

WILL THERE BE FALLOUT FROM CLEMENTI? THE
REPERCUSSIONS FOR THE LEGAL PROFESSION
AFTER THE LEGAL SERVICES ACT 2007

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TABLE OF CONTENTS

INTRODUCTION.....	537
I. HOW THE CLEMENTI REVIEW CAME ABOUT.....	539
A. Profile of the Legal Profession.....	539
B. Complaints Against Lawyers	540
C. Is the Legal Profession Anti-Competitive?	542
II. CLEMENTI REVIEW	543
A. Regulating the Legal Profession	544
B. Organizational Structure of the Legal Profession.....	545
III. THE WHITE PAPER: THE FUTURE OF LEGAL SERVICES: PUTTING CONSUMERS FIRST.....	547
IV. THE LEGAL SERVICES ACT 2007	547
V. THE FUTUROLOGY OF THE LEGAL SERVICES ACT.....	549
A. Tesco Law	549
B. Goldman Sachs Skadden.....	551
C. In the Redesigned Law Firm	552
D. The Realization of the Legal Services Act 2007	554
E. Generation Y and Immaterial Labor.....	562
F. The Decline of Professionalism?	565

INTRODUCTION

In 2006, I was at a meeting in Indiana discussing the globalization of the legal profession. It was not perhaps the most typical venue for such a discussion. But what surprised me most was the talk among the American

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lawyers present. One word fell from their lips time after time: “Clementi.” It invoked both awe and fear. Why so?

Sir David Clementi is an accountant,¹ a former deputy governor of the Bank of England, chairman of Prudential—one of the UK’s largest insurance companies, and now chairman of a new bank, Virgin Money.² In 2003, he was chosen by Lord Falconer, the Lord Chancellor, and given the following responsibilities:

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.³

These innocuous terms of reference gave rise to one of the most far-reaching analyses and sets of proposals for reforming the legal profession that the UK, or indeed, the world, had ever seen. The culmination of this work was the Legal Services Act 2007.⁴

This Article explores the genesis of the Act and its consequences both 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 and real case studies, I suggest that deskilling and deprofessionalization will be among 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 the newer generation’s—that is Generation Y’s—approach to work-life practices that signal the tendency towards immaterial labor as the descriptive metaphor for the new world.

1. The previous big examination of the legal profession in 1979 was also led by an accountant. See ROYAL COMMISSION ON LEGAL SERVICES, CHMN. SIR H. BENSON: FINAL REPORT, 1979, Cm. 7648 (U.K.).

2. See *David Clementi: Executive Profile & Biography*, BLOOMBERG BUSINESSWEEK, <http://investing.businessweek.com/research/stocks/people/person.asp?personId=5919134&ticker=PRU:LN&previousCapId=527074&previousTitle=PRUDENTIAL%20PLC> (last visited June 15, 2012).

3. DAVID CLEMENTI, REVIEW OF THE REGULATORY FRAMEWORK FOR LEGAL SERVICES IN ENGLAND AND WALES: FINAL REPORT 1 (2004), available at http://www.jambar.org/clement_report.pdf (emphasis omitted).

4. Legal Services Act, 2007, c. 29 (U.K.), available at <http://www.legislation.gov.uk/ukpga/2007/29/contents>.

I. HOW THE CLEMENTI REVIEW CAME ABOUT

Before I review the Clementi commission's work, let me explain how and why their review came about. Two converging processes were in play. The first was a product of complaints about lawyers' services. 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?

A. Profile of the Legal Profession

Let me take another step back. The UK has a population of around 62 million people,⁵ which is serviced by 316,373 legal services providers in total.⁶ What does the English legal profession look like?⁷ The 169,002 lawyers comprise 150,128 solicitors⁸ and 15,387 barristers.⁹ There are around 10,400 solicitor's firms, most of which have four partners or fewer (over 8,800, 84.8%).¹⁰ Firms with over 80 partners only number 57.¹¹ There are roughly 750 barristers' chambers and most of those are small organizations.¹² Approximately 31,000 solicitors and 3,000 barristers work outside private practice as in-house counsel or government lawyers.¹³ The UK also exports lawyers and over 6,600 work overseas.¹⁴

In 2009, legal services generated about \$36 billion of the UK's gross domestic product (1.8%), and \$5 billion worth of legal services were ex-

5. *World Development Indicators and Global Development Finance*, WORLD BANK, http://www.google.co.uk/publicdata/explore?ds=d5bncppjof8f9_&met_y=sp_pop_totl&idim=country:GBR&dl=en&hl=en&q=uk+population (last visited June 5, 2012).

6. See THECITYUK, LEGAL SERVICES 9 (2011), available at <http://www.thecityuk.com/assets/Uploads/Legal-Services-2011.pdf>.

7. To speak of a UK legal profession is a misnomer in that there are minimally two separate jurisdictions, namely, England and Wales and Scotland. As Scotland is introducing its own version of the Legal Services Act, it is reasonable for analytic purposes to use English and UK interchangeably. Scotland has around 5,000 lawyers according to the CCBE in 2006. COUNCIL OF BARS AND LAW SOCIETIES OF EUR., NUMBER OF LAWYERS IN CCBE MEMBER BARS 2 n.11 (2006), available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/table_number_lawyers1_1179905628.pdf.

8. NINA FLETCHER & YULIA MURATOVA, LAW SOC'Y, TRENDS IN THE SOLICITORS' PROFESSION: ANNUAL STATISTICAL REPORT 2010 5 (2010).

9. *Statistics*, BAR COUNCIL, <http://www.barcouncil.org.uk/about-the-bar/facts-and-figures/statistics/> (last visited June 15, 2012).

10. See FLETCHER & MURATOVA, *supra* note 8, at 22.

11. *Id.*

12. See *Statistics*, *supra* note 9.

13. See *id.*; see also FLETCHER & MURATOVA, *supra* note 8, at 5, 22.

14. See FLETCHER & MURATOVA, *supra* note 8, at 19 tbl. 2.14.

ported compared to imports of legal services of \$800 million.¹⁵ The UK is a net exporter of legal services to the value of \$3 billion.¹⁶

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 corporate clients.¹⁷ The corporate sector includes a number of international law firms including DLA Piper, with over 4,000 lawyers,¹⁸ and Clifford Chance, with 3,200 lawyers,¹⁹ making them the largest law firms in the world along with Baker & McKenzie with 3,750 lawyers.²⁰ Yet it is 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.²¹ Corporate clients tend to be more sophisticated and are knowledgeable repeat players in their use of lawyers and law firms and know how to sanction untoward behavior effectively.²²

B. Complaints Against Lawyers

What does the profile of complaints look like? According to the Clementi Report, complaints fall into three categories: inadequate professional service, professional misconduct, and negligence.²³ Until the advent of the Legal Services Act 2007, complaints against lawyers were handled by a mixture of professional bodies including the Law Society, the Bar Council, and the Legal Services Ombudsman. The professional bodies failed to meet targets set by the ombudsman to clear complaints within a particular time period.²⁴ It looked similar to the types of complaints made against law-

15. See THECITYUK, *supra* note 6, at 10-11.

16. See *id.* at 2.

17. JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 319 (1982).

18. DLA PIPER, <http://www.dlapiper.com/home.aspx> (last visited June 15, 2012).

19. *About Us*, CLIFFORD CHANCE, http://www.cliffordchance.com/about_us.html (last visited June 15, 2012).

20. *About Us*, BAKER & MCKENZIE, <http://www.bakermckenzie.com/aboutus/> (last visited June 15, 2012).

21. Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 97 (1974).

22. *Managing Partner*, however, reported that 52% of law firms did not have a structured feedback program that would allow general counsel to complain. *Law Firms Regularly Fail to Meet Client Needs*, MANAGING PARTNER (Aug. 24, 2011), <http://www.managingpartner.com/index.php?q=news/business-development/law-firms-regularly-fail-meet-client-needs>.

23. CLEMENTI, *supra* note 3, at 53-54.

24. *Id.* at 57-58.

yers in the US.²⁵ In 2005, the Law Society received over 17,000 complaints.²⁶ And *Which?* reported that a third of people considered they received poor service from their lawyer.²⁷ Complaints included lawyers not telling their clients about how much they would be charged and being dilatory about giving estimates, with few given in writing.²⁸ Other complaints included rudeness, arrogance, lack of communication, delays, getting higher bills than expected, and incompetence.²⁹ Delays came at the 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.’”³⁰

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 and multiple entry points.³¹ Because of this, the backlog of complaints has been rising year after year. And the government-established Legal Services Commissioner began fining the lawyers’ professional bodies for not keeping their houses in order.

Complaints against lawyers grew with an attendant rise in the consumerism movement. This coincided with the rise of immaterial labor, as discussed later in the Article.³² Consumers are no longer the passive receivers of goods and services who put up with poor delivery. The outcry about the “Heathrow Hassle” and the awful debut of Terminal 5 indicated the mood in 2008.³³ Non-governmental organizations like *Which?*³⁴ (formerly the Consumers Association) were given the right to bring “super-complaints” to the Office of Fair Trading about industries’ practices, such

25. See generally BARBARA A. CURRAN, *THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY* (1977).

26. *Soliciting Sound Legal Advice*, *GUARDIAN* (Oct. 26, 2006), <http://www.guardian.co.uk/money/2006/oct/26/yourrights.legal1>.

27. *Which? Wants Law Regulation*, *WHICH?* (Mar. 21, 2005), <http://www.which.co.uk/about-which/press/press-releases/campaign-press-releases/consumer-markets/2005/03/which-wants-law-regulation/>.

28. See *id.*

29. See *id.*

30. CLEMENTI, *supra* note 3, at 6 (emphasis omitted).

31. CLEMENTI, *supra* note 3, 50-80.

32. See *infra* Section V.E.

33. *Putting an End to the Heathrow Hassle*, *TIME*, <http://www.time.com/time/photogallery/0,29307,1723684,00.html> (last visited June 15, 2012); *Heathrow Hassle Continues for Third Day*, *CNN.COM* (Mar. 29, 2008), <http://edition.cnn.com/2008/WORLD/europe/03/29/heathrow.t5/index.html>.

34. See *What We Do*, *WHICH?*, <http://www.which.co.uk/about-which/what-we-do/> (last visited June 15, 2012).

as supermarkets acting as cartels, as a result of this movement.³⁵ If lawyers had been able to clear up these backlogs of complaints or had listened to the claims of consumer watchdogs, they might have postponed what was to come.³⁶

C. 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. This investigation 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.³⁷ The OFT's initial report recommended:

[C]ompetition law appl[ie]d to the professions without potential exclusion is a specific expression of our more general view that the professions should be subject to competition law in the same way as other economic actors. If the application of competition to the professions is restricted, so too is the ability of the OFT to ensure that markets for professional services work well and that consumers benefit from this.³⁸

The OFT argued that the conveyance and probate markets should be liberalized to remove the lawyer's monopoly. Cold-calling by lawyers should be permitted, and the Law Society changed its rules here.³⁹ Multidisciplinary practices should be permitted: it should be possible, for example, for lawyers and accountants to merge, or for real estate entities to practice

35. *Super-complaints*, DEP'T FOR BUS. INNOVATION & SKILLS, <http://www.bis.gov.uk/policies/consumer-issues/enforcement-of-consumer-law/super-complaints> (last visited June 15, 2012).

36. Since opening in October 2010, the Legal Ombudsman has become the official organization for dealing with complaints against lawyers. See *About Us*, LEGAL OMBUDSMAN, <http://www.legalombudsman.org.uk/aboutus/index.html> (last visited June 15, 2012). In its first six months of operation (Oct. 6, 2010 to Mar. 31, 2011), it received 38,155 complaints which converted into 3,768 cases. *Statistics: First Six Months*, LEGAL OMBUDSMAN, <http://www.legalombudsman.org.uk/aboutus/statistics.html> (last visited June 15, 2012). By area of law the largest categories accepted for investigation were: 20% of the cases dealt with residential conveyancing, 19% with family law, 13% with wills and probate, and 10% with litigation. *Id.* Complaint categories consisted of 16% failure to advise, 15% failure to follow instructions, 12% delay, 10% excessive costs, 9% failure to keep informed, and 9% failure to progress and deficient costs information. *Id.*

37. See OFFICE OF FAIR TRADING, COMPETITION IN PROFESSIONS: A REPORT BY THE DIRECTOR GENERAL OF FAIR TRADING 6-7 (2001), available at http://www.oft.gov.uk/shared_oftrreports/professional_bodies/oft328.pdf.

38. *Id.* at 19.

39. *Id.* at 12.

together. Moreover, lawyer-client privilege should be curtailed to those areas where other professionals could not give cognate advice.⁴⁰ 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.⁴¹ Finally, the OFT pointed out that there was a regulatory maze surrounding lawyers, having identified that twenty-two regulators, which were incoherent, did not interface easily, and that there were gaps between them.⁴²

In 2002, the OFT published a progress report, the idea being that it was not the government's job to put the professions' houses in order, but to ensure that all restrictions on open competition, not justified, were removed.⁴³ While the OFT thought some progress had been made by the professions, it concluded that it remained "concerned that important freedoms continue to be unnecessarily restricted."⁴⁴ Shortly afterwards the government decided to establish the Clementi review.

II. 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.

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

41. The OFT also wanted to abolish QCs as they did not signify anything useful to the market. *Government Conclusions: Competition and Regulation in the Legal Services Market: A Report following the Consultation "In the Public Interest,"* DEP'T CONST. AFF. (July 2003), <http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/consult/general/oftreptconc.htm>.

42. Even the Archbishop of Canterbury, the head of the Church of England, is the regulator for notaries. See ROBERT BALDWIN, KATE MALLESON & MARTIN CAVE, SCOPING STUDY FOR REGULATING LEGAL SERVICES (2003).

43. See generally OFFICE OF FAIR TRADING, COMPETITION IN PROFESSIONS: PROGRESS STATEMENT (2002), available at http://www.offt.gov.uk/shared_offt/reports/professional_bodies/offt385.pdf.

44. *Id.* ¶ 5.3.

A. Regulating the Legal Profession

In a report of nearly 200 pages, Clementi examined the regulation and structures of the legal profession.⁴⁵ 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 rights⁴⁶

These objectives were to be allied to a set of principles and precepts, which included:

- Independence
- Integrity
- The duty to act in the best interests of the client
- Confidentiality⁴⁷

These would be embodied in professional codes.⁴⁸

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.⁴⁹ 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.⁵⁰ The second, Model B+, would create a supervisory Legal Services Board that would have oversight of frontline regulators and a majority of non-lawyers.⁵¹ This would give a level of independence from government control, would leave regulation at the practitioner level where it was most needed, and would provide an easier transition than Model A.⁵² The motif was to be reform, not revolution in regulation.⁵³

The frontline regulators would derive their authority from the Legal Services Board—not directly from the state.⁵⁴ In addition, a complaints-

45. See generally CLEMENTI, *supra* note 3.

46. *Id.* at 15-17.

47. *Id.* at 21.

48. *Id.*

49. *Id.* at 24.

50. *Id.* at 25.

51. *Id.* at 32-36.

52. *Id.*

53. See *id.* at 36.

54. See *id.* at 32-34.

handling body would sit over them as part of the Legal Services Board to handle complaints.⁵⁵ It would require the frontline regulators to take the necessary disciplinary action.⁵⁶ Clementi left it to government to determine which legal services should be within the regulator's remit.⁵⁷

According to Clementi, current regulation mixed its aims. Some were devoted to professional bodies and others to activities. Moreover, there was an emphasis on the individual lawyer rather than the law firm or economic unit.⁵⁸ Clementi proposed that the economic unit should be the primary focus of regulation, not the individual.⁵⁹ 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.⁶⁰ Globalization was included in the menu.

B. 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, for example, solicitors in partnerships and barristers as solo practitioners. Freedom to organize as professionals 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.⁶¹ These individuals would be responsible for reporting to the regulators, that is, the entity not the individual lawyer.

Clementi did not accept any of the arguments put forward by lawyers about their respective styles of organization.⁶² He argued they should be opened up.⁶³ His proposals included two stages.

First would be the emergence of legal disciplinary practices (LDP), which would be composed of different types of lawyers.⁶⁴ The form could be corporate, partnership, or otherwise.⁶⁵ Lawyers or non-lawyers could manage it.⁶⁶ And, quite radically, it could have outside owners,⁶⁷ as long as

55. *Id.* at 64-65, 67-69.

56. *See id.* at 67-69.

57. *See id.* at 100.

58. *See id.* at 112.

59. *Id.*

60. *Id.* at 17.

61. *See id.* at 113.

62. *See id.* at 127.

63. *See id.*

64. *See Legal Disciplinary Practice*, LAW SOC'Y (Apr. 6, 2011), <http://www.lawsociety.org.uk/productsandservices/practicenotes/ldp/4946.article>.

65. *Id.*

66. *See CLEMENTI*, *supra* note 3, at 124.

they passed a “fitness to own” test.⁶⁸ Lawyers would have to constitute the majority of the managers.⁶⁹ Outside owners would not be permitted to interfere with individual cases or have access to client files.⁷⁰ And there would be conflicts of interest rules against taking clients when the outside owner has an adverse interest in the outcome.⁷¹

LDPs were only the first step. The second would be to permit multi-disciplinary practices (MDP) where lawyers and non-lawyers work together and share fees.⁷² 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.⁷³ The potential range of MDPs could run from the needs of the individual client to the large corporate client.⁷⁴ Integrated service would be seamless: one-stop shopping.⁷⁵

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 whether there would necessarily be a dominant profession.⁷⁶ Unlike LDPs where lawyers would be in the majority of practitioners, they could easily be in the minority in an MDP.⁷⁷ What would the role of outside owners be?

Clementi noted that instances already existed.⁷⁸ Law firms gave financial advice and as such were regulated by the Financial Services Authority.⁷⁹ 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.⁸⁰ Rödl has

67. Cf. MODEL RULES OF PROF'L CONDUCT R. 5.4 (2010) (explaining that licensed conveyancers have always been able to have external investors).

68. See CLEMENTI, *supra* note 3, at 124.

69. See *id.*

70. See *id.*

71. See *id.*

72. Cf. MODEL RULES OF PROF'L CONDUCT R. 5.4 (2010); see CLEMENTI, *supra* note 3, at 133.

73. See CLEMENTI, *supra* note 3, at 134.

74. See *id.* at 133-34.

75. *Id.*

76. See *id.* at 134-38.

77. See *id.*

78. See *id.*

79. *Id.* at 136.

80. *Services Overview*, RÖDL & PARTNER, http://www.roedl.com/services/services_overview.html (last visited June 15, 2012).

eighty offices worldwide.⁸¹ The firm even advises law firms.⁸² 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, or Alternative Business Structures as they were to become named, coming on stream later.⁸³

III. THE WHITE PAPER: THE FUTURE OF LEGAL SERVICES: PUTTING CONSUMERS FIRST

Following the Clementi review, the government produced a White Paper,⁸⁴ which was consumerist in orientation, given that its subtitle was “Putting Consumers First.”⁸⁵ It essentially followed the Clementi recommendations. This was a lively period of debate and lobbying by the legal profession.⁸⁶ Finally, the Legal Services Act came into being after prolonged scrutiny by Parliament.

IV. THE LEGAL SERVICES ACT 2007

The Act was signed into law at the end of 2007.⁸⁷ Again it followed the course set by the OFT, Clementi, and the White Paper. It created a Legal Services Board (LSB), which would also have a Consumer Panel, and there would be an Office of Legal Complaints.⁸⁸ The frontline authorized regulators would be under the LSB.

But it was in the sphere of “Alternative Business Structures” that the Act took a more radical view than its predecessors.⁸⁹ The new structure could be an LDP or MDP: there would be no intermediate step as recom-

81. *About Rödl & Partner*, RÖDL & PARTNER, http://www.roedl.com/about_us/about_roedl_partner.html (last visited June 15, 2012).

82. *See Services Overview*, *supra* note 80.

83. CLEMENTI, *supra* note 3, at 137.

84. DEPARTMENT FOR CONSTITUTIONAL AFFAIRS, THE FUTURE OF LEGAL SERVICES: PUTTING CONSUMERS FIRST, 2005, Cm 6679 (U.K.), available at <http://www.official-documents.gov.uk/document/cm66/6679/6679.pdf>.

85. *Id.*

86. *See generally* John Flood, *The Re-Landscaping of the Legal Profession: Large Law Firms and Professional Re-Regulation*, 59 CURRENT SOC. 507 (2011) (discussing further the negotiations between the introduction of the White Paper and the implementation of the Legal Services Act 2007).

87. Legal Services Act, 2007, c. 29 (U.K.), available at <http://www.legislation.gov.uk/ukpga/2007/29/contents> (including explanatory notes).

88. *Id.* at pts. 2-6.

89. *Id.* at pt. 5.

mended by Clementi. As long as the new structure obtained a license from its regulator, it could exist.⁹⁰ This was to be the “Big Bang” of law.⁹¹

The Act followed the White Paper in identifying the benefits of ABS to consumers:

- more choice: consumers will have greater flexibility in deciding from where to obtain legal and some non-legal services.
- reduced prices: consumers should be able to purchase some legal services more cheaply. This should arise where ABS firms realise savings through economies of scale and reduce transaction costs where different types of legal professionals are part of the same firm.
- better access to justice: ABS firms might find it easier to provide services in rural areas or to less mobile consumers.
- improved consumer service: consumers may benefit from a better service where ABS firms are able to access external finance and specialist non-legal expertise.
- greater convenience: ABS firms can provide one-stop-shopping for related services, for example car insurance and legal services for accident claims.
- increased consumer confidence: higher consumer protection levels and an increase in the quality of legal services could flow from ABS firms, which have a good reputation in providing non-legal services. These firms will have a strong incentive to keep that reputation when providing legal services.⁹²

The Act also outlined potential benefits for legal service providers:

- increased access to finance: at present, providers can face constraints on the amount of equity, mainly debt equity, they can raise. Allowing alternative business structures will facilitate expansion by firms (including into international markets) and investment in large-scale capital projects that increase efficiency.
- better spread of risk: a firm could spread its risk more effectively among shareholders. This will lower the required rate of return on any investment, facilitate investment, and could deliver lower prices.

90. *Outcomes-focused Regulation: Does your Firm Need to Be Authorised as an ABS?*, SOLICITORS REG. AUTHORITY (Mar. 7, 2012), <http://www.sra.org.uk/solicitors/freedom-in-practice/alt-bs/need-to-be-authorised.page>.

91. See DAVID KYNASTON, CITY OF LONDON: THE HISTORY 560-71 (David Milner ed., 2011); see also David Kynaston, *Was the Big Bang Good for the City of London and Britain?*, TELEGRAPH (Oct. 26, 2011), <http://www.telegraph.co.uk/finance/financialcrisis/8850654/Was-the-Big-Bang-good-for-the-City-of-London-and-Britain.html>.

92. DEPARTMENT FOR CONSTITUTIONAL AFFAIRS, *supra* note 84, at 40 (emphasis omitted) (footnotes omitted).

- increased flexibility: non-legal firms such as insurance companies, banks, and estate agents will have the freedom to realise synergies with legal firms by forming ABS firms and offering integrated legal and associated services.
- easier to hire and retain high-quality non-legal staff: ABS firms will be able to reward non-legal staff in the same way as lawyers.
- more choice for new legal professionals: ABS firms could contribute to greater diversity by offering those who are currently under-represented more opportunities to enter and remain within the profession.⁹³

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. The SRA has licensed the first set of ABS in 2012, which included the supermarket, the Cooperative, which now runs Cooperative Legal Services.⁹⁴

V. THE FUTUROLOGY OF THE LEGAL SERVICES ACT

What then are the consequences of the Act? For US lawyers, they are potentially hazardous because they will place them at a competitive disadvantage in the global marketplace. Before I detail some of the changes, let me conduct a thought experiment, namely, “Tesco Law” and “Goldman Sachs Skadden.” The purpose of this experiment is to imagine how the Legal Services Act could give rise to large, domineering organizations that would have the capacity to soak up large amounts of the legal market, both for individuals and corporations. Tesco Law represents the individual consumer end of the market while Goldman Sachs Skadden is the multinational corporate.

A. Tesco Law

Tesco recently opened its US branch of supermarkets in California.⁹⁵ It was able to do this because it is the most profitable supermarket in the UK. 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

93. *Id.* at 40–41 (emphasis omitted) (footnotes omitted).

94. *The Co-operative Becomes First High Street Brand to Acquire ABS Status*, NEWLEGALREVIEW (Apr. 2, 2012), http://www.cpaglobal.com/newlegalreview/5113/the_cooperative_becomes_first_.

95. *Our Businesses*, TESCO PLC, <http://www.tescopl.com/index.asp?pageid=8> (last visited June 15, 2012).

cities and Tesco runs the most successful loyalty card in retail history.⁹⁶ 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.⁹⁷ 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, slow responses to queries. All of this is quite off-putting to the average consumer who cannot understand why lawyers are so inefficient and yet so expensive.

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 would be clearly marked along with the month's special offers. And there would be no mention anywhere of billable hours. Even the checkout clerks could be primed to spot potential customers and proffer specials on legal services. Imagine a credit card rejected at the cash desk, which could be the stimulus for assistance with debt management and bankruptcy. This could generate a raft of special offers after the Christmas big spend. For someone with bruises, a bit of help on the domestic relations front, perhaps. David McCandless' analysis of Facebook statistics showed that most breakups occurred in the two weeks prior to Christmas and during Spring Break (March),⁹⁸ which demonstrates how these kinds of data can be deployed by marketers in organizations like Tesco to cross-sell all kinds of services, including legal.⁹⁹ Moreover, quality controls would ensure satisfaction, most likely money-back guarantees. It is a captive market that no lawyer can compete with on price or range of service.

The work would be commoditized, based around the use of intelligent software, possibly outsourced (to India), and referred out if specialist help is

96. Elizabeth Rigby, *Eyes in the Till*, FIN. TIMES (Nov. 11, 2006), <http://www.ft.com/intl/cms/s/0/f90ed19a-7129-11db-8e0b-0000779e2340.html>.

97. *Id.* 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. *Id.* It's comprehensive.

98. Jeffrey Van Camp, *Couples Are Most Likely to Breakup Before Christmas, Facebook Graph Shows*, DIGITAL TRENDS (Nov. 3, 2010), <http://www.digitaltrends.com/computing/couples-are-most-likely-to-breakup-before-christmas-facebook-graph-shows/>.

99. For example, Target employed statisticians to calculate when pregnant women were likely to be in their second trimester so they could market baby supplies to them. Charles Duhigg, *How Companies Learn Your Secrets*, N.Y. TIMES MAG. (Feb. 16, 2012), at MM30, available at http://www.nytimes.com/2012/02/19/magazine/shopping-habits.html?_r=1&scp=6&sq=stores%20data%20use&st=cse. It doesn't take a great leap of imagination to see how services such as wills, trusts for education, and inheritance planning could be built into the marketing.

needed. Lawyers, or even paralegals, would be hired at cheap rates—it would be a competitive market after all.

B. Goldman Sachs Skadden

Mergers and acquisitions is lucrative work. In 2007, Goldman Sachs' revenues were over \$69 billion with 30,000 employees (3,000 in India).¹⁰⁰ In 2007, Skadden Arps finally broke through the \$2 billion revenue mark with approximately 2,000 lawyers.¹⁰¹ Suppose Goldman Sachs were to acquire Skadden and then offer a total M&A package at rates that would not depend on variable professional fees, but straightforward value billing instead, just as banks already do. They could offer a seamless service that might even undercut in-house legal rates; it could be attractive to corporate clients. Perhaps it could lead to conflicts rules becoming a thing of the past.¹⁰² 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.

Although these two scenarios are figments of the imagination, they have presaged a new age of legal service delivery that has taken off in 2012 as a result of the implementation of the ABS provisions and the formation of the regulations.¹⁰³ The new modes of delivery fall into a number of categories including:

- passporting LDPs into ABS,
- extension of conventional law firms aimed at consumers,
- integrated business services delivery organizations directed toward business clients,

100. *Fortune 500: Goldman Sachs Group*, CNNMONEY (Apr. 30, 2007), <http://money.cnn.com/magazines/fortune/fortune500/2007/snapshots/575.html>; *2008 Goldman Sachs Annual Report*, GOLDMAN SACHS 2 (2008), <http://www.goldmansachs.com/investor-relations/financials/archived/annual-reports/2008-entire-annual-report.pdf>; Heather Timmons, *Cost-Cutting in New York, But a Boom in India*, N.Y. TIMES (Aug. 11, 2008), http://www.nytimes.com/2008/08/12/business/worldbusiness/12indiawall.html?pagewanted=all&_r=0.

101. Two other firms, DLA Piper and Latham & Watkins LLP, also broke the \$2 billion revenue barrier.

102. For example, the Solicitors Regulation Authority has relaxed conflicts of interest rules. SOLICITORS REGULATION AUTH., CODE OF CONDUCT R. 3 (2007), *available at* <http://www.sra.org.uk/rule3/>; *see also* SOLICITORS REGULATION AUTH., SRA HANDBOOK ch. 3 (2011), *available at* <http://www.sra.org.uk/solicitors/handbook/welcome.page>.

103. The SRA started accepting ABS authorization applications on January 3, 2012. *Alternative Business Structures*, SOLICITORS REG. AUTHORITY, <http://www.sra.org.uk/solicitors/freedom-in-practice/alternative-business-structures.page> (last updated Apr. 23, 2012).

- non-law companies moving into legal services,
- delivery of back-office legal services for own-brand use,
- flotation of law firms (Slater & Walker (Peel Hunt)/RJW/Claims Direct),
- temporary placement lawyers' services (Axiom, BLP LoD, LawVest/Riverview).

However, to comprehend the kinds of changes that are being wrought on the legal industry, it is necessary to understand how the conventional image of the law firm has altered. We need to look at the redesigned law firm.

C. In the Redesigned Law Firm

Robert Rosen, in his seminal article, "*We're All Consultants Now*," speculated on how the changes in companies would affect the way legal services are contracted for and delivered.¹⁰⁴ 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 in-house or external lawyers. The redesigned company is permeable and malleable, no longer quite a fixed entity with a uniform identity.

The Legal Services Act is stimulating the production of 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.¹⁰⁵ 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, introduced, for example, a system of soccer red and yellow cards to warn partners of when they are slacking.¹⁰⁶ 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

104. Robert Eli Rosen, "*We're All Consultants Now*": *How Change in Client Organizational Strategies Influences Change in the Organization of Corporate Legal Services*, 44 ARIZ. L. REV. 637, 638-41 (2002).

105. See generally MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991).

106. Nina Goswami, *Eversheds Red Cards Equity Partners*, *LAWYER* (Oct. 30, 2008), <http://www.thelawyer.com/eversheds-red-cards-equity-partners/135428.article>.

of deferred gratification) could lead to the reward of partnership.¹⁰⁷ In the redesigned law firm, the ideal of permanent partnership is fast disappearing. Wilkins & Gulati have demonstrated that partners must be selective about which associates they choose to train on the path to partnership.¹⁰⁸ Because of the pressures on partners, they can't encircle the entire cohort of associates. 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 are never 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 or the deprofessionalization of law.¹⁰⁹

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 law firm encountered with this structure in the light of its global organization.¹¹⁰ It reorganized as a Swiss *verein*.¹¹¹ 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.¹¹² Theoretically this is represented as moving beyond the gentle transition from P² to MBP, from

107. See Marc Galanter & William Henderson, *The Elastic Tournament: The Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1887 (2008).

108. David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1656 (1998).

109. See generally ROBERT A. BROOKS, *CHEAPER BY THE HOUR: TEMPORARY LAWYERS AND THE DEPROFESSIONALIZATION OF THE LAW* (2011).

110. Steve Hoare & Joanne Harris, *B&M Opts for Swiss Verein Partner Setup*, LAWYER (July 5, 2004), <http://www.thelawyer.com/bm-opts-for-swiss-verein-partner-setup/110758.article>.

111. See *Swiss Verein*, WIKIPEDIA, http://en.wikipedia.org/wiki/Swiss_Verein (last visited Oct. 6, 2011); Debra Cassens Weiss, *Are Am. Law Rankings Distorted by Swiss Vereins? Two of Top Five Operate This Way*, A.B.A. J. (May 2, 2011), http://www.abajournal.com/news/article/are_amlaw_rankings_distorted_by_swiss_vereins_two_of_top_five_operate_this_way/.

112. For example, see Arnold & Porter and APCO. See *Statement of James W. Jones, Vice Chairman and Gen. Counsel of APCO Associates Inc.*, ABA COMM'N ON MULTIDISCIPLINARY PRACTICE, http://www.americanbar.org/groups/professional_responsibility/commission_multidisciplinary_practice/jones1.html (last visited June 15, 2012) ("The MDP concept is at the heart of what APCO is—and it always has been."); see also *Oral Testimony of James W. Jones, Vice Chair and Gen. Counsel of APCO Associates Inc.*, ABA COMM'N ON MULTIDISCIPLINARY PRACTICE, http://www.americanbar.org/groups/professional_responsibility/commission_multidisciplinary_practice/jones2.html (last visited June 15, 2012).

partnership to bureaucracy.¹¹³ This is best described as a transition from a traditional model of collegial partnership toward a systematically managed, rationally organized, knowledge intensive firm. Both of these developments have pushed the law firm towards a more open configuration, one that essentially permits external influences—not only professionalism—to shape the outlook and values of the law firm. The Legal Services Act was then pushing against an open door.

D. The Realization of the Legal Services Act 2007

The starting point for ABS was meant to be October 2011, but it was late. A combination of delays by the SRA and the Ministry of Justice meant that the new market for legal services was postponed to early January 2012.¹¹⁴ In the two months following the opening for ABS license applications, the SRA received nearly 150 stage one applications and 33 moving into stage two.¹¹⁵

113. See Namrata Malhotra, Timothy Morris & C.R. Hinings, *Variation in Organizational Form Among Professional Service Organizations*, in 24 RESEARCH IN THE SOCIOLOGY OF ORGANIZATIONS: PROFESSIONAL SERVICE FIRMS 171-202 (Royston Greenwood, Roy Suddaby & Megan McDougald eds., 2006).

114. There are, according to the Legal Services Board, “eight separate bodies named as Approved Regulators in the Legal Services Act 2007,” but other bodies can apply to be regulators for activities; thus, for example, two accounting bodies are “listed as Approved Regulators in relation to reserved probate activities only.” *Approved Regulators*, LEGAL SERVICES BOARD, http://www.legalservicesboard.org.uk/can_we_help/approved_regulators/index.htm (last visited June 15, 2012). The largest regulator by number of people is the SRA. *Research Note: The Legal Services Market*, Legal Services Board (Aug. 2011), available at http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/research_note_on_the_legal_services_market.pdf. A smaller Approved Regulator, the Council for Licensed Conveyancers, however, had the appropriate regulatory structure in place in October 2011 and issued the first ABS license. See *Exclusive: Top Conveyancing Practice Becomes the First Ever ABS*, LEGAL FUTURES (Oct. 6, 2011), <http://www.legalfutures.co.uk/regulation/other-lawyers/exclusive-top-conveyancing-practice-becomes-the-first-ever-abs>.

115. See *SRA Update: ABS Shows Promising Take-up*, SOLICITORS REGULATION AUTHORITY, <http://www.sra.org.uk/sra/news/sra-update/issue-23-abs.page> (last visited June 15, 2012); *SRA Marks Its Arrival as ABS Licensing Authority*, SOLICITORS REGULATION AUTHORITY (Feb. 23, 2012), <http://www.sra.org.uk/sra/news/press/sra-abs-licensing-authority-celebration.page>. The stage one process involves providing basic information about the entity and its individuals, including owners, shareholders, managers, and especially the compliance officer for legal practice and the compliance officer for finance and administration. See *Licensed Body Application—Stage 1 Pre-Completion Notes*, SOLICITORS REGULATION AUTHORITY, <http://www.sra.org.uk/solicitors/freedom-in-practice/alt-bs/lba1-notes.page> (last visited June 15, 2012). Non-lawyer manager legal disciplinary practices will also passport to licensed body status through the same route. See *id.* On completion of stage one, the SRA creates a bespoke stage two application pack that requests specific information from the applicant organization. *Id.* The entire process is supposed to take no more than six months. *Id.*

Let me review some of the current new formations as they are appearing. They will provide a scope into the new ways of law practice. The list is necessarily incomplete as we are at the beginning of this process. It is impossible to say what the market will look like in ten or twenty years, except to say it will undergo radical change.

1. All current Legal Disciplinary Practices with non-lawyer managers have to convert to ABS under SRA rules. Thus, for example, Kennedys, which was the first city law firm to become an LDP in 2009, has applied for an ABS license.¹¹⁶ The reason for these conversions is to place all multi-professional firms on the same basis and avoid duplication in licensing schemes.

2. A less than radical approach to law firm development has been the adoption of the franchise model. In this situation, a group of law firms share a common brand and marketing, and to some extent knowledge management systems. The most well-known example of this move is Quality Solicitors—www.qualitysolicitors.com.¹¹⁷ The point of Quality Solicitors (QS) is to create a well-recognized brand quickly. QS has attempted to do this by advertising on television and establishing “legal access points” in well-known high street chain newsagents, such as WHSmith.¹¹⁸ These legal access points do not provide legal services per se, but only act as conduits to services within the QS brand. The aim of QS is to create a chain of law firms similar to the way opticians expanded after their deregulation in the 1980s. In October 2011, QS received a large investment by way of Palamon Capital Partners, a private equity fund “with the aim of ‘establishing the UK’s dominant brand for individual and SME legal services’ . . . [and] ‘our vision of creating the Specsavers of the legal world.’”¹¹⁹

116. See Suzi Ring, *Kennedys Eyes External Investment for New Litigation Venture*, LEGAL WK. (Feb. 24, 2012), http://www.legalweek.com/legal-week/news/2154438/kennedys-eyes-external-investment-litigation-venture-ahead-abs-switch?WT.rss_f=&WT.rss_a=Kennedys+eyes+external+investment+for+new+litigation+venture+ahead+of+ABS+switch.

117. QUALITYSOLICITORS, <http://www.qualitysolicitors.com> (last visited June 15, 2012).

118. See Sofia Lind, *QualitySolicitors and WHSmith Tie Up in ‘Game-Changing’ Deal for Market*, LEGAL WK. (Apr. 7, 2011), <http://www.legalweek.com/legal-week/news/2041738/qualitysolicitors-teams-whsmith-game-changing-deal-legal-market>.

119. See *QualitySolicitors Hits the Big Time as PE Investor Buys Majority Stake*, LEGAL FUTURES (Oct. 20, 2011), <http://www.legalfutures.co.uk/legal-services-act/market-monitor/qualitysolicitors-hits-the-big-time-as-pe-investor-buys-majority-stake> (quoting Steve Richards, QS’s Chairman). For more on Specsavers, see *History*, SPECSAVERS, <http://www.specsavers.co.uk/news-and-information/history/> (last visited June 15, 2012). Others that have followed this route have tried to use social media as a way of garnering business. See, e.g., *Lawyers2you*, FACEBOOK, <https://www.facebook.com/lawyers2you?sk=wall> (last visited June 15, 2012). Lawyers2you has created a Facebook page as an aid to marketing. *Id.*

3. At the other end of the spectrum to a franchise like QS is the niche practice, which seeks to extend its services. For example, Mishcon de Reya, a medium-sized London firm, has a reputation for handling the legal affairs, notably divorces, of high-net worth individuals as well as undertaking corporate law.¹²⁰ The firm is becoming an ABS in order to “create a new venture that will see it offer individuals and families with assets of more than £50m access to their own team of non-legal advisers, offering services such as private bank relationship management advice, tax advice and concierge services.”¹²¹ In contrast to QS, this move is to offer a wider range of non-legal services to clients in competition with banks rather than extend present market range.¹²²

4. The examples mentioned so far focus largely conventional individual-oriented legal services along with corporate services. The new legal market is now seeing the rise of the legal conglomerate, for example, the Parabis Group.¹²³ Its range encompasses consultancy, medical claims, accident claims, risk assessment, personal injury, and insurance, among others.¹²⁴ Parabis broadly falls into two groups: defendant services, which are primarily aimed at insurance companies,¹²⁵ and claimant services that include mostly personal injury work for individuals.¹²⁶ In addition to these, there are rehabilitation and risk analysis services such as those offered at www.argentrehab.co.uk and www.argentauditandlegacy.co.uk.¹²⁷ The group has around 400 lawyers and 600 paralegals. Parabis has already sold a majority stake in its business to a private equity fund for between £150m and £200m subject to SRA approval.¹²⁸ The goal is to fund further acquisitions in the legal field.¹²⁹

120. See *About Us*, MISHCON DE REYA, http://www.mishcon.com/about_us (last visited June 15, 2012).

121. Suzi Ring, *Mishcons to Go Beyond Legal with New High-Net Private Client Business*, LEGAL WK. (Feb. 24, 2012), <http://www.legalweek.com/legal-week/news/2154441/mishcons-legal-net-private-client-business>.

122. See JON ROBINS, BRAVE NEW WORLDS: NEW THINKING IN LEGAL SERVICES 11-15 (2012), available at http://www.epoq.co.uk/press/2012-01-24_New_thinking_in_legal_services.pdf (discussing QS).

123. PARABIS, <http://www.parabisgroup.co.uk/services/> (last visited June 15, 2012).

124. *Id.*

125. PLEXUS LAW, <http://www.plexuslaw.co.uk/services/> (last visited June 15, 2012).

126. COGENT LAW, <http://www.cogentlaw.co.uk/services/> (last visited June 15, 2012).

127. ARGENT REHABILITATION, <http://www.argentrehab.co.uk/services/> (last visited June 15, 2012); ARGENT AUDIT & LEGACY, <http://www.argentauditandlegacy.co.uk/services/> (last visited June 15, 2012).

128. Sofia Lind, *Private Equity House Takes Majority Parabis Stake in Law Firm LBO First*, LEGAL WK. (Feb. 6, 2012), <http://www.legalweek.com/legal-week/news/2144039/private-equity-house-takes-stake-plexus-law-parent-company>.

129. *Id.*

5. This next category of legal services suppliers changes the form by focusing on companies that have not traditionally been allied with legal services, but because of recent changes have moved into the market. Three examples here indicate the range: Co-operative Legal Services; AA Legal Services; and Halifax Legal Express.

- Co-operative Legal Services (CLS) is the actual expression of “TescoLaw.” CLS is an offshoot of a supermarket.¹³⁰ CLS went from three lawyers in 2007 to over 370 in 2011. CLS has also announced that it will employ another 3,000 legal professionals over the next five years.¹³¹ It offers a limited range of legal services for individuals, such as probate, conveyancing, and personal injury, packaged into a combination of services under such names as “Life Planning.”¹³² These packages mean it can combine not only legal services but include others such as its banking or its funeral service, which is one of the largest in the UK.¹³³ The aim is to make consumer service provision seamless across all aspects of life, so that legal services is merely one aspect of the service rather than its entirety.
- AA Legal Services¹³⁴ and Halifax Legal Express¹³⁵ are offshoots of automobile repair and banking groups, respectively. They provide legal documents such as wills and leases, which can be obtained online with or without a lawyer’s review.¹³⁶ Neither company actually provides the service, instead relying on “back-office” suppliers. Both AA and Halifax use Epoq Legal to deliver their legal services.¹³⁷ The distinction between CLS and AA/Halifax is that the former employs its own lawyers and is the actual provider whereas the latter uses other providers. Nevertheless, this latter model is gathering strength in the legal market.

130. See CO-OPERATIVE LEGAL SERVICES, <http://www.co-operative.coop/legalservices/> (last visited June 15, 2012).

131. Owen Bowcott, *Co-op to Hire 3,000 Lawyers in Challenge to High Street Solicitors*, GUARDIAN (May 28, 2012), available at <http://www.guardian.co.uk/law/2012/may/28/co-op-3000-lawyers-challenge-solicitors>.

132. *Co-op Legal Services Reports Strong Growth as It Gears Up for ABS Application*, LEGAL FUTURES (Mar. 31, 2011), <http://www.legalfutures.co.uk/legal-services-act/market-monitor/co-op-legal-services-reports-strong-growth-as-it-gears-up-for-abs-application>.

133. *The Co-Operative Funeralcare*, CO-OPERATIVE LEGAL SERVICES, <http://www.co-operative.coop/funeralcare/> (last visited June 15, 2012).

134. *AA Legal Services*, AA, <http://www.theaa.com/legal-services/legal-documents.html> (last visited June 15, 2012).

135. HALIFAX, <http://www.halifaxlegalexpress.co.uk/halifax/> (last visited June 15, 2012).

136. See *id.*; *AA Legal Services*, *supra* note 134.

137. EPOQ, <http://www.epoq.co.uk/our-clients/> (last visited June 15, 2012).

6. The next group is allied with group number five by virtue of the online mode of delivery and use of back-office groups. Most are focused toward individual consumers, but there are elements of business-to-business supply (B2B). The key examples I refer to here are Legal365.com, Epoq Legal, Rocket Lawyer, and LegalZoom.

- Legal365.com is the creation of the first free ISP in the UK and derives its goals from that project in that it attempts to make legal services simple, straightforward, and explicitly priced for consumers.¹³⁸ It is primarily an online document creation site, although owned by a law firm and so regulated by the SRA.¹³⁹ Rocket Lawyer and LegalZoom are essentially similar services—online document creation, but with variations, and both are opening in the UK. Rocket Lawyer is famous for having received \$18.5 million investment from Google Ventures.¹⁴⁰
- Epoq Legal has a different approach but similar objective to the others in this group. Whereas the others serviced consumers, Epoq is aimed at business clients as a B2B service.¹⁴¹ There are two main categories of B2B client: banks and insurers, twenty-nine in number, and law firms.¹⁴² Both are designed to act behind the scenes, combining intelligent software with the legal and regulatory aspects of legal work.

7. One of the most controversial aspects of the Legal Services Act has been the potential to buy and sell law firms and take them to market by way of an initial public offering (IPO). The first law firm to undergo an IPO was Slater & Gordon in 2007, a personal injury law firm in Melbourne, Australia.¹⁴³ Slater has used its capital to invest in and acquire other law firms in Australia. In January 2012, it entered the UK market by agreeing to purchase a major English personal injury firm, Russell Jones and Walker

138. LEGAL365, <http://www.legal365.com/about/> (last visited June 15, 2012).

139. *Id.*

140. Daniel Fisher, *Google Jumps into Online-Law Business with Rocket Lawyer*, FORBES (Aug. 11, 2011), <http://www.forbes.com/sites/danielfisher/2011/08/11/google-jumps-into-online-law-business-with-rocket-lawyer/>. Specialist online services have opened also. In-Deed provides online conveyancing services on a fixed-fee basis with a no completion, no fee arrangement. IN-DEED, <http://www.in-deed.net> (last visited June 15, 2012).

141. See *Aims, Vision & Culture*, EPOQ, <http://www.epoq.co.uk/aims-vision-and-culture/> (last visited June 15, 2012).

142. *Our Clients*, EPOQ, <http://www.epoq.co.uk/our-clients/> (last visited June 15, 2012).

143. Christine Parker, *Peering over the Ethical Precipice: Incorporation, Listing and the Ethical Responsibilities of Law Firms*, 5-6, (Univ. of Melbourne Legal Studies, Paper No. 339, 2008), available at http://papers.ssm.com/sol3/papers.cfm?abstract_id=1132926.

(RJW).¹⁴⁴ RJW also owns a claims management service, Claims Direct, that generates its earnings through no-win, no-fee schemes and advertising heavily on television.¹⁴⁵ Fears often expressed about this free market model—and one of the reasons why the American Bar Association has opposed this idea—are that shareholder interests could determine the selection of cases and type of work done by the firm. Thus far, regulators have created a regulatory environment that has prevented any such behavior.¹⁴⁶ Moreover, client concerns could become secondary to institutional demands and profits. Since the aim of the Legal Services Act is to increase provision of legal services and access to justice, the risk has been considered worthwhile because it can be countermanded by responsive regulation.

8. The buying and selling of law firms raises an interesting question over the value of law firms. Law firms have been notoriously difficult to value, as they tend to use different accounting procedures than most companies. Opinion among bankers suggests that most law firm partners have an over-inflated sense of their own and their firm's financial worth. As limited liability partnerships in the UK are compelled to file accounts with Companies House each year, two attempted valuations of law firms as public companies have been made. The most detailed was by Peel Hunt, a broking house, in 2011.¹⁴⁷ It suggested that the individual partner's equity in a firm such as Allen & Overy, a major City of London law firm with over 2,000 lawyers valued at £1.48bn, would amount to just over £4m.¹⁴⁸ Mark Brandon, a legal services consultant, further took a cautious line when he asked the question: Would you buy shares in a law firm?¹⁴⁹ In his view, investors would need to know what law firms would do with the money.¹⁵⁰ For example, one medium-sized firm, Irwin Mitchell, had announced it would seek

144. *Slater & Gordon to Enter UK Market with £54m Purchase of Russell Jones & Walker*, LEGAL FUTURES (Jan. 30, 2012), <http://www.legalfutures.co.uk/latest-news/slater-gordon-to-enter-uk-market-with-54m-purchase-of-russell-jones-walker>.

145. CLAIMS DIRECT, <http://www.claimsdirect.co.uk/injury-claims> (last visited June 15, 2012).

146. See Susan Saab Fortney, *Tales of Two Regimes for Regulating Limited Liability Law Firms in the U.S. and Australia: Client Protection and Risk Management Lessons*, 11 LEGAL ETHICS 230, 237-41 (2009). See generally Steven Mark & Tahlia Gordon, *Innovations in Regulation—Responding to a Changing Legal Services Market*, 22 GEO. J. LEGAL ETHICS 501 (2009).

147. See John Flood, *Time to Take Your Law Firm to Market?*, JOHN FLOOD'S RANDOM ACAD. THOUGHTS (RATs) (May 21, 2011, 4:44 PM), <http://johnflood.blogspot.com/2011/05/time-to-take-your-law-firm-to-market.html>.

148. PEEL HUNT, LEGAL SERVICES: TO IPO OR NOT TO IPO? (2011), available at http://www.johnflood.com/summersschool/Legal_Services_May_2011_Peel_Hunt.pdf.

149. Mark Brandon, *Would You Buy Shares in a Law Firm?*, MOTIVE (Mar. 29, 2011), <http://www.motivelegal.com/index.php/2011/03/would-you-buy-shares-in-a-law-firm/>.

150. *Id.*

external investment via an ABS in order to create a volume personal injury business alongside a more “bespoke” corporate service.¹⁵¹ Thus, creating new businesses and expanding offices seem to be two likely candidates for the use of external investment. More recent attempts at valuing law firms have argued that six of the UK’s biggest law firms would be included in the FTSE100 stock index if they were publicly traded companies.¹⁵²

9. Another aspect of these changes, although not of direct concern to this Article, is the ways legal process outsourcing companies (LPO) are moving. LPOs are not law firms in the conventional sense, but much of the work they do is typically performed by law firms, which put LPOs in an anomalous position. For example, Thomson Reuters, the largest media company in the world, bought Pangea3, an LPO.¹⁵³ If one examines the resulting mix of companies providing legal expertise or cognate expertise, Thomson Reuters begins to resemble a new type of legal company or law firm.

- WestLaw: Legal research, legislative, and case law resources
- West KM: Knowledge management services for lawyers
- ProLaw: Law practice management software
- Serengeti: Legal task management and workflow systems
- Elite: Financial and practice management systems
- FindLaw: Website development and online marketing
- Hubbard One: Business development technology and solutions
- Hildebrandt Baker Robbins: Law firm management and technology consulting
- GRC Division: Governance, risk, and compliance services
- IP Services: Patent research and analysis, trademark research, and protection
- TrustLaw: Global hub for *pro bono* legal work
- BARBRI: Bar training course
- Pangea3: Legal process outsourcing services¹⁵⁴

A combined set of activities as listed here could easily be reinforced with conventional legal services under the English regulatory system. An

151. *We Want External Capital, Says Irwin Mitchell*, LEGAL FUTURES (Apr. 20, 2011), <http://www.legalfutures.co.uk/legal-services-act/market-monitor/we-want-external-capital-says-irwin-mitchell>.

152. Caroline Binham, *Six Law Firms ‘Big Enough for FTSE100,’* FIN. TIMES (Feb. 26, 2012), <http://www.ft.com/cms/s/0/6a54dd96-6093-11e1-af75-00144feabdc0.html#axzz1nXW10jCf>.

153. *See Thomson Reuters Acquires Pangea3*, PANGEA3 (Nov. 19, 2010), <http://www.pangea3.com/thomson-reuters-acquires-pangea3.html>.

154. John Flood, *The Changing Face of Legal Process Outsourcing*, JOHN FLOOD’S RANDOM ACAD. THOUGHTS (RATs) (Nov. 24, 2010, 9:10 AM), <http://johnflood.blogspot.com/2010/11/changing-face-of-legal-process.html>.

LPO could potentially reverse engineer itself into a law practice and become an ABS.

10. The penultimate category is the creation of contract and/or temporary attorney assignment companies. Examples of these businesses include Lawyers on Demand owned by Berwin Leighton Paisner, a law firm, and Axiom Legal, a US and UK company.¹⁵⁵ Both place lawyers in in-house legal departments on temporary placements and also provide outsourcing and project management.¹⁵⁶ These companies represent the commoditization of the lawyer as well as legal services.

11. The final example is Riverview Law, a new company designed to offer legal services to SMEs at fixed prices.¹⁵⁷ The company operates through two arms, Riverview Solicitors and Riverview Chambers, with a central portal.¹⁵⁸ Work is allocated according to type, litigation or transactional, through the portal.¹⁵⁹ Riverview Chambers uses a range of barristers from independent chambers, which is in effect a further portal.¹⁶⁰ Riverview Solicitors employs its own lawyers.¹⁶¹ The entire operation is owned by another company called LawVest, an aspiring ABS, which is partly owned by the large law firm, DLA Piper.¹⁶² The English Bar, which has been disinclined to accept the changes behind the Legal Services Act, now finds itself directly joined through ventures such as Riverview. The success or otherwise of the fixed-fee model for all legal work will doubtless send reverberations through the legal profession.¹⁶³

The main focus of this Article has been on the organization of legal practice rather than its constituents. But legal services providers, however formed, must have appropriately educated and trained personnel. Will the

155. See AXIOM LAW, <http://www.axiomlaw.com/index.php/overview> (last visited June 15, 2012); LAWYERS ON DEMAND, <http://www.lod.co.uk/> (last visited June 15, 2012).

156. Caroline Hill, *The Expert Temps—Will Contract Lawyers Prove a Mainstream Tool for In-House Legal Teams?*, LEGAL WK. (Sept. 29, 2011), <http://www.legalweek.com/legal-week/analysis/2112525/expert-temps-contract-lawyers-prove-mainstream-tool-house-legal-teams>; see also AXIOM LAW, *supra* note 155; LAWYERS ON DEMAND, *supra* note 155.

157. *About Us*, RIVERVIEW L., <http://www.riverviewlaw.com/about-us/> (last visited June 15, 2012).

158. Suzi Ring & Sofia Lind, *Riverview Law in the Spotlight as Market Sizes Up New Fixed-Fee Legal Venture*, LEGAL WK. (Feb. 24, 2012), <http://www.legalweek.com/legal-week/analysis/2154614/riverview-law-spotlight-market-sizes-fixed-fee-legal-venture>.

159. *See id.*

160. *See id.*

161. *See id.*

162. *LawVest Unveils Fixed-Price Law Firm Combining Solicitors and Barristers*, LEGAL FUTURES (Feb. 20, 2012), <http://www.legalfutures.co.uk/latest-news/lawvest-unveils-fixed-price-law-firm-combining-solicitors-and-barristers>.

163. Ring & Lind, *supra* note 158.

new organizational forms be received well by new generations of lawyers? And how will their work patterns adapt to the new organizations?

E. Generation Y and Immaterial Labor

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, and their choices. There is a strong argument put forward that the millennial generation, known as Generation Y (born in early 1980s), has a different perspective on life choices as compared with earlier generations.¹⁶⁴ The general emphasis of the research shows that careers are viewed quite differently by Generation Y than the way that “Baby Boomers” perceive them.¹⁶⁵ Careers are seen as discrete moments rather than as ladders naturally joined. These discrete moments are composed of three to four year periods.¹⁶⁶ For example, one study suggests only two percent of Generation Y believed a career was for life.¹⁶⁷

It is in this context we see the establishment of ventures such as Axiom Law, a company that hires associates eight to ten years into their careers who have made a choice to abandon the partnership tournament in favor of a more relaxed life-work balance. They are employed to work in in-house 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. In the redesigned law firm there will evolve a concordance of styles that will accelerate convergence towards the new law firm.

How will legal education as presently structured and taught by mostly non-Generation 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?¹⁶⁸ We need to understand at a more theoretical level

164. *Sharing Our Knowledge: Portraying Generation Y*, HAYS NEWS, <http://www.hays.com.au/news/ausworkplace/issue4b.aspx> (last visited June 15, 2012).

165. *Id.*

166. See generally SUE HONORÉ & CARINA PAINE SCHOFIELD, *GENERATION Y: INSIDE OUT* (2009); INST. OF LEADERSHIP & MGMT. & ASHRIDGE BUS. SCH., *GREAT EXPECTATIONS: MANAGING GENERATION Y 5* (2011).

167. *Sharing Our Knowledge: Portraying Generation Y*, *supra* note 164.

168. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012); Stanley Fish, *The Bad News Law Schools*, N.Y. TIMES (Feb. 20, 2012), <http://opinionator.blogs.nytimes.com/2012/02/20/the-bad-news-law-schools/?hp>.

some of the reasons for change. I argue that we are entering a period of new working relations that are permeating all types of work, including professions.

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 managerial 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.¹⁶⁹ They both celebrate the collective and the individual.¹⁷⁰ They combine inter-individuality and trans-individuality.¹⁷¹ 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.¹⁷² The groups and teams are in reality political forms where the unexpected can happen, the possible is anticipated, and where tastes, emotions, language games, etc., have a role.¹⁷³ Immaterial labor therefore is “that [which] creates immaterial products, such as knowledge, information, communication, a relationship, or an emotional response.”¹⁷⁴ It is not the labor that is immaterial, but the product, which is applicable to legal services. Production and consumption become intertwined. It is no longer merely a case of the professional transmitting knowledge to a client, but rather their exchanges en-

169. See generally Rosen, *supra* note 104.

170. See generally *id.*

171. See generally *id.*

172. Gerard Hanlon, HRM Is Redundant?: Professions, Immaterial Labour and the Future of Work (2007) (unpublished manuscript), available at <http://merlin.mnngt.waikato.ac.nz/ejrot/cmsconference/2007/proceedings/whereiscriticalhrm/hanlon.pdf>.

173. *Id.*

174. MICHAEL HARTD & ANTONIO NEGRI, MULTITUDE: WAR AND DEMOCRACY IN THE AGE OF EMPIRE 108 (2004).

hance 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.'"¹⁷⁵

The political economy of labor now embodies elements that are not normally measured in a rational, calculable way.¹⁷⁶ 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 and 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."¹⁷⁷

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, 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."¹⁷⁸ Moreover, the distributed network form shifts this entire process to the global level. As producer and consumer, author and audience elide in this sphere, "[s]ocial networks offer unprecedented capacities for creating new forms of life and new relations of affinity," which is what is occurring in legal services.¹⁷⁹

Thus while the redesigned law firm appears to have the capacity to alter the legal landscape, as did Capability Brown to the English countryside, the new immaterial labor also has within it the ability to subvert or at least modify the way of the redesigned law firm, especially if practiced by Generation Y. In part this is because the new law firm will, through its traditional managerialist philosophy, attempt to impose rational accounting procedures that will fail to capture the new forms of immaterial labor. What will be interesting is to see how institutions respond, including firms and law schools, and what kind of value system and ethical system evolves with it.¹⁸⁰

175. Ben Trott, *Immaterial Labour and World Order: An Evaluation of a Thesis*, 7 EPHEMERA 203, 209 (2007) (emphasis omitted) (quoting MICHAEL HARDT & ANTONIO NEGRI, *EMPIRE* 294 (2001)).

176. Maurizio Lazzarato, *Immaterial Labor*, in *RADICAL THOUGHT IN ITALY: A POTENTIAL POLITICS* 132, 132-33 (Paolo Virno & Michael Hardt eds., 2006).

177. HARDT & NEGRI, *supra* note 175, at 32.

178. Mark Coté & Jennifer Pybus, *Learning to Immaterial Labour 2.0: MySpace and Social Networks*, 7 EPHEMERA 88, 90 (2007).

179. *Id.* at 104.

180. For example, who will own legal knowledge produced in these environments?

F. 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.¹⁸¹ Parsons talked of professions having a bargain with community.¹⁸² In exchange for the permission to self-regulate, the profession would not abuse its monopoly powers.¹⁸³ Johnson saw professionalism as a particular mode of resolving the tension in the producer-consumer relationship, in favor of the professional.¹⁸⁴ While these interpretations focus on the power of the professional, others like Freidson have underpinned the role of knowledge, noting the fluctuating balance between technical knowledge and symbolic representations.¹⁸⁵

Professionalism is now assuming the role of a folk term, a taxonomic trope, which triggers set responses without reflection. In the redesigned law firm, the ascendance of technical expertise is trumping and exiling symbolic functions. The result of the move to the technical is the abandonment of the mythic power of law in favor of the application of rules, regulation, and audit.¹⁸⁶ 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?"¹⁸⁷

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 (or, more likely, legal services provider) will be an interesting text to read.

181. Ralf Dahrendorf, *In Defence of the English Professions*, 77 J. ROYAL SOC'Y MED. 178, 178-79 (1984).

182. Talcott Parsons, *The Professions and Social Structure*, 17 SOC. FORCES 457, 457-58 (1939).

183. *See id.* at 458.

184. TERENCE JOHNSON, PROFESSIONS AND POWER 45-47 (1972).

185. *See generally* ELIOT FREIDSON, PROFESSIONAL POWERS: A STUDY OF THE INSTITUTIONALIZATION OF FORMAL KNOWLEDGE (1986).

186. *See generally* MICHAEL POWER, THE AUDIT SOCIETY: RITUALS OF VERIFICATION (1999).

187. Robert Rosen, "Proletarianizing" Lives: Researching Careers, 33 LAW & SOC'Y REV. 703, 709 (1999).

