INTRODUCTION

Large law firms are experiencing a shift in professional ideology.\(^1\) Competitive meritocracy, an ideology that rose to prominence in the 1960s and 1970s and has come to dominate large law firm thinking since the 1980s, is in decline and is gradually being replaced by a hypercompetitive professional ideology. The consequences of this ideological transformation are significant. At stake is not only the elite status of the large firm atop the legal profession but also the battle for equality within large law firms and in the legal profession. Competitive meritocracy, with its emphasis on objective standards of excellence, helped combat discrimination and open the doors of the elite large law firms to Jewish and Catholic lawyers in the 1960s and 1970s, and to women lawyers in the 1970s and 1980s.\(^2\) Its decline and the rise of the rivaling hypercompetitive ideology is likely to compromise the prospects of contemporary minorities seeking entry into large law firms and to frustrate the ongoing quest of previously excluded minorities for equality within these institutions.

With the help of competitive meritocracy, first generation women lawyers in the 1970s and 1980s opened the doors of large law firms, overcoming systematic exclusion, and explicit discrimination, by getting hired and subsequently by being promoted to partnership. Second generation women lawyers in the 1990s and 2000s, entering the profession and the ranks of large law firms in much higher numbers than their


\(^{2}\) *Infra* Part III.
predecessors, failed, however, to achieve gender equality. Regularly constituting half the entry class of associates at large law firms, women lawyers have run into the glass ceiling effect, failing to achieve equal representation on the partnership ranks.\(^3\) The vast literature on the subject identifies four factors explaining the glass ceiling effect: persistent gender stereotypes; discriminatory and biased mentoring processes and support networks; conservative workplace structures that are inhospitable to work-life concerns; and implicit, yet ingrained, instances of sexual harassment.\(^4\) This article identifies and explores a fifth explanatory factor—the impact and consequences of large law firms’ professional ideology.

Male-oriented professional ideology is commonly understood as a reason for women lawyers’ difficulties in advancement and achievement of gender equality. This article expands on this insight to develop two important ideas: it explores the notion of firmwide professional ideology, in contrast to the traditional understanding of professional ideology at the individual lawyer level, and it studies the various professional ideologies employed by and dominating large law firms. In particular, while the literature tends to attribute to large law firms a fairly abstract version of “elite” and “meritocratic” ideology, this article develops a detailed understanding of large law firm ideology, identifying the various ideologies battling for supremacy: WASP “meritocracy,” competitive meritocracy, and hypercompetitive meritocracy.\(^5\)

This article studies the ideological transformation experienced by large law firms and explores its consequences for women lawyers employed by them. In particular, it looks at the role professional ideology continues to play in sustaining the glass ceiling and turning the road to gender equality into a dead end. It explains why cautious expectations that women lawyers will gradually do better at large law firms in terms of promotion to partnership have not materialized and asserts that the powerful interaction between the dominant ideology of hypercompetitiveness and persistent gender stereotypes renders gender equality even less likely in the foreseeable future.\(^6\)

The underrepresentation of women lawyers among the partnership ranks of large law firms is a difficult problem to overcome on no less than four different levels. To begin with, there is no consensus that a problem exists. Many lawyers believe that this is a “no-problem” problem,\(^7\) that is, as the

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3. Infra Part I.
4. Id.
5. Because WASP ideology combines innovative formal commitment to meritocracy with systematic antimeritocratic ethnoreligious discrimination, it is referred to throughout the article as WASP “meritocracy.” Infra Part III. See generally Eli Wald, The Rise and Fall of the WASP and Jewish Law Firms, 60 STAN. L. REV. 1803, 1806–25 (2008) (contrasting the meritocratic, areligious identity of the large law firm with its hidden religious and cultural discriminatory identity).
6. Infra Part V.
percentage of women lawyers within the legal profession increases, their percentage as partners at large law firms will rise. Pursuant to this line of thinking, the “no problem” is self-correcting at least in the sense that greater equality for women lawyers at large law firms is just a matter of time. This belief is widespread, notwithstanding robust empirical studies confirming that women lawyers at large law firms (and at other prestigious segments of the legal profession) experience the glass ceiling effect and that significant equality gains are not made over time.

The disconnect between practitioners and policymakers who subscribe to the “no-problem” problem perspective and scholars of the legal profession who argue that the glass ceiling effect is real, serious, and not a self-correcting problem is compounded by a common perception that the underrepresentation of women lawyers is a “women-issue,” even a “feminist” concern. This misleading perception expands the disconnect, by causing some lawyers and scholars alike who are not interested in “feminist” issues to shy away from engaging the problem. Of course, the question of who is qualified and entitled to speak on behalf of others, let


8. Rhode, The "No-Problem" Problem, supra note 7.


alone on behalf of historically discriminated-against minorities, is not unique to women lawyers. Yet, the perception of the glass ceiling problem at large law firms as a “women-issue” marginalizes its significance and diminishes participation in the discourse about how to resolve it.

Next, the actual problem of the underrepresentation of women lawyers as partners at large law firms is a complex issue with few and admittedly limited solutions. Equality advocates have acknowledged the ineffectiveness of regulatory measures with regard to promotion practices at large law firms, and have observed the limited development of part-time and parental leave policies, as well as the reluctance of women lawyers to take advantage of these policies when they are available.

Finally, looming over the entire discourse is a conceptual metaproblem. Talking about “women lawyers at large law firms” triggers at least two proper conceptual objections: to the complex term “women” and to the complex term “large law firm.” With regard to the former, it is clear that collapsing the experiences of women lawyers into one category, ignoring racial, sexual-orientation, ethnoreligious, socioeconomic, and cultural distinctions, is highly problematic. Assuming that Caucasian women lawyers (and men) face the same challenges as Black or Hispanic women lawyers (or that Black and Hispanic women lawyers face similar challenges) is no doubt misleading. In the same way, collapsing the experiences of heterosexual and gay women lawyers, of married and unmarried women lawyers, and of women lawyers with children with those of childless women lawyers is deceptive. With regard to the latter, treating all large law firms alike, without accounting for differences in firms’ size, organization, structure, culture, etc. is, to say the least, problematic.

The conceptual metaproblem is counterintuitive because it appears obvious that the growing sophistication and sensitivity of the discourse that demands unpacking concepts such as “women” lawyers and “large law firms” is unqualifiedly desirable. Such demands, however, might at times cause the discourse to stall by rejecting necessary general propositions as

14. Epstein et al., supra note 9, at 329–79.
overinclusive and too abstract. Professional ideologies and gender stereotypes indeed impact diverse women lawyers and different types of large law firms differently, yet at some level it should not be overlooked or trivialized that they affect all women lawyers and all large law firms.

Bearing these substantive, methodological, and conceptual challenges in mind, this article is organized as follows. Part I explains the realities and thinking behind the glass ceiling status quo. Summarizing the extensive empirical and theoretical literature on the subject, it documents the experience of first generation women lawyers at large law firms in the 1970s and 1980s and the reasons for the glass ceiling effect experienced by second generation women lawyers in the 1990s and 2000s. Part II offers a brief account of recent practice reality changes experienced by large law firms, with an emphasis on the ongoing consequences of the economic downturn, changes that inform the experiences of women lawyers at large firms, as well as the perception of consequences of gender stereotypes and the formation of professional ideologies.

Part III develops the idea of large law firms’ professional ideology in two ways. First, it draws a distinction between the commonly understood notion of professional ideology that operates mainly at the level of individual lawyers, and professional ideologies that guide and shape the practices of firms and, in particular, large law firms. Second, while the existing literature tends to abstractly and sketchily attribute to large law firms an “elite” and “meritocratic” ideology, Part III explores in detail the nature of large firms’ professional ideology and identifies several ideologies competing for supremacy in this sphere.

Part IV studies the notion of gender stereotypes and their impact on women lawyers working at large law firms. As is the case with the notion of professional ideology, vast literature exists on the subject. Part IV offers a brief summary of the literature and proposes a fresh typology of gender stereotypes: “better stay at home” (type 1), “incompetent” (type 2), and “disloyal and undercommitted” (type 3). This suggested typology is used to demonstrate that, while some gender stereotypes have been mostly discredited and have only minor negative consequences (namely, type 1 stereotypes), other stereotypes continue to constitute significant hurdles for gender equality at large law firms (namely, type 2 stereotypes), while still others experience a resurgence and have particularly negative consequences under the prevailing hypercompetitive ideology (namely, type 3 stereotypes).

Exploring the meeting of professional ideology and stereotypes in large law firms, Part V advances the main claim of this article, that the new powerful professional ideology of hypercompetitive meritocracy dominating elite large law firms clashes with the still-powerful type 3 gender stereotypes and is likely to further challenge the prospects of gender equality at large law firms. Finally, Part VI suggests that because hypercompetitive meritocracy is an unstable professional ideology, large law firms might soon experience yet another shift in professional ideology,
one that might be more hospitable toward the advancement of women lawyers toward equality.

I. WOMEN LAWYERS, LARGE LAW FIRMS, AND THE GLASS CEILING EFFECT

Fifty years ago, the U.S. legal profession still consisted of, nearly exclusively, men lawyers.16 Historically, nineteenth century courts throughout the country refused to admit women into the practice of law.17 Many law schools refused to admit women law students, and some continued to impose admissions gender quotas as late as the 1960s and early 1970s.18 Women lawyers began entering the profession in substantial numbers in the 1970s, and the percentage of women lawyers has since been steadily increasing.19 By the early 1980s women lawyers constituted approximately eight percent of the practicing Bar;20 by 1991 this number had increased to approximately twenty percent, and in 2000 it reached twenty-seven percent.21 With women law students accounting for

16. Women lawyers comprised only three percent of the legal profession as late as the late 1960s. See Ballard, supra note 9, at 1.
17. See, e.g., Bradwell v. Illinois, 83 U.S. 130, 141 (1872) (Bradley, J., concurring) (opining that women’s nature precludes them from membership in the professions and suits them to “the domestic sphere as that which properly belongs to the domain and functions of womanhood”); In re Goodell, 39 Wis. 232, 245 (1875) (finding women’s “tender susceptibility” inconsistent with the qualities required by the practice of law). The U.S. Supreme Court later validated the sentiments expressed by such state court opinions by holding that states have the power to determine whether women are competent to practice law. In re Lockwood, 154 U.S. 116, 118 (1894). See generally Barbara Allen Babcock, Clara Shortridge Foltz: “First Woman,” 30 ARIZ. L. REV. 673, 698 n.134 (1988); Kathleen E. Lazarou, “Fettered Portias”: Obstacles Facing Nineteenth-Century Women Lawyers, WOMEN LAW. J., Winter 1978, at 21, 22.
19. Epstein et al., supra note 9, at 313–14. “In 1970, eight percent of all law students were women.” Ballard, supra note 9, at 2.
approximately fifty percent of the national law school student body, women will soon account for half of the profession.23

Yet while the sheer numbers of women lawyers may suggest gender equality within the profession, the reality is far different. Numerous studies confirm that women lawyers are concentrated in low-status practice areas of the profession and underrepresented in high-status practice areas; are underrepresented within the elite of these respective practice areas, even in the areas in which women lawyers constitute a majority of practitioners; and are paid less than their male counterparts for comparable positions and work.25

Large law firms, for over a century an integral part of the legal elite, feature a particular problem of gender inequality: while women lawyers account for approximately fifty percent of entry-level hires, they fail to advance to the coveted equity partner position, accounting for approximately only fifteen percent of large law firm partners nationwide.27


23. For an excellent recent review of both recent changes and the literature on women lawyers, see Fiona Kay & Elizabeth Gorman, Women in the Legal Profession, 2008 ANN. REV. L. & SOC. SCI. 299.


26. See, e.g., JOHN HAGAN & FIONA KAY, GENDER IN PRACTICE: A STUDY OF LAWYERS’ LIVES 73 (1995) (observing that “[b]ecoming a partner in a law firm is often the most important event in the [lawyer’s professional life]”); ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 231 (1988) (arguing that law firms are the embodiment of power in the legal system); ERWIN O. SMIGEL, THE WALL STREET LAWYER 7 (1964) (observing that practices of large law firms gradually become practices of law itself); JAMES B. STEWART, THE PARTNERS: INSIDE AMERICA’S MOST POWERFUL LAW FIRMS 15–17 (1983) (noting that elite firms carry tradition and permanence of law); Wald, supra note 5, at 1806 n.7; see also Epstein, Women in Law, supra note 9, at 176 (asserting that large law firms essentially “make” law).

27. In 1992, Cynthia Fuchs Epstein found that while women attorneys have constituted 40–50% of entering associate classes, they account for only 37% of associates and approximately 11% of partners. Epstein et al., supra note 9, at 291; Ballard, supra note 9, at 2; see also ABA COMM’N ON WOMEN IN THE PROFESSION, WOMEN IN THE LAW: A LOOK AT THE NUMBERS 25 (1995) (reporting that, in 1991, women lawyers made up only 10% of all
The extensive literature on the subject aptly describes the experiences of women lawyers at large law firms in terms of opening doors and subsequently running into a glass ceiling. While first generation women lawyers in the 1970s and 1980s have achieved access to the profession generally and, in particular, opened previously closed doors at large law firms by being hired as associates and by eventually being promoted to partnership, second generation women lawyers in the 1990s and 2000s have disappointedly experienced the glass ceiling effect, consistently failing to achieve equal representation at the partnership level.

The glass ceiling effect is counterintuitive. Early scholars speculated, and many lawyers continue to believe today, that the underrepresentation of women lawyers among large law firm partners was going to gradually decline, as more female associates got hired and subsequently promoted. Moreover, not only is the glass ceiling effect counterintuitive, it also contradicts the conventional economic wisdom that discrimination is inefficient and would not persist over time. According to this line of law firms’ partners nationwide. In 2007, women accounted for 16% of equity partners, 26% of nonequity partners, and 30% of “of counsel” lawyers. NAT’L ASS’N OF WOMEN LAWYERS, NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 4 (2007), available at http://www.nawl.org/Assets/Documents/2007+Survey+Report.pdf. NALP reports that women represented 17.9% of all partners in 2006. NALP, Percentage of Women and Minorities at Law Firms Up Slightly for 2006—Minority Women Lag Behind in Partnership Ranks (Oct. 12, 2006), http://www.nalp.org/2006octpercentageofwomenandminorities. Judge Judith Kaye, noting that the “male-to-female [partner] ratios . . . leveled off and have remained relatively stagnant since 1992,” called this the “‘50/15/15’ conundrum.” Kaye & Reddy, supra note 9, at 1946. Judge Kaye explained that “[f]or more than fifteen years, half of law school graduates have been women, yet only approximately fifteen percent of law firm equity partners and chief legal officers have been women.” Id. at 1946 n.13. The fifteen-year mark is significant, clarified Judge Kaye (writing in 2008 and quoting 2007 numbers), “as 1992 [was] the first year that J.D. enrollment by gender reached [fifty percent].” Id. See generally Kay & Gorman, supra note 23.

28. See supra note 7 and accompanying text.
29. See, e.g., NELSON, supra note 26, at 134 (describing the increasing proportion of women as “[t]he most striking change in the social composition of major law firms and the legal profession as a whole”).
30. EPSTEIN, WOMEN IN LAW, supra note 9, at 200–05; Foster, supra note 9, at 1636; French, supra note 9, at 189–90; Kaye & Reddy, supra note 9, at 1944–53. The vast glass ceiling literature focuses on the experience of women lawyers at large law firms, and to some extent also explores the phenomenon in legal academia and the judiciary. Supra note 7. While large law firms, the academia, and the judiciary are all elements of the legal elite, the reasons for the glass ceiling effect in them appear to be quite different and, surprisingly, underexplored. This article’s insights regarding the powerful interplay of professional ideology and stereotypes as an explanation of the glass ceiling effect in large law firms may also be used to shed some light about the experience of women lawyers in academia and the judiciary. For example, the glass ceiling effect experienced by women law professors is somewhat surprising given law schools’ liberal orientation and flexible work conditions. The interplay between gender stereotypes and the prevailing professional ideology, however, helps explain the glass ceiling effect.
32. Rhode, Gender and Professional Roles, supra note 7; Rhode, Myths of Meritocracy, supra note 7; Rhode, The "No-Problem" Problem, supra note 7.
reasoning, systematically failing to promote female associates who are as qualified as male associates to partnership would exact too high a cost on discriminating law firms in an increasingly competitive market for large law firm human capital.\textsuperscript{34} Failing to promote qualified women associates will put discriminating law firms at a competitive disadvantage, as nondiscriminating law firms will have a larger and more talented pool of partners. Indeed, hiring, training, but failing to promote qualified women associates who then are laterally hired and promoted by nondiscriminating firms will amount to subsidizing the competition’s human capital. Especially if large law firms embody “greedy institutions,”\textsuperscript{35} with a growing emphasis on the financial bottom line, surely they will not at the same time persist with inefficient hiring and promotion policies. Firms will therefore routinely promote women associates to partnerships and, over time, the underrepresentation of women partners problem will correct itself, because as the associate entry-level classes consist of fifty percent women lawyers, upon promotion women will eventually gain equal representation as partners. Deborah Rhode has fittingly characterized this perspective as the “no-problem” problem.\textsuperscript{36}

Because the glass ceiling effect is counterintuitive and it contradicts basic economic reasoning, many lawyers and nonlawyers alike continue to believe in the “no problem” problem perspective, notwithstanding the fact that the glass ceiling effect has been robustly documented.\textsuperscript{37} To be clear, “no problem” proponents do not question the empirical findings proving the glass ceiling effect. Rather, they rely on three interrelated arguments to question the existence and seriousness of the problem. First, they argue that not enough time has passed to allow for greater equality and that the “problem” will eventually, over time, correct itself.

Because this perspective is so prevalent, it is worth noting that given the unique hiring and promotion policies of large law firms, even if the “no problem” argument did hold for women lawyers working at large law firms, gender equality within the partnership ranks would take a very, very long time to accomplish. A simple example will illustrate the point. Suppose Law Firm has 100 male partners and no female partners.\textsuperscript{38} Suppose further that Law Firm hires every year forty first-year associates, that it eight years later promotes four associates to partnerships, and that one partner retires

\textsuperscript{34} See, e.g., French, supra note 9, at 214–16.
\textsuperscript{35} Cynthia Fuchs Epstein has applied Lewis Coser’s term to large law firms. Epstein et al., supra note 9, at 383–85; see also Epstein, Assessing Glass Ceilings and Open Doors, supra note 9, at 751.
\textsuperscript{36} Rhode, The “No-Problem” Problem, supra note 7, at 1736.
\textsuperscript{37} Supra note 7 and accompanying text.
\textsuperscript{38} This is a realistic assumption for a typical large law firm as late as the 1970s. See Wald, supra note 5, at 1806 n.7.
every year. Assume that Law Firm begins to hire women associates at the same rate as male associates and promotes them equally. That is, every year Law Firm promotes two male and two female associates to partnership. Finally, assume that the retiring partner is always a male partner. In this simplified example, it will take Law Firm one hundred years to achieve equality within its partnership ranks! In other words, even pursuant to the “no problem” problem logic, gender equality might be considered a problem because of the extremely long time it would take the “market” to overcome it.

Second, “no problem” proponents assert that the underrepresentation of women lawyers at the partnership levels does not constitute a problem because it is explained by women’s own choices to opt out of the partnership track. Finally, some “no problem” advocates concede the problem in theory, but consistently fail to acknowledge it in particular instances.

Nonetheless, even pursuant to the “no-problem” perspective, given that women lawyers regularly constitute half of the entry-level associate hires at large law firms, one would expect the percentage of women partners to consistently, if only slowly, rise. It has not. In what scholars have dubbed the glass ceiling effect, the percentage of women partners among large law firms has initially risen but then plateaued at approximately

39. This is a simplified assumption as large law firms’ growth has not been linear but rather exponential. See MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 87–98 (1991).

40. Initially, this assumption seems logical given that Law Firm has only male partners. Over time, as women lawyers are promoted to partnership, the assumption becomes increasingly strained. Note, however, that taking account of women lawyers’ retirement will have no qualitative effect on the example; rather, it will only further delay the timeline for achieving gender equality. Of course, the assumption also fails to take account of available empirical evidence that establishes that women lawyers have high attrition rates relative to their male counterparts. Once again, relaxing the retirement assumption to control for attrition rates will not qualitatively affect the example and will only further delay the timeline for achieving gender equality.

41. It could take even longer when one incorporates retirement of women lawyers over time, as well as attrition rates that are not the result of retirement due to old age. See supra note 40 and accompanying text.

42. Studying gender diversity on corporate boards, Deborah Rhode and Amanda Packel similarly find that “progress—especially in the last decade—has stalled. At current rates of change, it will take almost seventy years before women on corporate boards reach parity with men.” Deborah L. Rhode & Amanda K. Packel, Diversity on Corporate Boards 3 (Nov. 2009) (unpublished manuscript, on file with author).


44. See RHODE, supra note 43, at 5–9; Deborah L. Rhode, “What’s Sex Got To Do with It?”: Diversity in the Legal Profession, in LEGAL ETHICS: LAW STORIES 233 (Deborah L. Rhode & David J. Luban eds., 2006).

45. In the above-mentioned example, women lawyers will account for 10% of the partnership after six years and 25% after twenty years.

46. See supra note 7 and accompanying text.
fifteen percent.\textsuperscript{47} Moreover, even this limited success has partly been explained not by an increase in the number of female associates promoted to partnership from within the firm but by lateral hires.\textsuperscript{48}

What explains the glass ceiling effect? Two things are clear. First, women associates depart large law firms in disproportionate numbers compared with men lawyers,\textsuperscript{49} and, second, men lawyers are more likely to get promoted to partnership than women lawyers. Consequently, it appears that the former phenomenon explains the latter.\textsuperscript{50}

What, then, explains the disproportionately higher attrition rates of women lawyers? Some scholars argue that women lawyers choose to leave large law firms in higher numbers.\textsuperscript{51} This explanation is dissatisfactory on two grounds. To characterize the departure of women lawyers as a free choice is to argue that women attorneys opt out, as opposed to being pushed out. As extensive research demonstrates, however, women’s career sacrifices are explained not only by the choice of individual women lawyers but also by choices made by employers and public decision makers.\textsuperscript{52} More importantly, the free-choice explanation avoids the question. Even if it were assumed to be true, why would women lawyers opt out in disproportionate numbers?

Scholars of the legal profession argue that the interplay of several considerations explains the higher attrition rate of women lawyers at large law firms and the glass ceiling effect: the impact of negative gender stereotypes, the lack of mentorship and support networks, inhospitable

\textsuperscript{47} See supra note 27 and accompanying text.

\textsuperscript{48} Epstein, Glass Ceilings and Open Doors, supra note 7, at 357.

\textsuperscript{49} Id. at 439; see also Patton, supra note 22, at 174 (“Women were much more likely than men to be represented in . . . attrition statistics.”).

\textsuperscript{50} To illustrate, remember that Law Firm hires forty associates every year, twenty male associates and twenty female associates. If attrition rates were similar for men and women lawyers, Law Firm could expect thirty-two associates, sixteen men and sixteen women, to depart over the course of eight years (an attrition rate of 80%). This would leave the Firm with eight associates to choose from, out of which it would select four associates for promotion, two men and two women.

Now consider an attrition rate for women lawyers significantly higher than that of men lawyers. After eight years, nineteen female associates have left the Firm (95% attrition rate) and thirteen male associates have left the Firm (65% attrition rate), leaving the Firm with eight associates to choose from, seven male associates and one female associate. The example illustrates two points: First, even if it wanted to, the Firm could not promote two female associates because only one female associate is eligible for promotion. Remember that even if the Firm could promote two female associates every year, gender equality within the partnership rank will take a century to accomplish. If the Firm only promotes one woman associate for partnership (and three male associates) every year, gender equality will never be attained. Second, the Firm might be hard pressed to promote its one female associate every year. In a given year, for a variety of reasons, such as subject matter fit, two male associates might be promoted, which will further delay advancements toward gender equality at the Firm.

\textsuperscript{51} Epstein, supra note 33, at 77.

\textsuperscript{52} See DEBORAH L. RHODE, JUSTICE AND GENDER 165–67 (1989); Rhode, The “No-Problem” Problem, supra note 7, at 1758, 1768–70.
workplace structures, and sexual harassment. First, women lawyers at large firms are confronted with multiple stereotypical assumptions about their poor fit: lack of assertiveness, competitiveness, and business literacy necessary for a successful career as an attorney; incompetence; and insufficient commitment to the firm and its clients. Worse, the impact of these “stereotypes is compounded by the subjectivity of performance evaluations and . . . other biases in decision-making.”

Next, women lawyers often experience difficulties in finding partner and senior associate mentors, who play an important role in advancing a junior associate’s career. Mentors provide subject-matter expertise and act as a reference source, offer informal insight and analysis of the firm’s politics and inner workings, and, closer to promotion time, provide necessary support and advocacy on behalf of the candidate. Increased intrafirm competition and a shift from the traditional “[c]lients belong[] to the firm” perspective to the notion that clients belonged to rainmaking partners in the 1990s and 2000s made mentorship and business networks even more important to the development of “partner” skills and correspondingly made lack of mentorship and limited access to business networks even more devastating to women lawyers.

Rigid work conditions compound the glass ceiling effect. Large law firm structures demand excessive and inflexible hours and resist reduced or flexible schedules. Clients, in turn, come to expect instant responsiveness.


54. THE UNFINISHED AGENDA, supra note 7, at 14–16; Foster, supra note 9, at 1645–48; French, supra note 9, at 203–04.

55. THE UNFINISHED AGENDA, supra note 7, at 15. Partners and clients are more likely to notice and recall information that confirms their prior stereotypical assumptions rather than information that contradicts them. For example, “attorneys who assume that working mothers are less committed tend to remember the times they left early, not the nights they stayed late.” Id.; see also Foster, supra note 9, at 1658–71.

56. THE UNFINISHED AGENDA, supra note 7, at 16; Foster, supra note 9, at 1642–43; French, supra note 9, at 200–02.


59. See infra Part V.B; see also Patton, supra note 22, at 188 (exploring reasons for why women fail to mentor other women lawyers).
and total availability.60 Finally, some women lawyers continue to experience overt and subtle forms of sexual harassment.61

Far from underestimating the powerful limiting force of these considerations on women lawyers’ advancement in large law firms, scholars and advocates for gender equality writing in the 1990s and early 2000s have nonetheless cautiously suggested reasons for optimism. Gender stereotypes, limited mentoring and networking opportunities, conservative structures, and harassment certainly explained the slow progress made toward gender equality. Yet, the hope was that the inefficient, wasteful, and inequitable nature of the underrepresentation of women lawyers would drive profit-maximizing law firms to overcome it, significant hurdles notwithstanding.62

Indeed, at a symbolic level, referring to the experience of second-generation women lawyers as the glass ceiling effect reflects a somber yet cautiously optimistic tone. Women lawyers certainly faced a serious obstacle on the road to equality, a ceiling preventing their advancement in the prestigious segments of the profession, yet the hurdles were not impossible to overcome. The ceilings were made of glass and thus breakable. To be sure, the journey was a hazardous one, shattered glass symbolically suggesting that anyone attempting to break through might get hurt. Indeed, the “house” itself might be left without a ceiling; yet the ceiling, importantly, was not made out of, for example, impenetrable concrete.63 This cautiously optimistic prediction has failed to materialize. Worse, third-generation women lawyers entering large law firms in the 2010s might be even less likely than their predecessors to achieve gender

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60. *The Unfinished Agenda*, supra note 7, at 17; see also Eli Wald, *Loyalty in Limbo: The Peculiar Case of Attorneys’ Loyalty to Clients*, 40 ST. MARY’S L.J. 909 (2009) (exploring the changing understanding of lawyers’ role from one that balanced client service against duties to the court, the legal system, and the public, to a client-centered role).


62. Judge Judith Kaye, an astute commentator on the progress of women lawyers at large law firms, exemplifies this cautious optimism. Stating: “[i]t was clear in 1996, in 2006, and is equally apparent today that women’s advancement in the profession requires “conspicuous, vocal vigilance.” And I continue to believe that “the progress of women in the legal profession is not a natural phenomenon, like erosion or accretion. It doesn’t just happen. It never will.” Kaye & Reddy, supra note 9, at 1942 (quoting Judith S. Kaye, *Moving Mountains: A Comment on the Glass Ceilings and Open Doors Report*, 65 FORDHAM L. REV. 573, 575 (1996); Judith S. Kaye, Chief Judge, N.Y. Court of Appeals, Introductory Remarks to the N.Y. State Bar Association Committee on Women in the Law Annual Edith I. Spivack Program: The Status and Expectations of Women in the Legal Profession (Jan. 24, 2006)). Judge Kaye nonetheless concludes with an optimistic tone, noting “notable successes” on the road to gender equality at large firms. Id. at 1966–73.

63. *But see Reichman & Sterling, Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, supra note 9, at 30 (describing the obstacles women lawyers face in terms of a concrete, rather than glass, ceiling).
equality. Metaphorically, women lawyers are facing not a formidable glass ceiling but a dead end.

II. NEW PRACTICE REALITIES AT LARGE LAW FIRMS: UNPRECEDENTED COMPETITION, INCREASED INSTABILITY, AND THE ECONOMIC DOWNTURN

By some measures, large law firms have been in a constant state of turmoil over the last century, experiencing an ongoing decline of professional values and rise of commercialism; greater business uncertainties; and increased competition for clients, for talented lawyers, and even intrafirm competition among the partners for power, prestige, and compensation. The continuously evolving business landscape of large law firms is thus better understood not as an isolated episode or even a series of events, but rather as an ongoing challenge with different practice-reality manifestations.

In the 1960s and 1970s, large law firms experienced immense exponential growth as the result of increased demand for legal services by corporate clients who consumed new kinds of legal services, significant growth in the body and scope of statutory and administrative laws regulating the conduct of entity clients, and the increased complexity of the law. The firms’ own internal growth engine, the result of promoting associates to partnership and seeking to maintain their effective partner-to-associate ratios, further fueled their growth. Traditional practice realities

64. Louis D. Brandeis, The Opportunity in the Law, Address Before the Harvard Ethical Society (May 4, 1905), in 39 AM. L. REV. 555, 559 (1905) (noting the shift in a lawyer’s general role, stating that “able lawyers have . . . allowed themselves to become adjuncts of great corporations” and urging a graduating class of law students to stand their professional ground and practice as lawyers for the people instead of as servants of corporate interests).

65. Large law firms are not unique in appearing to experience a perpetual state of crisis. See Deborah L. Rhode, The Professionalism Problem, 39 WM. & MARY L. REV. 283, 283 (1998) (“Lawyers belong to a profession permanently in decline. Or so it appears from the chronic laments by critics within and outside the bar.”).

66. See Magali Sarfatti Larson, On the Nostalgic View of Lawyers’ Role: Comment on Kagan and Rosen’s “On the Social Significance of Large Law Firm Practice,” 37 STAN. L. REV. 445, 448 (1985) (“It is well known that the large law firm was born . . . in a period of institutional reorganization dominated by the rise of the giant business corporation.”); Milton C. Regan, Jr., Taking Law Firms Seriously, 16 GEO. J. LEGAL ETHICS 155, 155 (2002).


68. The large firm relied on a probation period for purposes of training and selecting talent from within its associate pool for promotion: providing its associates with incentives to work hard, thereby responding to difficulties associated with monitoring both the inherent quality of the associate’s work (as opposed to the mere logging of long hours at the office) and the relative quality of work, given the firm’s dependence on teamwork as opposed to individual output, and discouraging associates from leaving and grabbing the firm’s human capital assets. Galanter & Palay, supra note 39, at 4–5. Promotion to partnership at the end of the probation period provided associates with deferred rewards and thus appropriate incentives to overcome the temptations of shirking, grabbing, and leaving. Finally, to maximize utilization of both the associates’ labor and the partners’ human capital, the firm set ratios of partners and senior associates to associates that enabled both effective mentoring and supervision of the associates’ work, and effective use of the partners’ and senior associates’ time. See id. at 89–108.
of a gentlemanly, anticompetitive legal environment began to crumble. The “old ways,” in which compensation was scarcely discussed, lateral hiring was taboo, competition for clients was considered discourteous, and the “going rate”—the starting salary of associates in lieu of a market-determined rate—was agreed upon, were all gone. Advertising and client solicitation were no longer forbidden. Following the U.S. Supreme Court decisions in Goldfarb v. Virginia State Bar and Bates v. State Bar of Arizona, deregulating the market for legal services, The American Lawyer began regularly publishing previously taboo information about attorney compensation, ranking the status of law firms both by the number of lawyers they employed and also by their reported profits per partner.

In the 1980s and 1990s large law firms continued to experience increased competition: “firm breakups, lateral hirings, . . . [retention of] contract attorneys, temporary attorneys, senior associates, staff attorneys, and other new categories of attorneys” have all become common practice realities.

As large law firms continued to mushroom in numbers and grow in size against a trend of the rise of in-house counsel and consequently curtailed demand by corporate entities, old long-term relationships between entity

69. Often, an associate did not know what to expect upon making partner. See Smigel, supra note 26, at 92.

70. See Paul Hoffman, Lions in the Street: The Inside Story of the Great Wall Street Law Firms 60–61 (1973) (noting the rarity of lateral movement by individual lawyers and that there were no “open breaks”).

71. Id. at 72 (“In the blue-chip bar client shifts are rare.”).

72. Smigel, supra note 26, at 57–59.

73. In the mid-1970s, the Supreme Court, in a line of cases dealing with various states’ ethics rules, questioned the cavalier and anticompetitive apparatus instituted by the organized bar dominated by the large law firms. See Bates v. State Bar of Ariz., 433 U.S. 350 (1977) (holding that a ban on price advertisement violates First Amendment commercial speech rights); Goldfarb v. Va. State Bar, 421 U.S. 773 (1975) (holding that a fee schedule constituted price fixing in violation of section 1 of the Sherman Act). In Bates v. State Bar of Arizona, the Court explicitly rejected respondents’ claim that “price advertising will bring about enhanced commercialism” and “irreparably damage the delicate balance between the lawyer’s need to earn and his obligation selflessly to serve.” 433 U.S. at 368. Compare In re Primus, 436 U.S. 412 (1978) (allowing attorney solicitation for nonprofit impact litigation), with Ohralik v. Ohio State Bar Ass’n, 436 U.S. 447 (1978) (upholding sanctions on lawyer who sought plaintiff in a tort suit).

74. 421 U.S. 773.

75. 433 U.S. 350.

76. “[T]he Bates decision has had a profound, perhaps radical, effect on our profession.” Duncan A. MacDonald, Speculations by a Customer About the Future of Large Law Firms, 64 Ind. L.J. 593, 594 n.4 (1989).


clients and large law firms disintegrated, “beauty-contests” for clients became the norm, and competition among large law firms reached unprecedented levels. Still, profits per partner reached all-time highs, and large law firms, in spite of the tremendous changes to their practice realities, were slow to proactively react in terms of adjusting and rethinking their organizational structures.

The late 1990s and 2000s saw increased competition intensify. The disintegration of the traditional structure of the large firm continued with greater force. The old promotion-to-partnership tournament has been replaced with multiple tournaments, the “up or out” policy all but abandoned, and lateral hiring and mergers and acquisitions of law firms have become the norm rather than the exception. New positions and levels of status such as nonequity and salaried partners were implemented, resulting in new “elastic” or “diamond” hiring and promotion structures—with fewer entry-level associates and more contract lawyers, paralegals, and lateral and mid-level associates hired; extended partnership tracks adopted, with a higher associate-to-partner ratio; and a more demanding billable hour requirement imposed.

Until the economic downturn of 2008–2009 hit, however, large law firms were relatively slow to react to changing practice realities in terms of the


81. Nicholas Varchaver first described the changing structure of large law firms as diamond shaped in Diamonds Are This Firm’s Best Friend, AM. LAW., Dec. 1995, at 67; see also Galanter & Henderson, supra note 77 (describing the evolving structure of large law firms as elastic).

82. Patton, supra note 22, at 180; John P. Weil & Co., The Traditional Law Partnership Track: Does It Still Exist? Quo Vadis?, http://weilandco.com/new/article6.html (last visited Mar. 12, 2010). The report notes that during the late 1980s, the partnership track moved from four to six years, to seven to nine years. Id. The average track, of course, varies by region and firm size.

83. See LORRAINE DUSKY, STILL UNEQUAL 170 (1996) (noting that while historically the ratio was close to one associate to one partner, it has consistently fallen, first to two to one, and then even further).

84. Rhode, Gender and Professional Roles, supra note 7, at 62–63. A revealing Price Waterhouse survey found that in 1976, the average Wall Street associate billed 1667 hours. See Epstein, Women in Law, supra note 9, at 209. By 1994, at the eight Manhattan firms surveyed by Epstein, the hours billed ranged from 1800 to 3000. See Epstein, Women in Law, supra note 9, at 382.
scope of their responses. The economic meltdown changed all that, with large law firms taking unprecedented steps of mass firing of support staff, associates, and even partners,\textsuperscript{85} freezing and even marginally lowering salaries,\textsuperscript{86} deferring offers to first-year associates, and cancelling summer recruitment programs.\textsuperscript{87} At the same time they were implementing these short-term cost cutting measures, large law firms were forced to become more price competitive vis-à-vis their clients, lowering hourly rates, capping overall costs, and limiting staffing.\textsuperscript{88}

The economic downturn has also prompted large law firms to rethink their long-term organizational structure. A growing number of large law firms have abandoned the up-or-out promotion process, introduced additional tracks of partnerships (nonequity, salaried), and even eliminated the de facto guarantee of life tenure partnership by firing and de-equitizing partners.\textsuperscript{89} With regard to associates, large firms have expanded the use of contract attorneys and of counsel lawyers, thereby diminishing their demand for associate work;\textsuperscript{90} decreased investments in associate mentorship, both in terms of programs and in terms of committing senior associates and partners’ time for the process;\textsuperscript{91} extended associateship tracks, either directly, or by abandoning the year-based training and promotion tracks for associates and replacing it with a system that relies on milestones, with the practical result of extending the associate track from


\textsuperscript{89} See generally \textit{Galanter & Henderson, supra} note 77.

\textsuperscript{90} See \textit{Milton C. Regan, Jr. \& Palmer T. Heenan, Supply Chains and Porous Boundaries: The Disaggregation of Legal Services, 78 FORDHAM L. REV. 2137 (2010)}.

eight to ten years to an indeterminable longer track, and enforced even more demanding billable-hour requirements, subject to the availability of work given the economic downturn.

Early evidence following the economic recession of 2008–2009 suggests further transformation and turmoil as large law firms experiment with abandoning the classic agency model of providing legal services and partnering with their clients in joint ventures, expanding outsourcing by disaggregating legal services and reassembling them at a lower cost, and by gearing up for possible reform that would allow the formation of multidisciplinary companies.

While it might be tempting, from a historical perspective, to write off the most recent changes in large law firm practice realities as yet another step down the century-long road of increased competition, doing so would foreclose on an important insight—that the changes have not affected all large law firm lawyers similarly. For example, some scholarly attention has been paid to the impact of these changes on partners, the erosion of the status of partnership, and the dilution in the meaning of being a partner, such as the previously unheard of de-equitizing, firing, and forced retirement of some partners. Yet insufficient attention has been given to studying the impact of the changes on specific categories of attorneys within large firms, in particular minority and women lawyers. This omission is perhaps explained in part by the fact that emerging empirical data regarding the extent of these developments regarding partners and associates alike do not reveal any striking patterns of inequity.

Indeed, even as the economic downturn panic settles, and more data regarding its impact becomes available, one should not expect to find any inequitable patterns regarding women and minority lawyers irrespective of whether such inequities have been taking place. Large law firms, mindful of the political implications of treating, or even being perceived as treating,
minority lawyers inequitably, have a strong incentive not to leave behind a paper trail of, for example, firing or failing to promote women lawyers disproportionately. Instead, large law firms, if they were to treat women lawyers inequitably would likely encourage these lawyers to leave and later characterize their departure as voluntary. As such, all the data will subsequently show is what it has shown consistently since the mid 1980s—that women lawyers depart large law firms in disproportionate numbers and experience the glass ceiling effect.

The question thus becomes whether there is reason to believe large law firms do treat women lawyers inequitably given recent changes in their practice realities. To see why that is likely to be the case, it is important to note that these recent practice developments were far from inevitable. First, extending the billable hour requirement may appear to be an intuitive response to increased competition, but it is not at all clear that it is a reasonable measure. Adding an hour or two to an already demanding workday may result in reduced marginal productivity. Second, law firms could have reduced starting and existing salaries significantly, as opposed to firing and delaying associate promotion. Finally, the economic downturn could have allowed large law firms to take advantage of, and invest in, technology to facilitate part-time schedules, parental leaves, etc. In fact, utilizing part-time schedules would seem to be an attractive vehicle for weathering the storm of economic instability and uncertainty. While some large firms have resorted to deferring offers and paying incoming associates reduced salaries, use of part-time arrangements has not increased.

The range of measures adopted by large law firms in response to the economic downturn has not been coincidental. Rather, the practice reality changes have led to a transformation in the firms’ governing professional ideology, which in turn has shaped and guided the policies implemented by the large firms. The increased competition has led large law firms to adopt a more explicit “around-the-clock” service mentality. This new hypercompetitive work ethic has resulted in an expectation that both associates and partners work and bill more hours and be available “24/7” to serve the needs of their corporate clients. Law firms expect their lawyers to adjust to this new hypercompetitive era, displaying the necessary loyalty to

97. For example, citing privacy considerations, many large law firms have recently refused requests by NALP to provide information about their partnership structures and, in particular, about the breakdown of equity versus nonequity partners in their ranks. See Debra Cassens Weiss, NALP Dropped Quest for Nonequity Partner Data After Law Firms Resisted, A.B.A. J., Feb. 25, 2010, http://www.abajournal.com/weekly/article/nalp_dropped_quest_for_nonequity_partner_data_after_law_firms_resisted. One possible motivation for refusing to provide NALP with data regarding nonequity partnership is that it might reveal gender inequities and the placement of a disproportionate number of women partners on nonequity tracks. See Vivia Chen, What Women Want: Law Firm Partnership Details, AM. LAW., Feb. 25, 2010, http://www.law.com/jsp/LawArticlePC.jsp?id=1202444495743&shreturn=1&_hbxlogin=1 (reporting that “[w]omen lawyers are furious” with the lack of transparency regarding large law firms’ nonequity tracks).
the firm and its clients, and reprioritizing their work-life balance to reflect greater loyalty to the firm.98

In sum, while the trend of increased commercialization and competition has been a long time in the making, recent changes have led to a new and significant development—the rise of a new professional ideology. This hypercompetitive ideology in turn impacts different categories of lawyers within the large law firms, especially women lawyers, disproportionately. This new ideology, and the particular ways in which law firms chose to respond to changing practice realities have had, and continue to have, a disproportionately negative impact on women lawyers, possibly rendering the challenge of reaching gender equality in the equity partnership track not a glass ceiling but a dead end.

III. LARGE LAW FIRMS’ PROFESSIONAL IDEOLOGY

Professional ideology, and, in particular, lawyers’ professional ideology, is a surprisingly controversial concept. While the mere definition of what it means to be a professional—formal education, esoteric intellectual knowledge, self-regulation, monopoly over the provision of legal services, elevated socioeconomic and cultural status, commitment to the public good, and role-morality99—seems innocent enough, early attempts at professionalizing the practice of law,100 as well as subsequent efforts,101 have been criticized, not without some merit, as attempts by presiding elites to exclude “undesirable” newcomers and monopolize the profession.102 At its best, professional ideology captures ideals and aspirations, thus guiding and shaping codes of professional conduct and practice realities more generally. Even so, any professional ideology not only shapes but also simultaneously reflects practice realities, and as a reflection of practice
realities, professional ideologies are rationalizations and excuses, used to justify and explain claims to elite professional status and power.103

While, historically, lawyers have successfully claimed the practice of law to be a profession, the classic account of what it means to be a lawyer dates back to the early 1970s.104 The traditional account is William Simon’s “standard conception,”105 according to which the practice of law is defined by two essential principles: partisanship and nonaccountability.106 Partisanship calls upon lawyers to act as zealous advocates pursuing the interests of their clients to the best of their abilities within the bounds of the law. Nonaccountability instructs lawyers to defer to clients’ exercise of autonomy and authority over setting the goals of the representation and in return absolves attorneys from legal, professional, and moral accountability for the objectives they help clients pursue.107

Debates over lawyers’ professional ideology tended to accept the “standard conception” as its baseline, with proponents defending its principles on utilitarian grounds (arguing that it embodies the most effective method of truth finding)108 and on moral grounds (arguing that it protects individual autonomy and enables “[f]irst-class citizenship”109), and opponents asserting that it frustrates truth finding, justice, and fairness.110

107. Simon, supra note 105, at 40–41; see also Wald, supra note 60.
109. Stephen L. Pepper, The Lawyer’s Amoral Ethical Role: A Defense, a Problem, and Some Possibilities, 1986 AM. B. FOUND. RES. J. 613, 617 (“Put simply, first-class citizenship is dependent on access to the law.”).
Critical scholars have persuasively argued that there is little sense to talk about generic “lawyers” and generic “ideology.” Accepting a one-size-fits-all ideology that treated all lawyers similarly irrespective of socioeconomic, cultural, ethnoreligious, and gender characteristics was “bleaching out” important aspects of what it means to be a lawyer. In particular, Deborah Rhode has dissected the standard professional account, exposing its male presumptions and traits.

Somewhat lost in these powerful substantive critiques was the challenge that the “standard conception” was individual based and conceived; it assumed that the basic unit of law practice was an individual lawyer and was developed accordingly. Of course, when Simon offered his account of lawyering centered around an individual lawyer as the locus of analysis, the majority of lawyers were still solo practitioners, and many partnerships were in effect office-sharing arrangements with independent and fairly autonomous individual lawyers at their core. Moreover, even as law firms were growing in numbers and in size, individual lawyers continued to play a key role as the core professional unit, in terms of ideology and, correspondingly, as targets of professional regulation. This was, and arguably still is, a reasonable proposition because at many small-sized firms the key actors are very much still the firms’ individual lawyers.

To date, little scholarly attention has been devoted to the conceptualization and meaning of law firm ideology or professional ideology at the firm level, a surprising fact given the considerable scholarly interest in the rise, organization, and structure of the large law firm. In a nutshell, by attributing both the organizational design and ideological underpinning of the large law firm to Paul D. Cravath and his

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112. Rhode, Gender and Professional Roles, supra note 7, at 44–53.
113. The ABA Model Rules of Professional Conduct, their predecessors (the Model Code and the Canons), as well as every state code of professional conduct implementing the Model Rules, all essentially regulate individual lawyer conduct and do not meaningfully regulate at the law firm level. See Elizabeth Chambliss, The Nirvana Fallacy in Law Firm Regulation Debates, 33 Fordham Urb. L.J. 119 (2005) (examining the tension between traditional individual lawyer regulation and law firm regulation and arguments that the latter may undermine individual accountability); see also Elizabeth Chambliss, New Sources of Managerial Authority in Large Law Firms, 22 Geo. J. Legal Ethics 63, 87–92 (2009) (exploring the individual lawyer and law firm regulation debate in the context of the institutionalization of risk management processes at large law firms).
114. To be clear, significant attention has been given to the broader notion of the firm culture. See, e.g., Galanter & Palay, supra note 39; Smigel, supra note 26; Susan Saab Fortney, Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements, 69 UMKC L. Rev. 239 (2000); Wald, supra note 5; Peter J. Winders, Law Firm Culture—Its Importance and How To Overcome It, 2004 Prof. Law. 11.
“Cravath System,” the literature assumes, mostly implicitly, that the large law firm is a professional meritocracy and then proceeds to investigate the decline of these meritocratic values in the face of rising commercialism and increased competition. While as a crude account, meritocracy sums up the professional ideology of the large firm, it is not rich enough to encompass the possibility of the existence of several different manifestations of meritocratic ideologies, nor the possibility of ideological transformations within large law firms and their impact on particular lawyer constituencies within them.

The simplified meritocracy account consists, in fact, of four competing ideologies dominating large law firm thinking in different eras. Gentlemanly premeritocracy, the leading ideology at the time large law firms first rose in the late nineteenth century; WASP “meritocracy,” the revolutionary ideology of the large law firm during its rise to prominence and until the 1960s; competitive meritocracy, an ideology that emerged gradually after 1945, began to dominate large law firms in the 1960s and 1970s, and began a slow, consistent decline in the 1980s; and finally, hypercompetitive meritocracy, an offshoot of competitive meritocracy that began to develop in the 1980s and gradually rose to prominence by the 2000s.

The large law firm emerged in the late nineteenth century, the brainchild of visionaries such as Paul D. Cravath and Louis Brandeis. Indeed, prior to Cravath’s era, large law firms did not exist; “a firm of four attorneys was considered a ‘large’ firm.” The prevailing ideology in the profession, and its small law firms, was gentlemanly, paternalistic vis-à-vis clients, laid back, and informal. Admission to the practice was based on examinations following years of “reading the law” and apprenticeships, and


117. See, e.g., Pearce, supra note 1 (exploring the decline of the old professional paradigm and the rise of the business paradigm at large law firms).

118. Other aspects of the firmwide ideology that require further delineation are the processes by which it is disseminated and internalized by firm members. See Jean E. Wallace & Fiona M. Kay, The Professionalism of Practising Law: A Comparison Across Work Contexts, 29 J. ORGANIZATIONAL BEHAV. 1021 (2008) (examining dimensions of professionalism among law firm partners and associates). Associates presumably buy into the firms’ fairly abstract ideology of meritocracy when they decide to join and subsequently stay with the firms. How it is, however, that over time they come to accept and even internalize specific ideologies, particularly hypercompetitiveness, as the embodiment of excellence and meritocracy is a separate question.


120. Wald, supra note 5.
was based as much on nepotism and the social and professional standing of one’s mentor as it was on merit and excellence.\(^{121}\)

Cravath changed all of that, introducing meritocracy as an ideological and organizational cornerstone. The Cravath System stressed elite educational credentials as a hiring prerequisite (graduation from an elite law school, top grades, and law review affiliation), training and mentorship within the firm, promotion to those who excel (as opposed to the then-prevailing kinship and nepotism practical standards for promotion), the development of specialization and unique professional expertise, the development of team concepts and subsequently firmwide expertise, and the delivery of legal services in a professional, efficient manner.\(^{122}\)

Cravath and his contemporaries revolutionized the practice of law, introducing the large law firm as a unit of practice and displacing kinship and nepotism with an explicit commitment to meritocracy as the ideological backbone of law practice and the large law firm. Yet it is also important to remember that the Cravath System’s notion of meritocracy, while a radical departure from the prevailing nepotism, was still very much limited and a product of its time. It was a meritocracy that could not conceive of socioeconomic, cultural, and ethnic minorities meeting its standards.

Moreover, it was a meritocracy that inherently built and relied on Protestant values and white-shoe ethos.\(^{123}\) As a firmwide ideology, WASP “meritocracy” entailed an expectation of intense loyalty to the firm and its clients as a facet of a belief in the practice of law as a secular calling, a loyalty that in turn both demanded and explained long hours in the office, often at the expense of personal commitments. It also carried an expectation that firm lawyers embody and meet both standards of professional excellence and of elite status. WASP “meritocracy” thus entailed, on the one hand, strong academic credentials, hard work, and increased specialization of the firm’s lawyers and, on the other hand, reflected the powerful interplay of professional, socioeconomic, and cultural networks—and the dominance of the WASP infrastructure in the upper spheres of the American business world. Further, WASP “meritocracy” manifested itself in commitment to the up-or-out promotion policies with a quasi-cartelistic agreement avoiding cherry-picking and lateral hires. Salaries were not explicitly discussed or negotiated, and information about financial compensation or the firm’s well-being was not disseminated. Competition for clients was unheard of, and law firms and corporate clients alike displayed long-term loyalty to each other.\(^{124}\) Thus, while the ideology was truly committed to aspects of professional

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\(^{123}\) *Id.*; Wald, *supra* note 119, at 888–89.

\(^{124}\) *Supra* note 22.
excellence and merit, it inherently incorporated elitist characteristics of white-shoe culture and Protestant dogma.

As a result, WASP ideology was inhospitable to non-WASP and women lawyers who otherwise met its meritocratic standards. In its defense, before World War II few non-WASP and women lawyers met these meritocratic standards, making egalitarian concerns about its nonmeritocratic aspects mostly theoretical. The percentage of women law students was negligible, and many elite law schools—graduation from which was a hiring prerequisite at the elite large firms—did not admit women. Similarly, few Catholic, Jewish, and racial minority law students were admitted to elite law schools. As practice realities gradually changed after 1945, however, the nonmeritocratic aspects of the WASP ideology became increasingly apparent.

Nonetheless, before rushing to judge the Cravath System too harshly, one ought to remember the day and age and avoid presentism. To say, for example, that the Cravath System discriminated against women lawyers would be to superimpose a contemporary understanding of discrimination on an era in which there were very few women lawyers. Cravath’s vision, and ideology, was not exclusionary of women; rather, it was devoid, fittingly for its time, of their presence in the profession. Here it might be useful to recall Karl N. Llewellyn’s insightful distinction between social and legal justice. Borrowing from Llewellyn, Cravath developed a model and advanced an ideology that was legally meritocratic within the constraints of the social realities of his day.

WASP “meritocracy” dominated until 1945, when it gradually began to erode and was eventually replaced with competitive meritocracy by the 1960s and 1970s. This ideological shift reflected and shaped practice realities experienced by large law firms. As American society matured, and was slowly overcoming ethnoreligious, racial, and gender biases, so did large law firms. Jewish and Catholic male law students began to graduate from elite law schools in significant numbers, as informal and formal admissions quotas were eliminated. At the same time, an exponential growth in corporate demand for legal services unsettled the large law firm world. Existing firms began to grow at a rate that threatened their WASP commitments, and new competitors emerged.

One should not, however, overstate the impact of ideological changes in explaining complex corresponding changes in practice realities. The elite WASP law firms of the era found it hard to adjust and adapt to the new practice realities. In fact, their commitment to WASP “meritocracy” constrained their ability to compete effectively with newcomer large law

125. Presentism is the attempt to explain historical phenomena from a contemporary perspective, thus failing to appreciate considerations that were important at the time but are not today. See, e.g., Morton J. Horwitz, The Rise of Legal Formalism, 19 AM. J. LEGAL HIST. 251 (1975) (exploring the risk of presentism in analyzing nineteenth-century law).
firms and, in particular, with Jewish law firms. Nonetheless, over time, competitive meritocracy replaced WASP “meritocracy” as the dominant ideology guiding the organization and structure of large law firms.

Just as WASP “meritocracy” entailed a significant genuine commitment to meritocracy, so did competitive meritocracy. That is, while competitive meritocracy reflected the increasingly competitive market conditions experienced by the large law firm, the new ideology also exhibited a true commitment to meritocracy. The significant difference between WASP “meritocracy” and competitive meritocracy was abandoning the WASP underpinnings and implicit requirements and relying to a greater extent on measures of objective merit such as law school status, grades, class ranking, and law review for purposes of hiring and promotion. As a result, WASP elite law firms gradually began to hire and subsequently promote Jewish and Catholic attorneys, and, as Jewish law firms grew, they were able to attract, over time, non-Jewish lawyers.

By the early and middle 1970s, when women lawyers entered the legal profession in significant numbers, competitive meritocracy had become the dominant professional ideology at large law firms. The competitive impulse of the new ideology included a willingness to recruit top talent, regardless of gender, and this commitment to meritocracy meant that women lawyers who met its objective standards of excellence were, in theory, plausible candidates for hiring by the large law firms.

This does not mean, of course, that first-generation women lawyers did not encounter significant hurdles as well as explicit and implicit forms of discrimination. Certainly they did. Indeed, the competitive aspect of the new ideology included more explicit notions of subject matter expertise and competence that women lawyers were assumed not to possess, as well as a commitment to working longer hours in the service of clients. While the justification for long hours in the office was no longer based in the Protestant ethos of a calling, but rather in a market-based service ideology, it assumed that women lawyers would be unable to meet its demands because of their personal commitments as wives and mothers.

Still, competitive ideology, as opposed to WASP ideology, was more hospitable to the possibility of women lawyers meeting its criteria of excellence. While the hiring and promotion of women lawyers was hardly imaginable under WASP “meritocracy,” it was conceivable pursuant to an ideology that put greater emphasis on objective meritocracy. And indeed, first-generation women lawyers overcame significant challenges and opened the doors of large law firms for the next generation.

Importantly, this ideological shift did more than respond to and justify changing practice realities. Over time, competitive meritocracy was celebrated as a more enlightened and equitable ideology. Although the ideological transformation was not necessarily motivated by egalitarian impulse and a desire for greater equality within the elite ranks of the legal

127. See generally Wald, supra note 5; Wald, supra note 119.
professor, it was subsequently marketed, both externally to clients and outsiders and internally to lawyers inside and outside large firms, as an advancement. Large law firms were claiming to be more professional, more egalitarian, and more equal, and therefore more deserving of elite status atop the legal profession because they had transitioned from WASP “meritocracy” to competitive meritocracy, notwithstanding the fact that other, less noble forces led to the ideological shift.

The gradual shift from competitive meritocracy to hypercompetitiveness, which began in the mid-1980s, was reflective of changes in practice realities. Increased competition in the market for corporate legal services drove large law firms to redefine their professional commitments. The firms were successfully recruiting graduates of elite law schools and promising not only high entry-level salaries and the potential for financial prosperity upon promotion to partnership, but also elite professional status, intellectual work (alongside the required paperwork), and interaction with the rich and powerful in the service of an elite group of clients. The ideology began to lose its appeal, and its promises were exposed as empty when competitive market realities rendered them unattainable. Law firms could no longer credibly claim to provide elite training, mentorship, intellectual work, and elite status. Instead, increasingly, all they could promise their lawyers were longer hours and higher pay.

Yet very long hours and high pay were not sufficient to attract elite lawyers and justify a claim to elite status. Professional ideology had to be rewritten to paint this grim reality in attractive colors. Hypercompetitiveness did just that: it portrayed lawyers as near-heroic servants, zealous service providers who pursue the interests of their clients around the clock. Under this new ideology, working 24/7 was considered a badge of honor, proof that lawyers were truly committed to client-centered service. This hypercompetitive ideology took over, beginning in the mid-1980s. The ideology became client-centered to an extent Cravath and his contemporaries could likely not have imagined, both in terms of deference to clients and also in terms of the belief that serving private interests serves the public interest. The ideology turned increasingly long hours and around-the-clock service mentality into elements proving the commitment of lawyers to their clients, and reestablished the claim of large law firms to

128. See supra notes 64–98 and accompanying text.

129. Anthony Kronman’s *The Lost Lawyer* constructs a parallel tale of how changes in large law firms’ practice realities rendered their intellectual and public-calling appeal unattainable. Kronman asserts that increased competition and specialization deprive lawyers of the ability to develop and practice practical wisdom, which is a calamity not only for the legal profession but for our society as a whole. See Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (1993). While Kronman’s conception of the ideal lawyer-statesman and his or her longing for lost professional glories has been duly challenged, see, e.g., Peter Margulies, *Progressive Lawyering and Lost Traditions*, 73 Tex. L. Rev. 1139 (1995) (reviewing Milner S. Ball, *The Word and the Law* (1993) and Kronman, supra), his account compellingly details how changing practice realities can render prevailing professional ideologies unattainable. Kronman, supra.
elite status, ironically because it defined elite status and excellence in terms of the absolute loyalty and commitment its clients demanded.

That is, pursuant to the new hypercompetitive ideology, the around-the-clock commitment was not merely a response to market realities of increased competition. It was the embodiment of value, proof that lawyers provide an invaluable product and service. Of course, if the target audience of the ideology was mainly the client, mere proven commitment to work 24/7 would likely not have sufficed as proof of providing value. Clients, after all, would not likely take longer hours, for which they had to foot the bill, as proof of quality and elite performance and would have required actual proof of value creation. Hypercompetitiveness, however, mainly targets lawyers, not clients, attempting to self-convince large-firm lawyers that they are engaged in elite practice and, as importantly, to convince lawyers outside of the large-firm sphere that large law firms deserve their elite status atop the profession.

Accordingly, large law firms had no incentive to try to choose avenues that would reduce the longer billable hours of associates and partners. Doing so would demonstrate that lawyers’ services were dispensable and that the work was not deserving of elite status. This is why large law firms chose the path of longer hours and refused to accommodate part-time schedules, work-from-home solutions, and other changes that would have been reasonable responses to practice pressures they experienced and, as of late, to the economic downturn. Doing so would have compromised the claim of large law firms to elite status. The longer billable hours required and the around-the-clock service mentality, which were reasonable yet certainly not inevitable functions of increasingly competitive practice realities, were thus recast as the manifestations of a noble new ideology, elevated to a not only required, but celebrated status.

While hypercompetitive, the new emerging ideology continued to embody a true commitment to meritocracy. Even as their growing size forced large law firms to dig deeper into elite law schools’ classes and eventually to expand the ranks of law schools from which they recruited, large law firms continued to insist on top educational credentials and extracurricular activities as required hiring criteria. Its commitment to objective meritocracy made the new ideology hospitable to all candidates who met its criteria of excellence. However, its hypercompetitive component undercut its meritocratic egalitarian aspects. Objective meritocracy has become a necessary yet insufficient condition for success, overshadowed by the ideology’s demands for total loyalty and devotion. “Ideal” candidates were not only to meet merit credentials but also to be willing to sacrifice personal lives, indeed to allow their professional identity to overtake and consume their personal identity.


131. Sanford Levinson, Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity, 14 CARDOZO L. REV. 1577, 1578 (1993) (arguing that the legal
Just as WASP “meritocracy” and competitive ideology coexisted and fought for dominance for approximately twenty years between the mid-1940s and the mid-1960s, so did competitive meritocracy and hypercompetitive meritocracy battle for supremacy between the mid-1980s and the mid-2000s. By the mid-2000s, in the years leading to the economic downturn, however, hypercompetitive meritocracy became the dominant ideology, with its more explicit emphases on the financial bottom line, rainmaking, long hours, and around-the-clock client-centered representation as key features. The hypercompetitive ideology was to a large extent informed by and a product of the large law firm’s quest to maintain its elite status. Importantly, while it was not a conspiracy of men lawyers aimed at the subjection of women lawyers, it was likely to have a devastating impact on women lawyers when it interacted with prevailing gender stereotypes.

IV. GENDER STEREOTYPES REVISITED: THE LARGE LAW FIRM CONTEXT

Stereotypes are exaggerated beliefs associated with a category, whose function is to justify and rationalize conduct in relation to that category. At large law firms, stereotypes impact prehiring decisions such as whom to meet with during on-campus interviews, whom to invite for callbacks, and to whom to extend a summer associate position offer. Stereotypes later influence retention decisions, such as whom to mentor, how much training one receives, and promotion and postpromotion decisions, including who makes partner, what kind of a partner (e.g., equity and nonequity), and how much sway one has as a partner.

Gender stereotypes faced by women lawyers at large law firms might be divided into three categories or types of stereotyping. First, women lawyers face stereotypes as working women (“type 1” stereotype). As such, they encounter beliefs that women belong in the home and not in the workplace, should support and focus on their husbands’ needs, should look pretty, and should care for their children. These exaggerated beliefs have nothing in particular to do with the practice of law, yet their impact is real and disturbing. Exactly because these stereotypes are acquired outside the practice of law, they are hard to combat and disprove within the practice.

132. Gordon W. Allport, The Nature of Prejudice 191 (1958) [hereinafter Allport, The Nature of Prejudice]; Susan T. Fiske, Stereotyping, Prejudice, and Discrimination, in 2 The Handbook of Social Psychology 357, 357 (Daniel T. Gilbert et al. eds., 4th ed. 1998) (defining stereotypes as a form of category-based reactions to “people from groups perceived to differ significantly from one’s own”); see also Gordon W. Allport, ABC’s of Scapegoating (1943) [hereinafter Allport, ABC’s of Scapegoating]; Valian, supra note 9, at 198–208; Chamallas, supra note 24 (studying the scope and consequences of stereotypes and other forms of gender bias in the workplace).

133. For detailed description of these stereotypes and their impact, see The Unfinished Agenda, supra note 7, at 14–16; Jody Armour, Stereotypes and Prejudice: Helping Legal
Next, women lawyers confront stereotypes as lawyers ("type 2" stereotype). As such, women lawyers face the assumption that they are incompetent, or at least not as competent as men lawyers, ill suited for the adversarial temper presumably required by the adversary system, and ill positioned to understand the complexities of the business world.134

Finally, women lawyers working at large law firms must cope with the belief that they are not sufficiently committed to the firm and its clients and, in particular, that their commitment to their family and children is inconsistent and incompatible with their loyalty to their practice ("type 3" stereotype). This specific stereotype is related to the generic stereotype that women ought to stay at home and raise their children but takes a life of its own in the context of the large law firm. Its emphasis is not on care for children but rather disloyalty to the firm and its clients. Thus, solutions that might address the generic stereotype, such as part-time arrangements and work-from-home accommodations, fail to address the latter because the issue is not merely the perception that women should stay at home and assume primary responsibility for childcare. Even if modern technology could easily enable women lawyers to multitask and work from home, the assumption will still persist that those women lawyers are not paying enough attention to their work and are distracted by their commitment to their role as mothers.

Since women attorneys began to enter the legal profession in significant numbers in the 1970s, gender stereotypes have inhibited their experience at large law firms. The impact of these interrelated and powerful set of stereotypes on the careers of women lawyers is both disturbing and significant. The existing literature correctly identifies gender stereotypes as an important factor explaining the glass ceiling effect and the underrepresentation of women lawyers in prestigious segments of the legal profession.135 As a result of these exaggerated beliefs, male lawyers,
historically the powerful decision makers within large firms, conclude that women lawyers are a poor fit for the firm (type 1 stereotypes), have a low likelihood of succeeding as a lawyer (type 2 stereotypes), and represent a higher risk of leaving the firm several years down the road (type 3 stereotypes). Consequently, women lawyers are deemed not as worth the investment in mentorship and training as their male counterparts. The gender stereotype thus leads to negative consequences as female associates tend to receive paperwork assignments as opposed to quality assignments. Furthermore, due to type 3 stereotyping, firm partners assume that because female associates prioritize their personal lives over their professional commitment, they will likely work and bill fewer hours relative to male associates and therefore will not be available during “crunch” time—late at night, over the weekend, and during family holidays.

The impact of these gender stereotypes is very real. It may lead rational decision makers within the firm to systematically prefer male associates to female lawyers. And the stereotypes tend to be a self-fulfilling prophecy. Because of the stereotype, male associates will likely receive better assignments, superior mentorship, and advanced training. Over time, male associates will have more and superior opportunities to become better lawyers, rationalizing the biased decisions against women attorneys.

While not impossible to overcome, stereotypes tend to be relatively fixed over time and resist change. Women lawyers have benefited from the gradual erosion of generic type 1 gender stereotypes with regard to women’s participation in the workforce. As documented by William J. Goode, women began to participate in the workforce in significant numbers in the eighteenth and nineteenth centuries, and their presence and roles were gradually accepted as mainstream by the late nineteenth century. When they first entered the profession in large numbers in the 1970s, women lawyers suffered from the type 1 stereotyping (for example, “a pretty lawyer, what a waste”) but this stereotyping, relatively speaking, quickly diminished. Second-generation women lawyers have also benefited from the gradual decline of type 2 stereotypes (for example, “women lawyers are incompetent”) in part because as the number of women lawyers continued to grow, interaction and experience with women lawyers made it clear that they were not incompetent.

Type 3 stereotypes, however, demonstrate the resistance of stereotyping to change. These stereotypes have been particularly stubborn, in part because the experiences of women lawyers at large law firms tend to verify, rather than disprove, the stereotypes in the eyes of those who believe in them. Every female associate who departs a firm to care for a child

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136. See Allport, ABC’s of Scapegoating, supra note 132; Allport, The Nature of Prejudice, supra note 132, at 191.
138. See, e.g., Miller, supra note 133.
139. The Unfinished Agenda, supra note 7, at 14–16.
“proves” the stereotype. And every associate who does not depart “proves” that total commitment to the firm requires not having a child or clearly “prioritizing” the firm above childcare.140

While stereotypes tend to persist, they may be positive or negative, or, more accurately, stereotypes may have positive or negative consequences.141 Moreover, stereotypes have a dynamic influence, as they tend to interact and respond to changing practice realities, culture, and ideologies.142 Changing professional ideologies, for example, may change the consequences of persisting stereotypes. Stereotypes that used to have negative consequences can have positive consequences under a new ideology, and vice versa. While stereotypes with positive consequences might yield even better outcomes under a more favorable ideology, an unfavorable ideology may worsen the impact of some stereotypes, as is the case for type 3 stereotypes faced by women lawyers at large law firms.

V. WHEN STEREOTYPES MEET PROFESSIONAL IDEOLOGY

The impact and consequences of stereotypes are a function of the interaction of stereotypes with the particular workplace, its culture, expectations, and prevailing ideology. Large law firms have always been a fertile ground for the use of stereotypes. Assessing the performance of a large number of associates is time consuming and difficult, both given the inherently subjective nature of the assessment and the fact that the work often resulted not in individualized, discrete work product but in a contribution to a team-generated product. As Mitu Gulati and David B. Wilkins point out, large law firm partners have always had the incentive to mentor those associates they thought they knew best, associates with socioeconomic, ethnoreligious, and cultural characteristics similar to their own.143

Increasingly competitive practices over the last two decades, however, have made relying on stereotyping even more appealing. As large law firms grew exponentially, the large number of incoming associates, the low likelihood that any one of them will stay with the firm in the long run, and the competitive pressures to maximize effective use of partners’ time for billing purposes all increased the appeal of using stereotypes in lieu of

140. This is what Rhode has called the “double bind.” See Rhode, Gender and Professional Roles, supra note 7, at 67–69; Rhode, Myths of Meritocracy, supra note 7, at 590–91; Rhode, The “No-Problem” Problem, supra note 7, at 1753–55.
141. See ALLPORT, THE NATURE OF PREJUDICE, supra note 132.
142. While positive stereotyping might entail beneficial consequences, as was the case for Jewish attorneys and law firms, whether stereotyping is ever desirable is very much in dispute. See, e.g., Devon W. Carbado & Mitu Gulati, Working Identity, 85 CORNELL L. REV. 1259 (2000); Paul Horwitz, Uncovering Identity, 105 MICH. L. REV. 1283 (2007) (reviewing KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS (2006)); Chris Frates, Owens’ “Stereotyping” Not Positively Received, DENVER POST, Aug. 4, 2006, at 1B (discussing the controversy surrounding Colorado Governor Bill Owens’s comments regarding positive Jewish and Asian cultural stereotypes).
143. Wilkins & Gulati, supra note 57, at 1608–13.
investing time in getting to know new associates, let alone training them. 144
In addition, as the graduating classes of elite law schools featured
increasingly diverse student bodies, the perception among large law firm
partners has become that getting to know these new lawyers would have
taken significantly more time and commitment than in the past.

Professional ideology both legitimizes and magnifies the impact and
consequences of stereotypes, and while professional ideology per se does
not determine whether the consequences of a particular stereotype will be
positive or negative, it does legitimize its usage and amplify its impact,
whatever those may be. To be sure, professional ideology is not advanced
for the purpose of legitimizing the use of stereotypes. Since its foundation,
the large law firm has effectively used its claim to be a meritocracy to first
secure and subsequently maintain its elite professional status atop the legal
profession. 145 Its credible claim to meritocracy has allowed it to establish
its status and leverage it into political power, professional standing, and, of
course, financial rewards.

Yet a distinctive side effect of professional ideology is its use as a
cover—an excuse to explain the use of stereotypes by concealing true
reasons for their invocation: cost-cutting, ignorance, and even
discrimination. In the name of its WASP, “meritocratic” ideology, elite
Wall Street law firms discriminated against Jewish and Catholic lawyers in
part by relying on stereotypes to explain why these lawyers lacked the
cultural and background sensibilities (read WASP) to succeed as attorneys.
Competitive meritocracy opened the door to ethnoreligious minorities and
women lawyers and even, over time, ushered equality to Jewish and
Catholic men lawyers, but still relied on stereotypes to exclude racial
minorities and deny equality for women lawyers. Hypercompetitive
ideology now helps justify the continued inequitable treatment of women
lawyers.

A. The “Flip Side of Bias”: The Shift from WASP “Meritocracy” to
Competitive Meritocracy and Its Impact on Jewish Lawyers

The impact of the interplay between professional ideology and
stereotypes on the career prospects of large law firm lawyers and, in
particular, the varying consequences of stereotypes under different and
changing ideologies can be significant. The experience of male Jewish
lawyers, first under WASP “meritocracy” and subsequently under
competitive meritocracy, illustrates this point. Operating alongside explicit
discrimination, the interchange between WASP ideology and stereotyping

144. See Patrick J. Schiltz, Legal Ethics in Decline: The Elite Law Firm, the Elite Law
School, and the Moral Formation of the Novice Attorney, 82 MINN. L. REV. 705, 740–41
(1998) (noting that partners’ exclusive focus on making a profit results in little time and little
incentive to mentor associates); S. Elizabeth Wilborn & Ronald J. Krotoszynski, Jr., Views
from the Front: A Dialog About the Corporate Law Firm, 1996 UTAH L. REV. 1293, 1299–300
(same).
limited the progress of Jewish and Catholic lawyers.\textsuperscript{146} Ethnoreligious stereotypes, such as that Jews are “pushy” and “aggressive,” “money grabbing,” and “stingy,”\textsuperscript{147} were inconsistent with the values of WASP “meritocracy” and thus allowed the law firms to explain and mask their discriminatory hiring and promotion practices in terms of their professional ideology.\textsuperscript{148} After all, these stereotypes were per se inconsistent with WASP ideology and white-shoe values.

Other ethnoreligious stereotypes, such as that “Jews are smart,” that in theory could have had a positive impact on the hiring prospects of Jewish law students could not compensate for the negative consequences of the other stereotypes. Discriminatory admissions policies excluded Jews from elite law schools and deprived them of the platform on which to showcase their presumed intellectual strengths. Moreover, the “smart” stereotype was countered by the stereotype that Jews had an “oriental mind” and lacked the necessary (elite WASP) sensibilities to succeed at the practice of large law firms.

Consequently, even after elite law schools relaxed admissions quotas and Jewish law students began to meet the elite meritocratic standards set by the large law firms,\textsuperscript{149} WASP ideology restricted the progress of Jewish lawyers.\textsuperscript{150} Successful Jewish lawyers were able to meet the objective criteria set by the large firms but were unable to meet the spirit and values in which those objective standards were shaped—WASP ideology. While there is no doubt that ethnoreligious discrimination has played a role in limiting the professional progress of male Jewish lawyers after 1945,

\textsuperscript{146} Id. at 1813–21. \textsuperscript{147} See id. at 1844–47; see also Wald, supra note 119, at 929–33. \textsuperscript{148} Wald, supra note 5, at 1813–23. \textsuperscript{149} Prior to 1945, quotas were common practice. See 1 U.S. IMMIGRATION COMM’N, THE CHILDREN OF IMMIGRANTS IN SCHOOLS, S. DOC. NO. 61-749, at 154–56, 160 (3d Sess. 1911) (documenting the number of Jewish students enrolled in law schools); 5 id. at 776–89 (same); Bureau of Jewish Soc. Research, Professional Tendencies Among Jewish Students in Colleges, Universities, and Professional Schools, in 22 THE AMERICAN JEWISH YEAR BOOK 383, 383–93 (Harry Schneiderman ed., 1920) (surveying professional tendencies among Jewish students in higher education); see also HEYWOOD BROUN & GEORGE BRITT, CHRISTIANS ONLY: A STUDY IN PREJUDICE 161–74 (1931) (providing anecdotal evidence of prejudice in hiring in the legal profession). After 1945, law schools began to drop discriminatory quotas. See Abel, supra note 102, at 85–87, 109 (exploring admission quotas as barriers to entering the profession); HAROLD S. WECHSLER, THE QUALIFIED STUDENT: A HISTORY OF SELECTIVE COLLEGE ADMISSION IN AMERICA 168–73 (1977) (discussing selective admission at Columbia’s professional schools); Jerold S. Auerbach, From Rags to Robes: The Legal Profession, Social Mobility and the American Jewish Experience, 66 AM. JEWISH HIST. Q. 249, 278–81 (1977) (discussing how prevailing admissions criteria had benefited Jewish law students and reversed professional discrimination); Marcia Graham Synnott, Anti-Semitism and American Universities: Did Quotas Follow the Jews?, in ANTI-SEMITISM IN AMERICAN HISTORY 233, 258–59 (David A. Gerber ed., 1986) (summarizing rising Jewish enrollment in top law schools and the subsequent decrease in Jewish enrollment in elite law schools by 1946 due to adverse reactions by the elite bar); see also Malcolm Gladwell, Getting In: The Social Logic of Ivy League Admissions, NEW YORKER, Oct. 10, 2005, at 80 (reviewing admissions policies at undergraduate Ivy League institutions). \textsuperscript{150} Wald, supra note 5, at 1813–23.
WASP “meritocratic” ideology allowed the large firms to justify their discriminatory hiring (and later promotion) policies in nondiscriminatory, ideological terms. It is thus not a coincidence that the first Jewish lawyers to advance in the elite large firms were Jews of German descent of higher socioeconomic background: if discrimination alone was holding Jewish lawyers back, presumably all Jewish lawyers would have experienced it equally. Yet Jewish lawyers who met the objective merit-based criteria of the large firms and were able to overcome, or even merely effectively cover, stereotypical assumptions were admitted.

Strikingly, the very same stereotypes that inhibited Jewish lawyers’ progress under WASP “meritocracy” became an asset under competitive meritocracy. “Aggressiveness” became a desirable quality in lawyers as the ideology became more explicitly client centered. “Pushy” was a useful trait in a professional world that now acknowledged the need to compete for clients and for talented lawyers. “Money grabbing” and “stinginess” became desirable skills when law practice began to put more explicit emphasis on efficiency and the financial bottom line. In other words, under the new competitive ideology, Jewish lawyers experienced the effects of the “flip side of bias”: the same old stereotypes that had negative consequences under the WASP “meritocratic” ideology now had positive consequences under the competitive meritocratic ideology. Further, the new ideology highlighted the “Jews are smart” stereotype and allowed it to have a strong positive impact on the career prospects of Jewish lawyers. Competitive meritocracy acknowledged the realities of increased competition for talented lawyers and turned “smart” Jewish lawyers into a desirable human capital commodity.

B. From Glass Ceilings to Dead Ends: The Shift from Competitive Meritocracy to Hypercompetitive Meritocracy and Its Impact on Women Lawyers

Women lawyers first began to enter the legal profession, and in particular large law firms, in significant numbers in the early 1970s. The barriers to entry faced by first-generation women lawyers at large law firms were significant. Women lawyers faced daunting explicit and implicit discrimination coupled with type 1, type 2, and type 3 stereotyping: women lawyers did not belong in the practice of law, were incompetent, and lacked the sufficient professional drive to succeed as lawyers because of their inherently competing loyalties as wives and mothers.

First-generation women lawyers, however, entered large law firm practice during the ascendency of the competitive meritocratic ideology, which played a positive role in opening the doors of large law firms to

151. Id. at 1838 n.158.
152. Id.; see also Randall Kennedy, Racial Passing, 62 OHIO ST. L.J. 1145 (2001).
153. Wald, supra note 5, at 1844–47, 1860; Wald, supra note 119, at 929–33.
154. Wald, supra note 5, at 1844–47, 1860; Wald, supra note 119, at 929–33.
women lawyers and helped combat some of the negative consequences of the prevailing stereotypes, especially in contrast to the old WASP “meritocracy.” Women lawyers were nearly unimaginable under WASP “meritocracy,” and the few who ventured to enter faced significant type 1, type 2, and type 3 stereotyping. Women were supposed to stay home, look pretty, and support their lawyer-husbands’ careers by hosting cocktail parties and doing charity work, not by invading the workplace. Women lawyers were incompetent and lacked the sophisticated business understanding required at the meritocratic law offices handling the affairs of large corporate clients. Finally, the kind of loyalty demanded by the large firm was understood to be strongly inconsistent with the role and commitment of women as women. Tales of associates’ endless hours in the office are as old as the large firms themselves. Large, elite law firms have earned their reputation as sweatshops under the WASP “meritocracy,” which demanded loyalty to the firm as a secular calling.

Moreover, while loyalty and intense commitment were essential, even a condition for success, they did not constitute the entire WASP ideology. Loyalty was necessary, but it was not sufficient. Indeed, many associates spent years logging endless hours without being promoted, a commitment and a practice reality hardly imaginable today. Notably, WASP “meritocracy” demanded more than loyalty. Its meritocratic aspect required demonstrated excellence, and its WASP component necessitated Protestant values, white-shoe culture, and socioeconomic indicia of elite status. Correspondingly, the WASP “meritocratic” ideology offered a lot more than mere financial rewards in return. It promised elite professional status, social and cultural standing, political power, intellectual challenge, and networking with society’s power brokers. Women, and women lawyers in particular, were thought to be, relying on gender stereotypes, irrelevant and inconsistent given this ideology, which mixed professional values, business interests, ethnoreligious identity, and conservative socioeconomic and cultural sensitivities.

Against this background, opening the doors of large law firms was made somewhat easier by the rise of competitive ideology. Under the influence of competitive meritocracy, large law firms were, to a growing extent, both claiming to hire (and subsequently promote) the best and actually doing so, irrespective of ethnoreligious background and even gender. Women lawyers who met the merit criteria set by the large law firms were more likely to be hired under competitive meritocracy than they were under WASP “meritocracy.” When elite law schools dropped their discriminatory

156. Wald, supra note 5, at 1810–25.
157. However, the economic downturn may change associates’ expectations and render them more tolerant of extended partnership tracks. See supra note 92 and accompanying text.
admissions policies, women law students rose to the top of their classes and met the merit standards required by the large firms. Importantly, while WASP “meritocracy” restricted entry to women lawyers, competitive meritocracy eased it. As large law firms began to experience increased competition in the 1970s and 1980s, and as their new competitive ideology put a growing emphasis on competition to get the best associates and lessened the pressure to honor old WASP traditions, women lawyers gained entry to the large firms.158

Women lawyers could have expected and in fact did fare better under competitive meritocracy.159 However, unlike its impact on male Jewish lawyers, competitive meritocracy did not create a “flip-side-of-bias” effect for women lawyers because the negative stereotypes imped ing women lawyers’ progress at large law firms—women belong at home, are incompetent, and are under committed—still imposed a disadvantage. In contrast, competitive meritocracy benefited male Jewish lawyers because the familiar stereotypes of “aggression,” “money grabbing,” and cultural “crustiness” were now perceived as not only consistent with, but even advantageous pursuant to, the new competitive ideology. For women lawyers, the new emphasis on competition opened the door, but only so far. The new competitive spirit meant that it was harder to consistently and systematically overlook the most qualified women lawyers, but the familiar stereotypes still held women back.

For example, to the extent that “Jewish aggressiveness” was perceived as an advantage under competitive ideology, women’s “soft,” “accommodating,” and “aggression-avoiding” assumed qualities, all associated with the type 1 stereotype, were still a disadvantage. Similarly, women lawyers still had to overcome the hurdle of type 2 gender stereotypes relating to presumptions of incompetence and ignorance regarding “business” and “financial matters.” Furthermore, competitive ideology flipped the bias against male Jewish lawyers because it allowed some dormant stereotypes, such as “Jews are smart,” to flourish. There was no equivalent benefit to women lawyers under the new ideology. Competitive meritocracy finally acknowledged women lawyers as talented professionals and helped fight type 1 stereotypes, but its growing emphasis on competitiveness still tolerated, even accommodated, type 2 and type 3 stereotyping.

Furthermore, while the competitive and meritocratic aspects of the ideology helped open doors for women lawyers by combating the impact of type 1 gender stereotypes, they did little to assist women of color overcome

158. Yet one should not belittle the hardships encountered by first-generation women lawyers in the 1970s and 1980s, which included explicit and implicit discrimination, stereotyping, and segregation—admitting women lawyers only to relegate them to “women” practice areas. See supra Part IV.

159. This is not to deny the residual power of old ideologies. No doubt, WASP women lawyers and Caucasian women lawyers in general could have expected to do better than ethnoreligious and racial minority women lawyers in terms of hiring and promotion.
harmful racial stereotypes. Indeed, the increased emphasis on competitiveness, combined with the realities of higher billable hours and increased specialization and growing complexity of large law firm practice, may have amplified the negative consequences of racial stereotypes faced by black women lawyers, such as beliefs that they are “incompetent”\textsuperscript{160} and “not intelligent enough” to succeed.\textsuperscript{161}

Imperfect as it certainly was, competitive meritocracy did help change the world of large law firms and open their doors to women lawyers. Had competitive meritocracy continued to prevail, perhaps it would have helped erode, over time, type 2 and 3 stereotypes. Arguably, the stereotypical myth of being incompetent and incapable of understanding complex business affairs was bound to be disproven over time as more women lawyers entered the profession and demonstrated their competence. The stereotype of being insufficiently committed to the firm and its clients would still be a hurdle, yet competitive meritocracy could have allowed women lawyers to prove their loyalty and commitment and eventually disprove the stereotype.\textsuperscript{162}

The opportunity inherent in competitive meritocracy, arguably explaining the cautiously optimistic tone of the glass ceiling literature, has been severely limited given the rise of hypercompetitive ideology. While meritocracy is still an inherent feature of the ideology women lawyers can easily meet, the hypercompetitive aspect of the ideology celebrates over-the-top commitment and loyalty to clients and the firm above all else, even


\textsuperscript{161} See Report of the Special Committee on Race and Ethnicity to the D.C. Circuit Task Force on Gender, Race and Ethnic Bias, 64 GEO. WASH. L. REV. 189, 193 (1996) (reporting a comment by an African American male attorney that some judges assume that “lawyers of color aren’t as good, smart, or prepared as white lawyers”). See generally David B. Wilkins, \textit{A Systematic Response to Systemic Disadvantage: A Response to Sander}, 57 STAN. L. REV. 1915, 1934 (2005) (exploring the experiences of black law students and practicing attorneys “in a world that continues to be dominated with negative images and stereotypes about blacks”); Joan C. Williams, \textit{The Social Psychology of Stereotyping: Using Social Science To Litigate Gender Discrimination Cases and Defang the “Cluelessness” Defense}, 7 EMP. RTS. & EMP’Y J. 401, 435 (2003) (noting that “very few studies have examined stereotypes related to women of color and motherhood”). A step in the right direction of examining the interplay of gender and racial stereotypes are recent ABA Commission on Women in the Profession reports. See ABA \textsc{Comm’n on Women in the Profession, From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms} (2008); ABA \textsc{Comm’n on Women in the Profession, Visible Invisibility: Women of Color in Law Firms} (2006).

\textsuperscript{162} See Rhode, \textit{The “No-Problem” Problem}, supra note 7 (pointing out insightfully that gender stereotypes regarding disloyalty and lack of commitment to the firm are disproven by the very women lawyers who stay at large firms and attempt to strike a work-life balance, because such a Herculean effort would only be undertaken by those truly committed to the firm).
above meritocracy. The new ideology highlights and amplifies with new
vigor type 3 stereotypes regarding women’s lack of commitment and
disloyalty to clients and the firm, and the negative consequences are
devastating.

To be clear, scholars of the legal profession have long noted that legal
careers are largely shaped by and designed for men with families who were
“family-free,” with models that expect utmost commitment to the
workplace and a willingness to sacrifice family life. Hypercompetitive
meritocracy is different from old, familiar models not in orientation but in
scope and tone. It defines excellence in terms of total commitment, around-
the-clock client service, and instant responsiveness. Thus, it forecloses, by
its very nature, the possibility of reduced or flexible schedules and reliance
on technology to allow for work-from-home alternatives. Objectively,
laptops, wireless technology, blackberries, PDF attachments, video
conferencing, etc., should have allowed lawyers to work from home, but the
hypercompetitive ideology prevents that. What the ideology requires is not
only physical attendance in the office, which objectively is somewhat
obsolete given technological advancements, but physical attendance as a
symbolic measure of loyalty, 24/7 commitment, and near-instant
responsiveness. This means that even if one could work from home, one
would actually work 24/7, thus frustrating the reasons for staying at
home.

The hypercompetitive ideology accentuates and aggravates the negative
consequences of the type 3 stereotype. The more emphasis put by the
hypercompetitive ideology on around-the-clock commitment to the firm
and clients, the more the disloyal and undercommitted stereotypes harm
women lawyers at large law firms. In particular, while type 1 stereotypes

163. See, e.g., ENGLISH, supra note 133, at 230; Ballard, supra note 9, at 22–26; Williams,
supra note 161, at 412–48 (exploring the interplay between workplace design, ideology, and
gender stereotypes).

164. But see CYNTHIA THOMAS CALVERT ET AL., THE PROJECT FOR ATTORNEY RETENTION,
REDUCED HOURS, FULL SUCCESS: PART-TIME PARTNERS IN U.S. LAW FIRMS 1 (2009),
available at http://www.parc.org/Publications/Part-TimePartner.pdf (reporting an increase
in the number of part-time partners, from 1.6% in 1999 to 3% in 2008, and a decline in the
negative stigma associated with part-time status). While a welcome development, it should
be noted that the overall number of part-time partners is still very low and that the authors
note a possible bias in their finding—it is based on interviews with part-time partners who
have stayed with their firms and who “therefore are most likely to be happy with their
arrangements” and not feel or experience a negative stigma. Id. at 1, 19. For a
counterperspective suggesting that the large law firms’ records are not improving fast
enough, see Kim Tasso, Opinion, Law Firms’ Flexible Working Policies—Could Do Better,
flexible-working-policies-%E2%80%93-could-do-better/1003459.article. See generally
CYNTHIA FUCHS EPSTEIN ET AL., THE PART-TIME PARADOX: TIME NORMS, PROFESSIONAL
LIFE, FAMILY, AND GENDER (1999).

165. See Joan C. Williams, Beyond the Glass Ceiling: The Maternal Wall as a Barrier to
on maternal stereotyping); Joan C. Williams, Litigating the Glass Ceiling and the Maternal
Wall: Using Stereotyping and Cognitive Bias Evidence To Prove Gender Discrimination, 7
may be mostly a thing of the past and type 2 stereotypes are being disproven by the competent work of many women lawyers, type 3 stereotypes clash with the hypercompetitive meritocracy head-on.

This new powerful clash between the demands of the hypercompetitive ideology and type 3 gender stereotypes helps explain why, even as type 1 and type 2 stereotypes are in decline, women lawyers at large law firms are still facing innumerable hurdles on the road to equality, and arguably are facing a more difficult challenge than they did under competitive meritocracy because the particular stereotypes that inhibit their progress—lack of commitment and sufficient loyalty to the firm and its clients and prioritizing family over work—have harsh consequences given the new prevailing ideology of hypercompetitiveness.

Unlike the case of WASP “meritocracy” in which loyalty played an important but not an all-consuming role, under hypercompetitive ideology total devotion to the firm and its clients has become the core of the ideology and its sole measure of excellence. Elite professional credentials are but a necessary condition to entry, and 24/7 loyalty is the measure of commitment and success. The dilution of the professional ideology and its reduction to firm and client-centered loyalty has been mirrored by the dilution of the rewards offered by the hypercompetitive ideology—mere financial rewards. And the reward aspect of the ideology reinforces its demand of total loyalty: one is only deserving of sharing in the riches if one is willing to sacrifice his or her personal life.

In a misleading sense, hypercompetitive ideology is gender blind. To the extent that women lawyers are willing to sacrifice their personal life and demonstrate total devotion and loyalty to the firm and its clients, the path to equity partnership appears to be open to them. Yet this is exactly where type 3 stereotypes kick in to block the career advancement of women lawyers. Pursuant to the stereotypes, women lawyers are assumed to lack the necessary commitment and devotion to the firm because of their assumed desire to get married, start a family, become mothers, and care for their children. All women lawyers of all racial, ethnoreligious, socioeconomic, and cultural backgrounds are assumed similarly to lack what it takes to succeed as lawyers at large firms, and the desire to become a mother is imputed to them. Indeed, in today’s cultural and legal environment, which appropriately recognizes the rights of same-sex families to have and adopt children, even gay women are labeled the same way.

166. See Wilkins, supra note 91; see also John P. Heinz, When Law Firms Fail, 43 SUFFOLK U. L. REV. 67 (2009); Wald, supra note 5, at 1861–62.


168. Joan Williams notes that women of color, in addition to stereotyping regarding motherhood and caregiving, may be confronted with assumptions of single motherhood. See Williams, supra note 161, at 435–36.
Pursuant to the hypercompetitive ideology, motherhood and the practice as an elite lawyer at a large law firm are inherently and irreversibly incompatible. Presumably, a wife and a mother could simply not work 24/7, technological advancements notwithstanding. The only women lawyers who might escape the consequences of the stereotype are childless women lawyers, but they are assumed to want to have children and ironically lack the capacity to prove otherwise, even if they are committed to significantly delay or even altogether forgo having children in order to attain professional success. Moreover, arguably the “generation me” phenomenon further compounds the powerful interplay of type 3 stereotypes and hypercompetitive ideology. Women lawyers in the twenty-first century are presumed to lack the resolve and willingness to sacrifice that characterized the first-generation women lawyers of the 1970s.

Glass ceiling scholars have voiced cautious optimism regarding gender equality, hoping that part-time arrangements and parental leave policies will more commonly be implemented by large law firms. Rhode has correctly pointed out that “[r]estructuring both work and domestic roles is essential to achieving equal opportunity in fact as well as theory,” that “[m]uch may depend on the size and profit margins of the institution and the predictability of work in part-time employees’ areas of specialization,” and finally, that “[g]ender hierarchies will persist until concerns about the quality of life become more central professional priorities.”

Unfortunately, the conditions for gender equality identified by Rhode are less likely to hold under the hypercompetitive ideology. Large law firms are highly hierarchal, conservative, and, in the aftermath of the economic

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169. Joan Williams aptly calls this phenomenon a “maternal wall.” See, e.g., Williams & Westfall, supra note 167, at 31.
171. Id. Interestingly, while there is no empirical support for this stereotypical assumption, it is shared by some first generation lawyers with regard to younger women lawyers. See Reichman & Sterling, Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers, supra note 9, at 52, 70.
172. See, e.g., Menkel-Meadow, Portia Redux, supra note 133, at 113 (“[A]ttention to gender and quality of life issues with which women are more likely to be concerned, may cause the profession as a whole to reevaluate the demand of its ‘greedy institutions’ that seem to require so much devotion to work.”). “As female attorneys constitute an increasing part of the profession, it becomes increasingly costly to discount their needs and devalue their talents.” Rhode, Gender and Professional Roles, supra note 7, at 63. “[I]n many practice settings, the entrance of a critical mass has brought significant improvements.” Id. at 68. Still, “[p]eer pressures, socialization patterns, and personal convenience all war against egalitarian roles [for women lawyers].” Id. at 62; see also Dona S. Kahn, Breaking Through: A Woman’s Journey Through the Male Dominated Law Profession of the Mid-Twentieth Century, 30 WOMEN’S RTS. L. REP. 628 (2009).
173. See CALVERT ET AL., supra note 164; Rhode, Gender and Professional Roles, supra note 7, at 62.
174. Rhode, Gender and Professional Roles, supra note 7, at 64.
175. Id.; see also Foster, supra note 9, at 1673 (surveying the ineffectiveness of judicial scrutiny and arguing, “Law Firms Must Alter Their Paradigms From Within”).
downturn, experiencing shrinking and increasingly unpredictable profit margins, all rendering it less likely that they will restructure to accommodate work-life arrangements. Further, pursuant to the hypercompetitive professional ideology, not only are concerns about the quality of life less central, but they are in fact in stark conflict with total devotion and utmost loyalty to the firm and its clients. Part-time arrangements and parental leaves are less likely under the hypercompetitive ideology because, irrespective of increased technological feasibility and formal institutional acceptance, they contradict the values of the ideology by their very nature. Taking advantage of such arrangements is thus discouraged and renders those who might do so not only less committed, but also worse, as those who either “do not get what it takes to succeed” or “get it but are unwilling or unable to do what it takes.” Therefore, while it is true that “in many practice settings, the entrance of a critical mass [of women lawyers] has brought significant improvements,” and that in many settings and arenas women lawyers are changing, even redefining, the practice of law, large law firms appear to be a practice setting in which gender equality is likely to be less attainable in the foreseeable future given their dominant inhospitable professional ideology.

VI. ON THE ROAD AGAIN: THE PROSPECTS FOR THE DEMISE OF THE HYPERCOMPETITIVE IDEOLOGY AND IMPROVED GENDER EQUALITY

Gender inequality, in the legal profession in general, and at large law firms’ partnership ranks in particular, has long been documented. While the range of possible responses may “follow fairly obviously from the diagnoses,” and includes professional regulations and enforcement strategies, large law firms have

176. Epstein, Women in Law, supra note 9, at 392–414.
177. Rhode, Gender and Professional Roles, supra note 7, at 68.
178. For explorations of the ways in which women lawyers redefine the practice of law, see Carrie Menkel-Meadow, Portia in a Different Voice: Speculations on a Women’s Lawyering Process, 1 Berkeley Women’s L.J. 39 (1985) (advancing the notion of women lawyers’ “ethic of care” as an alternative to the male-oriented “standard account” of legal ethics). See also Virginia G. Drachman, Sisters in Law: Women Lawyers in Modern American History (1998); Suzanne Nossel & Elizabeth Westfall, Presumed Equal: What America’s Top Women Lawyers Really Think About Their Firms (1998); Robin Sax, Reaching the Bar: Stories from Women at All Stages of Their Law Careers (2009); Menkel-Meadow, Portia Redux, supra note 133, at 113 (revisiting and refining the “ethic of care”).
179. This is not to belittle recent positive developments and efforts by law firms to pursue gender equality. See Calvert et al., supra note 164 (reporting the growing acceptability of partner part-time arrangements); Kaye & Reddy, supra note 9, at 1966–73 (examining positive developments toward gender equality at large law firms). Rather, the point is that the hypercompetitive ideology, especially when interacting with prevailing gender stereotypes, is inconsistent with, and is likely to make more difficult, the changes necessary to make gender equality more attainable.
180. Rhode, Gender and Professional Roles, supra note 7, at 69.
181. Id.
182. Id. at 70.
remained, for the most part, conservatively unresponsive. Professional regulation, a poor and underenforced measure generally, is particularly ill suited to deal with law firms, let alone powerful, large, elite law firms. In fact, the organized bar appears to have essentially given up on even trying to meaningfully regulate large, elite law firms. Internally, large law firms are hierarchal, have a hiring and promotion structure that make it especially difficult to address the dynamics and legacy of both past and ongoing gender inequality, and, as this article argues, are guided by a professional ideology that is, by its very nature, inhospitable to gender equality.

The rise of hypercompetitive ideology at large law firms is therefore bad news for women lawyers and for the prospect of greater gender equality in the legal profession. In contrast with competitive meritocracy, hypercompetitive meritocracy, while still requiring merit as a condition of hiring and promotion, puts greater emphasis on around-the-clock commitment and demonstrated loyalty to the law firm and its clients, demands that clash with type 3 gender stereotypes. That is not to say, of course, that individual women lawyers cannot make partner at large law firms under the new ideology. Yet the new ideology is likely to further hinder the progress of women lawyers as a group toward equality at large law firms and make the journey a more difficult one than it used to be.

Because hypercompetitiveness limits the advancement of women lawyers at large law firms, it ought to come under attack. Lawyers as high priests of a civic religion and as guardians of the Rule of Law ought to lead the way in the fight for equality, and professional ideologies inconsistent with such a mission ought to be denounced. Fortunately, the prospects for an ideological shift are good.

Large law firms risk losing their credible claim to elite status if they do not revise their hypercompetitive culture. Large firms used to be able to claim elite standing and use it to recruit the best and the brightest, which in turn reinforced their claim to elite status because they had a compelling ideology and an attractive package to offer that included elite status,

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183. See Abel, supra note 102.


185. See supra notes 38–48 and accompanying text.


188. See, e.g., Deborah L. Rhode, In the Interests of Justice: Reforming the Legal Profession (2000).
intellectually challenging work, political power, and handsome financial rewards. If all large law firms have left is the promise of a lot of money, alongside demands of total loyalty and the sacrifice of personal lives as the measure of excellence, it may not be enough to attract the best candidates and sustain their elite status.189 Ironically then, the inequitable hypercompetitive ideology is likely to decline not because of its impact on women lawyers but because it threatens to undermine the elite status of large firms.190 Moreover, a growing number of men and women are interested in a more effective work/life balance, with a greater emphasis on life accommodations,191 further destabilizing the hypercompetitive ideology with its complete commitment to work at the expense of personal life.

The possible decline of hypercompetitive meritocracy as a dominant ideology constitutes only qualified good news. As the shifts from WASP “meritocracy” to competitive meritocracy and from competitive meritocracy to hypercompetitive meritocracy illustrate, ideological transformation may take place over several decades. For the time being, as unstable as it may be, hypercompetitiveness is here to stay, inhibiting the career prospects of women lawyers practicing at large law firms.

What an alternative large law firm professional ideology might look like is at this stage unclear.192 One thing, however, is certain. In order to advance gender equality, the new ideology should be inconsistent with prevailing gender stereotypes. While such an ideology may not be able to cause a “flip side of bias” effect and turn old stereotypes on their head, by embracing, for example, commitment to a meaningful personal life as a desired professional quality, it ought to at least make it difficult to incorporate negative gender stereotypes and rely on them to justify discriminatory hiring and promotion practices couched in terms of professional ideology.

189. This phenomenon is somewhat reminiscent of the challenge faced by large law firms in the 1960s, as cohorts of young and excited law graduates rejected the appeal of large law firms and threatened, for a while, the elite status of large law firms. Over time, large law firms were able to deflect the threat by committing themselves to the provision of pro bono services and raising salaries, tactics unlikely to succeed today.

190. This result is ironic but not unprecedented. In fact, past ideological shifts were similarly motivated not by egalitarian considerations but by the entrepreneurial quest for elite professional power, political influence, and rich financial rewards. WASP meritocracy displaced gentlemanly premeritocracy and competitive meritocracy replaced WASP meritocracy because of the professional, political, and monetary drive of powerful partners, and only subsequently was described to be motivated by professional and egalitarian reasons. See Wald, supra note 5.


192. In this Symposium David Wilkins offers one such vision, pursuant to which large law firm lawyers might become, and come to think of themselves, not as agents serving principal-clients but rather as junior partners, working alongside their clients. See Wilkins, supra note 94.