Transformation in the Nature of Pro Bono Activity and Institutional Commitment in Large Corporate Law Firms

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Pro bono work is increasingly an important part of the activities of large corporate law firms and has been thoroughly institutionalized among nearly all large law firms changing the nature of pro bono work over time. However, some organizations have higher levels of participation in such institutionalized activity than others. This study examined the impact of economic and organizational factors in large law firms on their institutional commitment to pro bono. The empirical examination shows that organizational determinants of commitment vary by the level of institutionalization of pro bono, while economic determinants have similar effects in different institutional regimes.
There is a long tradition of private organizations providing public goods and services. From religious organizations providing alms and medical services to large corporations financing public libraries and universities, private interests have been mobilized to public ends. In recent years there has been an intensification of this effort, with a focus not only on using private organizations to operate in the public interest, but also increasing the use of private for-profit entities, in the funding of these organizations.

Sociologists have focused on the role of corporations in funding non-profit organizations through a focus on the grants economy (Galaskiewicz, 1997; 1985). Corporations and other economic organizations provide important economic and service support to a variety of different charitable and non-profit organizations, typically within a circumscribed geographical area, as a means to reduce tax liabilities, to provide a positive image of the organization, or to push ideas and values that benefit the organization. Furthermore, economic organizations face significant pressures to engage in charitable and socially responsible activities from important external stakeholders, including stockholders, board members, politicians, customers, and members of the communities where the organization is located (Burt, 1983; Davis & Blomstrom, 1975; Galaskiewicz, 1997; Galaskiewicz & Wasserman, 1989; Silver, 2001; Steiner, 1975). On the other hand, scholars such as Milton Friedman (1970) argue that the responsibility of a corporation to society is to generate profits, which will generate the most efficient and equitable distribution of resources within the economy (c.f. Jensen, 2002).

Given these pressures to engage in activities oriented to the public good, it is worthwhile to look into the reasons why some economic organizations provide more in terms of goods, services, and money to charitable activities. Some researchers have argued that there are important economic benefits to the firm in engaging in charitable or socially responsible
activities. Organizational scholars have attempted to find out a positive relationship between social performance and financial performance (Griffin & Mahon, 1997). A large body of empirical research reported that corporate philanthropy or socially responsible behaviors are ultimately aimed to bring economic benefits into corporations (Burt, 1983; Klassen & McLaughlin, 1996; Porter & Kramer, 2002; Vadarajan & Menon, 1987; see review for Marrgolis & Walsh, 2003). However, the evidence relationship between social performance and financial performance is mixed (Griffin & Mahon, 1997; Hilman & Keim, 2001) suggesting that there is no straightforward relationship between the philanthropic activities of firms and any general benefits to their economic performance.

This indicates that motivations behind pursuing activities oriented to the public benefit are much more varied than has been previously studied. Furthermore, the general movement to push corporations to engage in socially responsible behavior, including philanthropy, along with industry and location specific movements indicates that the relationship between organizational contributions and the external environment involves more than simply economic performance. This raises the question of how it is that firms respond to these external pressures, and what determines the extent to which firms commit to engaging in behavior that is increasingly demanded from important external actors, while at the same time providing little or no (or possibly negative) economic benefits to the firm.

The field of corporate law has been one industry where there has been a significant pressure to get large corporate law firms to spend more of their time providing free legal services. These free legal services, or pro bono\(^1\), are meant to provide a means for those who would not otherwise be able to access legal services for civil matters to be able to have legal representation. While the public defender’s office provides this for criminal cases, there is not the same legal

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\(^1\) Short for *pro bono publico*, “for the public good"
right to representation in civil matters, which includes all legal matters not having to do with a criminal case. This includes issues such as the incorporation of non-profit organizations, landlord-tenant disputes, employment discrimination cases, torts, and numerous similar issues relating to individuals and organizations, and disputes between them. Much of these services are inaccessible to a broad variety of individuals and organizations without the economic resources to pursue their issues in the formal legal system. Pro bono, along with legal aid clinics and public interest law firms, provides one of the most significant means of access to the courts for those clients otherwise unable to afford legal services. Lawyers also engage in pro bono activity in order to further particular political policies and to advance particular causes (Sarat & Scheingold, 1998; Heinz, Paik, & Southworth, 2003).

However, pro bono activities are done by lawyers who otherwise command high fees for their legal advice and time spent on legal affairs. This is particularly true for large corporate law firms, where billing rates can exceed $500 per hour. This raises a significant empirical question: why is it that lawyers in these elite law firms provide their time for free, with a substantial commitment of their firm’s resources to assist them in doing so? While there has been a significant movement within the legal profession to pressure these large firms to commit more of their attorneys’ time to the provision of pro bono services, why is that some firms commit to providing a significant amount of their resources to pro bono services, and forego the revenues their lawyers would otherwise be able to generate?

In this paper we explore these questions from two perspectives. We begin by examining the relationship elite law firms have to their environment, in particular the role of a movement within the legal profession for a greater commitment to pro bono work throughout the profession, but in particular in the large corporate law firms. In the next section we provide an overview of
the development of this movement towards pro bono work over the past two decades, and argue that by the end of the 1990’s there was an institutionalized expectation of the provision of pro bono services by these large, elite firms.

Following the historical overview, we then develop a theoretical model to explore the factors that would make organizations more or less committed to participating in institutionalized practices, in this case pro bono. Because pro bono work takes away from the ability of firms to engage in legal work that generates revenues, we generate hypotheses about the ways in which the financial performance of firms would inhibit or encourage pro bono activity. However, these effects depend on the level of institutionalization of pro bono in the larger field of corporate legal practice. Based on the historical discussion and following recent research by Cummings (2004), we argue that pro bono work in the early 1990’s was less institutionalized in the sense that lawyers at elite firms were encouraged to do pro bono work, but there was not a strong expectation that firms should be committed to fostering pro bono work among their attorneys. However, by the end of the decade a number of institutional structures were put in place, as well as a shift in the expectations of law firms, their clients, and their attorneys, that firms should not just allow their lawyers to engage in pro bono work, but were expected to provide extensive supports for them to do so, and firms that did not engage in this work were seen as professionally irresponsible. This indicates that the economic factors that encourage or inhibit commitment to pro bono work are dependent on the level of institutionalization of pro bono in the field at large. Furthermore, particular organizational structures in certain firms are also hypothesized to affect a firms’ commitment to pro bono work, based on the demands of hiring new and talented lawyers as well as by adopting illegitimate organizational structures.
HISTORICAL TRANSITION IN LEGAL INDUSTRY AND PRP BONO INSTITUTIONALIZATION

The years 1992 to 2004 marked the beginning of a new era in the behavior of the large corporate law firm and the corporate law firm market aptly described as the transformation of the large corporate law firm. During this period, large corporate law firms more rapidly grew than ever before which led to the emergence of the “mega law firms,” (Uzzi & Lancaster, 2004). Compared to the large law firms that existed before 1990, the average mega law firm employed hundreds of lawyers and provided a variety of legal services to large, diversified corporations.

The advent of mega law firm is a successful social form in a sense that it is organized to deliver comprehensive, continuous, high-quality legal services (Galanter & Palay, 1990). However, it has changed a traditional way that a business has been conducted in a legal industry. As several authors have argued (Glendon, 1994; Kronman, 1993; Linowitz, 1994; Uzzi & Lancaster, 2004), law firms have become more like a business that depended more on generating increasingly higher revenues and profits which resulted in the dramatic growth of law firm. And economic expansion and dot-com boom in 1990s created the explosion in the demand for legal services which required firms to grow as well (Cummings, 2004). The rising volume of business meant that firms needed to hire aggressively. However, the elite law schools did not grow in number or in the sizes of their classes (Sherer & Lee, 2002). This resulted in a very intense competition to get top law school graduates among prestigious law firms which increased starting salary dramatically and subsequently billable hours (Fortney, 2000). This change made law firms more openly commercial and profit-oriented.

In addition, the relation between corporate clients and law firms has shifted from comprehensive, enduring and socially embedded relationships toward less exclusive and more
task-oriented arm’s length relationship (Lazega, 2001; Uzzi & Lancaster, 2004).

Contemporaneous with intensified rivalry among law firms, in-house corporate legal departments have expanded in size, function and budget which resulted in melting down the traditional exclusive and noncompetitive relationship between corporations and law firms (Galanter & Palay, 1991) Enlarged corporate in-hours legal departments took a markedly increased portion of the corporation's routine legal work conducted by outside counsels. And they actively spread work among law firms, impose budgetary restraints, and exert more control over cases which resulted in more engagement in more discrete transactions. The expansion of in-house corporate legal departments and the breakdown of retainer relationships have made the legal industry more market oriented and competitive than ever before (Uzzi & Lancaster, 2004).

The law firm growth and the change in social relation between law firms and corporate clients changed the character of the firm. Commercialism prevailed and notions of public service and independence were marginalized (Cummings, 2004). And the rise and prosperity of large corporate law firms was accompanied by an increasing concern over the decline of professionalism within the legal profession as increased competitiveness and commercialization result in decreasing pro bono. At the height of the boom, large law firm pro bono conversely plunged into the bottom. For example, in 1999, the average pro bono hours per lawyer among top 100 revenue grossing law firms was 38.55, 32% less than 57.06 in 1992. A front-page article in the New York Times reported that law firms were cutting back on free legal services for the poor (New York Times, 2000).

Many of the nation's biggest law firms -- inundated with more business than they can often handle and pressing lawyers to raise their billable hours to pay escalating salaries -- have cut back on pro bono work so sharply that they fall far below professional guidelines for representing people who cannot afford to pay.
The consequence of the economic growth and competitive pressure is pro bono retrenchment in the face of law firm commercialization.

However, it was not until the 1990s that pro bono became assimilated into large law firm professional practices. Behind the loud outcry over declining pro bono in the 1990s, a critical transformation was taking in place. There was a radical change in how pro bono services were being distributed (Cummings, 2004). Pro bono was traditionally provided informally as a matter of individual lawyers’ interest which quickly retrenched under the fantastic growth of law firms during 1990s. However, the heightened anxiety over decreasing pro bono resulted in more institutional involvement to promote the ideology of professionalism. By the end of the 1990s, pro bono was centralized and organized by a network of organizational structures (e.g., organized bar, pro bono matching organizations, etc). They facilitated, connected and coordinated the provision of free legal services by law firms. Corresponding to the increasing calling for institutional commitment, large law firms got actively engaged in pro bono services which fulfilled professional duty as the officers of the court. Viewed in this regard, this period of economic growth and competitive pressure during 1990s, which shrank the provision of free legal services by law firms, in fact impacted pro bono to be deeply embedded within large law firms’ structure (Sarat, 1998).

The rise of pro bono has occurred as part of a larger effort by the organized bar to translate the ideals of professionalism into concrete institutional forms (Cummings, 2004) and the desire on the part of big law firms to improve firm status which moved to shore up their public image and gain a competitive edge in the recruiting wars, and counter the heightened cultural anxiety about commercialism within the legal profession (Granfield, 2007).
First, recognizing of the growing severity of the unmet legal needs of the poor and disadvantaged in the communities, professional foundations urged large law firms to involve in more pro bono activity. In 1993, the law firm Pro Bono Challenge was launched calling on large law firms to contribute 3 to 5 percent of their billable hours to pro bono (Pro Bono Institute, 1993). The Challenge was designed to promote pro bono programs in large firms, requiring signatories to demonstrate their institutional obligation to encourage and support the participation by all of its attorneys in pro bono publico activities. By 2007, there are 137 signatory firms (37 Charter signatory firms) to the Challenge, which included many of the nation’s large law firms.

Corresponding with Pro Bono Challenge, the American Bar Association (ABA) campaigned to make pro bono a priority amending its law school accreditation standard in 1996 calling for more pro bono opportunity during law school years: “[a] law school should encourage its students to participate in pro bono activities and provide opportunities for them to do so.” It also challenged the nation’s biggest law firms to step up their pro bono commitments supporting the development of a pro bono infrastructure in nonprofit groups, law firms, and law schools (Rhode, 1999).

Law schools also echoed this transformation. In 1999, Association of American Law School (AALS) recommended law schools to provide more pro bono related programs: “[a] law school should provide all students with pro bono opportunities and helped create the Pro Bono Project.” The early exposure on pro bono during law school years would help future lawyers to develop professional values (Storrow & Turner 2003). Since, in 1987, Tulane law school first initiated pro bono program, law schools have increasingly provided pro bono opportunity to their students. In 2001, 17 law schools made pro bono related activity as graduation requirement, 73
schools had some kind of formal, administratively supported pro bono programs and 24 schools had informal pro bono supporting groups (Association of American Law School, 2001).

These institutional events are constant counter battle against the decline of professionalism to recover the spirit of pro bono in a legal industry. They call for an institutional commitment, rather than an individual commitment, in recognition of the fact that the policies, and practices of law firms and law schools’ programs are critical to the ability and willingness of lawyers to undertake pro bono work.

The combination of these developments precipitated many law firms to increase their pro bono programs. Especially, the rise of the large corporate law firms played a critical role in the spread of pro bono in a legal industry. Although solo practitioners or small-size law firms have also taken a large portion of pro bono work, it has been large law firms that have provided the resources and prestige to promote to pro bono as a legitimate professional practice. Aimed to shore up their public images and gain a competitive edge in the recruiting wars, large law firms increasingly structured pro bono committees and hired full-time pro bono coordinators to facilitate pro bono activity by systemizing the delivery of pro bono and formalizing pro bono policies. As a result, large law firms began tracking their own pro bono activity, and publicizing pro bono achievements on web sites and in annual reports as part of their recruitment efforts. Once defined as a central professional goal in large law firms, pro bono has become quickly institutionalized. In this regard, the increasing anxiety and all the fervor over pro bono retrenchment in the 1990s, in fact, resulted in pro bono institutionalization.

THEORY AND HYPOTHESES
Research in institutional theory has focused on how new organizational structures and processes are developed and diffuse through an organizational population or field. Early work in this area showed how organizations adopt structures in order to signal their legitimacy to the external environment (Meyer & Rowan, 1977; DiMaggio & Powell, 1983). Other work has shown how actors within organizations also act as agents of diffusion in order to gain power and status within the organization (Meyer & Jepperson, 2000). Much of the research in this area has focused on the processes by which organizations adopt new structures or processes (c.f. Burt, 1987; Davis, 1991; Greve, Strang, & Tuma, 1995; Galaskiewicz & Burt, 1991).

From this perspective, organizations are strongly affected by their institutional environment, either as a consequence of agents within the organization pushing for the adoption of new organizational structures, or in order to satisfy external demands, or a combination of the two. However, many of the organizational structures developed are not integrated into the rest of the organization, instead serving as a buffer between core organizational processes and the environment. Meyer and Rowan (1977) referred to this process as decoupling, where the core tasks of the organization are decoupled from much of the organization’s structure which exists in response to legitimization concerns in the environment.

Recent work has built on this insight, showing that it is frequently sufficient for organizations to communicate to interested actors in the environment that they will implement new structures or actions to satisfy these external actors, whether or not they actually follow through on their statements. Zajac and Westphal show in a number of papers that corporations gain benefits from indicating they will buy back outstanding shares of stocks, which market participants see as beneficial to their interests, by increasing the value of stock and reducing the cash available for managers to potentially misuse (Westphal & Zajac, 2001). However, the
benefits to the corporation for announcing a stock buy back program occur regardless of whether or not the corporation in fact buys back a single share of stock, much less the amount that they stated they were going to purchase back.

This work indicates that we need to examine more closely the processes by which organizations actually engage in the behaviors that signal legitimacy. Specifically, the symbolic management of a firm’s institutional image does not imply a full commitment to the behaviors that it is signaling to the environment. Instead, it suggests that we need to look beyond the question of simply whether or not organizations adopt a new practice or structure to see how much organizations commit to fully realizing their participation in these practices.

When considering the level of commitment to fully implementing institutional demands, it is important to consider how organizations respond to institutional pressures at different stages of the process of institutionalization. One of the central tenants of institutional theory is that practices become fully institutionalized when they are taken for granted, in that all organizations within a particular field or population are expected to engage in the prescribed activities (Powell & DiMaggio, 1991). Prior to this taken for granted stage these prescriptions are contested. In the case of pro bono, pro bono work was seen as something to be valued, but not something that should be a requirement or expectation for firms to necessarily participate in. This valuation of pro bono work in the early stages of institutionalization meant that pro bono was something that could bring prestige and professional legitimacy to the firm, but moves to require pro bono participation by lawyers within state and national bar associations were roundly dismissed (Rhode, 2005; Cummings, 2004).

While pro bono requirements were never implemented, by the end of the 1990’s there were strong informal pressures on law firms to have some pro bono program, and firms had a
difficult time opting out of providing support for pro bono by their lawyers. Facing a competitive market for hiring the best talent, with new law school graduates expecting to be able to engage in pro bono work forced firms without formal pro bono programs to implement them in order to recruit the best talent. Furthermore, by engaging in pro bono work, large corporate firms were able to satisfy the concerns of other lawyers that they remained committed to the professional ethos of the law, which had been a major concern about the increasing bureaucratization and corporatization of law firms in previous decades. This created conditions where pro bono activities were expected at firms, and the notion that large law firms should support and encourage, and even require, pro bono work by their lawyers became highly institutionalized.

This implies that we need to understand the factors that lead to greater or lesser commitments to pro bono work among large law firms, and how they differ based upon the stage of the process of institutionalization. To do so, we examine economic and organizational factors that would drive higher or lower levels of commitment, and how these would be expected to differ when practices are highly institutionalized or not.

**Opportunity Costs and the Economics of Pro Bono**

The commitment of a law firm to pro bono involves a trade-off with revenue generating activities. Hours spent for non-paying clients are necessarily hours not spent for clients who pay significant amounts of money for the same amount of time of the firms lawyers. In 1993, the average hourly rate for associates at these firms was above $130 per hour, while for partners it was above $240 (Uzzi & Lancaster, 2004). Furthermore, firms routinely count hours spent on pro bono cases as billable hours in their annual review of attorneys, which means that pro bono
work is not above and beyond attorneys’ other cases, but instead act in lieu of paying clients. In general, for every hour spent on a pro bono case that represents an hour not spent generating revenue for the firm.

Thus, pro bono activity represents an opportunity cost for firms. By providing their services for free, they take time away from cases that would otherwise generate revenues for the firm. However, this will primarily impact firms that have the capacity to actually engage in sufficient paying work to fill their attorneys’ time. Firms that have the opportunity to fully utilize the time of their attorneys to generate revenues will be less likely to have their attorneys engage in pro bono work, while firms with greater levels of slack will be more likely to do so. This is particularly true for firms that are increasing their share of the market for their goods and services, where demands on fully capturing this increase will drive firms to less fully commit to pro bono work.

*Hypothesis 1: Firms with higher rates of revenue growth will have lower levels of pro bono commitment.*

Similar pressures will operate on firms that are able to generate higher rates of profits. One of the reasons for engaging in pro bono activity is to signal legitimacy to the environment in order to secure additional resources. This will be especially true when certain activities are institutionalized, in the sense that they are expected behaviors of firms. Firms that are more effective in translating their billable hours into profits will have less incentive to increase their commitment to pro bono than will firms that have lower profitability, where the profits per dollar of revenue are lower, and foregoing those additional dollars of revenue will have less impact on the partners of the firm, who are the residual claimants to the firm’s profits. This indicates that
firms will have lower levels of commitment to pro bono work when they have higher rates of profitability.

*Hypothesis 2a: More profitable firms will have lower levels of pro bono commitment.*

Conversely, we can expect a similar effect, but only under situations where pro bono is highly institutionalized. We would expect this not because more profitable firms have more to lose than do less profitable firms when pro bono is institutionalized, but instead because less profitable firms will have more to gain by engaging in pro bono. When certain levels of pro bono are expected of all large firms, those who are less profitable will be more likely to engage in higher levels of pro bono activity with the eye towards potential gains by being seen as more legitimate from the perspective of external actors. This leads to a modified version of the previous hypothesis:

*Hypothesis 2b: More profitable firms will have lower levels of pro bono commitment under regimes where pro bono activity is institutionalized.*

We also expect that the ability of law firms to generate revenues from their human capital will affect the level of pro bono commitment. As professional organizations, law firms rely on the knowledge and skills of their attorneys, particularly their senior partners, to generate income streams for the firm. However, law firms need to be able to leverage the human capital of their partners with other attorneys in the firm in order to fully capture the potential economic returns to the partners’ human capital. The tournament structure of law firms was originally designed in order to provide an organizational structure that was able to increase the ability of partners to produce revenues by hiring young associates without much experience, while at the same time providing training for the associates, as well as an incentive structure that allowed them to be relatively underpaid in return for the possibility of becoming a full partner in the future. This
model, often referred to as the Cravath model after the firm Cravath, Swaine, and Moore which originally developed this structure, was the dominant mode of organizing law firms, particularly large corporate firms, in the last half of the twentieth century, and continues to be the baseline model for law firm structure (Sherer & Lee, 2002; Lancaster & Uzzi, 2004).

The tournament model allowed firms to become more efficient in leveraging the human capital of their partners. This efficiency arises from the ability for partners to manage and direct the activities of numerous associates and lower-level attorneys within the firm. Firms with greater levels of efficiency will have greater incentives for their lawyers to engage in revenue generating work instead of pro bono activity, because they are able to produce higher rates of return to their human capital. Furthermore, demands by lower-level attorneys in the firm to be able to participate in pro bono work will be less likely to succeed because of the competitive nature of the tournament model, and firms with higher levels of efficiency will be more competitive in the competition to become partner (Galanter & Palay, 1991).

While efficiency is difficult to measure in the best of circumstances, it is particularly hard when dealing with human capital intensive industries. However, researchers studying law firms, as well as lawyers themselves, all consider that law firms are more efficient when they are more effective in leveraging the human capital of their senior partners, who have very high levels of legal knowledge and expertise, through the work of younger lawyers who work under these partners (Gilson & Mnookin, 1985; Daniels, 1992). The leverage ratio of the firm, or the ratio of associates to partners, indicates the overall efficiency of the firm in being able to most effectively leverage the human capital of their partners. Combining the industry specific measurement of efficiency to our theoretical development, we generate the following hypothesis:

_Hypothesis 3: Firms with higher leverage ratios will have lower levels of pro bono commitment._
Institutional Benefits and Organizational Structures

Our previous discussion focused on the effect of the economic performance of firms would affect their commitment to institutionalized activities. We hypothesized that firms with higher levels of economic performance will have lower levels of commitment to pro bono work. However, research in organizational theory indicates that organizations will conform to institutionalized pressures due to factors independent of their economic performance.

Organizations that innovate their organizational structures often face increased competitive pressures because of uncertainty around these novel structures. In certain ways, this represents the liability of newness, in that organizational innovations take a certain amount of time to operate effectively, and the organization is at risk of survival during the period of transition (Stinchcombe, 1965; Singh, Tucker, & House, 1986; Amburgey, Kelly, & Barnett, 1993). However, organizations that innovate also face a legitimacy problem, particularly when the new organizational structures are contested.

Organizations that adopt new structures that are seen as illegitimate by external actors will seek to restore this legitimacy through other practices. In the context of law firms, one of the most contested internal changes within law firms in recent decades has been the shift towards multi-tiered partnerships, which many within the legal community see as an indicator of the corporatization of law firms (Nelson, 1988; Sherer & Lee, 2002). Under this model, the firm posits two types of partners, equity and non-equity, with equity partners the traditional model of the partner as residual claimant of the firm. Non-equity partners are more similar to associates, in that they receive a salary instead of a share of the profits, and work on employment contracts, as opposed to being a part-owner of the firm.
The development of the two-tier partnership structure was a highly contested innovation in organizational structures. As we mentioned above, the Cravath model had been the standard organizational form for law firms in the post-war period. The two-tier partnership model challenged the core of the Cravath model by changing the nature of the reward of the tournament: making partner (Hagan & Kay, 1995). The two-tier partnership model was one of several innovations in organizational structure that were seen by corporate clients as more efficient and responsive than was the traditional Cravath model (Heinz & Markham-Bugbee, 1986; Lancaster & Uzzi, 2004). However, within the profession this was seen increasingly as an attempt to deprofessionalize law by making law firms into bureaucratic corporations only interested in the pursuit of profits (Galanter & Palay, 1991; Nelson, 1988). This created a legitimacy crisis for firms adopting the new form of governance, as it directly challenged the professional development implicit in the Cravath model. As argued above, when pro bono was in the early stages of institutionalization, it was considered to be a commitment to professional norms, while pro bono later became expected for all firms. This leads us to hypothesize that firms which adopted the two-tier model in the earlier period of institutionalization will be more likely to increase their commitment to pro bono in order to secure legitimacy within the profession when there are definite benefits to doing so. However, we expect that there will be no effect when pro bono is highly institutionalized, as there is an expectation that all firms will have some commitment to pro bono work.

**Hypothesis 4:** Firms with two-tier partnerships will have higher levels of pro bono commitment when pro bono is less institutionalized.

Finally, one of the shifts that led to the institutionalization of pro bono was expectations on the part of younger lawyers. Most lawyers begin law school, especially elite law schools
from which most of the associates in large law firms are drawn, with a commitment to social justice and social reform. These attitudes shift over the course of law school when students begin to find corporate law practice more interesting than public interest law (Stover, 1989). In addition, the high costs of law school and the desire for high quality experience push graduates into corporate practice. However, students retain their interest in doing public interest legal work, but they wish to do so within the context of corporate practice. Schools have also been a major site for increasing interest in pro bono work, in many cases renaming their legal aid clinics as pro bono centers, in order to encourage a commitment to public interest service, even when practicing in large firms.

These new graduates enter firms with a strong interest in doing some pro bono work. This is combined with greater pressures on large law firms to continue to grow in size, which makes the competition for the best law school graduates even fiercer. A significant, and fairly inexpensive, means to attract the best graduates is to provide formal pro bono options within the firm to those associates who wish to engage in this work. This indicates that firms that are growing more quickly will be more committed to pro bono than will firms growing more slowly. However, we expect this effect will be most important when pro bono is more highly institutionalized, because potential recruits who will be attracted to formal pro bono programs will have greater options available to them as the practice becomes more widespread, and that a higher level of commitment to pro bono on the part of firms will be a greater benefit in recruitment.

Another way in which growing law firms can benefit from formal pro bono practices is that pro bono cases provide a low-risk (to the firm, certainly not to the clients) way of training associates, when direct training is not as easily performed. Pro bono cases create opportunities
for associates to handle their own cases, get valuable experience in courtrooms and in front of judges, draft in documents, interviewing, dealing with people, and having close contacts with clients (Epstein, 2002; Spaulding, 1998; Lardent, 2000; Rhode, 2005). By having their associates handle pro bono cases, the associates gain experience, but the firm does not have to risk negative repercussions for their paying clients, which could provide significant damage to their relationships and reputations. Firms that are growing quickly would draw greater benefits from pro bono work than would firms that were static or growing more slowly, in that growing firms would provide less opportunities for more closely supervised training in more important cases, while pro bono cases provide a low-risk and fairly autonomous means to provide similar experiences for associates.

_Hypothesis 5: Firms that are growing in size more quickly will have higher levels of pro bono commitment when pro bono is highly institutionalized._

**METHODS**

**Data and Sample**

Our data are drawn from the _American Lawyer’s AmLaw 100_, which is an annual survey of the 100 highest-grossing law firms in the United States. This data includes information on the size of the law firm, the firm’s governance structure, as well as financial performance, including revenues and profits. Furthermore, the _American Lawyer_ adds to this data with a separate survey from the same firms on their level of pro bono activities for the same time period.

To collect data on the client’s of these law firms, we supplement this data with the _National Law Journal_’s annual surveys of “Who Represents Corporate America” and “Who Represents Financial America”. These are surveys of the Fortune 250 and 200 largest U.S. banks (by assets). These clients report on the names of up to 10 law firms that they used during
the previous year, along with the names and affiliations of lawyers on their board of directors, as well as data on the in-house legal staff of the company.

The *National Law Journal* also publishes an annual survey of the 250 largest law firms, by number of attorneys, which provides information on the number of partners, associates, offices, and branch locations, as well as the firm’s average starting salary for its incoming associates. We combined these data with the financial data for the AmLaw 100 firms, which provided a detailed set of organizational characteristics for the firms as well as data on their clients. Due to missing data limitations, we ended up with an unbalanced panel comprised of 1,021 firm-year observations for our final data used in the analyses below.

**Measures**

*Dependent Variable*

To measure the extent to which firms have higher or lower levels of pro bono commitment, we utilized the average number of pro bono hours performed by attorneys in the firm. This measure of pro bono strictly captures the extent to which attorneys within the firm are performing free legal services. When reporting the number of pro bono hours performed by attorneys within the firm, a number of different activities are excluded. Pro bono hours do not include nonlegal work for charities, work done by lawyers in non-U.S. offices, paralegal time, bar association activities, community service, and time spent serving on boards or raising funds for charitable institutions. This definition is similar to the one used by the Pro Bono Institute (PBI) for its law firm challenge, although unlike the PBI, this measure does not count pro bono work by summer associates and paralegals. This definition of pro bono is more conservative and
better fit to our research purpose since this only includes pro bono activity done by lawyers which more accurately reflects law firm commitment to pro bono.

Firms also reported other measures of pro bono activity, including the proportion of their attorneys which performed at least twenty hours of pro bono activity, as well as the total number of pro bono hours counted by the firm. The proportional measure captures the breadth of participation in pro bono activity by attorneys within the firm, but given our hypotheses, we utilized the average amount of pro bono hours as a better measure of the extent to which firms commit to pro bono activity. However, the two measures are highly correlated, and we found substantively similar results when we used the proportional measure as a dependent variable.

Independent variables

Hypothesis 1 predicted that the revenue growth of a firm will be negatively related to pro bono commitment. To test this hypothesis, we included a measure of the change in the gross revenues for each firm. To test hypotheses 2a and 2b, we also included a measure of the profitability of the firm. We measured profitability as the average amount of profits per partner within the firm. Because law firms are private partnerships, and the partners of the firm are the residual claimants of the firms revenues, we utilized the average profits per each equity partner as a measure of the firms overall rate of profitability. This is a more appropriate measure for law firms than are the total profits, or the profits for each dollar of revenue, which fails to capture the ability of the firm to generate profits for its owners.

To test hypothesis 3, we include a measure of the leverage of a law firm as the industry standard measure of the efficiency of law firms (Galantar & Palay, 1991; Gilson & Mnookin, 1985; Daniels, 1992; Sherer, 1995). The leverage of a firm is calculated as the number of
associates in the firm divided by the number of partners in the firm. Firms that are able to more effectively leverage the human capital of their partners will be more effective in generating high quality work from salaried associates.

To capture the effects of firm organization indicated in hypotheses 4 and 5. To measure non-legitimate organizational structures, we included a dummy variable measuring whether or not a firm has a two-tier partnership. A two-tier partnership structure involves a split between equity and non-equity partners, where non-equity partners do not have any ownership in the firm, and are paid a salary instead of receiving a share of the profits of the firm. By contrast, equity partners are co-owners of the firm, and their principal source of income are shares of the profits of the firm, and they have full voting rights within the firm.

Our measure of firm growth was measured by the increase rate in the number of a law firm’s lawyers during the years t - 1 and t. Firms that are growing more quickly face a significant challenge in the recruitment of new lawyers into the firm, especially associates directly out of law school, who are increasingly demanding opportunities for pro bono work. Furthermore, as firms grow more quickly, they have greater demands to train their associates, and pro bono cases allow associates to gain valuable experience appearing before judges and following cases without the risk of alienating any of their corporate clients.

**Organizational Structure, Client Characteristics, and Control Variables**

To control for differences in the total size of the firm, we included the number of branch offices as well as the log of number of lawyers. We also included firm age which is the log of years since the founding of the firm, to control for inertia and operating routines (Hannan & Freeman, 1989; Haveman, 1993). We controlled for firms’ costs of goods sold, which is the
starting salary of each firm’s first year associates, a standard measure in the industry (Hagan, Zatz, Arnold, & Kay, 1991; Gilson & Mnookin, 1985; Uzzi & Lancaster, 2004).

We also controlled for the structure of a firm’s relationships with its clients. We controlled for the average number of in-house counsel at each law firm’s clients. In-house counsel provide an important source of professional expertise in evaluating outside counsel, and are able to more carefully evaluate the services and quality of law firms (Suchman, 1998; Nelson & Nielsen, 2000). We calculated the average number of in-house counsels in a law firm’s network of clients by summing the number of in-house counsel of each client and dividing it by the number of clients. We also controlled for the competitiveness of a law firm’s position relative to other firms by including the average number of outside counsel which serve clients of a focal law firm and the total number of clients of each law firm in the sample (Uzzi & Lancaster, 2004).

We also include dummy variables for each year in our sample in order to pick up any temporal variation outside of our splitting the sample at 1998.

**Institutional Periodization**

Our reviews on critical events in a legal industry suggest that as a more regimented and organized structure, the level of institutionalization of pro bono work shifted in the late 1990’s. However, there was not a single identifiable point in time which we can point to as a fundamental shift in the level of institutionalization. Because of this, we identified a cut-off point empirically by examining the level of pro bono commitment over the entire time period. We end up splitting our sample into two periods, 1992-1998 and 1999-2004, based on trends in the level of pro bono commitment. Figure 1 shows the Prior to 1999, levels of pro bono at large
firms had been declining at an overall level, even as more firms were beginning to establish formal pro bono policies. This indicates that if there are different processes occurring during our sample period, we would expect to see them shift around 1998-1999.

To determine whether or not the selection of the particular cutoff affected our results, we undertake a sensitivity analysis to determine whether our results are sensitive to the specific cutoff period. Based on comparisons of these critical events review accounts, the graphical analyses, and the model specifications, we divided observations for empirical analysis into two historical periods, 1992-1998 and 1999-2004 which correspond with the two institutionalization periods. We also conducted sensitivity tests with alternative timing specifications to investigate when the effects of time dissipated.

**Statistical Model**

Recall that our data are an unbalanced panel different law firms were sampled at different time periods on the same items, with a subset of firms being repeatedly sampled (Firebaugh, 1997). To model this data structure, we used a pooled cross-sectional fixed effects time series regression model (Greene, 2000). This model enables us to control for any factor that is stable over time.

Also, we checked to be sure that our analyses did not suffer from attrition problems, which occur when the presence of certain types of organizations (e.g., small organizations) leads to biased estimates because of their high probability of disappearing from the data set. Such exiting might be endogenously related to the main independent variables. Therefore, we
excluded such cases in the population during the study period and ran analyses following the above models. The pattern of results remained same. For the purpose of the discussion in this paper, we report analyses with full data.

RESULTS

We tested each hypothesis with reference to results in the model 1, 2 and 3 presented in Table 1. Hypothesis 1 states that highly growing law firms in gross revenue will be less likely to be committed to pro bono activity. As Hypothesis 1 predicted, there is a negative effect of revenue growth rate on pro bono commitment. When there are opportunities to generate revenue, law firms are in favor of doing paying work instead of pro bono activity. This result suggests that law firms do not commit to pro bono activity in the expense of their economic gains implying a substitution effect between the two.

Hypothesis 2 states that the more profitable firms will be less likely to be committed to pro bono activity given the economic pressure to maintain their profitability. In a full model, the coefficient of firm profitability was insignificant suggesting that there is no difference on pro bono commitment based on firm profitability. However, this result varies in different pro bono institutionalization windows. In an early stage of pro bono institutionalization, more profitable law firms, in fact, did more pro bono work although the effect of law firm profitability on pro bono commitment was weak. This result indicates that whereas more profitable law firms are under pressure to maintain their profitability, they might face more of noblesse oblige type of institutional pressure to do pro bono especially when overall pro bono commitment in legal
industry decreased. However, under the late period of pro bono institutionalization, as expected, the significantly negative coefficient of law firm profitability suggests that less profitable law firms were more likely to engage in pro bono activity in the late period of pro bono institutionalization than were more profitable law firms. This indicates that less profitable law firms are more likely to engage in legitimacy enhancing activity. This result strongly supports Hypothesis 2b.

Hypothesis 3 states that law firms with a higher leverage ratio will be less likely to be committed to pro bono activity. As Hypothesis 3 predicted, a leverage ratio variable has a negative and significant effect on pro bono commitment. More efficient law firms are more likely to engage in revenue generating work instead of pro bono work. This indicates that as partners leverage their human capital more effectively, enhancing the overall level of firm efficiency, law firms are less likely to engage in pro bono activity. In addition, as law firms become more leveraged, there is more competition and less change to be promoted to partner among associate lawyers. Under the tournament model, associate lawyers are inclined to spend their time on billable work instead of pro bono work because ability and quality of good lawyers was evaluated by their economic performance. However, this negative effect of leverage ratio on pro bono commitment became less salient as pro bono became a legitimate form of legal practice and expected for all firms. As seen in the result, although the coefficients of leverage ratio are negative and significant in all models, the level of effect and significance became less under the late period of institutionalization.

Hypothesis 4 states that law firms with a new governance structure will be more likely to be committed to pro bono activity during the early period of pro bono institutionalization and this effect will disappear as pro bono is institutionalized. As expected, there is a significantly
positive coefficient of two-tier partnership on pro bono in an early period and it became insignificant in a late period. This suggests that when firms adopted a new governance structure which might be seen as an illegitimate practice, they face a legitimacy crisis and subsequently engage in more pro bono activity which ultimately secures their legitimacy as a professional entity.

Hypothesis 5 states that highly growing law firms in size will be more likely to be committed to pro bono activity during the late period of pro bono institutionalization. As predicted in Hypothesis 5, there is a significantly positive effect of growth in size on pro bono commitment in a late period. This indicates that as pro bono becomes institutionalized, highly growing law firms in size are more likely to make pro bono opportunity available in order to attract talented law school graduates, and to train young associates.

No control variable except firm age in the model 1 and model 3 and average number of in-house lawyers in model 3 had a significant effect on pro bono commitment. The significant coefficients for firm age suggest that older law firms are more likely to do pro bono activity especially when pro bono is expected for all firms. The significant coefficients for average number of in-house lawyers indicate that as pro bono become institutionalized, significantly more pro bono hours has been devoted by law firms with clients who have a large in-house legal department.

We conducted sensitivity analysis to further examining the selection of the two time period cut points. We estimated 5 time periods set at one year intervals for two year before 1999 and two years after 1999. While 1999 as a cutting point was the best fit, the statistically significant differences between the two time periods remain if we select the cut point at 1998 and 2000. This indicates a transition period during which cut points are not very sensitive. Effects
change if we select cut points before 1998 or after 2000. This result is quantitative support of pro bono institutionalization process, which manifests different effects of institutionalization earlier and later in the observation period.

In addition while our results are consistent with our hypotheses, we were concerned about the question of endogeneity. We argue that economic performance will affect the level of a firm’s commitment to pro bono, but it is clearly possible that economic performance is a result of pro bono. This is particularly true when considering that pro bono work often involves a tradeoff between billable hours and hours spent on pro bono cases. To establish the direction of causality, we ran models to determine whether or not the amount of pro bono work a firm did affected the underlying economic performance of the firm.

We ran models using two economic performance of the firm, i.e., revenue per lawyer and profit per partner and two pro bono commitment measures, i.e., average pro bono hours per lawyer and percentage of lawyers doing more than 20 hours per year, respectively. Either of pro bono commitment measures did not significantly affect revenue per lawyer of the firm. Similarly, average pro bono hours per lawyer did not affect profit per partner of the firm. Although percentage of lawyers doing more than 20 hours per year had a negative effect on profitability but the effect was marginal.

These results indicate that while economic performance has an effect on pro bono commitment, we were not able to find evidence that pro bono had a short term positive or negative effect on either revenues or profitability. Instead we find that, at least in the short term, pro bono is revenue and profit neutral, neither providing immediate economic returns to the firm, nor does it reduce revenues or profits.

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2 Results are available upon request
CONCLUSION

Pro bono work has become an important part of corporate law practice (Cummings, 2004). As legal aid clinics decrease in resources, and in many cases are closed down, there has been a dramatic increase in the need for attorneys in private practice to perform free legal services to poor clients who are not otherwise able to access the civil courts. The pressure on elite law firms to support and encourage pro bono work has come from the legal profession in general, because of the high status that large firms have in the profession, as well as young lawyers who desire the ability to work on pro bono cases while also working for large corporate clients that are the main source of revenues for their firms. These changes have made understanding the factors that drive different levels of commitment in large law firms an increasingly important topic of study.

This paper examines what factors increase or diminish the amount of pro bono work that attorneys at large law firms perform. Overall, we find that the effects of economic and organizational factors on law firms commitment to pro bono changes depending on changes at the institutional level of the profession. During most of the 1990s, pro bono was seen as a positive activity on the part of large firms, but not something that was expected of these firms. However, by the turn of the millennium, nearly all large firms were participating in pro bono activities, and providing significant levels of support for their attorneys to take on pro bono cases. These two regimes, one where pro bono was encouraged but not expected, and later when pro bono was expected of large firms, shape the ways in which law firms participate in charitable work.

When examining economic factors, we find that they are fairly consistent over the two periods we examine. We find that firms that are increasing their revenues consistently perform
less pro bono work. As they are able to increase their market share and draw in larger amounts of money, firms will still perform pro bono work, but at lower levels than firms growing at a more moderate pace, in order to fully capture the rents available to the firm. We find a similar negative effect for the efficiency, or leverage, for the firm, with more efficient firms having lower levels of commitment to pro bono work than less efficient firms. Firms that are better able to leverage the human capital of their partners through their associates had less need of the training possibilities of pro bono work, as well as greater incentives to utilize their high leverage to generate revenues and profits for the firm. However, the impact of efficiency on pro bono commitment decreased as pro bono becomes institutionalized. The profitability of a firm tells a slightly different story. When greater participation in pro bono was elective, there was marginally significant and positive effect for firm profits on the level of pro bono commitment suggesting that more profitable firms had a greater levels of commitment to pro bono for needy clients using more available resources and responding to external expectation as leading organizations. When pro bono was more institutionalized, however, more profitable firms had lower levels of commitment to pro bono than less profitable firms, suggesting that they did not need the greater visibility and professional image that comes from pro bono work, while less profitable firms saw an increased commitment as a means to building their business and reputation.

When we examine organizational characteristics, we find that these effects differ dramatically by period. In the less institutionalized period, we find that firms that adopt an organizational structure that was seen as highly corporatized by the profession, the two-tier partnership, they had much higher levels of commitment to pro bono work. While the main purpose of adopting a two-tier partnership structure was to signal an efficient and responsive
firm to their corporate clients, these firms also faced a legitimacy challenge within the profession, where concerns about the changing structure of law firms led many to see changes such as the two-tier partnership as a harbinger of the end of the legal profession as a profession. One way firms managed this legitimacy problem was to engage in activities that signaled a deep commitment to professional norms, and pro bono work was one of the more significant ways in which firms could do so. However, as two-tier partnerships became more common, and pro bono became a less effective means of showing distinctions between firms as it became more universal, the effect of two-tier partnership structures disappears. One of the central benefits of pro bono work by firms is to provide significant and important training to their attorneys, especially incoming associates. We hypothesized that firms that are growing more quickly will have greater levels of commitment to pro bono work, especially in the later period, as needs for training and recruitment increase. We find that while the effect in the early period is insignificant and the effect in the later period is positive and significant. This suggests that once pro bono is expected for all firms, they promote it in order to get a competitive edge in recruiting war, and use it as a legitimate means to provide valuable training to newly recruited attorneys with low risk. And, we do find that the effect for the overall size of the firm in the later period is insignificant, which suggests that it is more a problem of growth than it is of managing large numbers of attorneys.

Our paper contributes to the literature on institutional change (Clemens & Cook, 1999; Schneiberg & Bartley, 2001). Much of the work in institutional theory on how organizations respond to changes in the institutional environment has focused on the process of adoption and diffusion, where the question is whether or not an organization adopts an institutionalized practice or structure. However this leaves open the question of whether or not these changes are
meaningful (Meyer & Rowan, 1977; Westphal & Zajac, 2001), nor the extent to which some organizations are more committed to the institutionalized practices than are other organizations. By examining how different organizational and economic factors affect commitment to pro bono under two different institutional regimes, we begin to provide a framework for understanding different levels of participation in institutionalized norms.

This paper also provides some insight into changes in the practice of philanthropic activities by organizations. Work on corporate philanthropy has focused on the determinants of providing money and grants to external non-profit organizations, whether local charities, political lobbyist organizations, foundations, and other such agencies. However, increasingly private for-profit organizations are being called upon to perform charitable services in-kind as the resource environment for charitable and non-profit organizations decreases. In the field of law, the decrease in legal aid has created conditions where attorneys in private practice are increasingly needed to provide the work that had previously been done by dedicated public interest lawyers. This move is similar to changes in other industries where firms and corporations are increasingly involved directly in charitable activities, and by understanding how law firms shape their commitment to the provision of charitable works, we can begin to understand the more general process of the private provision of public goods in other areas of the economy.
FIGURE 1
Pro Bono Commitment by Year, All Firms
TABLE 1
Fixed Effects Panel Regression of Pro Bono Commitment of Law Firms

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<tr>
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<td><strong>Firm Performance</strong></td>
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<td>Change in Gross Revenues</td>
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<td>-0.232**</td>
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<td></td>
<td>(0.066)</td>
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<td>(0.067)</td>
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<td>Profits per Partner (ln)</td>
<td>3.434</td>
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<td>(3.640)</td>
<td>(5.732)</td>
<td>(5.375)</td>
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<td>-0.129</td>
<td>0.143*</td>
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<td>(0.066)</td>
<td>(0.113)</td>
<td>(0.071)</td>
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<td>Two-Tier Partnership</td>
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<td>(1.667)</td>
<td>(2.753)</td>
<td>(2.429)</td>
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<td>Leverage Ratio</td>
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<td>(0.014)</td>
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<td>(0.020)</td>
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<td>Firm Costs</td>
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<td>(0.079)</td>
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<td># of Branch Offices</td>
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<td>(0.174)</td>
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<td>(6.629)</td>
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<td>Firm Age (ln)</td>
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<td>(6.330)</td>
<td>(58.122)</td>
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<td><strong>Client Characteristics</strong></td>
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<td>Average # of In-house Counsel</td>
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<td>(0.009)</td>
<td>(0.029)</td>
<td>(0.008)</td>
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<td>Average # of Outside Counsel</td>
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<td>1993</td>
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<td>2004</td>
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<td>4.21***</td>
<td>9.68***</td>
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+ p<.10; * p<.05; **p<.01; *** p<.001 (two-tailed tests)
Standard Errors in Parentheses
REFERENCES


number (Ex, B5 or 12).


