

The New World Order for Lawyers and the Legal Profession(s)

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Ronit Dinovitzer & Bryant Garth, *Lawyers and the Legal Profession*, (UC Irvine School of Law Research Paper No. 2015-19), available at [SSRN](#).

One of the main concerns of the authors is the structure of the legal profession in which perpetual reproduction of hierarchies forms a contest among different elements of the profession. The configuration of the profession shapes its research which places corporate lawyers and firms at the top of the hierarchy. This seems to stem from the early Cravath idealisation of law firm development. Even though the Cravath model dates from the late 19th century, it reverberates still in the 21st century and has captured scholars' thinking. It appears difficult to shake off these established idealisations and models when discussing the legal profession. Dinovitzer and Garth (D&G) endeavour to show how these cleavages rip through the study of legal professions.

"Lawyers and the Legal Profession" draws on the research done on the structure of the legal profession, its divisions, lawyers' backgrounds (gender, ethnicity, class), law firms and globalisation. The range is broad but there is one caveat, which is most of the work referred to is based on research done within the US. It is legitimate to question this given the global differences between legal professions, regulatory systems and the like. Although the Cravath model might have been the blueprint for law firm organisation that was exported by American lawyers—and its residues are apparent—whether it remains the dominant model is open and contested, even, perhaps, within the US. See, for example, the rise of the ["smart" law firm](#) (Wald). I return to this later.

Starting with the two-hemispheres model of the social structure of the legal profession D&G show its enduring attraction to researchers but more importantly as an almost unshiftable barrier to change within the profession. This is augmented by their analysis of different social groups and their attempts at breaching this barrier. Despite huge advances women still are more evident in "settings with lower pay, less power, and less prestige" (D&G: 3). Women are "more likely to work in government, legal services, or public defender and public interest positions" (id). Rewards and promotion in law are fraught for women.

Race and class are factors that can hinder career prospects in law although law school rankings can trump social origins. However, lower social class can produce lower earnings over time.

Satisfaction with law careers appears to be distributed throughout the range of legal practice. Misery is not the defining emotion notwithstanding layoffs and declining law school enrolments, according to the After the JD study. It appears that satisfaction is correlated to lawyers' expectations and social origins. Those outside the corporate law firm circle find satisfaction because of their achievements contrary to the dissatisfaction expressed by Big Law lawyers. Lawyers from lower socio-economic groups tend to denounce Big Law in order to maintain their satisfaction, something that again reinforces difference and hierarchy.

In the realm of practice solo and small firm lawyers have been subjected to deskilling and deprofessionalization, they worry about status and respectability, and their numbers are shrinking. The large law firm sector is thriving and growing. Yet despite growth and economic success, the corporate world is beset with new problems. Established models of law firm growth hit the buffers in the recession when corporations intensified the changes in the ways they used law firms. No longer established long term one-to-one relations, but clusters of firms identified with star lawyers selected as and when by in house counsel. The recession also demolished the sanctity of partnership with equity partners being laid off along with associates and non-equity partners.

The issue of corporate lawyers' professionalism and independence from clients is variable. Evidence points both ways: lawyers can remain apart from their clients' interests, their values give them strength, yet lawyers are desperately seeking business and are therefore willing to compromise their positions and professionalism and be the weaker party. D&G's inference is that lawyer-client relationships are more nuanced and defy categorical conclusions.

One of the most distinctive types of client is the in house counsel, a relatively understudied part of the profession compared to law firm lawyers. While the amount of research on in house counsel has increased, according to D&G, it seems to focus on the autonomy and independence of such counsel from their employers. This suggests there is insufficient research on the relationships of in house counsel with their external counsel. Nevertheless, we are seeing more research on in house counsel being carried out outside the US. For example, the [Harvard GLEE project](#) has produced a number of papers on the role of [in house counsel](#) in such countries as India, Brazil and others.

Indeed, when D&G turn to globalization they see it in terms of US expansion and imperialism. Their view is simultaneously historical and ahistorical. How is this paradox possible? Using the end of the Cold War as their starting point coupled with the export of neoliberal economics, they show how law firms pursued their clients around the world. Of course one's view is shaped by one's perspective. If D&G had used an earlier starting date their picture would be different. Colonial regimes and empires had inbuilt advantages in developing exports and services. Certainly the City of London law firms were global in the 19th century as were some in France. We need more research to bring out these themes. For example, the development of the railways globally in the 19th century would show a more mixed and nuanced market for legal services. Moreover, not only are we now seeing more intense competition among legal service suppliers from different parts of the world, we are seeing variation in the ways these suppliers are organising themselves.

Ideal types, or even archetypes, have been remarkably enduring in legal profession research. One dominant archetype, for example, is the Cravath model of law firm development which is clearly reinforced in the research D&G examine. (See Regan's [Eat What You Kill](#)) Yet we know that it has been challenged as deficient by some scholars in the US and now has declining relevance there and elsewhere. Why is this not more apparent in their survey? It is because D&G focus mainly on US research which is still carried out in law schools. Look elsewhere and a different *mise en scène* appears. Within Europe, and other parts of North America, research on professional service firms (PSF), including law firms, is increasingly conducted in business schools which use different theoretical frameworks and arguments to those found in the typical legal professions literature, especially in the US. Institutional theory examines the [foundations of PSFs](#) (Muzio, Brock & Suddaby)—their [cultural, cognitive and regulative pillars](#) (Scott). Organisational theory is now far more sophisticated than in the heyday of the two hemispheres. Research on [leadership in PSFs](#) shows the subtleties of commanding authority in organisations without clear demarcations of authority (Empson). The role of [emotional labour](#) assumes greater importance (Hochschild). And theories of globalisation now incorporate the concept of the [subaltern](#) (Sousa Santos) and [cosmopolitanism](#) (Flood & Lederer).

The role of regulation now plays an increasingly imperative role in determining the structures and activities of professions. In the UK the Legal Services Act 2007 has given rise to a new type of law firm, the Alternative Business Structure. The freedom accorded to legal services providers has attracted US companies—not law firms—such as LegalZoom and Axiom to establish in the UK. Globally the accounting firms, or more accurately professional service firms, are preparing to challenge the global hegemony of law firms. Legal process outsourcing has dramatically affected the prospects of lawyers wanting to obtain jobs in conventional law firms. And the global trade talks that take place don't refer to lawyers but [legal services providers](#) (Terry). This is creating new areas of research that will alter our images of the legal profession and professions in the future. Perhaps it is a combination of tunnel vision and a restrictive set of professional strictures within the US that produces such a conservative outlook for the legal profession.

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