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Death Squads and “directions over lunch”:

A Comparative Review of the Independence of the Bar

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Introduction

Informed observers can confidently assert that the independence of the bar is a foundational constitutional principle in Canada.

Once asserted, however, difficulties begin.

When we speak of independence, we employ a relational, not an absolute concept. Independence from whom or what? And to what degree? Law can leave no vacuum and constitutional government tolerates no “independence” in the sense of absence of accountability. Politicians, captains of industry, political party officials, soldiers, police, Prime Ministers, Presidents, and Queens are all subject to the law. Whatever “independence” connotes, it cannot be a zone of immunity from the rule of law.¹

Independence *from* who?

We cannot, in fact, judge the appropriate degree of independence, the zones of autonomy that it establishes, or the range of conduct, attitudes, or dispositions it is supposed to protect, until we understand the other side of the “independence” relation: who or what lawyers are to be independent from? If independence from the state or from government (which is not exactly the same thing) is the foremost objective, certain consequences may be thought to flow logically. Even here though, we might mean a variety of things when we invoke the notion of independence from “government”. Though it seems obvious that the notion must include some idea of independence from the executive branch, it is less clear that members of the legal profession should be buffered from either the legislative or judicial branches of “government”? If lawyers should be independent from each, but to varying degree, the degree of independence to be preserved might vary either with particular

¹ A point well made by Sir David Clementi (March, 2004), observing that “self-regulation, in practice, operates within parameters clearly laid down by law, with the state involved in many aspects of regulation” (16) and concluding: “Over recent years, the form of regulation of legal services has, arguably, moved further towards co-regulation (exercised by government and the legal professional bodies) and away from pure self-regulation; although the system overall remains one based on a combination of self-, co-, and state regulation.” (17)

circumstances or merely formally, according to which branch of government we are dealing with. Moreover, while the minimal standard of protecting lawyers from threats and coercion is clearly important, it might be that “professional independence” can be severely compromised by the hope of preferment as well as my crude threats. To what extent can one speak meaningfully of “independence” from the executive branch of government in circumstances where contracts, advancements, honours, and lucrative or prestigious appointments (including to the bench) remain matters of government patronage? The state is not the only source of patronage, of course. If it is independence of mind and of action is valued, the notion needs to be vigorously asserted in other realms as well. Quite apart from the potentially distorting influence of stage largess, lawyerly independence may require a degree of removal from the corrupting influence of the market, played out in the realm of private power or private interest. Such concerns weighed heavily on the minds of the individuals who created the modern Canadian legal profession, providing the motivating force that propelled the creation of most of the structures of modern-day professionalism, including arrangements relating to education and qualification, professional ethics, discipline, and professional organization (see: Pue, 2003, and sources cited therein). To what degree, then, should members of the bar be buffered from client influence? Should they be independent of pressure arising from the needs of partnerships or from the pressure of law firms organized as Big Business (as, by convention and etiquette, barristers have been in England)? If so, how might these goals be attained? Despite their historical resonance, such questions may seem surprising and out of place – even, to a degree, nonsensical - in North America. Across the Atlantic, however, the conventions and etiquette of the English Bar have continued to seek to limit the potential for the market to warp the judgment, conduct, or sensibilities of barristers, despite the economic pressures to do otherwise. Finally, what degree of independence from the organized legal profession should individual lawyers enjoy?

Independence *for* who?

Secondly, what do we mean when we speak of “the bar”. The language designating individuals who provide legal services, including advocacy before courts, varies from country to country. A USA “attorney” is similar to but not exactly the same as a Canadian “lawyer” or English barrister. In common law Canada the term “lawyer” is, in fact, only a convenient catch-all, used loosely to refer to any active member of a provincial or territorial Law Society. In the United States “attorney” denotes a professionally qualified individual who provides legal services for a fee and who has a right of audience in certain courts. In England and Wales, and, to varying degree, other former British colonies, there are two traditional legal professions,² not one. The “Bar”, properly speaking, consists only of “barristers”. This is the branch of the legal profession which has conventionally enjoyed the exclusive right of audience in the Superior Courts. The “solicitor’s branch” (not “attorney’s”) performs much first-contact legal work. It is often, not entirely accurately, thought of as the “office work” side of the legal profession just as the bar is often, equally inaccurately, thought of as courtroom lawyers. Conventional English etiquette allowed solicitors, but not barristers, to have direct contact with their clients, to work in firms (barristers work on their own), to contract for fees (barristers’ receive ‘honoraria’, negotiated between solicitors and barristers’ clerks and paid in advance), and to select or reject clients as they see fit. Barristers, in contrast, were notionally expected to honour the “cab rank rule”, representing any client presenting herself and able to pay the fee. The Bar, historically organized around the ancient institutions of four “Inns of Court” (Grey’s Inn, Inner Temple, Middle Temple, Lincoln’s Inn), whose powers and privileges are so ancient as to be without documented source, coalesces for common governance through the Bar Council. Although the Bar Council is a relatively new

² Sir David Clementi, Final Report, December 2004, identifies five “legal professions”: solicitors, barristers, legal executives, patent agents, trade mark attorneys. (24)

innovation with a somewhat ambiguous status some informed observers believe that “regulatory power has now been irreversibly to the Bar Council” (Clementi, December 2004, p. 31, referencing views of unnamed others). Common law Canada’s legal professions, derived from English models, unite “barristers” and “solicitors” in one qualifying association. The professions remain notionally and conceptually distinct despite the fact all lawyers are both solicitor and barrister (a point that is not generally appreciated or understood by Canadian law societies: Pue 1995b) and few think at all of the difference. It would, of course, be both messy and inconvenient if it turned out that “lawyers” in their guise as “solicitors” should enjoy different types or degrees of “independence” than “lawyers” qua barristers.

Though it is not much understood in early twenty-first century Canada, the English Bar as it existed from the late nineteenth century well into the twentieth represents the “gold standard” in Canadian mythologies of legal professional independence. Its institutions, traditions, and history, derived at-a-distance from Canadian professional leaders who were well familiar with English practices, lies, ghost-like, behind much contemporary thinking. (Pue, 1995b) Canadian professional thought tends to emphasize independence from government as an ultimate value. This is also one key component of the English Bar’s self-conception for the struggles that produced constitutional government in the place of royal despotism played themselves out dramatically in the courtroom and through the actions of barristers. The English Bar’s historical notion of its independence is at once deeper and broader than this, however. It emphasizes independence of mind (the cab-rank rule), independence of interest (the reliance on solicitor intermediaries and the notion of barristers’ fees as honoraria), independence from solicitors (the institution of the barrister’s clerk), independence from clients (the insistence on receiving instructions from solicitors, not directly from clients), and independence from other barristers (the prohibition on partnership and corresponding organization of work through Chambers rather than firms).

Constitutional Principle?

Third, what does it mean to speak of the “independence of the bar” as a *constitutional principle*? Canada’s written constitution nowhere explicitly mentions the notion. This, of course, does not dispose of the issue. Many central features of our constitution – including political parties, the office of the Prime Minister, and most of the constraints on the Monarch’s power that we take for granted, for example – appear nowhere in the formal written text. If the “independence of the bar” has an existence in the formal documents of Canada’s constitution, it must lie in the now rather embarrassing words of the British North America Act, 1867’s (now designated the “Constitution Act, 1867”), preamble:

Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

Though ever more opaque for each succeeding generation of Canadians, the words “a Constitution similar in Principle to that of the United Kingdom” have done a lot of the “heavy lifting” in constituting Canada. Noting the presence of such terms does not, of course, dispose of the question. Rather, it only opens up the question of what the multifarious texts, conventions, usages, writings, judgments, customs, parliamentary practices, values, and other sources of the Constitution of the United Kingdom might indicate insofar as the legal profession’s independence is concerned.

This raises questions of an historical and political character unfamiliar to contemporary Canadian lawyers. The fact that the British House of Lords Select Committee on the Constitution is currently of the view that “the independence of the legal profession is constitutionally important” (as reported in Joint Committee, 2006, p. 40), is persuasive, given

the history of Canada’s parliamentary system, but not determinative. Even if *that* statement is taken at face value, its precise implications are by no means clear.

From coast to coast to coast?

Finally, what does “in Canada” include? Does the principle of professional independence extend to civil law Canada (Quebec) or does it apply only to the common law jurisdictions? Does it apply equally to each common law province or do variations in local circumstances (for an extraordinary treatment of how “transatlantic constitutionalism” works through divergent local circumstances, see Bilder, 2004) or the date of confederation for each province produce potentially divergent outcomes? Finally, what of its application to peoples and regions where the continuing sovereignty of First people’s, whether explicitly affirmed and charted out (as in Nunavut or Nishga) or not, interjects a competing constitutionalism?

Framework understandings of “Professions”

Such questions are neither simple nor inconsequential. The answers depend very much on historically embedded understandings of legal profession and their roles in society. Unfortunately, much scholarship on “the professions” as historical phenomena, economic activity, or sociological category has directed attention elsewhere. At best, the bulk of such work fails to illuminate these matters. At worst, it has sown confusion. By focusing on apparent similarities of form between lawyer’s professionalization and that of other occupations (accountants, physicians, or plumbers, for example) the theory of professions has served to obscure the relationship between legal services, the rule of law, and constitutionalism.

As they have tried to understand the distinguishing features and social roles of professions, scholars have responded to shifting intellectual fashions, emphasizing different themes in each phase of the sub-discipline’s development (see Freidson, 1994, 1-10; Karpik, Introduction). Such shifts are characteristic of the scholarly professions. In general,

approaches which were “professions-friendly” (often unhelpfully lumped together as “functionalist”) developed during the nineteenth and twentieth centuries, giving way to more critical understandings from about the mid-twentieth century onward. An emphasis on pro-social effects of “professionalization”, such as social integration or the development of reservoirs of high-level expertise, was displaced from the 1960’s onward by scholarship cast in a demystifying mould which treated professions as elaborate conspiracies against consumer and public alike. In this particular iteration the theory of professions accorded supreme importance to the state-protection of professional monopolies in the provision of their key services and the consequent monopoly rents that professions could extract from “consumers”. Professions were viewed as “plundering nomadic tribes sweeping back and forth across the social territory in search of an opportunity to increase their material and symbolic wealth” (Karpik, 3). All else, whether it be educational attainments, ethical codes, fee regulation, professional rhetoric’s oriented around the language of “public interest”, or procedures to discipline or expel incompetent or dishonest professionals was construed as serving the cause of monopoly. Seemingly benign characteristics such as ethical codes might be interpreted as advancing self-interest directly (as in ethical restrictions on fee competition) or by providing a smoke-screen shielding self-interest from public scrutiny. A strange political alliance converged. When “both radical and free-market ideologues” agreed on the main outlines of the “monopoly” critique of professions (Freidson, 9) it was as if the Yippie movement and the Chicago school of economics had joined forces. The professions stood no chance. One potentially significant variation saw professions as advancing some form of cultural monopoly or a collective status project along with or instead of a simple economic monopoly. “Status projects” typically involved efforts to secure recognition of the group as learned or gentlemanly and often involved screening by class, race, ethnicity, political conviction, religion, or gender, for example). Although it diverged radically from economic reductionist

approaches, this was rarely fully appreciated (Alan Paterson was an early and important exception). Often illogically treated as a mere subcategory of monopoly theory, cultural interpretations were never fully taken on board by the larger literatures (discussions of these threads are found in Karpik, Introduction; Eliot Freidson, 1-10; Abbott, 1-31; Auerbach; Bledstein; Haskell, Johnson; Larson; Prest; Abel; Empson; amongst others). In the last years of the twentieth century, however students of the professions started to take the cultures and institutions of professions more seriously. New works brought professional cultures into sharper focus and, dramatically, illuminated the crucial relationship between lawyers’ professionalism and the historical transition to liberal constitutionalism (eg., Pue and Sugarman; Di Maggio and Powell; Karpik and Halliday).

Much writing on professions has centred on identifying certain core “traits” which are said both to distinguish professional groups from other sorts of organizations and to distinguish “professionals” from other sorts of workers. Carr-Saunders and Wilson’s 1933 classic work had a profound impact:

Its theoretical discussion systematized a view of professions that had by then come to dominate the writings both of the professions themselves and of the social scientists examining them. Professions were organized bodies of experts who applied esoteric knowledge to particular cases. They had elaborate systems of instruction and training, together with entry by examination and other formal prerequisites. They normally possessed and enforced a code of ethics or behavior. This list of properties became the core of later definitions. (Abbott, 4)

A sort of “check-list” emerged over time. Unsurprisingly, any sense of historical or professional specificity was diminished with each repetition. Much research on the legal profession has sought to measure degrees of professionalism in the realms of organization, education, esoteric knowledge, ethical codes and discipline. Sir David Clementi’s recent report on the legal professions of England and Wales relies on a “trait” approach of sorts, identifying five “core functions of regulation”, treating the second and third under the heading

of “entry standards and training”, and expanding the others into “monitoring and enforcement”, “complaints” and “discipline”. (Clementi, December 2004, 26; cf. Clementi, March 2004, 24-25)

Check-list approaches direct discourse: they tend to obscure consideration of anything *not* on the check-list. Notions such as independence have not proved intellectually fashionable under the onslaught of economic theories focused on monopoly effects. Any value plausibly associated with a principle of “independence” for any association, group, or occupation, does not bear up very well in the constrained utilitarianism of “trait”-based approaches. This results in a systematic failure to value forms of associational life that are not either governed directly by the state or by the logic of the free market (a point registered powerfully by Burrage). Moreover, in generalizing about *all* professions (a field that is never properly defined), abstract theories serve to obscure significant distinctions *amongst* professions. The distinctiveness of lawyers’ roles in relation to courts, state, and society has, in particular, been lost in the shuffle. English Canada’s leading study of professional regulation similarly pays little attention to the peculiarities of legal work (Law Reform Commission of Manitoba). This is so, curiously, despite the fact that the relationship between the autonomy of the legal profession and constitutional governance is widely recognized as being of central importance to the success of societies transiting from authoritarian to constitutional governance. Likewise, work seeking to establish the conditions for successful economic development in transitional or third-world societies, cannot overlook the nexus between lawyers, the rule of law, and calculability. An embarrassed silence prevails only within established liberal democracies. Possibly, such things are largely taken for granted.

Few western scholars of the professions have sought to support the notion that professions in general or lawyers in particular should be “independent”. The idea of independence from state regulation strikes many as outright undemocratic, if not a prescription

for lawlessness. Although *lawyers* in the common law world have frequently invoked the notion of “independence of the profession” they have generally done a dreadful job of explaining their profession or its functions. Most often, nonsense arguments have emerged when they have been provoked to think about matters relating to self-regulation, independence, or the social or political values associated with an “independent bar” (see Pue, 1995b). This is unfortunate, not because the “correct” position is obvious, but because serious issues deserve serious attention.

Lawyers *DO* share much with a wide array of “professions” including the clergy, barbers, medical occupations, and, perhaps, mediums (Abbott, 291; Law Reform Commission of Manitoba). Nonetheless, in key ways *legal professionals* and, hence, some portions at least of the *legal professions*, are distinct (Larson, 1986, 1989; Freidson; Clementi, December, 2004, 15 ff). The role of lawyers in law – and hence in relation to the “rule of law”³ - emerges as central. The International Bar Association (1990), for example, asserted that:

The independence of the legal profession constitutes an essential guarantee for the promotion and protection of human rights and is necessary for effective and adequate access to legal services:

An equitable system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restrictions, pressures or interference, direct or indirect is imperative for the establishment and maintenance of the rule of law.

It is essential to establish conditions in which all persons shall have effective and prompt access to legal services provided by an independent lawyer of their choice to protect and establish their legal, economic, social, cultural, civil and political rights.

Professional associations of lawyers have a vital role to uphold professional standards and ethics, to protect their members from improper restrictions and infringements, to provide legal services to all in need of them, and to co-operate with governmental and other institutions in furthering the ends of justice.

³ This notion, too, long took a beating at the hands of scholars only to be rehabilitated in the late twentieth century. See: E.P. Thompson.

The only surprising thing about this is that it took students of the professions a very long time to notice it. Scholarship that sees “independence” as anything other than a cover for self-interest is seriously underdeveloped.

Amongst legal writers, Australian High Court Justice Michael Kirby views the independence of the legal profession as intimately linked to the role of law in society and this, in turn, to the judiciary’s special role in sustaining law. The rule of law rests, in his view, rests ultimately upon human commitment because “concepts of justice” that do not “have hands and feet ... remain sterile abstractions.” (Burger, quoted in Kirby, 17) Even the most cursory review of historical or international comparisons underscores the practical relevance of these seemingly abstract matters (see below). The repression of lawyers is routine. Consequently, “law’s principal actors – judges and practicing lawyers and also legal academics” must be assured “a very high measure of independence of mind and action.” (Kirby, 1) The independence of lawyers and the rule of law alike are diminished by authoritarianism, corruption, lawlessness, or patronage.

Judges must be free, in appropriate cases, to apply “the law neutrally against the government” without fear of retribution (this much is clearly constitutionally required in Canada). Because fair adjudication requires that even “unpopular clients” receive legal assistance and that even lawyers working to uphold the legal rights of “unpopular causes” are free to act fearlessly, certain consequences follow.

By ensuring that no person is beyond the reach of the law, the legal profession can operate as a check upon the arbitrary or excessive exercise of power by the government and its agents or by other powerful parties. By basing advocacy and judgments upon the rule of law, as opposed to the wealth or power of relevant interests or the transient popularity of the decision or of the interests affected, both lawyers and judges are indispensable instruments for the protection of minority and individual rights. (Kirby, 6)

The mere fact of a lawyer informing a decision maker of legal rights, duties, and responsibilities can have dramatic effect on the lived experience of the rule of law (see, for

example, Challinor). Lawyers, like judges, must “be free to carry out their work without interference or fear of reprisal.” (Kirby, 2)

Conversely, powerful individuals, associations, bureaucracies, and institutions (both “state” and “private”) have every reason to wish to constrain the work of lawyers. Well-functioning “independent professional organizations” can operate as both shield and sword in the cause of fearless legal representation. Intimidated or co-opted professional organizations cannot play this role. More directly, powerful individuals or institutions may seek to limit the clients lawyers may represent, threaten lawyers with “disciplinary action, prosecution or sanctions”, or otherwise seek to interfere with lawyers selectively on account of “their clients or the work that they undertake”. (Kirby, 2). Trumped-up criminal prosecutions, ruinous civil suits, assassination and disappearances, lie at the extreme end of the spectrum.

Although many assertions about the value of professional independence emphasize courtroom work, the availability of independent, confidential and privileged legal advice is essential if law’s promise is to be rendered tangible. This is readily apparent when we imagine dealings with officials who administer the modern state’s vast regulatory apparatus, but it is also true with respect to the advice and legal paperwork that facilitates the structuring of private arrangements. Only a caricature of the rule of law would insist on leaving individuals uncertain as to the legal consequences of their actions until after they had acted: one would be unable to plan transactions so as to render risk calculable, unable to invoke legal protections until engaged in full-dress battle. This is as true of person-to-person arrangements as of dealings with the State writ large. Those denied the benefit of legal advice, access to knowledge about the law, are left unable to forward-plan their lives, unable to make rational business decisions, and unable even to see their wishes carried out on death or incapacity.

Understanding these things carries us a long way toward appreciating the importance of “independence of the legal professions”. Formulations such as Mr. Justice Kirby’s and the International Bar Association’s overlook an aspect of the constitutional role of professional independence brought to the fore in a recent body of work which identifies a central role of legal professions in effecting transitions to constitutional governance.

The Emergence of Constitutional Governance

One of history’s enduring puzzles is how and why liberal constitutional governance emerged in Europe. Though the story played differently from one country to another, liberal constitutionalism displaced monarchy or princely rule, absolutism, the divine right of kings, class, church, and enduring relations of hierarchy in many countries with surprising speed.

What emerged were notions of constitutionalism in which monarchs were either unnecessary (France, the United States) or only conditionally acceptable (tethered within “constitutional monarchy”, as in Britain, for example). Absolutism gave way to a moderate state, “subjects” became rights-bearing “citizens”, and governance required engagement with a “public”. From this, eventually, democracy emerged.

Jurgen Habermas’ insights have been tremendously productive in explaining these historical processes. He emphasized the growing importance of rational debate amongst an informed “public” about matters of state as “bourgeois society” emerged. Following on Habermas, Lucien Karpik and Terrence Halliday have identified the key roles played by lawyers in these processes in at least some countries. Defining “political liberalism” as a bundle of ideas including “equality before the law, freedom of speech, personal security, property rights, due process of law, and so on – whatever was needed to define in a very central but narrow way the elements of political citizenship” (Karpik & Halliday, 2001), Karpik, Halliday, and other scholars drawing on their insights have showed close historical connections between lawyers’ work and the emergence of constitutional society. If this is so, the “constitutional” basis for the “independence of the legal profession” is organic: constitutionalism and an independent legal profession are intertwined to such an extent that it makes no more sense to speak of one without the other than it does to speak of constitutional societies without an independent judiciary, freedom of expression, assembly, or press. Although the relationship is most fully demonstrated in truly remarkable historical work on the French legal professions (Karpik, 1999), similar processes have been identified in outline in England and Wales (Pue, 1997) and elsewhere. For Karpik, the distinguishing feature of the legal profession lies in the fact that lawyers *represent* others. In speaking for others and to the state (directly or through the judicial bench) representatives inevitably emphasize consistency, equitable treatment of one party vis-à-vis others, prospective application of rules, and the notion that even the sovereign should behave consistently with past behaviour and publicly declared standards. Here lies the kernel of the rule of law. And the rule of law is the kernel of liberal constitutionalism. As Karpik has it, “[b]y virtue of his very function, the lawyer is a representative. ... The lawyer is someone entitled to speak and act on behalf of another person: all else follows from this.” (Karpik, 1999: 77)

It should be appreciated that this is a limited, albeit important, thesis. Lawyers are neither the only significant figures in the struggle for constitutionalism, nor the most important ones. The thesis does not imply that *all* lawyers or even a majority play or have played “pro-

constitutional” roles. Lawyers, like anyone else can be mere “hired-guns” or mouthpieces. They can experience fear and are not immune from threats, bribery, inducement or corruption. The “lawyers and liberalism” hypothesis is ambitious but limited. It has spawned historical research demonstrating that, in at least some key countries “for a long period... lawyers have mobilized on behalf of a political liberalism”. The key elements of this version of political liberalism are:

“(a) a concept of the moderate state, including judicial independence,
(b) a set of civil rights, such as those of freedom of speech, freedom of movement, and the right to own property, and
(c) a notion of civil society, with voluntary associations or publics who are constituted outside the state, including, most notably, lawyers' own associations.” (Karpik & Halliday, 2001)

So understood, the independence of the legal profession takes on a rather different character than that presented in more conventional formulations. The emphasis on *representative* functions de-centres courts to some extent, while the understanding that lawyers invoke the authority of a “public” and simultaneously constitute, speak to, and speak *for* a public sphere, takes us beyond the realm of “human rights” or “rule of law” narrowly construed. Lawyering moves from the periphery to centre-stage in the historical processes that displaced absolutism with liberal governance. The independent action of lawyers and, perhaps, legal professions, becomes indispensable, imbricated in the very fabric of forms of constitutionalism characterized by a moderate state, free associations, and civil rights.

The Hong Kong Bar and the Creation of a Moderate State

The central importance of legal professional independence to constitutional governance can, thus, be established conceptually, as a logical outcome of the rule of law (in the fashion of Mr. Justice Kirby or the International Bar Association) or through a review of historical experience (in the vein of Karpik and Halliday). These are not, however, matters of concern only to legal theorists or to those with antiquarian interests. The pressure for political actors to seek to undermine the independence of judiciary and lawyer is constant. Like the force of gravity, it tugs on “good” and “bad” alike for the simple reason that “[t]hose who are used to being obeyed and feared commonly find it intensely annoying that there is a source of power that they cannot control or buy – the law and the courts.” (Kirby, 1). Evidence of this can be found in every country. Places in transition or where constitutional governance is otherwise fragile provide particularly poignant illustrations however.

In recent times the Hong Kong Bar has played a significantly pro-constitutional role while seeking to protect their own position as providers of legal services. In a fascinating series of interventions the Bar Association asserts the virtues of constitutional governance and provides an outstanding apologetic for the etiquette of a British-modeled bar, complete with the cab-rank principle, limitations on direct client contact, and so on. The immediate background political situation of Hong Kong's transition from British colony to a special administrative region of China created a dynamic constitutional situation. The meanings of Hong Kong's Basic Law are still being worked out in practice. China itself has been experiencing enormous transformations during this period. The Hong Kong Bar's documents express a well-thought out notion of barristers' professionalism, carefully developed in a time and place where an embrace of market logic matters of professional governance combined oddly with an evolving political situation to produce peculiar challenges.

In *The Second Periodic Report on the Hong Kong Special Administrative Region of the People's Republic of China in light of the International Covenant on Civil and Political Rights* the organized Bar in Hong Kong takes up a role similar to that of the Ordres des Avocats in Paris during their more active periods (as documented by Karpik). This document was submitted to the United Nations Human Rights Committee and is, accordingly, cast in terms of compliance with obligations cognizable in international law. Its pith and substance concerns the establishment of a form of liberal politics in Hong Kong. According to the Bar, "powers reserved to the Central Authorities under the Basic Law" (the written portion of the constitution for the Hong Kong Special Administrative Region) were exercised in such a way as to corrode "the Rule of Law and the Independence of the Judiciary" (para. 2). Three uses of the Standing Committee of the National People's Congress (NPCSC) power of interpretation gave rise to concern. These involved the Committee, acting on the request of the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) reversing an interpretation given by the Hong Kong Court of Final Appeal (para. 4), an occasion on which the NPCSC of its own initiative issued an interpretation of the Basic Law precluding possible developments in the electoral system (para. 5) and an occasion (May 2005) on which the Acting Chief Executive of the HKSAR sought an interpretation of the Basic Law despite pending legal proceedings dealing with the same matters (para. 6). According to the Bar, "a NPCSC interpretation may be sought and given in the absence of a court case, in the middle of a court case, and subsequent to the final adjudication of a court case, and with or without a request from the Chief Executive of the HKSAR." (para 7). This, it is said, violates the spirit

of the Basic Law, substituting “a flexible instrument of rule” for constitutional interpretation in accordance with “established canons of construction”. The result is that “the integrity of the established legal system ... is subject to an uncertain and dominant source of law...” (para. 8)

The Bar’s wide-ranging brief also supported the creation of a “statutory human rights commission” (para. 16), expressed alarm at the clandestine operations of Mainland security personnel in Hong Kong (para. 21), and sought humane treatment of both Hong Kong residents detained on the Mainland and asylum seekers in Hong Kong (paras. 22, 23). It protested the conditions of police cells (para. 27), inadequate protection from domestic violence (para. 30), the inadequacy of an Independent Police Complaints Council with no investigatory powers (para. 31), the absence of laws prohibiting racial discrimination (para. 33) or discrimination on the basis of sexual orientation (para. 34), and the wide-open violations of privacy likely to result from relying on “the undefined expression ‘public security’ to authorize surveillance or the interception of communications (para. 37). Immigration matters, police searches, Falun Gong and the exchange of information between Hong Kong and Chinese security authorities, constitutional amendment, and elections law were all addressed. In all of this the Bar assumes the voice of a defender of public interest, and does so in a language intended to “play” to a wide public. Its cause – the rule of law, integrity of judicial processes, procedural regularity, and compliance with constitutional text *and* spirit – are themes of wide resonance.

Matters relating to legal rights more narrowly construed and, specifically, to the role of lawyers, are also addressed. Again, the actions of state authorities are found wanting. On one occasion a barrister was arrested, his chambers searched, and documents seized by police on a “fishing expedition” and with no reasonable grounds for suspicion. These circumstances were judicially determined to violate the common law rule of professional privilege (para 13). On another occasion, a lawyer-client meeting was bugged by investigators of the Independent Commission Against Corruption (para 14). Finally, the government’s refusal to establish an independent legal aid authority, gives rise to concerns about professional independence (para. 18).

Such matters are significant. The rule of law cannot be sustained if lawyers engaged in work that is inconvenient for those in “power” were routinely harassed. Though Hong Kong has not passed the tipping point, other places been less fortunate. Harassment of lawyers takes place with varying degrees of severity, both under authoritarian regimes and in places where

the rule of any sort is insecurely established. The fate of lawyers is a bellwether of sorts for constitutional governance and civil liberty alike.⁴

Lawyers & Liberty: Death Squads and “directions over lunch”

Lawyers are vulnerable to assault in troubling times all around the world. They have been muzzled in Uganda (*Reporters without Borders*; ICJ, 2003; National Endowment for Democracy; Ugandan Law Society), subjected to politically-motivated prosecutions in Kenya (Ayieko) and Iran (ICJ, 22 April, 2003; ICJ, 24 January, 2003), subjected to travel restrictions, detained, tortured or assassinated in Liberia (Perspective, April 24, April 25, 2002; Haddad; Human Rights Watch), Zimbabwe (WNYC Radio; IBA, 24 August 2004; Human Rights Watch, February 9, 2006; Amnesty International; Duclos), India (Kannabiran; ICJ, 26 November 2003: calling on the Indian Government to protect all human rights defenders from attacks by State agents or death squads) Thailand (The Nation) and Sri Lanka (Centre for the Independence of Judges and Lawyers). Space precludes an assessment of any of these individual situations, much less of the wider array of assaults on lawyers as individuals, on lawyerly associations, and on professional roles, that take place routinely around the world. The point that these are pressing concerns, much connected to the health of democracies and of constitutional government (which is not the same thing) cannot be missed, however.

The assumption in “the west” is that developed democracies are immune from problems on this scale. Despite the disturbing knowledge that several seeming durable constitutional systems have collapsed with astonishing speed, this may be true. There is a long distance from the “here” to semi-official death squads, torture of lawyers and disappearances. The corrosion of “independence” can occur in other ways, however. Lawyers work for sex offenders, drug dealers, arms traders, and terrorists as well as for captains of industry. Widespread moral panic can emerge quickly around professional work; powerful interests may wish to interfere with legal representation well before the extreme end of the spectrum has been reached. “It is not just”, as one witness before a British Parliamentary Committee said, “a matter of getting to the brink of dictatorship.... The rule of

⁴ The American Bar Association has created an international Legal Profession Reform Index in recognition of this: <http://www.abanet.org/ceeli/publications/lpri/home.html> (accessed August 25, 2006). The index assesses 24 factors (see appendix)

law and the institutions that support it need to be seen to be separate from the state....” (Steve Hynes, quoted in Joint Committee: 40). Commentators on a draft British Bill to that would create a “Legal Services Board” (LSB – see discussion below) expressed concern about structures that would facilitate future “instances of inappropriate pressure by Government on the legal profession” (Joint Committee: 39). According to the British Joint Committee, “The Law Society told us that approved regulators would do ‘exactly what the LSB says’, however informally, and cautioned that a direction ‘over lunch’ could circumvent the need for the use of formal powers.” (Joint Committee, 39-40)

The concern about back-channel government direction is not trivial. If the Law Society of England and Wales reckons that it would respond to “over lunch” direction from the Legal Services Board, the possibility that the Legal Services Board would be equally responsive to informal suggestions from political power-brokers is equally cause for concern. Parliamentary systems of government are particularly susceptible to this form of low-key corruption of the public purpose. The knowledge that Canada ranks amongst the least sophisticated of Parliamentary systems when it comes to providing checks or balances on executive power (Savoie, 1999 and 2003; Simpson; Pue, 2002) gives cause for heightened anxiety in this respect. The susceptibility of even treasured national institutions to political interference when it serves the interests of the senior executive branch was dramatically illustrated in the so-called “APEC affair”. In that incident relatively small acts of misconduct by Royal Canadian Mounted Police Officers revealed that the Force had been responsive to inappropriate political directions which it should have refused. Investigations into police susceptibility to political direction soon mushroomed, as other “independent” agencies, in turn, were compromised. In very short order both the Canadian Broadcasting Corporation and the Commission for the Investigation of Public Complaints against the Royal Canadian Mounted Police – both designed to be “independent” of government control – had been brought to heel in the interests of the government of the day. The mechanisms employed to attain this result were blunt, crude, and hamfisted. Nonetheless, they were stunningly effective (Morin; Milewski; Pue, 2000a, 2000b, 2001b).

The danger of “directions over lunch” and similar distortions of independence has to be guarded against if the independence of legal professionals is valued. Common law Canada’s legal professions are currently governed by autonomous professional organizations that derive both their regulatory powers and the monopoly, without which regulatory powers are meaningless, from provincially enacted statutes. If a shift in regulatory locus were

contemplated the question of where that new power would reside and under what terms would be all-important. There is little reason for complacency as to the capacity of provincially created bureaucracies to withstand improper executive pressures. There is no reason to believe that provincial constitutional structures offer better protection for the “independence” of agencies from inappropriate executive control than the federal system.

Alternative Regulatory Models: it ain't broke?

Popular wisdom has it that “if it ain't broke, don't fix it”. Given the importance of independent legal advice, the threats implicit in government regulation of so sensitive a sphere, and the existence in common law Canada of established regulatory regimes in the form of the provincial and territorial law societies, there would seem to be good reason to leave well enough alone.

Complacency can be dangerous however. Former USA Secretary of State Colin Powell denigrated the approach, saying that “if it ain't broke, don't fix it' is the slogan of the complacent, the arrogant or the scared. It's an excuse for inaction, a call to non-arms.” (Thinkexist.com)

Developments in two of Canada's closest constitutional neighbours, Australia and England and Wales, suggest that complacency may not be in order. Canada, like Australia, is a federal state whose constitutional system, legal structures, and practices, are derived from the United Kingdom. Each country's legal profession finds its roots in centuries-old practices in the United Kingdom and most particularly in England and Wales. In both countries the traditional legal professions have struggled to adapt to accelerating rates of change during the past three decades. Market logic guided all areas of public life for most of that time and the values of efficiency has prevailed over other values such as the “rule of law”, faithfulness to inherited tradition, or other non-economic ways of “framing” public policy. The ascendance of market logic has been accelerated in each country as a result of international economic law's injunctions against protectionism and by forms of corporate consumerism which have demand integrated services between, for example, barristers and solicitors or lawyers and accountants (see, for example Mark and Hutcherson; Clementi, December 2004; Weisbrot). Britain's membership of the European Community and Canada's adherence to continental or hemispheric free trade agreements constrain local regulatory arrangements in ways that have not yet been entirely worked through.

Moreover, in each country, the legal profession has found it difficult to respond coherently to its critics. Charges of complacency or arrogance have, too often, been fair

enough (see, for example, Abel, 2003; Lynch; Pue, 1995b). The critics' charges have "stuck". Significant Australian and British reports have slammed traditional regulatory models as ineffective and inadequate to the task of protecting the public interest. In the words of Professor Stephen Parker, then of Griffith University, "the self-regulatory project inherited by Australian lawyers had been conceived in the middle of the 19th century at a time when the state was much less interventionist in its regulatory policy, and the community less demanding in its expectation of dynamic democratic involvement in 'private governments' than they are today" (Parker). Traditional legal regulators have proved ineffective in assuring quality of service and the complaints and dispute resolution mechanisms they created have been expensive and time-consuming. Too often, established complaints mechanisms have produced results which others construe as disadvantaging everyone except the lawyers who created the system, manage it, and whose interests are affected by the outcomes. Other problems are laid at the feet of lawyers as well. The Legal Services Commissioner for New South Wales, for example, feels that law is infected with "excessive adversarialism" verging on unethical practices and that law is 'becoming priced out of reach of all but a very few members of our society' (Mark, 2003: 2, 1). In England, Sir David Clementi, believes that traditional governing bodies do not represent the interests of all lawyers fairly, have not tried hard enough to encourage competition, have failed to embrace innovation, and have failed to develop transparent regulatory systems (Clementi, December 2004: 27-31). Nor can it be said that these are symptoms of a peculiarly Anglo-Australian disease. Canadian legal professions are surprisingly vulnerable to similar criticisms (Mucalov, 2004; Donovan, et. al.; McMahon; Walsh & Donovan; Hunter; National Report; McKnight).

Many think that the source of many problems is to be found in a fundamental conflict of interest that lies at the heart of any mode of "self-regulation". Here is what David Clementi had to say on the issue:

13. The first consideration relates to the public and consumer interest. The majority of respondents to the Consultation Paper argued that on these grounds the regulatory and representative roles of professional bodies should be split. For example the Council for Licensed Conveyancers stated in their response to the Consultation Paper: "*It is difficult to understand how one body can effectively both regulate a profession and also represent and lobby for its interests without prejudice to either its regulatory or representative functions.*" There is a conflict of interest between the two roles which should be tackled. In a regulatory body the public interest should have primacy. Issues such as changes in practice rules should be examined, not against the wishes of the membership, but against the test of the public interest. In a representative

body the interests of the membership should have primacy. It is hard to conclude that the decision by the leadership of the Law Society in the mid 1990s to restrict funds to its complaints handling operation was anything other than a body placing its representative interests ahead of its regulatory responsibilities, to the detriment of the public and consumer interest.

14. Even where a body does place the public interest ahead of that of its members, there remains an issue of perception. For example, it may be that each of the restrictive practices to be found in the practice rules within the Law Society or at the Bar has operated in the public interest. But, perhaps because many senior lawyers have been conditioned by the system that they grew up with, there is a perception that the issues have not historically been addressed with the vigour and independence to be expected of a regulatory body. (27-28)

Although Francis Gervais, speaking for the Federation of Law Societies, told a reporter (Mucalov, 2004) that the only function of Canadian law societies, unlike their British and Australian counter-parts, is to protect the public (“Their primary purpose is not to provide a service so their members, but to protect the public’s interest.”), this is not always born out in their actual operation. Even the most cursory review of Bencher’s election campaign statements in Ontario during the 1990’s and early 2000’s reveals a remarkable commitment to protect *lawyer’s interests* on the part of those seeking election to the governing body of the Law Society of Upper Canada (Law Society of Upper Canada, 1979, 1983, 1987, 1991, 1995, 1999, 2003). Electoral politics brings self-interest into the open. In their guise as public-interest regulators, Law Societies are compelled to “tax” their members increasing amounts in order to protect the public. In their guise as democratic organizations, it soon becomes apparent that this is an outcome that no electoral constituency embraces enthusiastically. However unfair it may be, there is, too, a perception that law societies are more likely to come down hard on the actions of less well-connected lawyers than on the big city professional elite. Whether this perception is attributable primarily to over-suspicious turn of mind (fed by failures of communications from law societies, perhaps) or reflects a systemic bias is, to some extent, moot. Perceptions take on lives of their own.

In Australia the cumulative effect of all of this has been a tidal bore sweeping through the legal professions for over a decade. Beginning in New South Wales in 1994, state after state has displaced professional self-governance with mechanisms of “co-regulation” in which professional groups work in partnership or under the direction of a state regulator. Australia’s revolution in legal professions’ regulation was summarized in the Canadian Bar Association’s *National* magazine in October 2004:

Australia's systems of self-regulation first came under attack in the 1980s. In Victoria, after decades of inept handling of public complaints, the state imposed a co-regulation complaints regime in 1997. Henceforth, the state decreed, the investigation of grievances would be shared between the government ombudsman and the lawyers' professional associations.

Then, in July 2003, after highly publicized clashes between the ombudsman and the Law Institute of Victoria (the solicitors' governing body), the axe fell. A new independent board took control of the regulation of lawyers, and a Legal Services Commissioner was appointed to oversee complaints investigations.

The Queensland government – after receiving a scathing report from its state ombudsman – also seized control over lawyer discipline. Complaints had soared, doubling from 685 in 2001 to 1,227 in 2002, and numerous complaints about gross over-billing and alleged fraud remained unresolved. In its report, the ombudsman described the Queensland Law Society as "nothing but a post office box" that received complaints, forwarded them to the lawyer, and then sent back the lawyer's response to the complainant.

The law society had tried to redeem itself by appointing a retired judge to review its complaints process and make changes. But it was too late, and on June 29, 2004, a separate Legal Services Commission was created to take on the job of complaints.

The Tasmanian government went even further. Last September, it stripped its law society of not only the right to investigate complaints, but also of the responsibility for issuing practice certificates, supervising trust accounts and developing practice rules. And early this year, legislation was introduced to formally abolish self-regulation in the legal profession.

The profession is also under attack in parts of Great Britain. The Law Society of England and Wales' regulatory framework – described in a government report as "outdated, over-complex and insufficiently accountable or transparent" – is currently under review. Again, a leading problem has been the lax handling of complaints against lawyers, which soared from 10,585 in 2001 to 14,880 in 2002. (Mucalov)

The first dramatic changes in Australia took place in New South Wales in 1994 when that state's Legal Services Commission was created pursuant to recommendations of the Law Reform Commission of New South Wales (NSW Law Reform Commission, 1993). The Legal Service Commissioner in New South Wales engages "co-regulation" of the legal professions (bar and solicitor's branch) with the pre-existing profession associations. The Commissioners' functions are extensive. Under section 688 of the *Legal Profession Act 2004* (New South Wales) the Commissioner receives complaints about unsatisfactory conduct or misconduct by lawyers. The Commissioner may:

- initiate complaints and either investigate directly or refer them to the Law Society Council or Bar Council (the "Councils")
- take over investigation of complaints from those bodies;
- monitor investigations and give "directions and assistance to Councils in connection with the investigation of complaints"

- review “the decisions of Councils to dismiss complaints or to reprimand” lawyers “in connection with complaints”:
- take over investigations or institute proceedings against lawyers in the Administrative Decisions Tribunal
- conduct surveys and report on “the views and levels of satisfaction of complainants and respondent Australian lawyers with the complaints handling and disciplinary system”
- monitor decisions relating to the grant, cancellation or suspension of practising certificates “on grounds relating to fitness to practise (for example, in connection with acts of bankruptcy, the commission of indictable offences or tax offences or failures to give required notifications)”
- take over the Councils’ roles in relation to local practicing certificates
- review “the provisions and operations of” the statute relating to complaints
- monitor the exercise of regulatory functions by the Councils, including reviewing their rules
- assist the Councils in promoting community education about the regulation and discipline of the legal profession,
- assist “the Councils in the enhancement of professional ethics and standards, for example, through liaison with legal educators or directly through research, publications or educational seminars”

The Commissioner, in other words, is a public official who works co-operatively with professional bodies under a grant of power that permits a very high degree of interference with the ordinary work of those bodies.

In England, by contrast, the English legal professions continue for the time-being to be self-governing on the traditional model. The “Law Society of England and Wales” governs solicitors while a combination of the Bar Council and the four ancient Inns of Court (Inner Temple, Middle Temple, Gray’s Inn, Lincoln’s Inn) governs the barrister’s profession (the “bar”, strictly speaking). This may be about to change dramatically however. A Draft Legal Services Bill was introduced on May 24, 2006, following an extensive review of the legal services market and regulation in the United Kingdom culminating in Sir David Clementi’s Final Report (December 2004). The Bill, if passed, would profoundly transform the governance of the legal professions. A Legal Services Board would oversee all regulation of legal services and jurisdiction over complaints would be taken from the Law Society and Bar Council and given to a new body, the “Office for Legal Complaints” (OLC). The Board would have authority to authorise professional associations⁵ to carry out regulatory functions but would retain power to remedy any failings on their part. The Board’s powers “will include

⁵ Including the Bar Council, the Law Society of England and Wales, and any new professional groupings that might emerge in the legal services field.

issuing performance targets, specific directions, public censure, financial penalties and, only if these fail, an intervention direction under which the Board will exercise one or more of the approved regulator’s regulatory functions. Ultimately, the regulator’s approval may be cancelled.” (Clover & Hassall)

In dealing with complaints, the Office for Legal Complaints would be accountable to the Board but would work independently. It would investigate, seek reconciliation where possible, and prepare a report explaining how each particular case should be resolved. Significantly, the OLC would have jurisdiction over both professional matters (inadequate service or professional misconduct) and legal matters (professional negligence). In the event that a report issued by the OLC was unsatisfactory to one or other party, enforcement would lie with a new officer entitled the “Chief Ombudsman”, appointed by the OLC. The Chief Ombudsman would be empowered to impose a range of remedies, including orders to pay compensation in amounts up to £20,000 (\$42,144.50 Canadian currency: August 27, 2006). The Draft Bill makes no provision for appeal from the Chief Ombudsman’s decision, leaving aggrieved parties only to the limited remedies provided under the ordinary principles of administrative law. (Clover & Hassall) Although this arrangement seemingly gives the Chief Ombudsman important judicial powers (including, effectively, legal rulings in such traditional common law fields as professional negligence and the interpretation of professional contracts) the Bill requires the appointment of a non-lawyer to that office.

A further feature of the pending British legislation has the potential to profoundly warp the field of legal services regulation by reshaping “legal services” altogether. The Bill’s operating premise is that new legal professions and new types of professional service providers will emerge in the future. These might include legal services corporations owned by non-professional shareholders, multi-disciplinary practices, service providers blending the services of barristers and solicitors, or new professions defined in ways and operating in market niches that are presently unanticipated. In a ministerial statement accompanying the introduction of the Bill the Lord Chancellor and Secretary of State for Constitutional Affairs, Lord Falconer of Thoroton, explained that the Legal Services Board will have “wide range of powers including those to authorise and de-authorise front line regulators and to quickly bring unregulated legal services under its remit through secondary legislation to best protect consumers interests.” Moreover,

The draft Legal Services Bill also sets out arrangements to facilitate alternative business structures, which would enable different kinds of lawyers, and lawyers and

non-lawyers, to work together on an equal footing. These structures will allow legal services to be delivered in new ways, promoting greater competition and innovation and enabling providers to better respond to the demands of consumers. A range of safeguards will be put in place to protect consumers and demand high standards. (Lord Falconer of Thoroton)

It is possible that the re-jigging of the professional services market will ultimately have an even greater effect on the regulatory universe than the direct changes in regulatory structures.

What happened to professional independence?

Although existing arrangements in Australia and the proposed legislative scheme for England and Wales are described, politely, as “co-regulation” or as creating “light touch” state regulators, each reform unquestionably involves a massive transfer of power from autonomous professional bodies to state-created bureaucracies. In both countries the zone of “self-regulation” is only as wide as the responsible state appointee permits, a sort of professional equivalent to imperial strategies of “indirect rule” in remote colonies.

We have moved now from the realm of professional independence as such to the rather different question, familiar in administrative law, of how and to what degree “independence” should be protected for state appointees. A weak or vulnerable Legal Services Commission or Board could be steamrolled by an insistent executive.

Steve Mark, the only person to hold the office of Legal Services Commissioner in New South Wales, has observed that “...it is essential that the rule of law, and in particular its application to the separation of powers be carefully observed where a body such as mine is created within the Executive branch of Government with a role of regulating the judicial branch.” He added that the rule of law is not threatened by his investigation of complaints and, indeed, that there would be no problem even if he were to decide to “investigate all complaints and refer none to the professional associations.” He continued:

However, it is my view that it would be contrary to the rule of law for me to have **all** regulatory responsibilities, and most particularly the setting of rules and standards for the profession, due to my position within the Executive Branch of Government.

Accordingly, a strong relationship has developed between my Office and the professional associations for the purpose of improving the profession and ensuring that their high ethical standards are met. This co-regulatory regime is, in my view, the best existing model for regulation of the legal profession as it encourages the profession to continue on its path of self-regulation and improvement, albeit with direction from my Office. It also seems to me that it would be counter-productive if the role of the professional associations were limited to defending its members against charges of misconduct as this would create an adversarial relationship between them and my

Office and also be of concern to the ethical members of the profession that their association was acting as an advocate for the worst of its members. (Mark, 2003)

This is a strong position and a controversial one. There would, for example, be little space for professional independence in a state in which Executive officers disbarred “cause lawyers”, whose advocacy frustrated government initiatives. Mark participates in a culture and tradition of co-regulation in which professional bodies are respectfully treated by their regulatory overseer, not one in which statutory powers are used to their utmost. The Commission’s powers are, however, enormous. The independence that matters crucially, then, is the legal services commissioner’s independence from political pressures and the independence of mind on the part of the individual holding that office. The New South Wales Office is structured so as to maximize independence. Appeal on matters relating to complaints lies to the Supreme Court, and its decisions are not subject to review by the Attorney General or other political officer. It is funded from the State’s Public Purpose Fund, established from interest on lawyers’ Trust Funds, “and not from State Treasury or Commonwealth taxation revenue.” (OLSC “Frequent Questions”). In assessing the independence of administrative agencies, it is usually thought that greater independence flows from greater security of tenure. In this regard it is noteworthy that the New South Wales legislation specifies that the Commissioner may be appointed up to 7 years, and may only be removed from office for “misbehaviour, incapacity or incompetence” (NSW Legal Profession Act, 686 (4)(5)). It might also be added that the New South Wales experiment has benefited from the personal qualities brought to the office by the first and, so far, only Legal Services Commissioner. The durability of the structures created there will be difficult to assess fully until several successions have taken place.

At the time of writing the outcomes of processes in the United Kingdom remain unclear. The massive *Draft Legal Services Bill* has been carefully reviewed by a House of Commons / House of Lords Joint Committee on the Draft Legal Services Bill. The Bill provides for five year, fixed period, appointments to the Legal Services Board (renewable once), with appointees to be secure from removal unless they fail to discharge their functions, are convicted of an offence, bankrupt, unfit to hold office, or unable to discharge their functions.

Given the constitutional sensitivity of independence of the legal profession, it is not surprisingly, that considerable concern has been registered regarding the independence of the proposed regulators from inappropriate government interference. In one of the world’s major

financial capitals, independence was widely understood as being a factor in the “international competitiveness” of “City” firms in high-level, global, legal work. The City of London Law Society (the “City” is London’s Financial Centre) expressed the view that international business would be “spooked” if the Bill were passed unamended:

“The mere perception of a lack of independence from government will be used against my member firms in situations where they are competing for international instructions and will play into the hands of protective bar associations around the world...the power of the Secretary of State to appoint and the detailed powers written into the Bill as drafted...even if not used, even if just in reserve...could create a situation which will allow people to suggest, maybe wrongly, but possibly rightly, that there is a challenge to independence. If that happens, that could affect the competitiveness we want to preserve”. (as quoted, Joint Committee, 40-41, para. 127)

The major concerns to emerge from the Joint Committee review process related to the powers of appointment and removal the government would exercise over the Legal Services Board. The Joint Committee seems to have been unpersuaded by the Minister’s assurances that “ministerial appointments” do not mean “ministerial interference”. (as quoted, Joint Committee, 43, para. 136.) The Committee made a number of recommendations directed to buffering the appointment from ordinary practices of political appointment (Joint Committee, pp. 44 ff). These included reliance on a “nominations committee of the Board” which would also have responsibility for removal of members in appropriate circumstances (Joint Committee, p 45, para. 142, 144), and a requirement that the “Nolan Principles” of appointment be incorporated in the statute. The Joint Committee expressed considerable concern about the continuing powers of the Secretary of State over the Board that were provided for in the draft legislation – contrary to the recommendations of Sir David Clementi. The net effect of this was described by one witness before the Committee as presaging a fundamental shift: “we do start to see the head of regulation not really being the Legal Services Board but the Secretary of State.” (ILEX, as cited, Joint Committee, p. 47, para 153).

It is too early to evaluate where the reform process will go in the United Kingdom. Whatever responses and changes emerge as a result of the Parliamentary process it is very likely that fundamental reform, more or less along the lines of those which have been implemented in Australia since 1994, will follow.

Appendix

Basic Principles on the Role of Lawyers

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

(Office of the High Commissioner for Human Rights,
http://www.unhcr.ch/html/menu3/b/h_comp44.htm) (accessed August 25, 2006)

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their

professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

American Bar Association, Legal Profession Reform Index Criteria

<http://www.abanet.org/ceeli/publications/lpri/home.html> (accessed August 25, 2006).

I. PROFESSIONAL FREEDOMS AND GUARANTEES

Factor 1: Ability to Practice Law

Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

Factor 2: Professional Immunity

Lawyers are not identified with their clients or their clients' causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.

Factor 3: Access to Clients

Lawyers have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.

Factor 4: Lawyer-Client Confidentiality

The state recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.

Factor 5: Access to Information

Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy (equality of arms).

Factor 6: Right of Audience

Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.

II. EDUCATION, TRAINING AND ADMISSION TO THE PROFESSION

Factor 7: Academic Requirements

Lawyers have a formal, university-level, legal education from academic institutions authorized to award degrees in law.

Factor 8: Preparation to Practice

Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.

Factor 9: Qualification Process

Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.

Factor 10: Licensing

Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.

Factor 11: Non-discriminatory Admission

Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.

III. CONDITIONS AND STANDARDS OF PRACTICE

Factor 12: Formation of Independent Law Practice

Lawyers are able to practice law independently or in association with other lawyers.

Factor 13: Resources and Remuneration

Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.

Factor 14: Continuing Legal Education

Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.

Factor 15: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.

Factor 16: Professional Ethics and Conduct

Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.

Factor 17: Disciplinary Proceedings and Sanctions

Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.

IV. LEGAL SERVICES

Factor 18: Availability of Legal Services

A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.

Factor 19: Legal Services for the Disadvantaged

Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.

Factor 20: Alternative Dispute Resolution

Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.

V. PROFESSIONAL ASSOCIATIONS

Factor 21: Organizational Governance and Independence

- Abbott, Andrew, (1988) *The System of Professions: An Essay on the Division of Expert Labour* (Chicago & London: University of Chicago Press)
- Abel, R. L. (1998) Reviews: *Lawyers for Liberalism: Axiom, Oxymoron, or Accident?* (The Jurist: Books on Law) (<http://jurist.law.pitt.edu/lawbooks/revnov98.htm#Abel>) (accessed August 14, 2006)
- Abel, R.L. 1989(a), *American Lawyers* (New York: Oxford, Oxford University Press.
- Abel, R.L. 1989(b), "The Decline of Professionalism" *52 Modern Law Review* 1.
- Abel, Richard and Lewis, Philip S. (eds.) (1988a) *Lawyers in Society, vol. 1: The Common Law World* (Berkeley: University of California Press)
- Abel, Richard and Lewis, Philip S. (eds.) (1988b) *Lawyers in Society, vol. 2: The Civil Law World* (Berkeley: University of California Press)
- Abel, Richard and Lewis, Philip S. (eds.) (1989) *Lawyers in Society, vol. 3: Comparative Theories* (Berkeley: University of California Press)
- Abel, Richard L. (1998) "Lawyers for Liberalism: Axiom, Oxymoron, or Accident?" (review of Terence C. Halliday and Lucien Karpik, editors (1998) *Lawyers and the Rise of Western Political Liberalism* (NY: Oxford University Press) *The Jurist*, Books-on-law /Book Reviews, 1:8 November, 1998) (<http://jurist.law.pitt.edu/lawbooks/revnov98.htm#Abel>) (accessed August 21, 2006)
- Abel, Richard, (2003) *English Lawyers, Between Market and State: The Politics of Professionalism* (Oxford: Oxford University Press)
- Abel-Smith, B. & Stevens, R. 1967, *Lawyers and the Courts: A Sociological Study of the English Legal System 1750-1965* (London, Heinemann Educational Books Ltd.).
- African Charter on Human and Peoples' Rights*, Article 7
- American Convention on Human Rights*, Article 8
- Amnesty International "Human Rights Lawyer Tortured With Electrodes in Zimbabwe", Amnesty International, online: <http://web.amnesty.org/pages/zwe-260603-action-eng>
- Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP) (1999) "ACIJLP Asks Yemeni President to Veto Law on Legal Profession" <http://www.derechos.org/human-rights/mena/yemen/law.html> (Accessed August 12, 2006)
- Arthurs, H.W., (1995) "The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?" *33 Alta. L. Rev.*, 800
- Auerbach, Jerrold S. (1976) *Unequal Justice: Lawyers and Social Change in Modern America* (N.Y.: Oxford University Press)
- Ayieko, Odindo (2005, November 7) "Best and Worst" *Daily Nation* (Kenya).
- Bangalore Principles of Judicial Conduct* (2002)
- Bankowski, Zenon, and Geoff Mungham (1976) *Images of Law* (London; Boston: Routledge & Kegan Paul)
- Bar Standards Board, (2006), *Comments on the Draft Legal Services Bill: Joint Select Committee*
- Basic Principles on the Independence of the Judiciary* (1985)
- Bell, David A. (1997) Barristers, Politics, and the Failure of Civil Society in Old Regime France, in Karpik, Lucien, and Terrence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Bell, David A., (1994) *Lawyers and Citizens: The Making of a Political Elite in Old Regime France* (N.Y.: Oxford University Press)

- Bilder, Mary Sarah, (2004) *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, Mass.: Harvard University Press)
- Bledstein, B.J. (1976) *The Culture of Professionalism* (N.Y.: Norton)
- Bureau of Democracy, Human Rights and Labor (U.S Department of State) (2005), *Country Reports on Human Rights Practices – 2004*, 28 February 2005. Accessed at: <http://www.state.gov>. (as cited by Kirby, J.)
- Burger, Chief Justice Warren Burger (1972) *Address to the American Bar Association* (San Francisco), reported in *Vital Speeches*, 1 October, 1972.
- Burrage, Michael (1997) Mrs Thatcher Against the Little Republics: Ideology, Precedents, and Reactions, in Karpik, Lucien, and Terrence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Burrage, Michael (1998) “Mrs Thatcher Against the Little Republics: Ideology, Precedents, and Reactions,” in Karpik, Lucien, and Terrence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press), xxx-xxxx
- Cairo Declaration on Judicial Independence* (2003)
- Carr-Saunders, A.P., and P.A. Wilson (1933) *The Professions* (Oxford: Oxford University Press)
- Centre for the Independence of Judges and Lawyers (2000, 13 January) “Jurists Call on the Government to Institute a Thorough Inquiry into the Murder of Lawyer Kumar Ponnambalam”
- Challinor, Raymond (1990) *A Radical Lawyer in Victorian England: W. P. Roberts and the Struggle for Workers' Rights* (London: I. B. Tauris & Co. Ltd., 1990) (reviewed by W. Wesley Pue, Book Review: 17 *Victorian Review*, Spring, 1991, 99-106.)
- Clementi, Sir David, (2004, December) *Review of the Regulatory Framework for Legal Services in England and Wales* <http://www.legal-services-review.org.uk/content/report/report-chap.pdf> (Accessed August 15, 2006)
- Clementi, Sir David, (2004, March) “Review Of The Regulatory Framework For Legal Services In England And Wales: A Consultation Paper” http://www.legal-services-review.org.uk/content/consult/consult_reviewpaper.pdf (Accessed August 14, 2006)
- Clover, Sarah and Lydia Hassall (2006, June 28) “United Kingdom: The Draft Legal Services Bill” <http://www.mondaq.com/article.asp?articleid=40642&searchresults=1> (accessed August 28, 2006)
- Cocks, Raymond (1983) *Foundations of the Modern Bar* (London: Sweet & Maxwell)
- Cotter, W. Brent (1992) *Professional Responsibility Instruction in Canada: A coordinated curriculum for legal education* (Federation of Law Societies of Canada)
- Department for Constitutional Affairs (2006, May) *Draft Legal Services Bill, Explanatory Notes and Regulatory Impact Assessment* (Presented to Parliament by the Secretary of State for Constitutional Affairs and Lord Chancellor) (United Kingdom: Cm 6839)
- Di Maggio, P., & Powell, W. (1983). The iron cage revisited: institutional isomorphism and collective rationality in organizational fields. *American Sociological Review*, 48, April, 147-160.
- Donovan, Kevin, Moira Welsh and Patrick Evans (November 12, 2005) “Abuse of trust”, *Toronto Star* A01
- Duclos, Vincent, (2005) “ET Interviews Gabriel Shumba – We need to Prevent Genocide in Zimbabwe”, *Epoch Times Canada* (Oct 09, 2005) (<http://www.theepochtimes.com/tools/printer.asp?id=33089>) (accessed August 25, 2006)

- Empson, Laura (forthcoming) “Profession”, in Stewart Clegg and James Bailey, eds., *International Encyclopedia of Organization Studies* (London: Sage)
<http://www.sbs.ox.ac.uk/ccc/Profession.htm> (accessed August 15, 2006)
- European Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 6.
- Evans, Robert G. and Michael J. Trebilcock (1982) *Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (Toronto: Butterworths)
- Falconer of Thoroton (Lord Falconer) (2006, May 24) “The Regulation of Legal Services in England and Wales: Written ministerial statement”
(<http://www.dca.gov.uk/pubs/statements/2006/st060524.htm>) (accessed August 28, 2006)
- Freidson, Eliot, (1994) *Professionalism Reborn: Theory, Prophecy and Policy* (Chicago: University of Chicago Press)
- Gidney, R.D., and W.P.J. Millar (1994) *Professional Gentlemen: The Professions in Nineteenth-Century Ontario* (Toronto: University of Toronto Press)
- Grossberg, Michael (1997) The Politics of Professionalism: the creation of Legal Aid and the strains of political liberalism in America, 1900-1930, in Karpik, Lucien, and Terrence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Habermas, Jurgen (1962) *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*
- Haddad, Musue N. (2002) “Liberia: President Taylor Says Investigation of Gongloe Will Continue” www.allafrica.com (<http://allafrica.com/stories/200204300001.html>)
(Posted to the web April 30, 2002) (Accessed August 25, 2006)
- Halliday, T.C. 1987, *Beyond Monopoly* (Chicago and London: University of Chicago Press)
- Halliday, Terence C. and Lucien Karpik (1997) Politics Matter: a Comparative Theory of Lawyers in the Making of Political Liberalism , in Karpik, Lucien, and Terrence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Halliday, Terence C. and Lucien Karpik, (1997) Postscript: Lawyers, Political Liberalism, and Globalization, in Karpik, Lucien, and Terrence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Halliday, Terence C., and Bruce G. Carruthers (1997) Making the Courts Safe for the Powerful: the Commercial Stimulus for Judicial Autonomy in Reforms of the United States Bankruptcy Law, in Karpik, Lucien, and Terrence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Haskell, H.T., (1977) *The Emergence of Professional Social Science* (Urbana: University of Illinois Press)
- Hazell, Robert, ed. (1978) *The Bar on Trial* (London: Quartet Books)
- Hockman, Stephen, QC (2006) “The Bar Council: Securing The Future: August 2006”, *Counsel* (August, 2006)
<http://www.barcouncil.org.uk/document.asp?documentid=3971&languageid=1>
(Accessed August 17, 2006)
- Hong Kong Bar Association (1994) *The Future of the Legal Profession in Hong Kong: The Bar’s Position Paper* (Hong Kong: Hong Kong Bar Association)
- Hong Kong Bar Association (1995, republished 2003) *The Attorney-General’s Consultation Paper on Legal Services: The Hong Kong Bar Association’s Response*

- <http://www.hkba.org/whatsnew/submission-position-papers/2003/20030909.htm>
(accessed August 23, 2006)
- Hong Kong Bar Association (1996) *Should the Rights of Audience in the Supreme Court be Extended to Solicitors* (Hong Kong: Hong Kong Bar Association)
- Hong Kong Bar Association (2006) *The Second Periodic Report on the Hong Kong Special Administrative Region of the People’s Republic of China in light of the International Covenant on Civil and Political Rights (CCPR/C/HKG/2005/2): Submission of the Hong Kong Bar Association to the United Nations Human Rights Committee* (for Hearing in the 86th Session, 13-31 March, 2006, New York)
<http://www.hkba.org/whatsnew/submission-position-papers/2006/20060225.pdf>
(accessed August 23, 2006)
- Human Rights Watch (February 9, 2006) “Zimbabwe: Crackdown on the Press Intensifies” (New York, February 9, 2006),
<http://hrw.org/english/docs/2006/02/08/zimbab12632.htm>)
- Human Rights Watch (November 6, 2003) “Human Rights Watch Honors Liberian Lawyer - Torture Victim Plans to Rebuild Shattered Civil Society”
<http://hrw.org/english/docs/2003/11/06/liberi6500.htm>) (Accessed August 25, 2006)
- Hunter, George D., Treasurer, Law Society of Upper Canada (November 15, 2005) “Letter: Law society does not impede police” Toronto Star Pg. A23
- Hurlburt, William H. (2000) *The Self-Regulation of the Legal Profession in Canada and in England and Wales* (Edmonton: Law Society of Alberta and Alberta Law Reform Institute)
- Inter-American Democratic Charter*, Article 3
- International Bar Association (1982) *IBA Minimum Standards of Judicial Independence* (1982)
<http://www.ibanet.org/images/downloads/Minimum%20Standards%20of%20Judicial%20Independence%201982.pdf> (Accessed August 17, 2006)
- International Bar Association (1990) *IBA Standards for the Independence of the Legal Profession* (Adopted 1990)
<http://www.ibanet.org/images/downloads/Standards%20for%20the%20Independence%20of%20Legal%20Prof%201990.pdf>) (Accessed August 17, 2006)
- International Bar Association, (24 August 2004) “Zimbabwe: NGO Bill Harbours Grave Consequences for the People” News Release
<http://www.lexisnexis.com/presscenter/hottopics/IBAPressCenter.pdf>)
- International Commission of Jurists (2002) *Attacks on Justice: the Harassment and Persecution of Judges and Lawyers*, 2002.
- International Commission of Jurists (22 April, 2003), Letter to President Sayed Mohammad Khatami, <http://www.icj.org/IMG/pdf/doc-123.pdf>) (accessed August 25, 2006) (ICJ Worried at Charges against Lawyer”)
- International Commission of Jurists (23 August 2003), “Uganda: ICJ Alarmed at Blanket Prohibition on Lawyers’ Freedom of Expression” *Press Release* .
- International Commission of Jurists (24 January 2003) Letter to President Sayed Mohammad Khatami (http://www.icj.org/news.php3?id_article=2728&lang=en) (accessed August 25, 2006) (“Iranian Lawyers Jailed after Unfair Trials”)
- International Commission of Jurists (26 November 2003) Letter to Prime Minister of India and State Minister of Andhra Pradesh
http://www.icj.org/news.php3?id_article=3194&lang=en) (Accessed August 25, 2006)
- International Covenant on Civil and Political Rights*, Article 14.1

- Johnson, Terence (1972) *Professions and Power* (London: MacMillan)
- Joint Committee (July 25, 2006) Volume I: Report, *Draft Legal Services Bill* (Session 2006-06) (House of Commons, House of Lords, Joint Committee on the Draft Legal Services Bill)
- Kannabiran, K.G. (2003) *The Wages of Impunity* (New Delhi: Oriental, 2003).
- Karpik, Lucien & Terence Halliday (2001) "Reply Essay: Can Lawyers Be Committed to Political Liberalism?" *The Jurist*, Books-on-law /Book Reviews, April 2001; v.4, no.4 (<http://jurist.law.pitt.edu/lawbooks/revapr01.htm#KarpikHalliday>) (accessed August 21, 2006)
- Karpik, Lucien (1997) Builders of Liberal Society: French Lawyers and Politics, in Karpik, Lucien, and (1997) Terence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Karpik, Lucien (1999) *French Lawyers: A Study in Collective Action, 1274-1994* (Oxford University Press)
- Karpik, Lucien, and Terence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Kirby, Hon. Justice Michael, "Independence of the Legal Profession: Global and Regional Challenges" Speech delivered at the Law Council Of Australia: Presidents Of Law Associations In Asia Conference, Broadbeach, Queensland, Australia Sunday, 20 March 2005 (http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_20mar05.html) (accessed August 12, 2006)
- Kovacs, Maria M. (1994) *Liberal Professions & Illiberal Politics: Hungary from the Habsburgs to the Holocaust* (Washington, DC., and Oxford: Woodrow Wilson Center and Oxford University Press)
- Laperriere, Rene (1996) "La reforme des professions au Manitoba et au Quebec: Continuités ou ruptures?" *Manitoba Law Annual*, (1996) 24:2 *Manitoba Law Journal*, xxx-xxxx.
- Larson, Magali Sarfatti (1977) *The Rise of Professionalism: A Sociological Analysis* (Berkeley: University of California Press)
- Larson, Magali Sarfatti (1986) "Depoliticization and Lawyers' Functions: Reflections For a Comparative Analysis" 24 *Osgoode Hall L. J.* 743.
- Larson, Magali Sarfatti (1989) "The changing functions of lawyers in the liberal state", in *Lawyers and Society, vol. 3: Comparative Theories*, ed. Richard L. Abel and Philip S. Lewis (Berkeley: University of California Press, 427-77)
- Law Reform Commission of Manitoba, *Regulating Professions and Occupations* (Manitoba Law Reform Commission, 1994 Report #84), reviewed by W. Wesley Pue, "Foxes, Henhouses, Unfathomable Mysteries, and the Sufferance of the People - a review of "Regulating Professions and Occupations" *Manitoba Law Annual*, (1996) 24:2 *Manitoba Law Journal*, 283-300
- Law Society of England and Wales, "Independent regulation, empowered consumers - The Law Society's response to the White Paper: The Future of Legal Services – Putting Consumers First" (January 2006) (http://www.lawsociety.org.uk/documents/downloads/dynamic/whitepaperresponselaw_soc180106.pdf) (Accessed, August 12, 2006)
- Law Society of Upper Canada, (1979, 1983, 1987, 1991, 1995, 1999, 2003) *Candidate Guides* (Toronto: Law Society of Upper Canada)
- Ledford, Kenneth F. (1996) *From General Estate to Special Interest: German Lawyers 1878-1933* (Cambridge & NY: Cambridge University Press)

- Ledford, Kenneth F. (1997) *Lawyers and the Limits of Liberalism: the German Bar in the Weimar Republic*, in Karpik, Lucien, and Terrence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Legal Profession Act 2004 (New South Wales Consolidated Acts)
http://www.austlii.edu.au/au/legis/nsw/consol_act/lpa2004179/ (accessed August 27, 2006)
- Lynch, John Lynch (1996) "*Legal Aid & the Victorian Legal Profession, 1841-1995*" (Ph.D. Dissertation, Legal Studies, La Trobe University, Melbourne, Australia)
- Malcolm, Hon. David K., AC, Chief Justice of Western Australia, "Independence of the Legal Profession and Judiciary" ("The Church Service") Monday, 9 May 2005
(http://72.14.203.104/search?q=cache:W3y_3z3GXIMJ:www.supremecourt.wa.gov.au/speeches/pdf/TheChurchService09052005.pdf+%22independence+of+the+legal+profession%22&hl=en&ct=clnk&cd=1) (accessed August 12, 2006)
- Mark, Steven (2001) "Regulation: Putting the Profession in Good Order" (presented by Steve Mark at the 2001 Conference of Regulatory Officers, Canberra, March 2001)
(http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_speeches) (accessed August 27, 2006)
- Mark, Steven (2003) "Is State Regulation of the Legal Profession Inevitable?"
(http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_heron) (Accessed August 27, 2006)
- Mark, Steven (2005?) *Pennsylvania Law Review*
- Mark, Steven and Georgina Cowdroy (2004) "Incorporated Legal Practices: A New Era in the Provision of Legal Services in the State of New South Wales" (2004) 22:4 *Penn. State Int'l L. R.* 671.
- Mark, Steven, and Molly Hutcherson (2005) "New Structures for Legal Practices and the Challenges they bring for Regulators", (presented by Steve Mark at the 14th Commonwealth Law Conference 2005, London, September 2005)
(http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_speeches) (accessed August 27, 2006)
- McKnight, Peter (Feb. 3, 2003) "This isn't helping lawyers' image problems" *Vancouver Sun*, A.8.
- McMahon, Kirsten (November 2005) "LSUC responds to Toronto Star investigation" *Law Times*
- Milewski, Terry, (2000) "Forces of Journalism", in W. Wesley Pue, ed., *Pepper in Our Eyes. The APEC Affair* (Vancouver: University of British Columbia Press).
- Moore, Christopher, (1997) *The Law Society of Upper Canada and Ontario's Lawyers, 1797-1997* (University of Toronto Press)
- Morgan, David, "Recommendations On the Reform of the Legal Profession in Kyrgyzstan" (Open Society Justice Initiative, 2004)
(http://www.justiceinitiative.org/db/resource2?res_id=102465&preprint=1) (Accessed August 12, 2006)
- Morin, Gerald M. (2000) "Personal Reflections on the Ill-Fated First APEC Inquiry", in W. Wesley Pue, ed., *Pepper in Our Eyes. The APEC Affair* (Vancouver: University of British Columbia Press).
- Mucalov, Janice (October 2004) "Self-Governance: Walking the Tightrope" *Canadian Bar Association Magazine*, 16 (<http://www.cba.org/CBA/National/oct04/cover.aspx>) (accessed August 27, 2006)

- Nation (The), Bangkok. "HUMAN RIGHTS INVESTIGATIONS: Wasant fears for life after suspected kidnap attempt" Fri, June 30, 2006
http://www.nationmultimedia.com/2006/06/30/national/national_30007676.php
(accessed August 17, 2006)
- National Endowment for Democracy, "Uganda: Social, Economic and Political Background", online: <http://www.ned.org/grantees/fhri/03annual_report/report.html> (accessed August 25, 2006)
- New South Wales Law Reform Commission, (1993) *Report on Scrutiny Legal Profession* (Sydney: Law Reform Commission of NSW)
(<http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R70EXEC>) (Accessed August 27, 2006)
- November 19, 2005 Saturday **SECTION: NATIONAL REPORT**; Law must apply even to lawyers Pg. F06
- Observatory for the Protection of Human Rights Defenders (October 9, 2003) "India: Threats against Mr. K.G. Kannabiran and his family"
<http://www.omct.org/base.cfm?page=article&num=3688&consol=close&kwr=ADV&cfid=4098797&cftoken=27140417> (accessed August 25, 2006)
- Office of Democracy and Governance, (2002, January) *Guidance for Promoting Judicial Independence and Impartiality* (Revised Edition) (Washington: Bureau for Democracy, Conflict, and Humanitarian Assistance, U.S. Agency for International Development)
- Office of the Legal Services Commissioner (2006) "Frequent Questions"
http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_faqs (accessed August 28, 2006)
- Ogilvie, Margaret H. (1982) *Historical Introduction to Legal Studies* (Toronto: Carswell)
- Parker, Stephen (1996), "Islands of Civil Virtue? Lawyers and Civil Justice Reform" (Inaugural Professorial Lecture, Brisbane, Griffith University) (cited in Mark, 2003)
- Paterson, A. (1988) "The Legal Profession in Scotland: An Endangered Species or a Problem Case for Market Theory?": in Abel, R.L. & Lewis, P.S.C. *Lawyers in Society Volume One The Common Law World* (Berkeley: University of California Press).
- Paterson, A. (1993) "Market Theory and the Professions" *European Yearbook of the Sociology of Law* (Giuffre, Milan).
- Paterson, Alan Paterson, xxx
- Pérez-Perdomo, (2006) *Latin American Lawyers: A Historical Introduction* (Stanford, Ca.: Stanford University Press)
- Perkin, Harold (1989) *The Rise of Professional Society, England since 1880* (London: Routledge)
- Prest, Wilfrid (1984) 'Why the History of the Professions is Not Written', in *Law, Economy and Society: Essays in the History of English Law 1750-1914*, ed. G. R. Rubin and David Sugarman (Abingdon, Berks., Professional Books), pp. 300-320
- Pue, W. Wesley (1989a) "Guild Training versus Professional Education: The Department of Law at Queen's College, Birmingham in the 1850's" 33 *The American Journal of Legal History*, 241-287.
- Pue, W. Wesley (1989b) "Rethinking `Professionalism': Taking The Professions in Early Modern England Seriously" 4 *Canadian Journal of Law and Society*, 175-187.
- Pue, W. Wesley (1990) "Moral Panic at the English Bar: Paternal vs. Commercial Ideologies of Legal Practice in the 1860's" 15 *Law and Social Inquiry*, 49-118.
- Pue, W. Wesley (1991a) "Becoming `Ethical': Lawyers' Professional Ethics in Early Twentieth Century Canada" 20 *Manitoba Law Journal*, 227-261 [also published in

- Dale Gibson & W. Wesley Pue, eds., *Glimpses of Canadian Legal History* (Legal Research Institute, University of Manitoba, Fall 1991), 237-277.]
- Pue, W. Wesley (1991b) "Trajectories of Professionalism: Legal Professionalism after Abel" in Alvin Esau, ed., *Manitoba Law Annual, 1989-1990* (Winnipeg: Legal Research Institute), 57-92 [reprinted from (1990) 19 *Manitoba Law Journal*, 384-418].
- Pue, W. Wesley (1995a) "Common Law Legal Education in Canada's Age of Light, Soap and Water" in *Canada's Legal Inheritances*, Symposium Issue, edited by W. Wesley Pue and D. Guth, 23 *Manitoba Law Journal*, 654-688
- Pue, W. Wesley (1995b) "In Pursuit of Better Myth: Lawyers' Histories and Histories of Lawyers", 33(4) *Alberta Law Review*, 730-767
- Pue, W. Wesley (1995c) *Law School: The Story of Legal Education in British Columbia* [Vancouver: Continuing Legal Education Society of British Columbia & Faculty of Law, University of British Columbia] (xxvii + 285 pages)
- Pue, W. Wesley (1997) "Lawyers & Political Liberalism in 18th & 19th Century England", in Terence Halliday and Lucien Karpik, eds., *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press), 239-302.
- Pue, W. Wesley (1997) Lawyers and Political Liberalism in Eighteenth- and Nineteenth-century England, in Karpik, Lucien, and Terrence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Pue, W. Wesley (1998) "Lawyering for a Fragmented World: Professionalism after God", Vol. 5, Numbers 2/3 *International Journal of the Legal Profession* (symposium issue on "Lawyering for a Fragmented World", edited by W. Wesley Pue), 125-140.
- Pue, W. Wesley (1999) "'The Disquisitions of Learned Judges': Making Manitoba Lawyers, 1885-1931", in Jim Phillips and G. Blaine Baker, eds., *Essays in the History of Canadian Law: In Honour of R.C.B. Risk* (Toronto: Osgoode Society), 825-914.
- Pue, W. Wesley (1999) "British masculinities, Canadian Lawyers: Canadian legal education, 1900-1930", in *Misplaced Traditions: The Legal Profession and the British Empire*, Symposium Issue, 16(1) *Law in Context* (guest edited by Robert McQueen and W. Wesley Pue), 80-122.
- Pue, W. Wesley (1999) "The Best and the Brightest? Canadian Law School Admissions" (with Dawna Tong) 37:4 *Osgoode Hall Law Journal*, 843-876.
- Pue, W. Wesley (2000a) "Executive Accountability and the APEC Inquiry: Comment on 'Ruling on Applications to Call Additional Government Witnesses'" 34 *University of British Columbia Law Review*, 335-344.
- Pue, W. Wesley (2000b) "Policing, the Rule of Law, and Accountability in Canada: Lessons from the APEC Summit", in W. Wesley Pue, ed., *Pepper in Our Eyes. The APEC Affair* (Vancouver: University of British Columbia Press).
- Pue, W. Wesley (2001a) "'Back to Basics'? University Legal Education and 21st Century Professionalism" (with Annie Rochette) 20 *Windsor Yearbook of Access to Justice*, 167-190.
- Pue, W. Wesley (2001b) "The Prime Minister's Police? Commissioner Hughes' APEC report" 39(1) *Osgoode Hall Law Journal*, 165-185.
- Pue, W. Wesley (2002) "Bad Government: There are no friendly dictators, even in Canada", *Literary Review of Canada*, January/ February 2002, 14-16
- Pue, W. Wesley (2003) "Cultural Projects and Structural Transformation in the Canadian Legal Profession," in *Lawyers and Vampires: Cultural Histories of Legal Professions* (Oxford: Hart Publishing).

- Pue, W. Wesley (2006) “Educating the total jurist?”, 8 *Journal of Legal Ethics* , 208-221.
- Pue, W. Wesley and David Sugarman, (2003) *Lawyers and Vampires: Cultural Histories of Legal Professions* (Oxford: Hart Publishing.)
- Reidinger, Paul (1995) “Confessions of The Rodent,” *ABA Journal* (August 1995).
- Reporters without Borders* (27 August 2003), “Lawyers Banned from Appearing in the Media” , online: <http://www.rsf.org/article.php3?id_article=7856>.
- Riddell, Jessi-Ann (2006) “Strengthening An Independent Bar”, 4:2 *The Advisory* (March, 2006) (Law Society of Alberta)
- Rosenthal, Douglas E. (1974) *Lawyer and Client: Who’s in Charge?* (N.Y.: Russell Sage Foundation)
- Rueschemeyer, Dietrich (1997) State, Capitalism, and the Organization of Legal Counsel: Examining an Extreme Case - the Prussian Bar, 1700-1914, in Karpik, Lucien, and Terrence Halliday, eds., (1997) *Lawyers and the Rise of Western Political Liberalism: Legal Professions and the Constitution of Modern Politics* (Oxford: Oxford University Press)
- Savoie, Donald J. (1999) *Governing from the centre: the concentration of power in Canadian politics* (Toronto: University of Toronto Press)
- Savoie, Donald J. (2003) *Breaking the Bargain: Public Servants, Ministers, and Parliament* (Toronto: University of Toronto Press)
- Shumba, Garbriel (2003) “Testimony to the United States Congress, House Committee on International Relations”
- Simpson, Jeffrey (2001) *The Friendly Dictatorship*, (Toronto: McLelland and Stewart)
- Stager, David A.A. with Harry W. Arthurs (1990) *Lawyers in Canada* (Toronto: University of Toronto Press)
- Sugarman, David (1996) “Bourgeois collectivism, professional power and the boundaries of the State. The private and public life of the Law Society, 1825-1914” 3:1-2 *International Journal of the Legal Profession* 81-135.
- Sugarman, David, (1995) *A brief history of the Law Society* (London: The Law Society)
- Suva Statement on the Principles of Judicial Independence and Access to Justice* (2004)
- The Perspective (April 24, 2002) “MODHAR Calls for the Release of Human Rights Lawyer” (<http://www.theperspective.org/gongloearrested.html>) (Posted April 24, 2002) (accessed: August 25, 2006)
- The Perspective (April 25, 2002) “Human Rights Lawyer Tiawan Gongloe Tortured in Police Custody (Editorial)” (<http://www.theperspective.org/gongloetortured.html>) (Posted April 25, 2002) (accessed August 25, 2006)
- Thinkexist.com (2006) http://en.thinkexist.com/quotation/if_it_ain-t_broke-don-t_fix_it-is_the_slogan_of/147415.html (accessed August 27, 2006)
- Thompson, E. P. (1975) *Whigs and hunters: the origin of the Black Act* (London : Allen Lane)
- Tsungu, Arnold (2003) “The Legal Profession and the Judiciary as Human Rights Defenders in Zimbabwe in 2003. Separation or Consolidation of Powers on the Part of the State” Harare: Zimbabwe Lawyers for Human Rights)
- Ugandan Law Society (2002, October- November) , “Newsletter” <http://www.uls.or.ug/newsletters/oct_nov2002.html>.
- UN Basic Principles on the Role of Lawyers* (1990)
- United Nations Draft Principles on the Independence of the Judiciary* (1981).
- United Nations High Commission on Human Rights, Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers (<http://www.ohchr.org/english/issues/judiciary/index.htm>) (accessed August 12, 2006)
- Universal Declaration of Human Rights*, Article 10.

- Walsh, Moira, and Kevin Donovan, (November 13, 2005) "Law society plan still too soft, critics say", **Toronto Star A04**
- Weisbrot, David (1990) *Australian Lawyers* (Melbourne : Longman Cheshire)
- Willie, Richard A. (1994) *'These Legal Gentlemen': Lawyers in Manitoba: 1839-1900* (Winnipeg: Legal Research Institute)
- WNYC Radio/ National Public Radio "Interview with Gugulethu Moyo" (2 October 2003), online:
(http://www.onthedia.org/transcripts/transcripts_100303_zimbabwe_paper.html)
(Accessed August 25, 2006)