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**NAMING MEN AS *MEN*
IN CORPORATE LEGAL PRACTICE:
GENDER AND THE IDEA
OF “VIRTUALLY 24/7 COMMITMENT” IN LAW**

*Richard Collier**

INTRODUCTION

The truth is that the top law firms require a virtually 24/7 commitment from their employees and partners Solicitors with family responsibilities almost inevitably work fewer hours, and therefore do not carry the same heft as those sad people who have no life but their work. And, in our society, it is far more common for women to have the family responsibilities What is needed is a change of culture which is easy to say, but quite hard to achieve I fear that, when push comes to shove . . . corporations may decide that they want obsessive, testosterone-driven men rather than balanced, sensible women fighting their corner—even though it is often the balanced sensible women who will very often be more effective advisers and advocates.¹

I certainly wouldn't recommend my kids to work in a firm like this . . . I mean, the rewards are there, not just the money . . . but it's dysfunctional, we all know it is . . . I'll get to see the kids at weekend, and that's if I'm lucky.²

Across jurisdictions, and with few exceptions, debates about gender equity in the legal profession continue to be discursively positioned in terms of the law's “women problem.” Challenging the practices of *men* (at its simplest, what men do) has long been a central theme within feminist legal

* Professor of Law and Social Theory, Newcastle Law School. I would like to acknowledge the support of the Society of Legal Scholars in funding a project on well-being in the U.K. legal profession and upon which sections of this Article draw. All websites accessed December 2014. This Article is part of a larger colloquium entitled *The Challenge of Equity and Inclusion in the Legal Profession: An International and Comparative Perspective* held at Fordham University School of Law. For an overview of the colloquium, see Deborah L. Rhode, *Foreword: Diversity in the Legal Profession: A Comparative Perspective*, 83 *FORDHAM L. REV.* 2241 (2015).

1. Lord Neuberger, 2014 Rainbow Lecture on Diversity at the House of Commons of the United Kingdom (Mar. 12, 2014), *available at* <http://supremecourt.uk/docs/speech-140312.pdf>.

2. Richard Collier, *Fathers, Lawyers and the Work Life Balance: Managing the Downturn* (2011) (unpublished research study) (on file with author) [hereinafter *SLSA Study 2011*] (interview with male partner). For further details on this study, see *infra* note 35.

scholarship.³ Engaging men in gender equality projects, “to try and galvanize as many men and boys as possible to be advocates for gender equality,” is itself widely recognized across a range of policy contexts as a key part of affecting organizational change whereby, put simply, “Men . . . Gender equality is your issue too.”⁴ Yet the sense in which men have been seen and yet not seen (as men) is reflected in the dominant framing of contemporary debates around a wide range of issues relating to gender equity in the legal profession.

In relation to flexible working and work-life balance, for example, and the interconnections of gender and parenting in law firms more generally, we see a common pattern. That is, just as questions about men’s practices and identities are rendered invisible (as these issues become seen as either problems of or primarily about women),⁵ an ostensibly gender-neutral (but in fact highly gendered, masculine) model of the “bleached out” ideal legal worker systematically constructs women in terms of “otherness” to the male gendered norm.⁶ That is, just as men *as men* fade from sight within discussions of gender equity, the deleterious consequences for women of some gendered cultures and practices, as numerous studies of women and the world’s legal professions attest, become all too clear.⁷

This Article seeks to reframe and turn this conversation on its head, taking up Hannah Brenner’s recent call to reconceptualize problems and rethink solutions around gender equity in the profession.⁸ It does so by

3. For an overview of these debates, see JOANNE CONAGHAN, *LAW AND GENDER* (2013); and CAROL SMART, *FEMINISM AND THE POWER OF LAW* (1989).

4. Emma Watson, U.N. Women Goodwill Ambassador, *Gender Equality Is Your Issue Too* (Sept. 20, 2014), available at <http://www.unwomen.org/en/news/stories/2014/9/emma-watson-gender-equality-is-your-issue-too>.

5. By way of exception, see Stephanie Bornstein, *The Law of Gender Stereotyping and the Work-Family Conflicts of Men*, 63 HASTINGS L.J. 1297, 1333–42 (2012); and Keith Cunningham, *Father Time: Flexible Work Arrangements and the Law Firm’s Failure of the Family*, 53 STAN. L. REV. 967, 990–1000 (2001).

6. See HILARY SOMMERLAD ET AL., *DIVERSITY IN THE LEGAL PROFESSION IN ENGLAND AND WALES: A QUALITATIVE STUDY OF BARRIERS AND INDIVIDUAL CHOICES* 8 (2010); Margaret Thornton & Joanne Bagust, *The Gender Trap: Flexible Work in Corporate Legal Practice*, 45 OSGOODE HALL L.J. 773, 809 (2007); see also David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502, 1572–79 (1998).

7. This literature is voluminous. See, e.g., JOHN HAGAN & FIONA KAY, *GENDER IN PRACTICE: A STUDY OF LAWYERS’ LIVES* 25–50 (1995); MARY JANE MOSSMAN, *THE FIRST WOMEN LAWYERS: A COMPARATIVE STUDY OF GENDER, LAW AND THE LEGAL PROFESSIONS* 1–16 (2006); Hilary Sommerlad, *Women Solicitors in a Fractured Profession: Intersections of Gender and Professionalism in England and Wales*, 9 INT’L J. LEGAL PROF. 213, 213–19 (2002). See generally LIZ DUFF & LISA WEBLEY, *EQUALITY AND DIVERSITY: WOMEN SOLICITORS* (2004); MARGARET THORNTON, *DISSONANCE AND DISTRUST: WOMEN IN THE LEGAL PROFESSION* (1996); *WOMEN IN THE WORLD’S LEGAL PROFESSIONS* (Ulrika Schultz & Gisela Shaw eds., 2003); Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299 (2008).

8. Brenner’s analysis begins from the premise that gender inequality in the legal profession should be characterized as a problem of ethics; in particular, she calls for the development of new theories and new ways of thinking to push debates forward in this area, which in many ways have stalled. This entails moving beyond a study of barriers in private practice and considering aspects of legal education itself. See Hannah Brenner, *Expanding*

moving beyond the frame of the retention of women and exploring selected aspects of the gendered practices of men in relation to this notion of the ideal legal professional in large transnational “city” law firms.⁹ The Article traces how particular ideas about men and gender are, on closer examination, implicated in a broader recasting of lawyer professionalism within the increasingly hypercompetitive field of corporate legal practice.¹⁰ The discussion is primarily focused on the United Kingdom and what is more commonly termed “big law” in the United States. It is in this area that initiatives to tackle problems around work-life balance and well-being appear most developed¹¹ and policies and concerns about gendered workplace cultures and practices have come under most scrutiny.¹² The broader themes addressed, however, have wider resonance for the legal profession.

The analysis is focused, more specifically, on two interrelated areas each of which has been the subject of growing concern in the United Kingdom in recent years. First, what has become known as the work-life debate in law, and second, the issue of well-being in the legal profession. The Article argues that rethinking the relationship between men, law, and gender can help better understand the seemingly entrenched nature of problems and, with it, the complex dynamics of resistance to change in the profession. On closer examination, I suggest the framing of debate around gender equity and inclusion in the United Kingdom is marked by implicit and often problematic assumptions about the relationship between men, the gendered cultures of large law firms, and processes of identity formation as a legal professional.¹³

the Pathways to Gender Equality in the Legal Profession, 17 LEGAL ETHICS 261, 261–63 (2014).

9. See James R. Faulconbridge et al., *Global Law Firms: Globalization and the Organizational Spaces of Cross-Border Legal Work*, 28 NW. J. INT’L L. & BUS. 455, 455–88 (2008).

10. See Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245 (2010).

11. See discussion of recent initiatives in SOMMERLAD, *supra* note 6.

12. See *id.* at 8; see also Michael Shiner, *Young, Gifted and Blocked! Entry to the Solicitors’ Profession*, in DISCRIMINATING LAWYERS 87 (Philip Thomas ed., 2000).

13. On professional identity formation in law in the U.K. context, see James R. Faulconbridge, Daniel Muzio & Andrew Cook, *Institutional Legacies in TNCs and Their Management Through Training Academies: The Case of Transnational Law Firms in Italy*, 12 GLOBAL NETWORKS 48, 61 (2012); Andrew Francis & Hilary Sommerlad, *Access to Legal Work Experience and Its Role in the (Re)production of Legal Professional Identity*, 16 INT’L J. LEGAL PROF. 63, 66 (2009); Hilary Sommerlad, *Let History Judge? Gender, Race, Class and Performative Identity: A Study of Women Judges in England and Wales*, in GENDER AND JUDGING 355 (Ulrike Schultz & Gisela Shaw eds., 2013); Hilary Sommerlad, *Researching and Theorizing the Processes of Professional Identity Formation*, 34 J.L. SOC’Y 190, 194 (2007) [hereinafter Sommerlad, *Researching*].

I. LEGAL MASCULINITIES AND THE REFOCUSING
ON MEN AS MEN IN LAW FIRMS

First, what is meant, within the specific context of corporate legal practice, by refocusing on men *as men*? In the field of law, as in other disciplines, the primary focus of feminist work understandably has tended to be on women and women's lives, including studies of women in the legal profession. Nonetheless by the early to mid-1990s within legal scholarship in the United Kingdom, and drawing on an extensive body of interdisciplinary work commonly referred to as the "critical study of men and masculinities"¹⁴ (CSMM), masculinity was already, to a degree, on the agenda in legal studies in new kind of way. Positioned, broadly, as part of attempt by feminist and pro-feminist legal scholars to question how, across diverse areas of law, men are seen as the unspoken, taken-for-granted norm ("benchmark") in ways that draw, in particular, on assumptions about masculinity.¹⁵

In more recent years there has been a significant growth of interest in these pro-feminist engagements with masculinities. Legal studies internationally have seen the emergence of a body of scholarship seeking to explore and conceptualize more precisely what it means to speak of "men" as a gender category in relation to law.¹⁶ This work is drawing, to varying degrees, and in different ways across countries, on the CSMM scholarship referred to above.¹⁷ In the United States, it has taken the form of an engagement with "multidimensional masculinity theory,"¹⁸ reframing how

14. For an introduction and overview of key themes, see HANDBOOK OF STUDIES ON MEN AND MASCULINITIES 1–12 (R.W. Connell et al. eds., 2004); THE MASCULINITY STUDIES READER (Rachel Adams & David Savran eds., 2002); STEPHEN M. WHITEHEAD, MEN AND MASCULINITIES: KEY THEMES AND NEW DIRECTIONS (2002) (especially Chapter 1). For a very useful overview and introduction to the field generally, see FIDELMA ASHE, THE NEW POLITICS OF MASCULINITY: MEN, POWER AND RESISTANCE (2007).

15. From 1995, as an example of an early text in the field, see RICHARD COLLIER, MASCULINITY, LAW, AND THE FAMILY 1–46 (1995).

16. See, e.g., RICHARD COLLIER, MEN, LAW AND GENDER: ESSAYS ON THE 'MAN' OF LAW (2010); NANCY E. DOWD, THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE 13–24 (2010); EXPLORING MASCULINITIES: FEMINIST LEGAL THEORY REFLECTIONS (Martha Albertson Fineman & Michael Thomson eds., 2013); Richard Collier, *Masculinities, Law, and Personal Life: Towards a New Framework for Understanding Men, Law, and Gender*, 33 HARV. J.L. & GENDER 431, 444–64 (2010); Richard Collier, *Rethinking Men and Masculinities in the Contemporary Legal Profession: The Example of Fatherhood, Transnational Business Masculinities and Work-Life Balance in Large Law Firms*, 13 NEV. L.J. 410, 410–15 (2013) [hereinafter Collier, *Rethinking*]; Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853 (2006); Frank Rudy Cooper, *Our First Unisex President? Black Masculinity and Obama's Feminine Side*, 86 DENV. U. L. REV. 633, 645–49 (2009); Ann C. McGinley, *Introduction: Men, Masculinities, and Law: A Symposium on Multidimensional Masculinities Theory*, 13 NEV. L.J. 315, 317–19 (2013) [hereinafter McGinley, *Men*]; Ann C. McGinley, *Masculinities at Work*, 83 OR. L. REV. 359, 364–67 (2004).

17. On these differences within the European context, see discussion in Richard Collier, *Rechtswissenschaft*, in HANDBUCH MÄNNLICHKEITSFORSCHUNG (Stefan Horlacher, Bettina Schötz & Wieland Schwanebeck eds., forthcoming 2015).

18. For a detailed exploration of this topic, see MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH (Frank Rudy Cooper & Ann C. McGinley eds., 2012)

masculinity is approached in law and building, in particular, on insights of critical race and intersectionality scholarship.¹⁹ The new masculinities work raises some intriguing and important questions for research on gender equity and inclusion in the legal profession.

In what way is this so? Questions about men’s practices, identities, and, indeed, bodies, as we shall see, underscore diverse aspects of the contemporary debate around gender equity and inclusion. Recognizing that “men” is a heterogeneous category (see below) and that there is no one “male” experience, engagement with the multidimensional nature of masculinity embraces complex interconnections of race, class, and gender within the corporate legal workplace.²⁰ It questions the reproduction (and challenging) of the organizational workplace structures and cultures widely seen to be marked by a hegemony of men²¹ or rather, more accurately, certain *kinds* of men; more specifically, in the U.K. context as elsewhere, white, middle/upper-middle class, able-bodied men.²² It is precisely these gendered (masculine) cultures and corporate practices that impact on women and men in areas such as promotion,²³ work satisfaction, levels of retention/attrition, experience of sexist cultures, and differences in pay.²⁴

[hereinafter MASCULINITIES]. See also Richard Collier, *Men, Masculinities and Law: A Symposium on Multidimensional Masculinities Theory*, 13 NEV. L.J. 410, 410 (2013); McGinley, *Men*, *supra* note 16, at 315.

19. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1241–99 (1991); Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 781–88 (2000); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585–90 (1990); see also CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995).

20. In relation to interconnections of race, ethnicity, men, and masculinities, see *supra* notes 16–18. See also BLACK MEN ON RACE, GENDER AND SEXUALITY (Devon W. Carbado ed., 1999); Devon W. Carbado, *Masculinity by Law*, in MASCULINITIES, *supra* note 18, at 51–77; Athena D. Mutua, *The Multidimensional Turn: Revisiting Progressive Black Masculinities*, in MASCULINITIES, *supra* note 18, at 78; Athena D. Mutua, *Theorizing Progressive Black Masculinities*, in PROGRESSIVE BLACK MASCULINITIES 3 (Athena D. Mutua ed., 2006).

21. On the idea of hegemony of men, see Jeff Hearn, *From Hegemonic Masculinity to the Hegemony of Men*, 5 FEMINIST THEORY 49, 55 (2004).

22. Or a characterization of law as a masculine profession historically marked, as Julie Ashdown puts it in this colloquium, as “pale, male, and stale (that is, white, male, and older).” Julie Ashdown, *Shaping Diversity and Inclusion Policy with Research*, 83 FORDHAM L. REV. 2249, 2249 (2015). Hilary Sommerlad and her colleagues also draw attention in the U.K. context to the “legacy of the profession’s white, male elitist origins” and the continued “significance of cultural stereotypes.” See SOMMERLAD, *supra* note 6, at 6.

23. See *supra* notes 7, 10, 13 and accompanying text; see also S. Elizabeth Foster, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA L. REV. 1631, 1634–55 (1995); Ashly H. Pinnington & Jörgen Sandberg, *Lawyers Professional Careers: Increasing Women’s Inclusion in the Partnership of Law Firms*, 20 GENDER, WORK & ORG. 616 (2013); Deborah L. Rhode, *The “No-Problem” Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731, 1732–93 (1991).

24. For works that extensively explore these themes, see *supra* note 7. For recent U.K. debates, as reported in the legal professional press, see, for example, Alice Seton, *Sexism and the City: Why Female Lawyers Are Afraid to Speak Out Against Discrimination*, LEGAL WEEK (STUDENT ED.), Apr. 12, 2013, <http://www.legalweek.com/legal->

There have been numerous internal networks established in law firms, commissioned research studies,²⁵ initiatives, and other exhortations to “work better”;²⁶ the profession has seen the development of specific policies around flexible working and, more recently, well-being.²⁷ Yet there still appears, as Savita Kumra terms it in this colloquium, a marked “disconnect” between the declared organizational commitment to address gender equity and what research suggests are the everyday *realities* of many aspects of contemporary corporate legal practice.²⁸

Having set out what it means to name men *as men* in this context, in the following section, I explore more closely assumptions that underscore this “ideal” gender-neutral legal worker. I do so in the specific context of debates and developments around two issues: work life balance and well-being.

II. WORK-LIFE, WELL-BEING, AND THE IDEA OF THE “COMMITTED” CORPORATE LAWYER

The well documented “double bind” facing women lawyers is a central theme within feminist-inflected research highlighting the way pressures, demands, and expectations around parenting, domestic labor, and, increasingly, elder care can play out differently for women compared to those facing many men.²⁹ In the words of Lord Neuberger, speaking in the 2014 Rainbow Lecture on Diversity in the U.K. House of Commons, the “virtually 24/7 commitment” required by top firms from their employees

week/feature/2259318/sexism-and-the-city-why-female-lawyers-are-afraid-to-speak-out-against-discrimination.

25. Note, for example, the engagement with workplace culture change in LAW SOCIETY, WOMEN IN LAW INTERNATIONAL SUMMIT 2012 LEGACY REPORT (2012), available at <http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/documents/international-women-in-law-summit-2012-research-findings>.

26. For these initiatives and developments, see SOMMERLAD, *supra* note 6, at 9. For a report on work-life balance in law and specific recommendations relating to culture change produced by Working Families, see LEGAL LIVES: RETAINING TALENT THROUGH A BALANCED CULTURE 17 (2008) [hereinafter LEGAL LIVES], available at <http://www.workingfamilies.org.uk/wp-content/uploads/2014/09/Legal-Lives.pdf>.

27. See Richard Collier, ‘Love Law, Love Life’: Neoliberalism, Well-Being and Gender in the Legal Profession—The Case of Law School, 17 LEGAL ETHICS 202, 206–10 (2014). For examples of the now considerable international literature concerned with what has been termed the “unhappy lawyer,” see generally NORM KELK ET AL., COURTING THE BLUES: ATTITUDES TOWARDS DEPRESSION IN AUSTRALIAN LAW STUDENTS AND LEGAL PRACTITIONERS (2009); NANCY LEVIT & DOUGLAS O. LINDER, THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW (2010); John Hagan & Fiona Kay, *Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice*, 41 LAW & SOC’Y REV. 51 (2007); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999); Martin E.P. Seligman, Paul R. Verkuil & Terry Kang, *Why Lawyers Are Unhappy*, 10 DEAKIN L. REV. 49 (2005).

28. See Thornton & Bagust, *supra* note 6, at 786–95 (discussing flexible working in law firms); see also Savita Kumra, *Busy Doing Nothing: An Exploration of the Disconnect Between Gender Equity Issues Faced by Large Law Firms in the United Kingdom and the Diversity Management Initiatives Devised to Address Them*, 83 FORDHAM L. REV. 2277 (2015).

29. See *supra* note 7; see also DEBORAH L. RHODE, BALANCED LIVES: CHANGING THE CULTURE OF LEGAL PRACTICE (2001).

and partners means that “solicitors with family responsibilities almost inevitably work fewer hours, and therefore do not carry the same heft . . . And, in our society, it is far more common for women to have the family responsibilities.” “What is needed,” he continues, “is a change of culture.”³⁰ Building on the discussion in the previous section, such change presumably includes men (in this case male corporate lawyers) taking greater responsibility for and participating more in child care, domestic labor, and other related practices; in effect, readjusting their priorities and changing, for example, fathering practices (a change which, it is then acknowledged, “is easy to say, but quite hard to achieve”).³¹

The picture is, of course, more complex. In moving beyond and challenging the assumptions of rational choice and human capital theory, and drawing on an array of theoretical and methodological approaches, an extensive body of socio-legal work has drawn attention to the structural and cultural grounding of these problems of gender equity in law.³² It has explored, for example, how such apparent “choice” is exercised within specific situated contexts; how it is subject to distinctive gendered rationalities that are mediated by relational networks shaped by wider structural-economic constraints and historically embedded ideas of racial and gender capital.³³ There remains a sense, nonetheless, that contemporary debates around work life balance in law—which encompass far more than questions about care and family responsibility³⁴—remain premised on assumptions about the precise nature of this gendered commitment and men’s obligations and responsibilities (or rather lack thereof).

III. WORK/LIFE, WELL-BEING, AND MEN: WHAT DO WE KNOW?

What, therefore, is known about men, work-life balance, and well-being in corporate legal practice? Drawing on what research does exist in the field, it is possible to make several observations.³⁵ Research studies

30. Lord Neuberger, *supra* note 1, ¶¶ 17–18.

31. *Id.* ¶ 18.

32. Compare SOMMERLAD, *supra* note 6, at 39–41, with CATHERINE HAKIM, KEY ISSUES IN WOMEN’S WORK: FEMALE DIVERSITY AND THE POLARISATION OF WOMEN’S EMPLOYMENT 145–84 (2d ed. 2004). Human capital theory has been described as “the favoured refrain of neo-liberalism,” a perspective that sees individual choice as accounting for why so few women are at the top of the legal hierarchy. See Thornton & Bagust, *supra* note 6, at 794.

33. See, e.g., Hilary Sommerlad, *The “Social Magic” of Merit: Diversity, Equity, and Inclusion in the English and Welsh Legal Profession*, 83 FORDHAM L. REV. 2325 (2015); Eli Wald, *BigLaw Identity Capital: Pink and Blue, Black and White*, 83 FORDHAM L. REV. 2509 (2015).

34. The idea of “work-life” balance here refers to any connection between the work and personal domains of an individual involving both structural (time commitment, geographical location, and family size) and psychological aspects (job/life satisfaction, stress, general health, and well-being). See Abigail Gregory & Susan Milner, *Editorial: Work-Life Balance: A Matter of Choice?*, 16 GENDER, WORK & ORG. 1, 1–3 (2009).

35. This section draws in particular on two research studies conducted by the author and funded respectively by the British Academy and the Socio-Legal Studies Association. See Richard Collier, *Male Lawyers and the Negotiation of Work and Family Commitments*, (British Academy, SG Study Ref. No. 31920) (on file with author) [hereinafter BA Study];

indicate that concerns about poor work-life balance and well-being within corporate law firms cannot, at a general level, be confined to women.³⁶ Men, certainly, do leave large law firms, transferring in-house or, in some cases, exiting the profession citing work-life balance as a factor in their decision. The processes of inculcation into this 24/7 culture of commitment, however, appear formidable, willingly embraced by many young men and women as part of “the deal” the would-be successful lawyer in this area of corporate legal practice is seen as inevitably having to make:

Long hours . . . are an inevitable consequence of wanting to earn lots of money in the City . . . if you want the benefits, the intellectual benefits, financial benefits, whatever, this is the deal . . . no one is going to give me anything for free . . . no one forces me to do this job . . . either you buy into it or you don't . . .³⁷

If the emergence of a new form of hypercompetitive legal professionalism and restructuring of career paths, discussed elsewhere by Eli Wald,³⁸ is reconfiguring the nature of this “deal” for law firm associates and trainees, it remains structurally embedded in workplace practices and cultures, not least in dominant organizational models of billing. It is also gendered in distinctive ways in terms of understandings of the idea of “balance” between the personal consequences of such commitment with what are, for some at least, the considerable potential rewards of a successful career in a corporate law firm.³⁹

In what way is this so? Closer examination of work-life balance and men’s parenting in the context of large law firms is revealing in this regard. There is a need at the outset to situate and recognize the multidimensional nature of fatherhood; relationship status (for example, if coresidential, partnered, or separated), age and family size (including age of children),

SLSA Study 2011, *supra* note 2 (respectively). For a full discussion of the former, including methodology, see COLLIER, *supra* note 16, at 152–56. These projects involved two tranches of interviews (initially of 25, then 20; 45 total) with male lawyers and human resource/personnel managers located primarily within the City of London. See Collier, *Rethinking*, *supra* note 16, at 413. Interview data and quotations from interviewees have been largely excised from this account, but where included, citation is provided to the specific source. This discussion also draws on themes with which Professor Margaret Thornton recently dealt. See, e.g., Margaret Thornton, Australian National University College of Law, *Work/Life or Work/Work? Corporate Legal Practice in the 21st Century*, Keynote Address at the Innovations in Legal Practice Conference at the University of Portsmouth (Oct. 31, 2014) (on file with author). The latter article addresses dilemmas arising from pressure for flexible work in legal practice in light of a neoliberal turn that emphasizes profit maximization and the long-hours culture, and draws on some of Professor Thornton and this author’s other findings. See Margaret Thornton & Richard Collier, *Balancing Law and Life (2011–14)* (ongoing research project for the Australian Research Council).

36. See, e.g., *supra* note 27; see LEGAL LIVES, *supra* note 26; COLLIER, *supra* note 16, at 152–94; Thornton & Bagust, *supra* note 6, at 805.

37. SLSA Study 2011, *supra* note 2 (interview with partner).

38. Wald, *supra* note 10.

39. Particularly evident is how women partners in law firms are seen as “exceptional” (and as having made sacrifices in their careers), while men are not. See Nicole Buonocore Porter, *Re-Defining Superwoman: An Essay on Overcoming the ‘Maternal Wall’ in the Legal Workplace*, 13 DUKE J. GENDER L. & POL’Y 55, 79–80 (2006).

race, ethnicity, class, sexuality, and health each, amongst many other things, mediate individual experiences of parenthood and family within specific contexts. Nonetheless, at the very least, the constraints on men’s parenting that result from the kinds of commitment and demands being required by large law firms do not only run counter to the model of positive “engaged” fathering that has informed social and legal policy in the United Kingdom over the past two decades.⁴⁰ It is a model of commitment that also clashes strikingly with the kind of cultural change in law being sought by Lord Neuberger.⁴¹

There is, however, a complexity and nuance to men’s actual practices and experiences within corporate legal practice that suggests this model of the ideal (masculine, unencumbered) worker needs fleshing out in the context of social changes and new frameworks around equality and diversity.⁴² I have argued in more detail elsewhere, for example, drawing on sociological work and empirical research focusing on the gendered experiences of male corporate lawyers, that complex and often contradictory ideas about men, gender, and parenthood can *coexist* within particular organizational contexts in law firms.⁴³ Male lawyers with fathering responsibilities may, for example, understand their practices as men through reference to diverse and conflicting ideas about masculinity, fatherhood, and what it means to be (and, importantly, to be seen as) a “good dad,” a responsible “family man,” and a “successful lawyer,” each of which can vary at different moments of the life course.⁴⁴

At the same time, just as not all male lawyers can be seen as beneficiaries in the same way of the gendered cultures of corporate legal practice, it is also important to recognize the complex organizational interplays of gender and racial capital and the presence, for example, of concealed biases amongst men.⁴⁵ Digging deeper, research suggests, normative ideas about

40. See generally ADRIENNE BURGESS, *THE COSTS AND BENEFITS OF ACTIVE FATHERHOOD: EVIDENCE AND INSIGHTS TO INFORM THE DEVELOPMENT OF POLICY AND PRACTICE* (2007); RICHARD COLLIER & SALLY SHELDON, *FRAGMENTING FATHERHOOD* (2008); KATE STANLEY, *DADDY DEAREST? ACTIVE FATHERHOOD AND PUBLIC POLICY* (2005). It is significant in the U.K. context, for example, that this commitment involves lawyers opting out of European Union Directives relating to the maximum working week. See Council Directive 2003/88/EC, Concerning Certain Aspects of the Organisation of Working Time, 2003 O.J. (L 299) 9; see also *Maximum Weekly Working Hours*, GOV.UK (Nov. 12, 2014), <https://www.gov.uk/maximum-weekly-working-hours/weekly-maximum-working-hours-and-opting-out>.

41. See *supra* note 1.

42. See Ashdown, *supra* note 22.

43. See generally COLLIER, *supra* note 16; Collier, *Rethinking*, *supra* note 16.

44. For a further discussion on these interconnections, see COLLIER, *supra* note 16, at 152–94. Boris Groysberg and Robin Abrahams observe how when work and family responsibilities collide male executives appear more likely than women to “lay claim to the cultural narrative of the good provider. Several male executives who admitted to spending inadequate time with their families consider absence an acceptable price for providing their children with opportunities.” See Boris Groysberg & Robin Abrahams, *Manage Your Work, Manage Your Life*, HARV. BUS. REV. (Mar. 2014), available at <https://hbr.org/2014/03/manage-your-work-manage-your-life>.

45. See e.g., Devon W. Carbado, Patrick Rock & Valerie Purdie-Vaughns, *Concealed Biases* (2015) (unpublished manuscript) (on file with author); Wald, *supra* note 33; Kevin

what is deemed culturally appropriate “for a man” within a specific law firm/workplace context, encompassing gendered notions about, for example, men and vulnerability, emotion, weakness, ideas of strength, resilience, and commitment can also shape the way flexible working policy is understood at both an individual and organizational level.⁴⁶

To pursue this theme, in the case of well-being the emerging picture in contemporary debates in the United Kingdom is of a legal profession facing pressing problems, if not a coming crisis, in terms of a range of concerns around the psychological and physical health of lawyers.⁴⁷ This debate is, on the face of it, gender-neutral. Yet a cursory look at research on the interconnections between men, gender, and mental health suggests that ideas around gender, vulnerability, and emotion intersect with individual men’s subjective experiences in law firms in ways that can have implications for how problems around well-being in law are understood and appropriate solutions formulated. For example, men’s well-documented reluctance to seek help at times of emotional difficulty has been seen in this literature to connect to wider social processes around gender and masculine identity formation and cultural ideas about, in particular, heterosexual masculinity.⁴⁸ The growing research base on well-being in law, in turn, as well as the wider interdisciplinary scholarship around men’s physical and mental health during the life course, suggests these questions of gender, emotion, and vulnerability inform subjective experience of well-being in various ways.⁴⁹

It is intriguing, therefore, how there has emerged in this burgeoning literature on well-being in the legal profession⁵⁰ a distinctly gendered narrative around what can be summarized as the “cracking up” of the “alpha

Woodson, *Race and Rapport: Homophily and Racial Disadvantage in Large Law Firms*, 83 FORDHAM L. REV. 2557 (2015).

46. See COLLIER, *supra* note 16, at 171; Thornton, *Work/Life*, *supra* note 35; see also Stephanie Bornstein, *The Legal and Policy Implications of the “Flexibility Stigma,”* 69 J. SOC. ISSUES 389, 393–95 (2013); Laurie A. Rudman & Kris Mescher, *Penalizing Men Who Request a Family Leave: Is Flexibility Stigma a Femininity Stigma?*, 69 J. SOC. ISSUES 322, 324 (2013); Joseph A. Vandello et al., *When Equal Isn’t Really Equal: The Masculine Dilemma of Seeking Work Flexibility*, 69 J. SOC. ISSUES 303, 303–05, 314–18 (2013).

47. See Collier, *supra* note 27, at 206–11.

48. See further discussion of gender and men’s health in MIND, MEN AND MENTAL HEALTH: GET IT OFF YOUR CHEST 3, 24, 29 (2009); STEVE ROBERTSON, UNDERSTANDING MEN’S HEALTH: MASCULINITY, IDENTITY AND WELL-BEING (2007); Rosaleen O’Brien, Kate Hunt & Graham Hart, *“It’s Caveman Stuff, But That Is to a Certain Extent How Guys Still Operate”*: Men’s Accounts of Masculinity and Help-Seeking, 61 SOC. SCI. & MED. 503, 503–04 (2005); Sue Wheeler, *Men and Therapy: Are They Compatible?*, 3 COUNSELLING & PSYCHOTHERAPY RES. 2–5 (2003).

49. See, e.g., PROMOTING MEN’S MENTAL HEALTH (David Conrad & Alan White eds., 2010); DAVID WILKINS, UNTOLD PROBLEMS: A REVIEW OF THE ESSENTIAL ISSUES IN THE MENTAL HEALTH OF MEN AND BOYS (2010); DAVID WILKINS & MARIAM KEMPLE, DELIVERING MALE: EFFECTIVE PRACTICE IN MALE MENTAL HEALTH 12–13 (2010); ALAN WHITE, THE STATE OF MEN’S HEALTH IN EUROPE (EXTENDED REPORT) 21–42 (2011).

50. This is a theme that itself runs through much of the work cited above. See *supra* note 27.

male” in a competitive, long hours, “neoliberal workplace”;⁵¹ a narrative in which the pressures and anxieties associated with highly demanding (if for some lucrative) work as a city lawyer become interlinked to particular assumptions about men and masculinities, men’s health, and, increasingly within the debate in the profession, concerns around suicide.⁵² The public comments of an Australian judge, speaking of his experiences of depression, illustrate what has become a far broader theme in this international literature and debate around well-being in law:

I just thought [in a] typical Australian male situation: “Pull up your socks, kick yourself in the backside, you’ll be right, don’t tell anyone anything. It’s a sign of weakness. Just battle through and you’ll turn a corner”—which is nonsense. Your family can tell when there’s something wrong.⁵³

These debates reveal fault lines within, and a degree of complexity to, the ideal of the bleached out (masculine) professional considered above. There is, however, a “flip side” to this argument if we consider further how a commitment to particular ideas of success can connect to gender stereotypes. To return to the notion of the “deal” or trade off the would-be successful corporate lawyer is seen as inevitably having to make, in particular, it becomes possible to see how ideas about men and gender *also* function to hold together an apparent tension between a recognition of the need for change and seeming reluctance to address men’s precise role in bringing such change about—why, more precisely, in Lord Neuberger’s words, change in law firms may be so “easy to say, but quite hard to achieve.”⁵⁴

51. See, e.g., Damian Whitworth, *The New Alpha Male: Working Harder Than Ever and Cracking Up*, TIMES (London), Sept. 11, 2014, at 6–7. In the legal profession and corporate legal practice in particular attention has been paid to the “breakdown” and, in some cases, suicide of male lawyers. See, e.g., John Simpson, *Stressed Lawyer Took His Own Life Over Fear of Blunder*, TIMES (London), Sept. 13, 2013, at 23. In Australia, the suicide of Tristan Jepson has proved the catalyst for a broader debate about time billing as a major factor in the “unacceptably high” rate of depression in the law. See Justice Virginia Bell, Putting the Guidelines to Work, Tristan Jepson Memorial Lecture (Oct. 23, 2014), available at <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/bellj/bellj23oct2014.pdf>; Leanne Mezrani, *High Court Justice Calls for Change*, LAWYERS WEEKLY (Oct. 24, 2014), <http://www.lawyersweekly.com.au/news/high-court-justice-calls-for-change>. Note more generally themes in LISA PRYOR, *THE PINSTRIPED PRISON: HOW OVERACHIEVERS GET TRAPPED IN CORPORATE JOBS THEY HATE* (2008).

52. See CLARE WYLIE ET AL., *SUICIDE AND SOCIETY* 1–3 (2012), <http://www.samaritans.org/sites/default/files/kcfinder/files/Men%20and%20Suicide%20Research%20Report%20210912.pdf>. A flavor of the debate can be found in Owen Jones, *Man Up? Snap Out of It? Why Depressed Men Are Dying for Somebody to Talk To*, GUARDIAN, Aug. 16, 2014, at 11. To place this in wider context, it is important to note that in the United Kingdom suicide is the biggest killer of men between twenty and forty-nine years of age (eclipsing road accidents, cancer, and coronary heart disease). See also Robert Crampton, *When a Man Admits He Has Feelings, It’s Not Weakness—It’s Progress*, TIMES (London), Nov. 26, 2013, at 2–3.

53. Jane Lee, *Judge Tells of Depression Struggle in Bid to Help Many in Legal Circles*, AGE, Sept. 14, 2013, <http://theage.com.au/victoria/judge-tells-of-depression-struggle-in-bid-to-help-many-in-legal-circles-20130913-2tqci.html>.

54. See Neuberger, *supra* note 1, ¶ 18.

In what way is this so? I have argued in other work that for male lawyers working in an area of the legal profession in which organizational commitment to long hours is deeply embedded, some particular ideas can shape the formation of a masculine identity as a successful corporate lawyer.⁵⁵ More specifically, considerable subjective importance is attached to ideas about, for example, social status and the development of a corporate lawyer lifestyle; a lifestyle informed by ideas about distinction (from other lawyers) and consumption of “high end” positional goods and services. For those men then who are fathers, especially but not exclusively those with young children, whilst securing this lifestyle and being a successful lawyer in the highly competitive field of corporate law may then appear, for some at particular moments in the life course, as inimical to *having* flexibility in work, this is not the whole story; the need to maintain such a lifestyle itself becomes a key motivational force underscoring the commitment *to* a career in corporate law.

Enmeshed with this, importantly, is an issue that is often overlooked in the work-life and well-being in law literature; that is, the psychosocial dimensions of what are then seen as the intrinsic rewards, pleasures, and other “seductions” of many aspects of corporate legal work. The following comments capture a recurring theme within interviews with corporate male lawyers:

You know, my deal is on the front page of *The Times* and I have been up five nights without sleep, and had just flown . . . to get something signed . . . how exciting is that?⁵⁶

For me, it’s the unpredictability, the adrenaline, the late nights, the falling out, the adversarial nature and everything about transaction meetings is what attracts me to what I do.⁵⁷

For those men who might wish to assume greater caring roles, undoubtedly, tensions can appear. It is with regard to the transition between work and home, in particular, that frictions can emerge for some between, on the one hand, their everyday subjective experiences of interdependent, affective family relationships and responsibilities; and, on the other hand, the considerable temporal, spatial, and emotional demands of their work as relatively high paid, elite, professional city lawyers. If we look closer at these tensions, however, it becomes clearer how the “ideal” worker model and related assumptions about (gendered) commitment are themselves

55. For a further discussion on these themes, see COLLIER, *supra* note 16, and Collier, *Rethinking*, *supra* note 16. See also Groysberg & Abrahams, *supra* note 44 (noting gender differences in definitions of professional success amongst senior executives and that “[a] lower percentage of women than of men list financial achievement as an aspect of personal or professional success”). The centrality of ideas about lifestyle, consumption, and social/professional status chime with the representations of a legal career held out in the promotional material used by corporate legal firms in recruiting law students. See Richard Collier, ‘*Be Smart, Be Successful, Be Yourself . . .*’: *Representations of the Training Contract and Trainee Solicitor in Advertising by Large Law Firms*, 12 INT’L J. LEGAL PROF. 51, 58 (2005).

56. See COLLIER, *supra* note 16, at 186 (interview with associate).

57. See *id.* (interview with partner).

shaped by some diverse and often contradictory ideas about men and masculinity.

I have argued in this part that closer interrogation of interconnections between men, gender, and professional identity formation suggests that there is a richness and complexity to this ostensibly gender-neutral idea of commitment within corporate legal practice. In the following penultimate part I wish to dig deeper and consider how these gendered dimensions interweave normative ideas around masculinity with wider political, economic, and cultural shifts. In seeking to understand why it may be that so many law firms, as Kumra terms it, appear to be “busy doing nothing” whilst espousing a rhetoric of change, an engagement with the gendered dimensions of this “bigger picture” can shed further light on revealing, and troubling, shifts within the contemporary legal profession in relation to questions about men and gender equity.⁵⁸

IV. THE BIGGER PICTURE: THE PERSONAL, THE POLITICAL, AND THE “IDEAL” LEGAL PROFESSIONAL

Money motivates, status motivates . . . All organizations have competition in amongst them, but some encourage it more than others. I guess we encourage it.⁵⁹

In his comments on diversity in the U.K. legal profession, Lord Neuberger makes a now-familiar connection between cultures and practices in law that are discursively positioned as masculine, male-dominated, and problematic (for women) and the “business case” for gender equality in the profession.⁶⁰ Everyone is a winner, not least the law firm, if we address problems around equality and diversity.⁶¹ In this section I reconsider the limits of this business case for equality.⁶² I do so by exploring how a reframing of legal professionalism is itself linked to structural and political changes that, far from resulting in greater equality and inclusion in law, may somewhat paradoxically be seeing the further entrenching of the power and privilege of already socially dominant groups.

Hilary Sommerlad argues that the emergence over recent decades of an explicitly commercial professional paradigm within legal practice and, increasingly, legal education in the United Kingdom has been marked by a

58. See Kumra, *supra* note 28, at 2278.

59. BA Study, *supra* note 35 (interview with male partner).

60. See Neuberger, *supra* note 1. This business case in relation to well-being is a particular feature of reporting in the legal professional press in the United Kingdom. See, e.g., Jonathan Rayner, *Staff Wellbeing: Fit For Purpose*, L. SOC’Y GAZETTE (Sept. 2, 2013), <http://www.lawgazette.co.uk/staff-wellbeing-fit-for-purpose/5037241.article>.

61. See Joanne P. Braithwaite, *Diversity Staff and the Dynamics of Diversity Policy-Making in Large Law Firms*, 13 LEGAL ETHICS 141, 155–63 (2010); see also Louise Ashley, *Making a Difference?: The Use (and Abuse) of Diversity Management at the UK’s Elite Law Firms*, 24 WORK, EMP. & SOC. 711, 719–21 (2010).

62. See also Clare M.S. McGlynn, *The Business of Equality in the Solicitors’ Profession*, 63 MOD. L. REV. 442, 446–53 (2000); Lisa Webley & Liz Duff, *Women Solicitors As a Barometer for Problems in the Legal Profession—Time to Put Values Before Profits?*, 34 J. L. & SOC. 374, 387–93 (2007).

reinforcing of technocratic modes of control.⁶³ These have required a “shift from a profession overtly based on traditional status categories and the use of mechanisms of patronage to effect professional closure, to one which espouses meritocratic, economically rational practices.”⁶⁴

As debates around work-life balance and well-being illustrate only too well, there is an acute awareness of and sensitivity to the contemporary political resonance of discourses around gender equity and diversity in law. At the same time, however, noting the tenacious hold of gender divisions and cultures in the corporate legal workplace, Sommerlad observes how “existing power relations [can be] maintained through [organizational] *adaptation* to historical change.”⁶⁵

This theme of adaptation takes on a particular significance in the context of what a growing body of research suggests has become, in fact, a pronounced degree of gendered segmentation within the U.K. legal profession.⁶⁶ That is, notwithstanding the new opportunities for some individuals that the neoliberal-driven deregulation of legal services may have afforded in the United Kingdom,⁶⁷ the emergence of a new (feminized) underclass of lawyering encompasses in its practices a wide range of tasks traditionally associated with legal knowledge management and assigning of routine work to law firm employees or else through outsourcing.⁶⁸ This, recent research suggests, is then serving to elide the distinction between law firm associates and paralegals, managed positions culturally marked as feminine, in contrast to the (encoded as masculine) domain of the highly competitive and financially lucrative law firm partnership.⁶⁹

Yet how, more precisely, is this relevant to issues of gender and the naming of men *as men* within corporate legal practice discussed above? These processes are occurring against the backdrop of an increasingly hypercompetitive legal-business culture⁷⁰ and, moreover, within the context of a production process in law and financial services that embodies in many respects the entrepreneurial and market-orientated values associated with neoliberalism.⁷¹ It is at a nexus of these developments, more specifically,

63. Sommerlad, *Researching*, *supra* note 13, at 192.

64. *Id.*

65. *Id.* at 193.

66. See Sharon C. Bolton & Daniel Muzio, *Can't Live with 'Em; Can't Live Without 'Em: Gendered Segmentation in the Legal Profession*, 41 *SOC. 47*, 59–61 (2007); Sharon Bolton & Daniel Muzio, *The Paradoxical Processes of Feminization in the Professions: The Case of Established, Aspiring and Semi-Professions*, 22 *WORK, EMP. & SOC.* 281, 285–88 (2008).

67. See Lisa Webley, *Legal Professional De(Re)Regulation, Equality, and Inclusion, and the Contested Space Of Professionalism Within the Legal Market in England and Wales*, 83 *FORDHAM L. REV.* 2349 (2015).

68. See also Margaret Thornton, *Hypercompetitiveness or a Balanced Life? Gendered Discourses in the Globalisation of Australian Law Firms*, 17 *LEGAL ETHICS* 153, 162 (2014).

69. Thornton & Bagust, *supra* note 6, at 788; Joanne Bagust, *The Culture of Bullying in Australian Corporate Law Firms*, 17 *LEGAL ETHICS* 177, 192–200 (2014).

70. See Thornton, *supra* note 68; Wald, *supra* note 10, at 2245.

71. See also Hilary Sommerlad, *The Commercialisation of Law and the Enterprising Legal Practitioner: Continuity and Change*, 18 *INT'L J. LEGAL PROF.* 73, 76 (2011).

that these processes track to new configurations around men and gender as large corporate law firms have themselves come to exemplify aspects of what the sociologists Raewyn Connell and James Messerschmidt term the emergence of a new form of hegemonic, global “transnational business masculinity.”⁷²

The concept has been used within sociological and legal scholarship to refer to a new form of masculinity that empirical and theoretical studies of men suggest has emerged over the past two decades or so among globally mobile managers and businessmen; a group, I argue elsewhere, personified in certain respects by the figure of the transnational city corporate male lawyer.⁷³ It is a model of masculinity marked by (1) an acute individualism and high degree of self-reflexivity (not least toward career management), (2) a conditional loyalty to law firm/organization, (3) an acceptance of competition and the inevitable, and (4) the inescapable nature of the “deal” that must be made in pursuing a successful career in this area of law. There is a recognition, in particular, of the “bottom line” rationale that the logic of the market will ultimately frame the determination of the acceptability, or otherwise, of initiatives to tackle issues of, for example, work life balance or well-being in the law.

Why, however, is this significant for gender equity? Far from seeing any feminization of the legal profession—notwithstanding the well-documented gender transformation at point of entry to law internationally—it may be more accurate to trace what is more akin to a re-gendering (and in some accounts, indeed, a re-masculinization)⁷⁴ of law in ways aligned to these processes of organizational adaptation to formal equality agendas and a reframing of legal professionalism itself.⁷⁵ More specifically, an increasing

72. This concept is developed in R.W. Connell & James Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829, 849 (2005). See also Christine Beasley, *Rethinking Hegemonic Masculinity in a Globalizing World*, 11 MEN & MASCULINITIES 86, 91–93 (2008); Juanita Elias, *Hegemonic Masculinities, the Multinational Corporation, and the Developmental State: Constructing Gender in “Progressive” Firms*, 10 MEN & MASCULINITIES 405, 409–15 (2008); Juanita Elias & Christine Beasley, *Hegemonic Masculinity and Globalization: ‘Transnational Business Masculinities’ and Beyond*, 6 GLOBALIZATIONS 281, 284–88 (2009). On transnational men more generally, see Chris Beasley, *Rethinking Hegemonic Masculinity in Transnational Context*, in RETHINKING TRANSNATIONAL MEN: BEYOND, BETWEEN AND WITHIN NATIONS 29 (Jeff Hearn et al. eds., 2013).

73. See COLLIER, *supra* note 16, and especially Collier, *Rethinking*, *supra* note 16, at 411–13.

74. Whereby the model of transnational business masculinity associated with the hypercompetitive, fragmented legal profession of today differs in significant ways from more traditional, bourgeois models of masculinity, ideas of the (male) “lawyer as gentlemen” and law as a public service that marked the cultures of U.K. law at earlier moments. See Sharon Ackroyd & Daniel Muzio, *The Reconstructed Professional Firm: Explaining Change in English Legal Practices*, 29 ORG. STUD. 150, 151 (2008); Gerard Hanlon, *Professionalism As Enterprise: Service Class Politics and the Redefinition of Professionalism*, 32 SOC. 43, 55–58 (1998); Daniel Muzio, *The Professional Project and the Contemporary Re-Organisation of the Legal Profession in England and Wales*, 11 INT’L J. LEGAL PROF. 33, 37–38 (2004).

75. See, e.g., Andrew Francis, *Legal Ethics, the Marketplace and the Fragmentation of Legal Professionalism*, 12 INT’L J. LEGAL PROF. 173, 174–76 (2005); Donald Nicolson &

degree of (gendered) polarization or segmentation within the legal workforce is taking place in the context not just of the outsourcing of legal services and emergence of a new legal “precartiat,” but also a growing division, in terms of income, status, size, and influence, between elite corporate firms and “the rest.” It is particularly striking how within the legal profession some culturally powerful and resonant ideas about high income, professional status, and prestige (relative to other fields of law), about social class and global mobility continue to be hierarchically associated with the still predominantly male corporate law firm partner and, importantly, the very workplace cultures associated with the form of transnational business masculinity discussed above.⁷⁶

Moving beyond well-established concerns around the “proletarianization” and deskilling of legal professionals,⁷⁷ social, economic, and political shifts within corporate legal practice would thus appear to have a distinctly gendered inflection. Lisa Webley illustrates this U.K. inflection in this colloquium, which is connected to wider processes of social closure around access to and the development of a career within the legal profession.⁷⁸ The deployment of an ostensibly gender-neutral notion of “merit,” in particular, Hilary Sommerlad suggests, serves not just to short-circuit these formal policies around equity and inclusion.⁷⁹ It has itself historically policed the boundaries of legal professionalism while espousing a belief that law is always “open to all.”⁸⁰ In such a context, there is reason to question the extent to which the traction now being afforded to the rhetoric of gender equity at an organizational level, reflected in the promotion of flexible working and well-being policies, may clash with the realities of far wider sociopolitical and structural changes that are reshaping ideas of legal professionalism and ethics. These changes, in turn,

Julian Webb, *Public Rules and Private Values, Fractured Profession(alism)s and Institutional Ethics*, 12 INT’L J. LEGAL PROF. 165, 168–69 (2005). On the place of values in this global marketplace, see CHRISTINE PARKER & ADRIAN EVANS, *INSIDE LAWYERS’ ETHICS* (2007).

76. See *supra* note 72 and accompanying text.

77. CHARLES DERBER, *PROFESSIONALS AS WORKERS: MENTAL LABOR IN ADVANCED CAPITALISM* (1982); Webley & Duff, *supra* note 62, at 394.

78. See generally Webley, *supra* note 67. See also Louise Ashley & Laura Empson, *Differentiation and Discrimination: Understanding Social Class and Social Exclusion in Leading Law Firms*, 66 HUM. REL. 219, 237–38 (2013) (arguing discrimination is a response to conflicting commercial imperatives). In her work Sommerlad has argued, notwithstanding what are at first sight apparently archaic forms of English class-based masculinity, considerable capital and value continues to attach to having the “right” social and educational background, the “right” voice, looking and speaking “the part,” in particular in relation to client-facing interactions. See Sommerlad, *Researching*, *supra* note 13, at 202–03; Hilary Sommerlad, *Minorities, Merit and Misrecognition in the Globalized Profession*, 80 FORDHAM L. REV. 2481, 2502 (2010) [hereinafter Sommerlad, *Minorities*]; see also Andy Cook, James Faulconbridge & Daniel Muzio, *London’s Legal Elite: Recruitment Through Cultural Capital and the Reproduction of Social Exclusivity in City Professional Service Fields*, 44 ENV’T & PLAN. 1744, 1746–47 (2012).

79. See Sommerlad, *Researching*, *supra* note 13; see also Sommerlad, *Minorities*, *supra* note 78.

80. Sommerlad, *Researching*, *supra* note 13, at 204–05; see also Sommerlad, *Minorities*, *supra* note 78, at 2501–03.

are linked to patterns of growing inequality and a realigning of the hegemony of (transnational) men within the social and political contexts of neoliberalism.⁸¹

Why, more precisely, is this significant for understanding men and gender? In the case of global corporate legal practice, and noting the transnational reach of such firms, recent sociological work on the new mobilities associated with neoliberalism sheds further light on corporate lawyers as part of an emerging kinetic elite class.⁸² Individuals committed to a form of hyper mobility and instantaneous communication that is driving contemporary corporate legal business strategy; businesses served, importantly, by a lawyer who is, as a result of technological development and investment, implicated in a broader blurring of the “work-life” divide, an individual who is never “offline,” who, in their “merged lives,” is potentially available “24/7” to meet client demands.⁸³ In short, and somewhat paradoxically, at the very moment the U.K. legal profession appears to be committed to tackling problems around gender equity and inclusion, as reflected in the plethora of initiatives around work-life balance and well-being, a growing body of work suggests social divisions around class, race, and gender may be simultaneously entrenched, in ways that can serve to affirm the power and status of already privileged social groups—white, middle/upper-middle class men.⁸⁴

CONCLUSION

The elephant in the room . . . is the idea that caring for children is a responsibility shared only between mothers and women who are childcarers. Boardrooms won’t change until the ownership of the responsibility of caring for children is shared with men.⁸⁵

81. See *supra* note 72. For discussion of men, masculinity, and global finance, see Penny Griffin, *Gendering Global Finance: Crisis, Masculinity, and Responsibility*, 16 MEN & MASCULINITIES 9 (2014).

82. On the nomadic lifestyle of the affluent and highly mobile, see Monika Codourey, *Mobile Identities and the Socio-Spatial Relations of Air Travel*, 5 SURVEILLANCE & SOC’Y 188, 189 (2008).

83. See *A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century*, in DONNA HARRAWAY, SIMIANS, CYBORGS AND WOMEN: THE REINVENTION OF NATURE 149–82 (2001).

84. It is important to place these debates in law in the context of broader political and cultural shifts in the United Kingdom and, in the context of neoliberal driven “austerity politics,” what has been identified as the further empowering of “the straight, white, middle class Default man.” See Grayson Perry, *The Rise and Fall of Default Man*, NEW STATESMAN (Oct. 8, 2014), <http://www.newstatesman.com/culture/2014/10/grayson-perry-rise-and-fall-default-man>. The World Economic Forum research suggests gender equality is actually worsening in the U.K. workplace. See Simon Goodley, *UK Gender Gap Continues to Widen, Says World Economic Forum Report*, GUARDIAN, Oct. 28, 2014, at 3. This locates debates about gender equity and inclusion in law in the broader context of far gender realignments associated with neoliberal politics and political attacks on equality agendas and social welfare.

85. Duncan Fisher, *Letter to Editor*, INDEPENDENT, May 8, 2013, at 14, available at <http://www.independent.co.uk/voices/letters/letters-inequality-and-greed-in-the-city-8606335.html>.

If you spoke to male lawyers in City law firms, particularly those who have got children, and ask them if they are happy with their work life balance, I would expect very few to say they are. I imagine the stock response would be “no I’m not very happy, but I work in a City law firm and that’s how things are.”⁸⁶

I have argued in this Article that the idea of the “24/7” committed (masculine) professional rests on a complex set of assumptions around gender and emotion, care, dependency, and vulnerability. These assumptions also extend to corporeality and the gendered body, a body that is simply *capable* of laboring in this way, supported by an organizational infrastructure and a host of services provided by “big law.” Such a form of commitment depends on the work of others and is set within networks of interdependent familial and social relations; the work of all those who ultimately make possible such (on the surface) “unencumbered” commitment. Beatrix Campbell observes in her 2014 book *The End of Equality* how

[t]he “working week” has been institutionalized in the interests of men unencumbered by duties of care “Private” and “free” time is neither private nor free. Time is disciplined by the daily seasons of work and the needs of others . . . women’s presence in the world of waged work is permanent yet always contingent on *taking care of care*.⁸⁷

The logic of capital appears to ultimately dictate how the responsibilities to then deal with or otherwise manage the difficulties that can arise for this unencumbered worker are understood. Powerful and culturally resonant ideas enmeshed with neoliberalism about the ability to “make one’s own biography,” to engage in a reflexive “enterprise of the self,” to “choose” to aspire to succeed and so forth, and especially in relation to well-being to be “resilient,”⁸⁸ have each taken on special force and poignancy within recent debates around work-life balance and well-being in law.⁸⁹ Yet so long as the obligations of work-time autonomy are framed as no more than an individual responsibility to manage the self, to cope and to make it work,⁹⁰ it would appear profoundly difficult to move beyond the terms of this present debate—beyond, first, the logic of commitment to the business case and economic growth that suggests when economic priorities dictate questions of equality are of secondary importance and, second, beyond a hypermasculine culture that authorizes the very practices, including forms

86. SLSA Study 2011, *supra* note 2 (interview with male partner).

87. BEATRIX CAMPBELL, *END OF EQUALITY: THE ONLY WAY IS WOMEN’S LIBERATION* 19–20 (2013).

88. On the resulting failure, inadequacy, and tensions with the limitless potential of neoliberalism, see ZYGMUNT BAUMAN, *LIFE IN FRAGMENTS* (1995); and PATRICIA VENTURA, *NEOLIBERAL CULTURE: LIVING WITH AMERICAN NEOLIBERALISM* (2012).

89. With the repeated mantra being that one can “be who you want to be,” that “aspiration” to success in life can be achieved *through* success in law.

90. See Christine Parker, *The ‘Moral Panic’ Over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response?*, 37 UNSW L.J. 1103 (2014); Collier, *supra* note 27, at 207–10.

of cultural sexism which can have such deleterious consequences for the health of many legal practitioners, female and male.⁹¹

It is against this backdrop, therefore, that legal scholars across jurisdictions are now raising important questions about precisely the values and ethics to which contemporary legal practice and organizations should aspire. This debate is inseparable from concerns about equality and diversity in the profession as, importantly, transparent *inequalities* now have to be accounted for, and positions defended. In relation to well-being in law, new questions are emerging in particular about the subjective consequences, for both women and men, of such a form of commitment.⁹² In the case of corporate legal practice, and in the context of an intensification of pressures on lawyers associated with the entrepreneurial, market-orientated temporal cultures of neoliberalism, it is bringing to the surface precisely how questions of *values* underscore debates around gender equity.⁹³

Perhaps we come, ultimately, to questions about what happens to the intelligent and productive minds corporate law firms continue to attract; questions about the nature of a legal workplace which, far from facilitating healthy and balanced lives, would appear, research suggests, to inhibit for some individuals ethical human interactions based on values of decency and respect. This is a culture marked by high levels of workplace stress which can itself, it would seem, cultivate oppression through fear of failure;⁹⁴ a workplace shaped by appearance values, the use of proxies for ability (not least educational credentials/class background), high rewards and high stress and, simultaneously, economic and cultural imperatives which are now pushing lawyers away from “service”-orientated law careers. Somewhat paradoxically, at the very moment discourses of equality and inclusion are being embedded at an organizational level, the gendered, masculine nature of these cultures and disciplinary technologies adopted by management ensure that in many respects the masculinity of super-elite law firms⁹⁵ is sustained. In such a context, there is reason to question how effective change strategies will be so long as problems in this area are

91. Thornton, *supra* note 68, at 160–62; Bagust, *supra* note 69, at 180–81. The sexualized nature of city cultures has attracted increasing attention in the United Kingdom following a series of scandals in the light of the Global Financial Crises. See Ian Leslie, *The Problem with Testosterone*, *GUARDIAN*, June 30, 2012, at 42–43; Robert Verkaik, *Sexism in the City Still Rules OK: A Laddish Culture Translates into Lower Pay for Women and Fewer Opportunities to Advance an Investigation Finds*, *INDEPENDENT*, Sept. 7, 2013, at 4.

92. See generally ALAIN DE BOTTON, *THE PLEASURES AND SORROWS OF WORK* (2009); RICHARD SENNETT, *THE CORROSION OF CHARACTER: THE PERSONAL CONSEQUENCES OF WORK IN THE NEW CAPITALISM* (1998); RICHARD SENNETT, *RESPECT IN A WORLD OF INEQUALITY* (2003).

93. Francis & Sommerlad, *supra* note 13, at 79–80; Nicolson & Webb, *supra* note 75, at 165–66; Sommerlad, *Researching*, *supra* note 13, at 193–95; Webley & Duff, *supra* note 62, at 389.

94. For a further discussion of these themes, see Bagust, *supra* note 69.

95. For a further discussion of this association with masculinity, see Thornton, *supra* note 68, at 162 (2014). See also LOTTE BAILYN, *BREAKING THE MOLD: WOMEN, MEN, AND TIME IN THE NEW CORPORATE WORLD* (1993).

conceptualized as issues about women in which men, as men, are rendered invisible.

In conclusion, it is unsurprising therefore that the “obsessive, testosterone-driven” men “who work 24/7 in law firms” are simultaneously *normalized* and *pathologized* within debates around work-life balance and well-being in law. They appear as individuals to be admired/emulated whilst, at the same time, admonished as part of the “problem” that needs addressing. The gendered dynamics of a *resistance* to change coexists, paradoxically, with a formal acceptance of the *need* for such change. The demand for greater gender equity, for diversity, for a “better” and more representative kind of legal profession, encapsulated in the comments of Lord Neuberger, themselves runs alongside the systematic side stepping of any questioning of what it would actually mean in practice, at both an organizational and experiential level, *for men to change*.