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**Will There Be Fallout from Clementi?
Global Repercussions for the Legal Profession
after the UK Legal Services Act 2007**

John Flood



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Will There Be Fallout from Clementi? The Global Repercussions for the Legal Profession after the UK Legal Services Act 2007*

John Flood ♦

Abstract

The paper presents the historical arguments that led to the Clementi review of the legal profession and its culmination in the Legal Services Act 2007. There were two strands: one based on consumerism (too many complaints about lawyers' services); the other based on a sustained investigation by the competition authorities into professions' restrictive practices (anti-competitive unless proved in the public interest). These led to the abandonment of traditional forms of organization for lawyers' practices (alternative business structures) and the imposition of a new regulatory structure for the profession (oversight and frontline regulators).

In the second part of the paper I examine the trends in lawyers' practices as currently pursued and as envisaged by the Act as aligned with our conceptions of professionalism. Using two hypotheticals: Tesco Law, and Goldman Sachs Skadden, I chart a move from professionalism to deskilling and proletarianization in the legal profession, not unlike that which existed in the 19th century.

This dystopian view, which is essentially a top down conception of the legal industry, is contrasted with a more optimistic view based on the changes in the idealization of careers and life as represented by Generation Y. This is augmented by the changing nature of work, ie, post-Fordist, within organizations which in a number of ways escapes control and measurement because the distinctions between production and consumption, work and leisure allied with distributed network forms of production blur the boundaries that we have taken for granted. In contrast to the socio-economic approaches, I argue that we must examine conceptions of career, inclusion and exclusion, vocation, and community in order to understand how the professions will adapt to the postmodern condition.

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* Outline of paper presented at the University of Miami School of Law, in cooperation with the Miami-Florida European Union Center of Excellence, a partnership with Florida international University, and the Jean Monnet Chair on April 4, 2008.

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Questions

Two years ago I was at a meeting in Indiana discussing the globalization of the legal profession. Not perhaps the most typical venue for such a discussion. But what surprised most was the talk among the American lawyers present. One word fell from their lips time after time: Clementi. An invocation that generated both awe and fear. Why?

Sir David Clementi is an affable fellow, an accountant, a former deputy governor of the Bank of England and chairman of Prudential one of the UK's largest insurance companies.¹ In 2003 he was picked by Charlie Falconer, the then Lord Chancellor,

To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector.

To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified.²

These innocuous terms of reference gave rise to one of the most far-reaching analyses and set of proposals for reforming the legal profession that the UK, or indeed, the world, has seen. The culmination of this work was the Legal Services Act 2007.

This paper explores the genesis of the Act and its consequences actual and anticipated. I argue that the present trend of the legal profession is moving away from traditional conceptions of professionalism to a commercialized and industrialized alternative. In speculating about the potential outcomes, with the use of hypotheticals, I suggest that deskilling and deprofessionalization will be the logical outcomes. Yet in spite of this dystopian view, which among other things will compromise the role of the law school, there are signs of optimism to be found among newer generations' approaches to work-life practices that signal the tendency towards immaterial labor as the descriptive metaphor for the new world.

How the Clementi Review Came About

Before I analyze the Clementi commission's work, let me explain how and why the review came about. Two converging processes were in play. The first was a product of complaints about lawyers' services, both solicitors and barristers. And the second was an investigation by the UK competition authority, the Office of Fair Trading, into the restrictive practices of professions: were they able to justify their restrictions on entry and modes of practice as in the public interest.

Profile of the Legal Profession

Let me take another step back. What does the English legal profession look like? The UK has a population of around 60 million people which is serviced by 125,629 lawyers (3,500 who are located in another 70 countries) (2007 statistics). In 1990 there were only 64,379 lawyers. The increase is significant (a 95% increase).

In 2003 legal services generated about \$38 billion of the UK's gross domestic product (1.73%), and \$4 billion worth of legal services were exported compared to imports of legal services of \$800 million. The UK is a net exporter of legal services to the value of \$3 billion.

As in the US the UK legal profession is predominantly made up of small law firms with an increasing number of large law firms. Although aspects of the profession are quite specialized, there are essentially two hemispheres of lawyers who practice for individual clients and those who practice for corporate clients.³ The corporate sector includes a number of international law firms among which are Clifford Chance and DLAPiper, both with over 3,000 lawyers making them the largest law firms in the world with Baker & McKenzie. Yet it is, however, the individual sector that gives rise to the greatest number of complaints. Individual clients are typically one-shot clients with little knowledge of or expertise in legal matters.⁴ Corporate clients tend to be more sophisticated and are knowledgeable repeat players in their use of lawyers and law firms.

Complaints Against Lawyers

What does the profile of complaints look like? It looks similar to the types of complaints made against lawyers in the US. In 2006 the Law Society received over 17,000 complaints.⁵ And *Which?* (the magazine of the Consumer Association) reported that a third of people think they received poor service from their lawyer. Complaints included lawyers not telling their clients about how much they will be charged, being dilatory about giving estimates with few given in writing. Other complaints included rudeness, arrogance, lack of communication, delays, getting higher bills than expected, and incompetence. Delays came top of the list: as the Consumers Association reported with complaints about house transfers, "According to one respondent it would have been quicker to do a course in conveyancing."⁶

Unfortunately for lawyers, the high number of complaints was accompanied by an inefficient and inept system of handling complaints, which included three levels for the client to go up before a final resolution might be achieved. Because of this the backlog of complaints has been rising year on year. And the government established Legal Services Commissioner has begun fining the lawyers' professional bodies (the Law Society and the Bar Council) for not keeping their houses in order.

Complaints against lawyers have grown with a concomitant rise in the consumerism movement. (This coincides with the rise of immaterial labor as discussed later in the paper.) Consumers are no longer the passive receivers of goods and services who put up with poor delivery. Note the outcry about the "Heathrow Hassle" and the awful debut of Terminal 5. NGOs like *Which?* (Consumers Association) have been given the right to bring "supercomplaints" about industries' practices, e.g. supermarkets as cartels.⁷

If lawyers had been able to clear up these backlogs of complaints, if they had listened to the claims of consumer watchdogs, they might have prevented or postponed what was to come.

Is the Legal Profession Anti-Competitive?

The second strand that led to Clementi was the investigation by the Office of Fair Trading (OFT) into whether restrictive practices were distorting professional competition.⁸ This was promoted by the UK Treasury and included the professions of architects, lawyers, and accountants. The OFT focused on three themes: restrictions on entry, restrictions on conduct, and restrictions on

methods of supply, which included aspects of price competition, advertising, and types of business organizations through which professions deliver their services.⁹

The OFT argued that

- The conveyancing and probate markets should be liberalized to remove the lawyer's monopoly.
- Legal professional privilege should be restricted because of concern that it may distort in favor of lawyers as against non-lawyers.
- Cold-calling by lawyers should be permitted (and the Law Society changed its rules here).
- Multidisciplinary practices should be permitted: it should be possible, e.g. for lawyers and accountants to merge, or for real estate entities to practice together.
- Moreover, lawyer-client privilege should be curtailed to those areas where other professionals could not give cognate advice.¹⁰

The government agreed with all except the restricting of legal privilege, much to the annoyance of accountants who were advocating either an extension of the same rights to them or a shrinking of lawyers' rights.¹¹

Finally, the OFT pointed out that there was a regulatory maze surrounding lawyers having identified 22 regulators, which were incoherent, did not interface easily, and had gaps between them.¹² The OFT did not make any recommendations in relation to this but it was picked up by Clementi.

The government decided to establish the Clementi review.

Clementi Review

Many government commissions are passive, inviting interested parties to contribute evidence, then pondering among themselves and producing a report. Clementi was different. His team engaged in outreach: they sought out lawyers, consumers, policy wonks, academics and more. They held meetings in different parts of the country. Indeed when Richard Abel was introducing his book on the English legal profession at a seminar held at the Institute of Advanced Legal Studies in London, Clementi and his team turned up, much to everyone's surprise.

Regulating the Legal Profession

In a report of nearly 200 pages Clementi examined the regulation and structures of the legal profession.¹³ He identified six key objectives for a regulator of legal services. They were:

1. Maintaining the rule of law
2. Access to justice
3. Protection and promotion of consumer interests
4. Promotion of competition
5. Encouragement of a confident, strong and effective legal profession
6. Promoting public understanding of the citizen's legal rights

These were to be allied to a set of principles and precepts which would be embodied in the professional codes of practice and included:

- Independence
- Integrity
- The duty to act in the best interests of the client
- Confidentiality

Agreeing with OFT that there was a redundancy of regulators and regulation, he proposed a two-tier regulatory structure that would consist of a super-regulator that would sanction a series

of frontline regulators who would be involved in the day-to-day regulatory activities. Clementi discussed two approaches to the architecture of regulation. One, Model A, would remove all present regulators and replace them with a single overarching regulator, a Legal Services Authority. The second, Model B+, would create a supervisory Legal Services Board that would have oversight of frontline regulators and a majority of non-lawyers. This would give a level of independence from government control, it would leave regulation at the practitioner level where it was most needed, and it would provide an easier transition than Model A. The motif was to be reform not revolution in regulation.

The frontline regulators would derive their authority from the Legal Services Board not directly from the state. In addition, a complaints handling body would sit over them as part of the Legal Services Board to handle complaints. It would require the frontline regulators to take the necessary disciplinary action.

Which legal services should be within the regulator's remit, Clementi left it to government to determine.

According to Clementi current regulation mixed its aims. Some is devoted to professional bodies and others to activities. Moreover, there is an emphasis on the individual lawyer rather than the law firm or economic unit. Clementi proposed that the economic unit should be the primary focus of regulation, not the individual. Interestingly, Clementi thought that regulation should promote a strong and healthy profession because of the legal profession's success in promoting itself outside the UK. Globalization was included in the menu.

Organizational Structure of the Legal Profession

With this in mind Clementi tackled the organization of the delivery of legal services. He deemed them as unnecessarily restrictive, with, e.g. solicitors in partnerships and barristers as solo practitioners. Freedom to organize as professionals want would assist the promotion of competition. In order to ensure standards would not drop, Clementi proposed that an organization delivering legal services should have a head of legal practice and a head of finance and administration, which could be the same person. These would be the responsible reporting individuals to the regulators, i.e. the entity not the individual lawyer.

Clementi didn't accept any of the arguments put forward by lawyers about their respective styles of organization. He argued they should be opened up. His proposals include two stages.

First would be the emergence of legal disciplinary practices (LDP) that would be composed of different types of lawyers. The form could be corporate, partnership, or whatever. It could be managed by lawyers or non-lawyers. And, quite radically, it could have outside owners,¹⁴ as long as they passed a "fitness to own" test. Lawyers would have to constitute the majority of the managers. Outside owners would not be permitted to interfere with individual cases or have access to client files. And there would be conflicts of interest rules against taking clients when the outside owner has an adverse interest in the outcome.

LDPs were only the first step. The second would be to permit multidisciplinary practices (MDP) where lawyers and non-lawyers work together and share fees.¹⁵ Clementi could see lawyers and accountants practicing together delivering tax advice and investment services; lawyers and real estate specialists, surveyors, and architects providing construction packages; motoring organizations offering legal, insurance, health, and property repair services; and labor unions packaging legal services with health and employment issues. The potential range of MDPs could run from the needs of the individual client to the large corporate client. Integrated service would be seamless: one-stop shopping.

Clementi identified a number of issues with MDPs including the extent of regulatory reach (would a single frontline regulator deal with all professionals or would it be by sector?), the extent of legal privilege (who would be bound by what rules?), and would there necessarily be a

dominant profession? Unlike LDPs where lawyers would be in the majority of practitioners, they could easily be in the minority in an MDP. What would the role of outside owners be?

Clementi noted that instances already existed. Law firms gave financial advice and as such were regulated by the Financial Services Authority. Outside the UK MDPs existed. For example, Rödl & Partner, a German legal and professional services firm offers tax, legal and investment advisory work for companies that want to open in foreign markets. Rödl has 80 offices worldwide. The firm even advises law firms.¹⁶

Clementi understood that the issues with MDPs were complex and so agreed that LDPs should be the first incarnation of the new organization with MDPs coming on stream later.

The White Paper: The Future of Legal Services: Putting Consumers First

Following the Clementi review the government produced a White Paper—a prelude to legislation containing government’s proposals and statements of policy—which was consumerist in orientation, given that its subtitle was “putting consumers first.”¹⁷ It essentially followed the Clementi recommendations. This was a lively period of debate and lobbying by the legal profession. Finally, the Legal Services Act came into being after a prolonged scrutiny by Parliament.

The Legal Services Act 2007

The act was signed into law at the end of 2007.¹⁸ Again it followed the course set by the OFT, Clementi, and the White Paper. There would be a Legal Services Board (LSB), which would also have a Consumer Panel, and there would be an Office of Legal Complaints. Under the LSB would be the frontline regulators (i.e., Clementi Model B+).

But it was in the sphere of “Alternative Business Structures” that the act took a more radical view than its predecessors. Instead of the two-step process of first LDPs, then MDPs advocated by Clementi, the act merely said “anything.” The new structure could be an LDP or MDP. As long as the new structure obtained a license from its regulator, it could exist.

The Legal Services Act has sanctioned both the partial and complete ownership of legal practices by external investors. The way forward for a supermarket or investment bank to own a law practice has been opened. Admittedly none of this will be implemented until 2010 or later until the regulatory structure is in place, but it’s there.¹⁹

The Futurology of the Legal Services Act

What then are the possible consequences of the act? For US lawyers they are potentially dire because they will place them at a competitive disadvantage in the global marketplace.²⁰

Let’s consider, as a thought experiment, the two extremes: “Tesco Law” and “Goldman Sachs Skadden”.

Tesco Law

Tesco’s has recently opened its US branch of supermarkets in California. It was able to do this because it is the most profitable supermarket in the UK. Where it already runs in-store pharmacies and doctors’ walk-in surgeries. Both are popular. The stores are situated in middle class and working class areas of cities and Tesco runs the most successful loyalty card in retail history.²¹ Tesco has been able to mine the data—more rigorously than any other store—gained through its loyalty card not only to increase the sales of its products in store and online, but also to generate huge revenues from providing financial services (credit cards, insurance, banking).²²

It gives consumers what they want and what they think they might want, where they can get it easily, and at attractive prices.

Imagine the typical High Street or Main Street lawyer: a dull office, rather forbidding, no list of prices, no discounts and slow responses to queries. All quite off-putting to the average consumer.

Suppose Tesco decides to offer legal services. It could have a section near the doctor and pharmacy, brightly lit, a warm welcome, comfy chairs, and familiar surroundings. Prices clearly marked along with the month's special offers. And no mention anywhere of billable hours. Even the checkout clerks could be primed to spot potential customers. Credit card rejected at the cash desk; maybe some help with debt management. Special offers after the Christmas big spend to help with the debt incurred over the holiday season. Someone with bruises; a bit of help on the domestic relations front perhaps. It's a captive market that no lawyer can compete with on price or service.

The work could be commoditized, outsourced (to India), and referred out if specialist help is needed. Lawyers would be hired at cheap rates—it's a competitive market after all. At least they would get a corporate discount in the store.

Goldman Sachs Skadden

Mergers and acquisitions is lucrative work. In 2007 Goldman Sachs' revenues were \$46 billion with 30,000 employees (6,500 in India). In 2007 Skadden Arps finally broke through the \$2 billion revenue mark with approximately 2,000 lawyers.²³ Suppose Goldman Sachs could buy Skadden and offer a total M&A package at rates that would not depend on variable professional fees but straightforward value billing instead, that could offer a seamless service, that might even undercut inhouse legal rates; it could be attractive to corporate clients. If the big law firms get their way, conflicts rules will be a thing of the past. For the law firm it could potentially be a rewarding marriage, one that reaches across the globe without having to worry about opening offices in strange places. Moreover, all the difficulties that arise in decision making in partnerships would disappear because there would be no need for partners and associates, only employees and those fortunate enough to convert equity into cash and stocks.

There are other possibilities as various banks, funds, etc, consider investing in law firms. Law firms can be good revenue streams with bills coming in each month. Or organizations like the Automobile Association extend their legal services to their members. Or labor unions add to their menu of benefits. Companies already offer legal services as part of a flexible portfolio of benefits to their employees and one can envisage companies offering these packages.

In the Redesigned Law Firm

My colleague, Robert Rosen, in his seminal article, "We're All Consultants Now",²⁴ speculated on how the changes in companies would affect the way legal services are contracted for and delivered. Gone are the days of the wise counselor advising the CEO on his next strategic move; instead there are teams, amoeba-like, that shape shift to incorporate skills and competencies as they are required for the project. And lawyers are part of these teams, whether inhouse or external lawyers. The redesigned company is permeable and malleable, no longer quite a fixed entity/identity.

The Legal Services Act will give rise to the redesigned law firm. There is no requirement for the redesigned law firm to adhere to the Cravath model of law firm growth and design (see below). In fact there is every commercial reason for the redesigned law firm to move away from that model to a more easily controlled and controllable corporate structure where accountabilities are calibrated and audited.

The redesigned law firm is, in effect, continuing changes that have been occurring. Partnerships are rarely single tier equity structures; they are two-tiered or more. Partners are placed under enormous pressures to bill hours and generate business. The large UK law firm, Eversheds, is introducing a system of soccer red and yellow cards to warn partners of when they are slacking.²⁵ There is no security in being a law firm partner any more.

The Cravath model of law firm development, alluded to earlier, was predicated on the idea that associates' investment in their probation (a form of deferred gratification) could lead to the reward of partnership.²⁶ In the redesigned law firm this is fast disappearing. Wilkins & Gulati have demonstrated that partners must be selective about which associates they choose to train on the path to partnership.²⁷ Because of the pressures on partners they can't embrace the entire cohort. This division between the trained and the non-trained establishes two-tier associateships aligned with two-tier partnerships. Those in the latter class are consigned to high-turnover paperwork until burnt out. They will never be considered for partnership. Add to this class the group who become "staff attorneys" or "contract attorneys" and one sees a fragmentation of the composition of the law firm and the legal profession emerging with dynamic force. In one sense we see the deskilling of the workforce.

Let me mention two further points in relation to the redesigned law firm. In 2004 Baker & McKenzie decided to cease being an Illinois partnership because of the difficulties and obstacles the firm encountered with this structure in view of its global organization. It reorganized as a Swiss *verein*.²⁸ The second point relates to the ability of Washington DC law firms to run wholly owned subsidiaries engaged in other businesses, such as health economics or financial consulting.²⁹

We are now going beyond the gentle transition from traditional partnership to managed professional bureaucracy.³⁰ Furthermore, this year Lyceum Capital, a UK private equity fund, announced that it was to target law firms for investment opportunities.³¹

Generation Y

Other forces are at play in the redesigned law firm. The discussion above looks at the process of the division of labor in the law firm from the top down. What is happening from the bottom up? Is it any different? Is there reason for optimism in dystopia?

Sometimes we elide one generation with another without distinguishing their characteristics, their expectations, their choices. There is a strong argument put forward that the millennial generation known as Generation Y has a different perspective on life choices as compared with earlier generations. According to one commentator: "People in this group see their professional careers as a series of two-to three-year chapters and will readily switch jobs, so companies face the risk of high attrition if their expectations aren't met. The Gen Y cohort, already representing 12% of the US workforce, is therefore perceived as substantially harder to manage than its predecessors."³² And, moreover, "Generation Y lawyers will see their legal careers as temporary arrangements, as opposed to lifetime commitments. Generation Y lawyers will approach their legal careers in a more business-like fashion."³³

Elsewhere we see the establishment of new ventures such as Axiom Legal, a company that hires associates eight to ten years in to their careers who have made a choice to abandon the tournament in favor of a more relaxed life-work balance.³⁴ They are employed to work in inhouse legal departments for however long the client wants them present. The knowledge base is provided by Axiom, but they work in the teams of the client. They are cheaper than a law firm, but of course their salaries are lower too. But they are the repositories of knowledge, skills and competencies that law firms agonize over how to retain, but don't.³⁵

In the redesigned law firm there will evolve a concurrence of styles that will accelerate convergence towards the new law firm.

How will legal education as presently structured and taught by mostly non-Gen Y professors evolve? Is it trapped in a time warp? Does it perhaps represent the last stronghold of values that seem to be slipping out of the legal system?

The Decline of Professionalism?

Professions have been characterized in a number of ways over the years, some laudatory, others skeptically. Dahrendorf, a member of the 1979 Benson commission studying legal services, depicted them as a civilizing force in an increasingly commercialized society. Parsons talked of professions having a bargain with community. In exchange for the permission to self-regulate, the profession would not abuse its monopoly powers. Johnson saw professionalism as a particular mode of resolving the tension in the producer-consumer relationship, in favor of the professional. While these interpretations focus on the power of the professional, others like Friedson have underpinned the role of knowledge, noting the fluctuating balance between technical knowledge and symbolic representations.

Professionalism is now assuming the role of a folk term, a taxonomic trope, which triggers set responses without reflection.³⁶ In the redesigned law firm the ascendance of technical expertise is trumping and exiling symbolic functions. The result of the move to the technic is the abandonment of the mythic power of law in favor of the application of rules, regulation, and audit.³⁷ As Rosen puts it, “To what extent is legal work capable of creating for lawyers a (distorted, but precursive) sense of a realized self? How is work part of the professional’s nature? Does a legal career today create character or only simulacra of character?”³⁸ And do clients care about character and professionalism?

Deskilling is an essential component of deprofessionalization. It is the reformulation of time, space and action which tries to internalize new concepts without detracting from the old, but nevertheless supplanting them. Somehow a concept of profession might endure but it will bear little resemblance to its precursors. It is the deliberate erasure of the past and we are left wondering what values, if any, have persisted. The history of the redesigned law firm will be an interesting text to read.

Is this merely a one-way route to Weber’s iron cage? Not necessarily.

Immaterial and Affective Labor

The relations of the material conditions and the organization of the new forms of labor to capital are bringing about significant changes in the role of labor. There has long been an alliance between the state and professions based on trust. As the recent past has demonstrated the state no longer relies on or trusts these groups. This parallels the decline of the welfare state. The state has shifted its allegiance to the corporate and managerialist elements of society to achieve its goals. This provides for measurability and audit without the clutter of status and values. So the established professional structures and institutions are both undermined and altered. Unless the new professionals embrace the commercialized professionalism and are subsumed to its control, they are ignored and made redundant. They become the worker.

Managerialism looks to rationality and accountability for its mode of control. But in the post-Fordist society that is not always achievable. Because of the rise of technologies in the workplace the potential for different ways of working have emerged. The knowledge worker is not a mere slave to the machine but a creator with it. Appeals to flexible specialization are now redundant. As Rosen has shown the redesigned company, and by extension the redesigned law firm, is composed of shifting constellations of teams and cohorts that are permeable. They both celebrate the collective and the individual. They combine inter-individuality and trans-individuality. The first enables groups to form to produce products and services; the second takes the received and collective knowledge we already possess and enables us to become individuals

within the collectivity.³⁹ The groups and teams are in reality political forms where the unexpected can happen, the possible is anticipated, and where tastes, affects, language games, etc, have a role. Immaterial labor therefore is “that which creates immaterial products, such as knowledge, information, communication, a relationship or an emotional response”.⁴⁰ It is not the labor that is immaterial but the product. Production and consumption become intertwined. It is no longer merely a case of the professional transmitting knowledge to a client, but rather their exchanges enhance each other’s knowledge within their spheres. They both add value to the process. The key elements are collaboration, communication, and cooperation, all of which are immanent to the laboring activity itself.⁴¹ The political economy of labor now embodies elements that don’t normally allow themselves to be measured in a rational, calculable way.⁴² Labor time is no longer sufficient as a measure of a worker’s productivity in the new redesigned company and law firm. The division between work and non-work becomes harder to make. Because it is increasingly difficult to distinguish between productive, non-productive, and reproductive labor, Hardt & Negri argue that all social life has been rendered productive: “life is made to work for production and production is made to work for life”.⁴³

The role of technology is implicated in the shift to immaterial labor as distributed network forms of production become the norm. These collaborative ventures are visible in the forms of blogs, Facebook movements, MySpace pages, Second Life incursions, etc, which demonstrate the subjective turn in the development of free labor that traverses the conventional boundaries of production and leisure. And one must “emphasize the role of affect as the binding, dynamic force which both animates those subjectivities and provides coherence to the networked relations.”⁴⁴ Moreover, the distributed network form shifts this entire process to the global level. As producer and consumer, author and audience elide in this sphere, social networks “offer unprecedented capacities for creating new forms of life and new relations of affinity.”⁴⁵ It is then in these new social forms of working that we begin to see that change is not irrevocably one way.

¹ The previous major examination of the legal profession in 1979 was also led by an accountant, Sir Henry Benson (The Royal Commission on Legal Services in England and Wales, Cmnd 7648).

² Sir David Clementi, *Review of the Regulatory Framework for Legal Services in England and Wales in England and Wales: Final Report*, Dec 2004 at 1.

³ John P. Heinz and Edward O. Laumann (1982) *Chicago Lawyers: The Social Structure of the Bar* (New York: Russell Sage Foundation)

⁴ Marc Galanter, 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." 9 *Law & Society Review* 95-160.

⁵ Guardian Oct 26, 2006: <http://www.guardian.co.uk/money/2006/oct/26/yourrights.legal1>. In the year 2006/7 the Law Society’s Legal Complaints Service (LCS) and the Solicitors Regulation Authority (SRA) closed 20,364 complaints supported by a complaints handling budget of £36 million, see Zahida Manzoor CBE (10 July 2007) *Cycle of Change* Legal Services Complaints Commissioner’s Annual Report and Accounts (covering the period 1 April 2006 to 31 March 2007).

⁶ *Regulating Legal Services, Point of Law Campaign Briefing*, Which? October 2004.

⁷ The Enterprise Act of 2002 enabled named consumer organisations to make super-complaints to the Office of Fair Trading (OFT). A super-complaint can be made about any market that is not working properly for consumers.

⁸ The Irish competition authority carried out a similar study before the UK did. The then Chairperson of the Irish competition authority, Dr. John Fingleton, became the Chief Executive of the OFT.

⁹ Competition in Professions: A Report, OFT 328. London, OFT, 2001.

¹⁰ Anti-money laundering rules are now affecting the scope of legal privilege, as is the use of anti-terrorism legislation.

¹¹ The OFT also wanted to abolish QCs as they didn’t signify anything useful to the market.

¹² Even the Archbishop of Canterbury, the head of the Church of England, is the regulator for notaries.

¹³ Clementi Review above note 2.

¹⁴ Licensed conveyancers have always been able to have external investors. Cf. Rule 5.4 Model Rules of Professional Conduct: Professional Independence of a Lawyer.

¹⁵ Cf. Rule 5.4 Model Rules of Professional Conduct: Professional Independence of a Lawyer.

¹⁶ See, Kian Ganz “Rödl & Partner vows to hit 80 offices by next year” *The Lawyer* 2 April 2008: <http://www.thelawyer.com/cgi-bin/item.cgi?id=131985>

¹⁷ Department for Constitutional Affairs, Oct 2005, *The Future of Legal Services: Putting the Consumer First*, Cm 6679.

¹⁸ UK Legal Services Act 2007 and explanatory notes.

¹⁹ However, in Australia we already have the first law firm IPO. See Matt Byrne, "Slater & Gordon becomes first law firm to float" *The Lawyer* 21 May 2007: <http://www.thelawyer.com/cgi-bin/item.cgi?id=125961&d=122&h=24&f=46> and Christine Parker.

²⁰ Bruce MacEwen, Milton C. Regan, Jr., & Larry Ribstein, "Law Firms, Ethics, and Equity Capital", *Georgetown Journal of Legal Ethics*, Winter 2008.

²¹ Clive Humby, Terry Hunt & Tim Phillips *Scoring Points: How Tesco is Winning Customer Loyalty* Kogan Page, London (2003).

²² From the data, the company knows, among other things, when its customers are about to have a baby, go on holiday, buy a new car, what their musical tastes are, and so on. It's comprehensive.

²³ Two other firms, DLA Piper and Latham & Watkins, also broke the \$2 billion revenue barrier. See Sofia Lind, "DLA Piper smashes \$2bn barrier for global revenue" *Legal Week* 15 February 2008:

<http://www.legalweek.com/Articles/1096601/DLA+Piper+smashes+2bn+barrier+for+global+revenue.html>

And Matt Byrne and Julia Berris, "The Lawyer US Rev Counter" *The Lawyer* 14 March 2008:

<http://www.thelawyer.com/cgi-bin/item.cgi?id=131327>

²⁴ Robert Rosen, "We're all consultants now": How changes in client organizational strategies influences change in the organization of corporate legal services, 44 *Arizona Law Review* 637 (2002).

²⁵ Nina Goswami, "Eversheds set to red card sloppy partners" *The Lawyer* 17 March 2008:

<http://www.thelawyer.com/cgi-bin/item.cgi?id=131707&d=415&h=417&f=416>.

²⁶ Further developed by Marc Galanter & Thomas Palay *Tournament of Lawyers: The Transformation of the Big Law Firm* University Of Chicago Press (1994). See also, Marc Galanter and William D. Henderson, "The Elastic Tournament: The Second Transformation of the Big Law Firm"

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1104711

²⁷ David Wilkins & Mitu Gulati, Reconceiving the tournament of lawyers: tracking, seeding, and information control in the internal labor markets of elite law firm, 84 *Virginia Law Review* 1581 (1998).

²⁸ http://en.wikipedia.org/wiki/Swiss_Verein

²⁹ E.g. Arnold & Porter and APCO.

³⁰ Cooper, D., Hinings, B., Greenwood, R. and Brown, J., 1996. Sedimentation and transformation in organizational change: the case of Canadian law firms. *Organization Studies* 17 4, pp. 623–647.

³¹ Charlotte Edmund, Private Equity Firm First to Openly Target Legal Services in UK, *Legal Week*, March 6, 2008, <http://www.law.com/jsp/article.jsp?id=1204803998689>. See also,

<http://www.lyceumcapital.co.uk/news/default.asp?objectId=172>.

³² McCrindle Research, New Generations at Work—Attracting, Recruiting, Retraining & Training Gen Y, www.mccrindle.com.au (2006). Also cite from Hacker paper.

³³ Penelope Trunk, What Gen Y Really Wants, *Time*, July 5, 2007,

<http://www.time.com/time/magazine/article/0,9171,1640395,00.html>. Also Hacker paper.

³⁴ Axiom Legal is now located in New York, San Francisco, and London (www.axiomlegal.com).

³⁵ There is also the growth of online legal services to be taken into account, e.g. LegalZoom.com.

³⁶ Cf. Howard Becker, "The Nature of a Profession," *Education for the Professions*, (1962) *Yearbook of the National Society for the Study of Education*, pp. 27–46.

³⁷ Michael Power, *The Audit Society: Rituals of Verification*, Oxford University Press (1997).

³⁸ Robert Rosen, "Proletarianizing" lives: researching careers, 33 *Law & Society Review* 703, 709 (1999).

³⁹ G. Hanlon, HRM is redundant? Professions, immaterial labour and the future of work (n.d.).

⁴⁰ M. Hardt & A. Negri, *Multitude: War and Democracy in the Age of Empire* (2004).

⁴¹ Ben Trott, Immaterial Labour and World Order: An Evaluation of a Thesis, 7 *Ephemera* 203 (2007).

⁴² M. Lazzarato, (1996) 'Immaterial Labor', trans. P. Colilli and E. Emery, in M. Hardt and P. Virno (eds.) (1996) *Radical Thought in Italy: A Potential Politics*. Minneapolis and London: University of Minnesota Press, 133-147.

⁴³ M. Hardt and A. Negri, *Empire* (2001: 32).

⁴⁴ Mark Cote & Jennifer Pybus, Learning to immaterial labour 2.0: Myspace and social networks, 7 *Ephemera* 88 (2007).

⁴⁵ Id.