techniques in the context of large law firms. Joan argues that there is no neat divide between matters of professional conduct and compliance and 'business matters' (or indeed matters of 'business ethics'), and between individual conduct and firm conduct. These, she suggests, are particularly important points given the SRA's proposal (set out in Crispin's paper) to distinguish between firm based and individual regulation in its new Code of Conduct.

This is my first attempt at guest editing a journal. It is, for the record, far harder and far more time consuming than it may look. But it also a privilege, and I am enormously grateful to the general editors of *Legal Ethics*, Hilary Sommerlad and Reid Mortensen, for letting me take the helm, and to Anneke Logan (the *Legal Ethics* Administrative Officer) for her assistance (and patience). The same is due to Jenna Whittle and Heather Wallace at Taylor & Francis. To my pleasant surprise, all of the anonymous reviewers that I first called upon to read the draft papers immediately agreed to review (without the need, on my part, for arm twisting, tears or extortion). Their prompt care and attention has made this *Special Issue* that much better for their efforts, and I am grateful. Lydia Morgan took on the painstaking task of checking the first draft contributions as they came in for consistency with the journal's style. She deserves my thanks as well, and no doubt a long lie down in a darkened room, such are the unparalleled joys of OSCOLA. I hope that you will enjoy the following papers as much as I do, and that they make you reflect on the powerful, hidden, complex, challenging and interdependent worlds of corporate lawyers and their corporate clients.