Happiness in NewLaw—Assessing the Lifestyle Claims of Alternative Legal Practices in Australia

Author : Francesca Bartlett

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Margaret Thornton,*Towards the Uberisation of Legal Practice*, 1 **Law, Technology and Humans** 46 (2019).

Margaret Thornton's work has had a defining role in the landscape of socio-legal scholarship in Australia and across the common law world for the last generation. She has long critiqued the neo-liberal turn of our major institutions (especially in the academy and legal profession) with an emphasis on profit maximisation. She coined the term "Benchmark Male" to capture a prevailing notion of an "ideal worker" with supposed attributes often unattainable for women and others struggling under the yoke of gendered roles and assumptions. In *The Flexible Cyborg* in 2016, Thornton described the results of her qualitative empirical work, which found that technology enabled "temporal flexibility dovetailed with the feminisation of labour in the late twentieth century" resulting in women lawyers simply doing more (full time work *and* domestic duty). Thus, she has long documented how an economy enabled by the uptake of technology has "colonised new sites" including the personal sphere. Her latest contribution, *Towards the Uberisation of Legal Practice*, is also concerned with working patterns and gendered effects but provides a more upbeat reflection on an aspect of modern legal practice driven (to an extent) by a desire for "being happy."

Thornton bases her discussion on a relatively small, empirical project comprising of 38 interviews with Australian and English lawyers within "NewLaw" firms. However, the interviews were in-depth discussions, which ultimately generated rich insights concerning lawyer experience and opinion. By focusing on the process as well as the outcome of disruption of traditional legal career patterns and expectations, her project zeroed in on the following questions:

> Why lawyers had left traditional practice, established a new firm or had chosen to become independent contractors, and what working flexibly mean for them, how comfortable they were with the technology and what measures were being undertaken to prevent work from encroaching on their private life. (P. 48.)

Thornton describes a NewLaw firm as a "blended or hybrid model" still run by lawyers (usually as a fully incorporated legal practice available under Australian legislation) but with "varying degrees of centralised support" and control, and intensive use of IT specialists and legaltech. It could be a boutique firm with a handful of lawyers specialising in a new market or a hub for a large cohort of lawyers on contract. In both cases, the organisations seem to comprise of refugee senior practitioners from medium to large law firms. What is universal in approach is the sloughing off of a static physical presence—expensive offices are gone as both a cost saving method and a signal of a deliberate break with the past. Also gone is the hierarchical nature of traditional firms, that has long been implicated in a range of intractable barriers for women and persons of color in attainting seniority. Several interviewees described changing terminology—from "partner" to "practice leader"—to signal a shift in lock-step careers and autonomy levels.

NewLaw is a different species to the myriad solo practitioner providing traditional services to one-off

individual clients, even with legaltech enhancements. It may emerge as a true competitor to medium and large law firms for clients and staff, as it is largely focused on corporate clients offering legal advising, tech solutions, and legal personnel on secondment. Secondments may have been a large law firm practice for some time, but there are now deliberate business models responding to this demand. Thornton concludes that this "point[s] to the remarkable agility of NewLaw in responding to perceived gaps in the market." (P. 51.) Nevertheless, she concedes that, at this stage, it is a small sub-strand unlikely to replace an increasingly profitable BigLaw sector that has better capacity to provide training and a full suite of services.

Thornton's study also documents several organisations with an access to justice orientation that rely on technological educational resources and low-cost online services. Innovative, technology-enabled approaches to intractable access to justice problems have been a particular focus for many scholars such as Deborah Rhode. Thornton's discussion points to these models as part of a NewLaw ethos of rejecting neo-liberal ideology, but her discussion relates mostly to the less studied corporate NewLaw firm and its "disruptive innovation" in this legal services market. She explains this process by quoting her interview subjects who provide examples of Clayton Christensen's theory of an existing market that has inherent limitations making it vulnerable to change-makers. For instance, the partners of NewLaw firms cite familiar characterisations of law firms with "dysfunctional" time billing practices and pyramidal structures based on hyper-competition and a lack of transparency. The response is to "transcend narrow issues of legal regulation and creatively address contemporary problems" through new organisational arrangements and working styles. It is apparent that these lawyers are aware of innovation theory echoing Richard Susskind's deconstructive terms for future legal workers—describing "solutionists" focused on "faster, better, cheaper." (P. 49.)

A key contribution of Thornton's article is its examination of an emerging transformation of conceptions of lawyering and an evolution in the provision of legal services. The stated virtues of NewLaw are independence, autonomy, flexibility, and choice. These are cited as advantages unavailable in BigLaw. In the U.S., Joan Williams has reported on the stigma attached to legal workers who attempt to avail themselves of flexible employment policies. Williams, with Platt and Lee, however, tell a happier story: that new legal organisational structures have provided true access to flexible work with supportive cultural environments. Thornton's investigation of the mushrooming of NewLaw as a lifestyle choice for weary corporate lawyers in Australia makes similar findings.

That said, Thornton is cautious about this self-confessed new way, pointing to significant issues facing a contractor model where there is a greater risk of isolation and economic exploitation. She also concedes that, to the extent this sub-industry becomes identified as a feminised enclave, it may suffer the usual "invidiousness associated" with that characterization, including lower rates of pay and status (and there is already some evidence of this). We are yet to track whether there is the same structural exploitation of female labour, and vulnerability of workers with caring responsibilities, as has been observed in BigLaw. Nevertheless, it appears that, in this new approach, women are not the traditional "fringe-dwellers" Thornton has long observed in law.

Thornton's greatest caution relates to junior lawyers. NewLaw engages with and addresses challenges experienced by senior lawyers, and it generally provides a model premised on senior lawyers' ability to attract clients and work independently. There is scant space for junior lawyers to acquire skills and contacts needed in a contract- or specialist-based model. For those seeking to bypass BigLaw, participating in this gig economy too early presents all of the dangers represented by the ride-sharing company (Uber) that her title references. Thus, she warns that NewLaw does nothing to alleviate the "growing precariat" of junior lawyers.

Thornton's article reports the stories of converts to NewLaw. As such, it is a partial perspective on this

growing trend. However, as Thornton and her participants emphasise, it is a movement committed to leaving behind undesirable aspects of the legal workforce (presentism, discriminatory nepotistic or homosocial behaviours, hyper-competition, and exploitation of the client in some cases). For some lawyers at least, this provides a prospect of a happier life in law. Thornton observes more broadly that where the new models prove economically sustainable, they may in the future "change irrevocably the nature of legal professionalism." (P. 60.) Since the publication of her article in November 2019, there has been a drastic acceleration of reliance on virtual working environments as a result of a global pandemic (Covid-19). The article's predictions for a transformed profession seem to have been brought forward. And yet, as Thornton's article recognizes, we need to be attuned to its uneven and potentially unequal impacts upon lawyers and law practices.

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