Still Special After All These Years?
Fundamental Questions in Legal Services Regulation

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I. Introduction and theoretical framework

Prevalent theories of legal services regulation draw on analyses of established frameworks for regulating legal services in Western liberal democracies, focusing heavily on common law jurisdictions and Anglo-American examples. Regulation by independent and self-regulating legal professions, using powers delegated expressly or implicitly by the state, permeated the first edition of *Lawyers in Society* (Abel & Lewis 1988-89). The underlying justification for a legal system dominated by legal professions has been the claim that the institutional independence of lawyers from government is an important if not fundamental prerequisite for liberal democracy and the rule of law (Halliday & Karpik, 1997; Hazard & Dondi, 2004 : 93; Dezalay & Garth, 2011; Boon, 2017b, 2017d). Legal professionalism has, therefore, been an aspirational model for countries seeking to establish a democratic constitutional framework. In recent years, however, some jurisdictions have liberalised and de-regulated their legal services markets notably England and Wales and Denmark, Norway and Sweden. This has been seen as an attempt to balance professional and consumer interests in markets for legal services (Boon, 2010; 2017c,). It may even augur a more broadly applicable 'competitive-consumerist' paradigm of regulation (Semple, 2015).

This chapter assesses the current circumstances of legal services regulation worldwide. A dictionary definition of 'regulation' encompasses all efforts to 'control, govern, or direct' human conduct. Accordingly, enforced rules are certainly regulation but so are ideologies, customer demands and other influences on behaviour. The traditional model of professional regulation seeks to control lawyer behaviour by imposing extensive educational and training requirements supported by codes of conduct. It is arguably through the process of professional identification that lawyers become institutionally disposed to support the citizen and resist the encroachment of state power on rights. We therefore conceive of legal services regulation as potentially including processes associated with professionalism generally, particularly ethical socialisation through education and training, ethical codes and other means.

The prevalence of non-professional regulation of legal services markets in some parts of the world, together with reduced support for legal professionalism in other jurisdictions, call for reconsideration of the fundamentals of legal services regulation. The professional project of market control (Larson 1977; Abel 1988; 1999) is resisted, more or less vigorously, in different places and at different times, by the state, clients, and competing legal workers (Johnson 1972; Rhode 2013). These efforts appear to be bearing fruit in some jurisdictions. However, in many parts of the world professionalism continues to be an aspiration of lawyers, particularly in emerging democracies.

[1] The authors are grateful for comments from Pablo Fuenzalida and participants at the 2017 International Meeting of Law and Society in Mexico City, contributors to the 2017 workshop on Lawyers in 21st Century Societies in O ñati, Spain and participants in the 2018 Socio-Legal Studies Association Annual Conference at Bristol, England.

In light of the diverse directions the professional regulation of lawyers and legal services has taken in the last 30 years, this chapter focuses on three questions: *who* regulates and *how* and *why* they do so. In Part II we ask whether, and to what extent, lawyers regulate legal services, using four markers of professionalism: market control, occupational unity, insulating rules, and self-regulation. Institutional alternatives to professions could include governments, clients or consumers more generally (Johnson, 1972), each of which may favour different regulatory strategies. Part III considers the prevalence of professional regulation compared with alternatives, focusing on three dimensions-- admission, practice and discipline (Boon, 2017a)– and considering how different jurisdictions allocate responsibility for these functions.

Turning to the question of 'how' regulation occurs, Part IV considers the use and compatibility of three competing regulatory logics, which Freidson (2001) identifies as professionalism, market competition and corporate bureaucracy. Each has a distinctive rationale, calling for regulatory methods that may be inconsistent with those of the other logics. Part V takes up the question of *why* legal services are regulated, in the light of these rationales, by contrasting public interest and private interest theories and examining the continuing importance of the rule of law as a guiding principle.

The questions we pose are neither new nor exclusive to law. In answering them we mine the rich literature published in the 30 years since the original *Lawyers in Society* project. In addition to the country reports in volume one, we draw on responses of contributors to a questionnaire about regulation. We seek to engender a conversation between regulatory theory and the lawyer-specific issues raised by the country reports and other data sources.

II. Legal Professionalism: Lawyers Regulating Lawyers

A. Professional control of legal services markets

In the law and society tradition, legal services regulation is typically understood as an arena in which lawyers advance a self-interested 'professional project' of market control (Larson 1977; Witz 1992; Rhode 1981; Abel 1988) in order to improve, or at least protect, their income, social standing, and political power. An initial task is to guarantee the quality of service provided, typically through education and control over entry. According to Freidson, the regulatory logic of professionalism is distinguished by being organised along collegial lines in a spirit of public service. Its stated rationale is that only a professional peer group can judge practitioner performance.

Professionalism argues that the consumer interest is served by the inculcation of professional norms during a long period of education and training. These norms prioritise client interests and subordinate the profit motive. The need to organise education often leads to formation of a professional body, which seeks to establish the machinery of self-regulation: licensing regimes, codes of conduct, powers to inspect and intervene in legal businesses, and requirements that members insure against the risk of client claims. Among the myriad strictures on the practice of law, four are considered defining features of the regulatory infrastructure of legal professionalism: (i) monopoly, (ii) occupational unity, (iii) insulating rules, and (iv) self-

regulation. The prevalence and significance of each may vary over time and by jurisdiction. Before considering the evidence for a decline in professional market control we examine the circumstances of legal professionalism across jurisdictions, including those considered in Volume I.

i. Monopolies and other limitations on the provision of legal services: reserved activity, licensing regimes and prohibition of alternative (non-professional) legal service providers

Monopolies of legal work arise in different ways. The widest monopoly provides that legal services, broadly defined, must be delivered by regulated lawyers. In jurisdictions such as the U.S. and Canada, licensees have a *de jure* monopoly on all 'practice of law', including advice-giving. In other jurisdictions, England and Wales (Boon, 2017a) and the Netherlands, for example, giving legal advice is not reserved to lawyers. Licensing regimes may impose additional post-admission requirements (such as annual practising certificates), the grant of which may be contingent on maintaining a continuing professional development record and linked to the performance of specialties.

The scope of a broadly defined lawyers' monopoly is often hard to specify (Terry, 2014). For example, it may be difficult to distinguish legal and general business advice. This may lead to legislation enumerating the 'reserved activities' of lawyers, such as advocacy (e.g. the U.S. and Israel). In OECD countries, regulators are generally able to protect the lawyers' reserved areas of practice from unlicensed competitors, who are often prosecuted vigorously, even in the absence of quality problems or client complaints (Brockman, 2010). Sanctions for the unauthorised practice of law may also apply to those who have been admitted to a profession but do not meet current practising requirements.

Only courtroom advocacy and a few other special functions are reserved for lawyers in countries such as Mexico, Belgium, Thailand, and England and Wales. Some states have sought to limit lawyer monopolies. England and Wales (in 1987) and New Zealand (in 2006) created new sub-professions for conveyancing, a traditional solicitors' task, as a first step in undermining professional market control. In England and Wales the historic distribution of core legal functions— courtroom advocacy by barristers and other work by solicitors—was upended in 1990 by legislation allowing solicitors access to higher courts, which had been exclusive to barristers (Boon & Flood, 1999a). Further legislation in 2007 recognised *eight* legal occupations, all of which could perform one or more reserved activities (Boon, 2017c). While many of these were longstanding sub-professions, they were encouraged to apply to conduct different reserved activities and even to regulate each other's members. The legislation also provided a mechanism for non-legal professions to seek authorisation to conduct reserved legal activities.

ii. Occupational Unity

Historically, a degree of occupational unity was essential for a profession asserting market control. The profession may coalesce around and claim jurisdiction over broad areas of work (Abbott, 1988). Typically, this body is more important in forming professional identity than the wide variety of organisational units and forms of practice. The work claimed by a profession may be the result of historic 'settlements' dividing the legal field between occupational groups. Legal roles in many jurisdictions derive from these historical divisions in a former colonial power. For example, countries following the common law tradition often adopted the English sub-professions of barristers (courtroom advocates) and solicitors (transactional lawyers) (see, e.g., Canada), while civil law countries allocated responsibility

differently, for example, among the French *avocats*, *avoués* and *notaires*.[2] In colonial Africa, the legal professions reflected a substantive, although permeable divide between customary and colonial legal systems (Dezalay, 2017).

Not all countries adopted divided legal professions. In India, there is 'only one class of persons entitled to practise the profession of law, namely, advocates' (*Advocates Act*, s. 29). The same is true in Thailand and most jurisdictions of common law North America (Wilkins, 1993; see also Kenya). There is contradictory evidence about whether a particular form of occupational unity—a single provider of legal services—is a marker of legal professionalism. Yet, there is a fused profession in countries where lawyer hegemony appears to be robust – such as Canada, India, and the US -- and fragmented providers in countries where professional regulation is relatively weak, such as Russia and Eastern European countries. While occupational control is not necessarily diminished when sub-professions perform different legal roles, occupational unity may still help to establish and maintain market control.

Occupational subdivisions raise questions about restrictive trade practices, for example, referral rules for advocacy (South Africa), and foster territorial squabbles between different types of lawyer (Indonesia) or foreign and local lawyers in many Asian jurisdictions (see, e.g., Chen & Whalen-Bridge, 2017; South Korea; India; Israel). This can draw the attention of sceptical states and publics to the privileges lawyers enjoy. Adjusting the boundaries between professions can provide the occasion for reforms eroding their individual and collective positions (Semple 2015: 88). Subdivisions open the door to ad hoc competition, weaken a common front against unlicensed competitors, and dilute resistance to government control.

The position of professions in England and Wales illustrates this weakness of occupational disunity. That jurisdiction used to be regarded as a paradigm of professionalism, despite the division of functions between solicitors and barristers. A government strategy of increasing the variety of legal services providers and competition between them has been paralleled by attempts to reduce the distinctions between the practice structures of solicitors (who work in firms) and barristers (who had to be independent practitioners) (Boon & Flood 1999a; Stephen, 2013). If this eventually leads to fusion, it will be a notable example of what an IBA survey of legal services regulation identified as a global trend toward occupational unity (International Bar Association, 2016). France's 1991 merger of legal advisors and lawyers fits this mold, as does British Columbia's possible merger of notaries and lawyers (Society of Notaries of British Columbia and Law Society of British Columbia, 2015). The next 30 years may reveal whether occupational unity helps professionalism to remain the dominant way to manage legal services.

iii. Insulating Rules

Occupational sub-groupings are not the only difference that might disrupt the apparent coherence of professional practice. Another regulatory restriction governs how lawyers can provide legal services. Business structure rules or authorisation frameworks are typically used to specify the lawyers' practice sites. Professionalised legal services markets traditionally require that a particular type of lawyer work only in businesses owned and managed by that type of lawyer, usually in partnership or as a sole practitioner. This rule is said to maintain a

[2] The first two of which were combined in a single profession in 1971 (Karpik, 1999).

homogeneous ethical culture, 'insulating' members from commercial interests or the potentially divergent ethical norms of other, non-legal professions or legal sub-professions.

Non-lawyer ownership or management of law firms is forbidden in some jurisdictions. Among OECD jurisdictions, common law Canada and the United States arguably go furthest in this direction (Hadfield, 2014; American Bar Association, 2018 R. 5.4). France has traditionally had fairly tight business structure rules but is in the midst of a modest liberalisation (Snyder, 2017). Since publication of the previous volumes, there has been a growth in the number of jurisdictions permitting non-lawyer ownership and management of law firms. In England and Wales and Australia, entrepreneurs and venture capitalists can now create or acquire law firms, and non-lawyers can manage them (Boon, 2017d). Even if they employ licensed lawyers, these 'alternative business structures' compete with lawyer-owned firms for the profits generated through the sale of legal services.

Québec's regime is an interesting compromise. Law firms cannot be publicly traded corporations, but multi-disciplinary partnerships are permitted, and non-lawyers can own up to 49 per cent of the shares in an incorporated law firm (Legis Québec, 2010; Semple, 2017). Another potential relaxation allows lawyers to work for non-lawyers in entities not regulated as legal services providers. In England and Wales independent regulators are proposing to let solicitors work for alternative legal services providers in competition with solicitors' firms; they will be subject to the same code of conduct as solicitors in law firms but not to the same requirements regarding professional liability insurance.

These examples suggest that some jurisdictions have recently relaxed insulating rules, while others have preserved them. We are not aware of any that have introduced rules to *reinforce* insulation. This indicates a trend toward liberalising business structure rules and authorisation regimes.

iv. Self-regulation

An occupational group is self-regulating if those making regulatory decisions are (i) members of the occupational group and (ii) accountable (if at all) only to other members (Kaye, 2006). Self-regulation generally is administered by a professional body. There are typically three dimensions: admission, practice regulation and discipline (Boon, 2017b). The regulation of admission includes courses to be studied, qualifications to be obtained and practical experience to be gained. Practice regulation specifies conduct rules and monitoring standards. Discipline involves establishing a system for investigating misconduct and tribunals to hear cases and impose sanctions, including possible expulsion from the profession.

In federal states legal professions often handle disciplinary functions at the territorial level. Thus, in the US, State Bars set professional entry requirements, prescribe conduct practice and engage in discipline. In Argentina, entry is by law degree, but there are 80 different bar associations publishing ethics codes and handling disciplinary cases. Very little information is available about the self-regulating activities of these associations, including the outcomes of cases. A relatively pure form of self-regulation is also found in Canada's common law provinces (Woolley, 2011; Semple, 2017;). Such variations can cause problems for lawyers working across the entire federal jurisdiction, and there are often efforts to harmonise regulation. In 2002, for example, 24 Swiss regional bars, each with separate rules, were unified to facilitate more effective regulation.

Across the range of international jurisdictions there is an ebb and flow in the power of legal professional groupings. Lawyer self-regulation is robust in some parts of the world and increasing in many developing jurisdictions. Self-regulation depends on effective control by professional bodies, typically liberal institutions, which struggle to become established and thrive in autocratic states, such as Russia and other former Soviet satellites, such as Serbia. Professionalism does, however, flourish in unexpected places. The Palestinian Bar Association, for example, has augmented its role since its establishment in 1997 and the Israeli Bar Association has suffered only minor incursions on its traditional dominance. Italian lawyers managed to resist the state's efforts at regulatory reform after 2005.

The IBA has identified a global trend away from pure self-regulation, even in disciplinary processes (2016: 15). The evidence for this may be minimal, involving little more than an increase in instances of lay participation. Japan is among the jurisdictions that added non-lawyers to disciplinary tribunals previously staffed exclusively by lawyers. In other jurisdictions action has been more drastic. In England and Wales for example, professional bodies have been removed from all front-line regulatory activity by the Legal Services Act 2007 (Boon, 2017c,). In Germany, decisions of the Constitutional Court have left little scope for professional self-regulation.

B. The decline of professional market control

The decline of legal professionalism can be attributed to factors identified in the previous edition of *Lawyers in Society* and subsequent work. A primary cause is the accusation that legal professionalism is self-serving. Critics suggest that a self-interested occupational group can manipulate regulation to reduce competition (Smith, 1776; Rhode, 1996), evade discipline for malpractice (Paterson et al., 2003; Arthurs, 1998), and otherwise feather its own nest. These perceptions may lead to measures to weaken professional control of markets. The intellectual climate they foster may also weaken resolve to address the external forces that undermine professional arrangements, including globalisation, specialisation, growth in the number of qualified lawyers, paralegal workers, diversification of practice settings and increases in numbers of alternative legal services providers.

Many jurisdictions have seen an increase in numbers of lawyers working 'in-house', for corporations or public utilities. This often opens the door to questioning professional arrangements, for example, whether the advice of in-house counsel enjoys legal professional privilege (Netherlands, Germany). The solutions could rupture both occupational unity and insulating rules, whether they limit the scope of arrangements to the existing group or extend them to new contexs. The growth of international practice can have a similar impact. Lawyers practicing outside their home jurisdiction may be subject to regulation by the host country, for example, lawyers moving between EU countries, incomers to Scandinavian countries and commercial lawyers in Singapore (Chen & Whalen-Bridge, 2017). Some jurisdictions ban foreign firms but allow partnerships with host firms (Serbia and Bosnia and Herzegovina). Unregulated transnational practice can cause tension between indigenous and incoming lawyers, as in Myanmar, 'the last wild west for global law firms'.

The diversification of practice sites over the past 30 years has sometimes forced professions to change practice rules, either to accommodate changes or to maintain a semblance of occupational unity. This has weakened arguments against diversification of the entities in which lawyers can work, which has become a contentious issue as the number of practitioners increases

in some jurisdictions. Controlling entry to practice has generally been seen to be a primary method of securing a market for professional services (Larson, 1977). In situations where there are several legal professions, further diversification of practice arrangements can weaken arguments for profession-specific educational arrangements, undermining efforts by professions to dictate the legal curriculum in universities.

Lawyers' inability to control legal education is the Achilles' heel of market control. Law graduates demand legal jobs, challenge professional restrictions on entry, and work for non-lawyer competitors. There is little incentive for providers to control numbers. Legal education is attractive to both universities (Abel, 2012; Australia) and students (Brazil, Turkey), and there is global competition for law students (Flood, 2011). The range of providers of legal education has also expanded rapidly in many parts of the world, as the country reports illustrate (e.g., South Korea, Poland). In Mexico, for example, an average of one new law school has opened *each week* since the mid-1980s. Lawyers' self-regulatory organisations generally cannot prevent public universities and private law schools from opening and expanding legal education programmes (Shanahan, 2000; Brazil; Zer-Gutman, 2017).

Suppressing competition in order to support prices requires control of the number of new licensees. In jurisdictions where legal professions have more effective market control, measures can be taken to stem the growth in professional ranks. The *numerus clausus* (a hard ceiling on the number allowed to practise) is the strongest such measure (see, e.g., Czech Republic). More typically, a licensing regime establishes entry barriers and other conditions of practice that can restrict supply, thereby maintaining prices for existing suppliers (Maurizi, 1974). Regulators can decide which legal educational credentials will be sufficient to gain entry to the next stage of education, training or the profession itself. The American Bar Association effectively used this power to control growth between the 1920s and 1970s (Abel, 1989), but thereafter enrolment expanded rapidly (Galanter, 2011) until student demand fell off sharply after the 2008 recession. Whereas centralised professions may actively seek to control entry, local associations dependent on membership fees have incentives to expand (Argentina).

Regulators may seek to control entry by mechanisms such as bar examinations and practical training requirements. After its unsuccessful effort to prevent the creation of new law schools, Brazil's bar implemented a tough bar exam with a pass rate of only 17.5 per cent. In Ghana, universities confer 1,000 LL.B. degrees per year, but to be licensed an applicant must also attend the Ghana School of Law, which until recently admitted only 250 (MyJoyOnline, 2015; Dawuni, 2017; see also South Korea). Japan's bar association used its exam to tightly restrict the supply of *bengoshi* for many years. Regulatory entry barriers such as the length of mandatory apprenticeship (Israel) and the recognition of educational credentials (Tunisia) have been adjusted for essentially political reasons. Foreign-trained lawyers also threaten market control. Pressure from foreign governments to allow them access has led to negotiated compromises in countries such as Japan and Taiwan.

Because the legal profession (like other professions) emphasises formal academic education to justify its exclusivity (Larson, 1977: 17; Abel, 2012), and because legal education is expensive and arduous, it is difficult to deny a career to those who have survived it. When graduates have invested time and money in law school with the reasonable expectation of being able to practise, using entry rules to deny them licenses can be politically difficult (Kilian, 2017; Zer-Gutman, 2017). Political demands on government may translate into pressure on legal

professions to expand in order to accommodate aspiring entrants (Canada). Government may also wish to expand the profession to increase competition between legal services providers and reduce prices. There may also be other political motives behind state-led expansion. Japan dramatically increased the number of lawyers after 2001 in an effort to 'establish the rule of law in every corner of the Japanese society'. Lawyers' market control project has failed to restrict numbers in most jurisdictions. The number of licensees per capita has grown dramatically in many parts of the world (Galanter, 2011), as the country reports illustrate (e.g., Belgium; Brazil).

One way to limit the size of the profession is to encourage and control regulated para-professions. In some North American jurisdictions, the inability of individual clients to afford lawyers has led to licensure of para-professions, such as Ontario's licensed paralegals and Washington State's Limited License Legal Technicians (Levin, 2014; International Bar Association, 2016). In Ontario, lawyers' market control appeared to have survived when the government decided in 2007 to grant the Law Society regulatory control over paralegals, including the right to define their scope of practice. Cynics were unsurprised that the definition was very narrow. However, in response to the dire state of access to civil justice, the government appointed a commission, which recommended that paralegals be able to practise family law (Bonkalo, 2016). Lawyers' groups are organising in opposition, initiating a classic market control struggle.

The more licensure succeeds in maintaining prices, the more vigorously unlicensed competition will bubble up. Where professions refuse to expand, or where growth does not lower prices, government may tolerate or encourage an alternative, unregulated legal sector. In Poland, for example,lightly controlled legal occupations dedicated to business advising and debt collection have emerged in a regulatory vacuum. Suppressing this competition requires cooperation from the judiciary and law-enforcement authorities. In countries like Russia the state has declined to cooperate, leaving the organised Bar 'a rather small island of professionalism in a stormy sea of the unregulated market for legal services' (Mrowczynski, 2016). Consequently, there are unknown numbers of unqualified practitioners, possibly up to one million, providing legal services, including advocacy in civil cases.[3] In China, licensed lawyers have also confronted strong competition from unlicensed rivals (Liu, 2011). In England and Wales, government competition agencies actively promote alternative legal services providers, even in core activities such as advocacy (Boon, 2017c). Since the later 1980s, Germany's Constitutional Court has eroded restrictions on most unregulated practice of law except higher court work.

Legal professions face competition from Internet providers of legal information and forms. The Israeli judiciary has generally supported the bar in suppressing online competition (Zer Gutman, 2017). In the US, unlicensed competitors such as LegalZoom and Rocketlawyer have been sued by several state bar associations (Barton, 2015).[4] Their virtual existence ensures

[3] The exception is administrative cases, for which a law degree is required and must be produced before the case begins.

[4] These suits typically allege unauthorised practice of law, which is prohibited by Rule 5.5 of the American Bar Association's *Model Rules of Professional Conduct*. State bar associations have brought most of these suits. However, LegalZoom was also named in a 2010 unauthorised practice class action brought on behalf of its customers (*Janson v. LegalZoom.com, Inc.*, 802 F. Supp. 2d 1053 (W.D. Mo. 2011)), which it settled in 2012 by making significant payments, WD Mo. Case No. 2:10-cv-04018-NKL. LegalZoom won a significant victory in a South Carolina case, and the Supreme Court decision in *North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015) has reduced the scope for self-regulatory entities (including bar associations) to sue

these corporations are not limited by national boundaries. Both are now operating in England and Wales, where the regulatory environment is more hospitable, and they may use this platform to expand their activities throughout Europe (Rose, 2016; Hyde, 2018).

Corporations seeking to play an intermediary role in the legal services market have also been threatened by regulators. In a variant on the 'closed-panel prepaid plans' that the American Bar Association fought in the 1970s and 1980s (Abel, 1989), Avvo.com marketed the 'Avvo Legal Services' programme to individuals and small businesses. In exchange for monthly fees, users received services from licensed lawyers who entered contracts with (and paid fees to) Avvo. In the summer of 2017, a committee of the Supreme Court of New Jersey ruled that lawyers licensed by that state could not participate in these programmes, which violated ethical rules about fee-sharing and referral schemes (Superior Court of New Jersey, 2017). Under pressure from multiple bar associations, Avvo abandoned the programme in January 2018.

Increasing heterogeneity of the bar in many jurisdictions (e.g., Belgium; Australia) and lawyer specialisation (e.g., France) may make it more difficult to act collectively against potential competition. When paralegals threaten a niche of the established bar (e.g., Ontario family lawyers), specialisation means that most lawyers have no direct pecuniary interest. But as firms increase in size and practise in many substantive areas, they have a greater interest in protecting all lawyers from incursions.

Developing and small countries often exhibit a regulatory bifurcation between local lawyers and those trained and licensed abroad. Legal services regulation cuts both ways for foreign lawyers. Countries such as India exclude them altogether. However, regulation may also give foreign lawyers their own market shelters (Brazil) and exempt them from some ethical rules applicable to domestic lawyers in the host jurisdiction (Liu, 2011). In other countries, differences may exist between host and incoming professions in terms of work performed and regulation. Singapore, for instance, restricts foreign lawyers to corporate practice, forbidding them to compete for personal clients, but subjects foreign and domestic lawyers to a common code of conduct (Chen & Whalen-Bridge, 2017). The International Bar Association (2016) has identified a global shift in favour of granting foreign lawyers' practice rights.

III. Alternative regulatory institutions

A. State regulation

State regulation is deeply problematic for lawyers' collective project because, as Abel argued (1989), self-regulation was both a motive of professionalisation and a basis for claims to autonomy. A recent study by the International Bar Association identified the regulator in 158 countries containing 233 jurisdictions. It found that national or local lawyer associations were the majority of regulators of practice and discipline but not admissions (see Table 1).

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competitors without falling foul of anti-trust legislation. Nevertheless, multiple new lawsuits against the new entrants have been filed.

TABLE 1: Regulation of admission, practice and discipline by jurisdiction

Regulator	Admission	Practice	Discipline
National(N) or local(L) bars	N 71 (32%) L 22 (10%) Total 93 (42%)	N 114 (52%) L 17 (8%) Total 131 (60%)	N 100 (46%) L 16 (7%) Total 116 (53%)
Independent regulatory authorities	58 (26%)	24 (11%)	51 (24%)
Courts	27 (12%)	42 (19%)	27 (12%)
Government	16 (7%)	14 (6%)	13 (6%)
Mixed or shared responsibility	29 (13%)	8 (4%)	9 (4%)
	223 (100%)	219 (100%)	217 (100%)

Source: International Bar Association *Directory of Regulators of the Legal Professions* (IBA, 2016) available at http://www.ibanet.org/IBA_Regulation_Directory_Home.aspx last accessed 25/5/2016.

However, Table 1 does not tell the whole story. Since the first edition of *Lawyers in Society*, some leading jurisdictions have increased state regulation. In over half of nine leading jurisdictions in the previous ten years, government had made significant legislative interventions in legal services markets[5] or significant changes to market arrangements (Boon, 2017c).[6] Some changes involve the creation of regulators in niche areas. In England and Wales, for example, all complaints against any of the eight regulated legal occupations are now heard by a single Ombudsman (Ibid.).

England and Wales, Denmark, and Canada[7] have separated the regulatory and representative roles of professional bodies (Boon, 2017d; IBA, 2016b) and prohibited the latter from trying to influence new 'independent' regulatory agencies. In England and Wales, regulators continued to use a code of conduct based almost entirely on previous codes (Boon, 2016); but significant changes continue to be implemented, including those concerning entry and educational requirements. Although the IBA views this as self-regulation because the

[5] New Zealand (Lawyers and Conveyancers Act 2006); England and Wales (Legal Services Act 2007); Eire (Legal Services Regulation Act 2015).

[6] In Germany, the Rechtsdienstleistungsgesetz 2008 (Legal Services Act) allowed unregulated legal services to operate on the fringes of the market. In Singapore, the Legal Profession Act (2009) gave professional rule-making powers to a new body. The Israeli Bar Association Act gave the Minister of Justice default powers if the Association did not perform its functions.

[7] This may seem inconsistent with the proposition that Canada has a traditional professionalist regime; but though there are separate representative bodies in Canada (CBA, OBA, etc.), the law societies still have almost total control of regulation.

independent regulator was established by the professional body, it actually represents a transition from self-regulation to a regime of 'pure' regulation (Flood, 2011) or state regulation.

In some jurisdictions, state entities create and enforce legal services regulation with no more than technical input from lawyers. The Persian Gulf States, Egypt, and many central and east Asian nations generally take this approach (International Bar Association, 2016). State regulation of lawyers need not be formal or rule-bound. Liu (2011) shows that, despite the weakness of the Chinese Ministry of Justice, state officials exercise power over lawyers through a process of 'symbiotic exchange' of resources such as market opportunities.

The state is the lead actor in regulating legal services in many countries. It has always been involved in civil law systems (e.g., Italy) but is also becoming more active in common law countries (such as England and Wales and Australia), which have been transformed by competitive-consumerist regulatory reform over the last three decades (Boon, 2017c; Semple, 2015). Supranational bodies, especially the European Union, are also actors in the regulatory space (Terry, 2009), often spurring nations to pursue competition-oriented regulatory reforms (e.g., Italy; Ireland, see Hosier, 2015).

B. Judicial Regulation

Although it is a branch of the state, the judiciary often regulates lawyers as part of regimes perceived to be self-regulating. It may delegate this inherent jurisdiction to the professions or play a more central role (International Bar Association, 2016). In the United States, state supreme courts have constitutional authority to discipline lawyers but generally defer to bar associations on policy matters (Fischer, 2006; Barton, 2011). Similarly, the Supreme Court of Chile gave legal force to a previously voluntary Code of Conduct drafted by the Chilean Bar Association. In Iran, by contrast, the Bar Association is completely subject to the judiciary, which is subordinate to the theocracy. In fact, judges in Iran are more religious officials than lawyers. In Germany, decisions of the Constitutional Court have liberalised the legal profession, forcing its decision-making to conform to the Basic Law of the Constitution (Kilian, 2017).

C. Co-regulatory arrangements

In many jurisdictions power is divided between self-regulatory and state bodies, so-called co-regulation. A government can delegate broad regulatory authority to a bar association, as Libya did in 2014. Some states regulate lawyers' conduct in specific niches and contexts in pursuit of broader policy goals (Wilkins 1990), while leaving bar associations and courts a free hand in other matters. Securities regulation and laws against money-laundering require lawyers to 'blow the whistle' on client wrongdoing despite confidentiality protections (Semple, 2017, Israel). States may also regulate lawyers appearing before state institutions, such as tribunals (Wilkins, 1992).

In some jurisdictions, states have created regulatory agencies including lawyers, judges, and lay representatives. In Singapore, the Legal Services Regulatory Authority controls both Singapore and foreign lawyers; in New Zealand, government regulators oversee or participate in professional regulation; and in Australia, the Competition and Consumer Commission has intervened in legal services regulation to enforce consumer standards (Boon, 2017d).

IV. Alternative regulatory logics

Freidson proposed two regulatory logics as alternatives or complements to professionalism: market competition and corporate bureaucracy. He suggests that most regulatory contexts will contain a combination of these mechanisms, although one may predominate. The decline of professionalism is some jurisdictions has provided scope for the expansion of these competing logics.

A. Market regulation

One rationale for professionalism is that legal services are 'credence goods', whose quality consumers cannot easily assess (Ogus, 1995). Lawyers must therefore be socialised in an ideal of public service so they do not exploit this information asymmetry. Clients may be offered additional protections, such as making lawyers fiduciaries of client monies. In some jurisdictions, clients receive little or no regulatory protection beyond that provided to consumers of other services. In others, notably England and Wales, government has sought to promote market regulation at the expense of professionalism (Boon, 2017c).

The theory of market regulation is that inefficient providers will be driven out by more efficient competitors, but there are problems in creating a perfectly responsive system. For market competition to benefit consumers, they must be sufficiently well informed to understand the tradeoffs between quality and cost (Competition & Markets Authority (UK), 2016; Semple, 2018), using their market power to regulate lawyers. Abel (1993) argued that large corporate clients, especially those with in-house legal departments capable of shopping around, can wield significant market control over outside lawyers. It is less clear whether clients in other markets can effectively control their lawyers through market mechanisms.

For competition to function as an effective regulatory mechanism in mass legal services markets it would be necessary for lawyers to publish data on quality and price. This has been proposed by the UK Competition and Markets Authority (2016). But even publication may not ensure that clients behave as perfectly rational consumers. Market imperfections are arguably addressed by *post-hoc* mechanisms making lawyers liable for harming client interests. As a control mechanism, however, liability has two problems: first, there may be a long delay before the provider feels the penalty; and second, impecunious lawyers may be unable to pay awards. Many jurisdictions therefore impose requirements that lawyers carry professional indemnity insurance (see section IV (C), below).

Control by powerful clients is such a powerful influence on lawyer behaviour that some academics doubt whether regulatory intervention can be an effective counterweight. Lawyers may fail to exercise 'independence' when in thrall to corporations. Recent empirical work on UK corporate counsel has tended to emphasise the dominance of 'commercial' imperatives (Moorhead &Hinchly, 2015). Vaughan and Oakley (2016) observed London corporate finance lawyers articulate a 'client-centered, client-first role', which might exclude concern for other interests. But though a study of Canadian corporate lawyers also found client capture, it expressed optimism about lawyers' ability to say 'no' to illegal or unethical client demands by drawing on various resources (Dinovitzer et al., 2014; 2015). Since the 1980s many developed countries have supported efforts to subject their economies to market forces, by creating powerful competition authorities (Boon, 2017c, England and Wales; South Africa). Such bodies may impose measures to force down prices, an attractive policy in legal services markets where costs are high.

In most countries, litigation is too expensive for all but the wealthiest. In many, access to justice is a dominant discourse (South Africa). This contradicts one of the key promises of the modern state; the enforcement of individual rights. States may attempt to increase competition in order to drive down prices. Measures may include creating professional competitors, reducing legal professions' restrictive practices and encouraging non-professional competitors (Boon, 2017c; Denmark, Sweden and Norway; Netherlands). These moves may be supplemented by removing regulation seen to impede a particular market. In many common law jurisdictions contingency fee agreements were banned under ancient crimes and torts aimed at restricting third-party support for litigation. They were also considered unethical and conducive to lawyer misconduct. In England and Wales, declining legal aid support for litigation led to the introduction of various conditional fee agreements that were previously banned.

Reduction of regulation to facilitate competitive markets often confronts traditional professional ethics. There are potential threats to lawyer independence when quality and price are controlled by market mechanisms alone. There is also a risk that lawyer behaviour may be influenced by third-party payers, such as legal aid authorities and commercial funders of litigation. The results do not always clearly justify marketisation. In England and Wales, for example, the burden of regulation has proved to be an impediment to cheaper legal services irrespective of the business model used by providers (Boon 2017c). Academic opinion often reflects ambivalence regarding the balance between professionalism and competition in legal services markets. While many academics are supportive of more competitive markets for legal services, there is also criticism of weak regulation, such as allowing lawyers to limit liability or practise without insurance (Fortney, 2012).

B. Corporate bureaucratic regulation

The legal ethics literature advocates designing the 'ethical infrastructure' of conventional law firms to discourage lawyer misconduct (Schneyer, 1991; Chambliss & Wilkins, 2002; Parker et al., 2008). Such measures often include imposing responsibility on a firm for the conduct of its members. In England and Wales, the independent regulator for solicitors did so by amending the Code of Conduct to specify the 'outcomes' legal entities had to achieve and requiring all firms to appoint Heads of Legal Practice and Finance. These compliance posts have additional regulatory responsibilities, and individuals can be held accountable for disciplinary failings within those areas (Boon, 2017c). Combined with the reduced powers of the professional body, steps such as these can be seen as a shift in regulatory logic towards a corporate bureaucratic model (Boon 2017c) in which the firm is the 'primary site of normative control'.

C. Mixed-logic regimes

The difficulties in either competition or bureaucracy as alternatives to professionalism suggest they will usually augment conventional regulatory mechanisms.

Some shifts towards bureaucratic regulation have coincided with the wishes of legal professions. The desire of sectors of the legal profession for more flexible authorisation arrangements (for example in cross-border work) dovetails with that of government for more competitive domestic market arrangements, including multi-disciplinary partnerships (typically with accountants) or Alternative Business Structures (ABS), allowing non-lawyers to own and manage legal businesses. ABS were eventually introduced in Scotland, where lawyers feared competition with England and Wales. However, the liberalisation of legal services markets may be hindered by the reluctance of states to interfere in professional self-regulation in the belief it

serves the public interest. Thus, Germany is allowing multi-disciplinary practice, but not ABS because of opposition from the German Bar.

The literature on the potential of liability claims as a method of professional regulation is relatively undeveloped (Wilkins, 1992). We speculate that the success of liability as a regulatory mechanism depends on two institutions: the judiciary and the insurance industry. Judicial regulation of legal services operates via malpractice lawsuits against lawyers and firms. By determining whether legal services provided to a client were deficient, judges establish baseline quality standards. In many jurisdictions, this is the primary avenue for clients who want compensation for lawyer wrongdoing (Kritzer, 2017). For example the failure of Indonesian bar associations to discipline lawyers has led to increased reliance on lawsuits by aggrieved clients. In some countries, difficulties in bringing malpractice claims encourage alternative, non-judicial avenues for obtaining compensation, particularly small amounts (Fortney, 2017; Boon, 2017a).

Judicial standards affect lawyers through incentives created by professional indemnity insurance (PII). PII policies are mandatory for lawyers in many countries (Kritzer, 2017; Kenya), although only one state (Oregon) in the US-. A detailed empirical study by Kritzer and Vidmar (2018) suggests that malpractice litigation, at least in the US, has very different characteristics in the corporate client and personal client practice 'hemispheres'. In the latter, claims are relatively common although damages are typically small. Corporate lawyers are named in such suits much less frequently, but the damages claimed are greater, and many are resolved through settlement. In England and Wales, since the Law Society ended its mutual insurance scheme, the inability to obtain such insurance on the open market has led to many small firm closures (Boon, 2017a). Private insurers offer experience-rated premiums based on the type of practice and work and claims records, resulting in high quotes for many small firms. Thus, it could be argued, compulsory PII allows insurance companies to regulate in a professionalised market by setting the boundary of affordable practice.

V. The Rationale of Legal Services Regulation: Public and Private Interest Theories

In this section we consider *why* legal services are regulated and why they tend to be regulated by professions in democratic states. There are two schools of thought: that regulation serves the interest of some or all of the public (Hantke-Domas, 2003) or that regulation advances the interests of those who control it.

A. Public Interest Accounts of Regulatory Motivation

Legal services regulation might serve legitimate goals, including correction of the market failures to which they are vulnerable, such as information asymmetry, negative externalities, and undersupply of public goods (Bergh, 2006; Semple, 2015). Recent reforms in the OECD (e.g., entity regulation, principles-based regulation, and risk-based regulation) seem to be good-faith efforts to make regulation more effective or efficient. Client regulation of lawyers may pursue goals other than profit-maximisation. Some corporations seek to use their market power to encourage outside law firms to adopt programmes of corporate social responsibility, including pro bono contributions and diversity, even beyond counsel diversity guidelines (Boon & Whyte, 1999d; Vaughan et al., 2015; Whelan & Ziv, 2013).

The promotion of competition in professionalised legal services markets is a distinctively neoliberal public interest goal, emphasised especially in the UK and Australia (Parker ,2002;

Stephen, 2013; Boon, 2010; 2017c; Webb, 2013), but also in other advanced economies (Denmark, Sweden and Norway). Promoting competition was also a central motive for the Italian government's forceful 2005 intervention into what had been a self-regulated profession. Interventions may include the adoption of new philosophies and styles of regulation, for example, shifting the focus away from professionals, acting individually and collectively, and onto employing organisations (Boon & Whyte, 2019).

Whether new kinds of regulation actually *do* correct market failure or improve consumer welfare is an empirical question. Results are inconclusive in the two jurisdictions that have attempted to introduce greater competition. In England and Wales, for example, the authorisation of new business structures has had relatively little effect on innovation and the price of services, leading competition authorities to advocate greater use of unregulated services (Boon, 2017c) and the growth of unregulated activity, even in core areas such as advocacy.

B. Lawyer Independence and the Rule of Law

States may expressly acknowledge the importance of the lawyer's role by recognising legal professional privilege, which protects lawyers and clients from being compelled to reveal the content of their discussions. Arguments for self-regulation sometimes make broader claims, for example that an independent bar is a necessary incubator for an independent judiciary (Millen, 2005), independent legal professions nurture limited or balanced constitutionalism (Halliday & Karpik, 1997; Boon, 2010), or professional autonomy is conducive to public service activities such as provision of services *pro bono publico* (Boon & Whyte, 1999d) .

Proponents of self-regulation have long claimed it serves the public interest because lawyers have, historically, been key political players in the emergence of rule of law regimes in Western liberal democracies (Halliday & Karpik, 1997, Gordon, 2010). Conversely, ethical rules created and enforced by the state can easily become 'tool[s]to guarantee the loyalty of lawyers to the Party-state', as in Vietnam. In that country, lawyers are required to report their clients' crimes, refrain from criticising the state, and cooperate with the government-controlled media.

The role of lawyers in rule of law regimes has been under attack during most of the period since the first edition of *Lawyers in Society*. From the 1970s, many US academics expressed considerable doubt about whether the client-centric propensities of lawyers could be justified in moral terms (Wasserstrom, 1975; Schwartz, 1978). This disquiet grew with more precise analysis of lawyers' behaviour. The 'standard conception' of the lawyer's role was drawn from the American Bar Association ethics rules, based on courtroom advocacy (Simon, 1978), which encouraged extreme partisanship that would otherwise be considered unethical (Freedman,1966). This was justified as supporting the autonomy of litigatants (Sward, 1989). There are concerns, however, about the protection of third-party and public interests in regimes that are more focused on client interests (Nicholson and Webb, 2000).

The standard conception required lawyers to treat clients as consumers, accepting their objectives regardless of the lawyer's moral views (principle of *neutrality*) and using all lawful means to achieve those objectives (principle of *partisanship*). Lawyers, then, were not accountable for the consequences (principle of *non-accountability*) (Simon, 1978). Simon argued that while these principles derived from criminal defence, they also permeated lawyers' non-adversarial roles. This model of the professional role, emphasising client-centricity at the expense of public-facing duties, defined subsequent academic debates about lawyers' roles (Boon & Levin, 1999c; Nicolson & Webb, 2000; Dare, 2009; Wendel, 2010). In particular, it

dominated discussions of the ethical responsibilities of lawyers and the legal implications, such as professional privilege.

Many early contributions to the debate on the role morality of lawyers noted the baleful impact of neutrality and partisanship on individual lawyers and the culture of legal practice and society (Pepper, 1986; Luban, 1988; Goodrich, 2000; Nicolson & Webb, 2000), while more recent contributions have tended to support versions of the standard conception, based on the relationship between the conventional professional roles of lawyers and the rule of law. They do so by confining partisanship to limited spheres, such as criminal defence (Dare, 2009), or restricting the client interests lawyers legitimately may pursue (Wendel, 2010).

While debates concerning the validity of the lawyer's professional role remained grounded in moral and political philosophy (Luban & Wendel, 2017), little attention has been paid to whether the standard conception offers a true account of the lawyer's role in the US (but see Schneyer, 1984) or elsewhere. Lawyers' obligations to clients and others may differ significantly between the US and other jurisdictions, including England and Wales (Boon, 2016), where the principles of neutrality and partisanship are often said to have originated. Even in the US, the ABA Model Rules now differentiate standards by context and extend duties to third parties.

Even in the common law jurisdictions influenced by English law, codes of conduct may only pay lip-service to the standard conception. There are few examples of disciplinary rules requiring lawyers to accept all clients (the English bar's 'cab rank' principle) or pursue a client's lawful objectives. In most leading common law jurisdictions, ethical codes commit lawyers to defending their clients' best interests, a formula opening the door to paternalistic interpretations of those interests (Boon, 2016). Indeed, lawyers' codes of conduct generally qualify obligations to clients by invoking a public role, such as duties to the court, requiring independence *from* clients.

Scepticism regarding the claims of lawyers in liberal democracies to independence, support for the rule of law or other ideologies is not new. In the first edition of *Lawyers in Society*, however, Friedman said that there may be 'a core of truth to the myth, and perhaps more than just a core' (1989: 18-19). He also suggested that, since nothing exactly like legal professions existed in most third world countries before the colonial period, the notion of 'law' in those countries came to mean Western law, while 'lawyer' meant primarily 'Western lawyer' (Id. 1). In many former European colonies lawyers sometimes had to be trained in the home jurisidiction[8] (Nigeria) or were imported from the metropole or other colonies (Myanmar; Zimbabwe). Where legal education evolved in former colonies it was often offered first by European academics, and legal services were delivered by European lawyers (Burundi). It is not surprising, therefore, that the ideology of emergent legal professions in former colonies continues to draw inspiration from notions of democracy and the rule of law. This may partially explain the rise of 'cause lawyering', on behalf of regime opponents or against regime policies in emerging democracies like Tunisia, Taiwan, Zimbabwe and pre-1992 Ghana (Dawuni, 2017) .

Legal professions often claim to support the rule of law in countries that lack a colonial history linked to Western democracies, for example, Brazil and China. In Turkey, the Union of Turkish Bar Associations has been a prominent voice opposing authoritarian trends and

[8] A requirement in Nigeria until the 1960s.

supporting regime opponents (Elveriş, 2016; see also Libya and Venezuela). This activity may be encouraged by the main international bar associations, which have promoted 'Western' notions of lawyers' ethics and independent legal professions as an aspiration for all nations (Boon & Flood, 1999b; Council of Bars and Law Societies of Europe, 2013; International Bar Association, 2016).

In most legal systems lawyers also have duties to the judiciary, the legal system and the administration of justice. Litigators and advocates, for example, may be obligated not to mislead the court. Lawyers should counsel against, and cannot participate in, illegal client activity. They may be required by statute to report suspected money laundering or terrorist activity by clients. In the absence of such statutory provisions, however, they generally are not obligated to report client wrongdoing, even to prevent third-party harms. In the leading jurisdictions, rules about reporting client behaviour threatening the physical or financial security of third parties tend to be permissive rather than mandatory (Boon, 2016).

Ethical codes perform a range of public interest functions: role definition, guidance, regulation, discipline, education, and differentiation, and as well as public relations (Abel, 1981; Abbott, 1988; Nicolson, 1998). Codes are often the closest that legal professions come to public statements of values and aspirational ideals, typically reflecting the confluence of purposes we have identified. For example, the Federation of Law Societies of Canada's Model Code of Professional Conduct states that a 'special ethical responsibility comes with membership in the legal profession. This Code attempts to define and illustrate that responsibility in terms of a lawyer's professional relationships with clients, the Justice system and the profession'. The core private practitioner norms expressed in codes of conduct, covering advertising, conflicts of interest, court conduct and legal professional privilege tend to be ubiquitous, even in places like Russia, where professionalism is weak.

Lawyers' roles in bringing judicial review proceedings challenging legislation (in the US) or holding the executive to account (in the UK) assert the constitutional separation of powers (see, e.g., Dieng, 1997). These functions support arguments for the independence of lawyers, arguably based on autonomy in independently established legal professions, and are said to be incompatible with state regulation of lawyers (Gordon, 1986; Dingwall & Fenn, 1987; Kirby, 2005). We argue that, in general, independent legal professions are imperfect indicators of rule of law regimes. Yet, there is clearly some connection. In developed countries like Poland, weakened legal professions are symptomatic of the decline of the rule of law and expose the judiciary to increased risk of attacks (Davies, 2018).

Claims that lawyers support the rule of law are most clearly substantiated when lawyers are a focus of resistance to regime interference in civil society (Burundi) or assert clients' rights against the state by representing those accused of political crimes or challenging abuses of rights by state administrations or bureaucracies in national or international forums (Pue, 1997; Tunisia; Argentina, South Africa). Some such champions of the rule of law risk torture and death (Mynmar).

Advocacy for the rule of law may be weakened by growth in corporate practice, the high cost of litigation, the of pro bono work and a growth of in-house legal sectors (Netherlands). It is debateable whether independent professions are necessary to address such issues: lawyers may be subject to statutory public responsibilities, such as pro bono representation, even when self-regulation is weak (Argentina).

C. Private Interest Accounts of Regulatory Motivation

Many academics and policy makers are sceptical of the motives underlying professional legal services regulation (Abel, 1981). The market control theory contends that professional projects are self-interested. Arthurs (1998) found an 'ethical economy', in which self-regulatory organisations focus on 'those disciplinary problems whose resolution provides the highest returns to the profession with the least risk of adverse consequence' (see also Brockman, 2010). Beil (1970) suggests that American bar associations in the 1960s aggressively persecuted lawyers who represented opponents of the powerful clients of the legal establishment. The Israeli Bar Association, which has a dominant regulatory role in that country, is 'highly proactive in resisting any real or perceived threat to the profession's symbolic status or material concerns'. After Tunisian lawyers played a leading role in the 2010-11 protests that removed President Ben Ali from power, they sought to use the resulting social capital to enlarge their legal services monopoly.

Naturally, state officials may promote selfish interests through regulation. Discipline may be used to cow lawyers who represent politically dangerous opponents. For example Mrowczynski (2016) describes a 2008 effort by President Vladimir Putin to increase the Russian government's power to disbar advocates defending his rival Mikhail Khodorovskii. In Vietnam, lawyers' power to do anything contrary to the interests of the regime is tightly constrained, as the disbarment of lawyer Võ An Đôn illustrates. Different groups experience different degrees of regulation in the same jurisdiction. In Iran, 'legal advisors' are controlled by the judiciary, whereas its traditional lawyers enjoy a small measure of self-regulatory independence under the Iranian Bar Association (IBA). One Iranian lawyer said:

> [I]f we defend a political case [involving dissidents] or give an interview, we know that our license won't be revoked at the end of the year because of that. But legal advisors' licenses are renewed by the judiciary, which may revoke them at will.

Lawyers' relationship to the rule of law arguably confers special responsibility to defend it. Lawyers may be more active in protecting the rule of law in emergent or fragile democracies than in those better established. Recent examples include Pakistan, where lawyers defied riot police to protest the removal of the Chief Justice (Library of Congress, undated), and Turkey, where 40 lawyers were arrested at a courthouse sit-in and 15 human rights lawyers representing alleged terrorists were arrested for being members of terrorist organisations (Lowe, 2017).

The efforts of some wealthy Western countries to erode restrictive practices, subordinate client confidentiality to mandatory reporting of money laundering and legalise third-party funding of litigation and fee agreements giving lawyers a stake in the outcome may subvert legal ethics, independence, and hence the rule of law (Turriff, 2010).

VI. Conclusion: *Lawyers in Society*: Thirty Years On

The original volumes of *Lawyers in Society* expressed doubts about the motives and integrity of regulatory processes controlled by lawyers' organisations. Clients injured by negligence or incompetence were relegated to risky civil claims; the most common client complaints (about discourtesy, delay, and cost) fell outside the ambit of disciplinary procedures;

a large proportion of claims that qualified for consideration were dismissed without a hearing (Abel, 1989 : 133-35). As legal professions have been subjected to further investigation there has been continuing criticism of self-regulation: failure to require insurance against the risk of client harms (Kritzer, 2017); diversion of serious complaints (Brockman, 2004); and overrepresentation of solo and small firm lawyers in disciplinary proceedings (Abel, 2008). At the same time, efforts to control lawyer autonomy, usually by promoting competition, raise the danger of unduly expanding state power (Halliday & Karpik, 1997).

Perspectives on regulation and ethics advanced in the original edition remain helpful in understanding the evolving nexus between lawyers, clients, states, and markets. By the time it was published in 1988, sociological reverence for professional norms (Durkheim, 1992) had been supplanted by scepticism (Larson, 1977). Moreover, the loss of control over educational routes to qualification and, hence, supply, posed a real threat to the logic of professional regulation (Abel, 1986). There is ample evidence that this trend has continued, presenting internal challenges to self-regulation and external challenges by, for example, creating pools of viable non-professional labour.

The scholarly attack on legal professionalism and the profession's efforts to control its market resonated with policy-makers. Activist states, dedicated to free market ideologies and consumer rights, had 'transformed the professional configuration' in some jurisdictions (Abel, 1989 : 137). Under neoliberal regimes, deprofessionalisation has accelerated on several fronts (Boon, 2017d), including state attacks on self-regulation and increasing emphasis on the firm as a site for practitioner socialisation and continuing training (Boon and Fazaeli, 2014). Although the ideologies of professionalism and the rule of law continue to animate legal ethics and legal services regulation in many countries, they are losing traction in others, raising fundamental questions about legal services regulation.

These developments give new relevance to the question; 'who regulates legal services and why?' Scholarship in the original *Lawyers in Society* volumes encouraged a comparative analysis of legal services regulation in response to these questions. At that time, it was widely recognised that lawyers played a central role in their own regulation, acting primarily through professional associations. Today, however, most jurisdictions grant lawyers little or no control over the markets in which they must sink or swim. In some jurisdictions the state plays a leading role, not only through broad legislative initiatives but also through institution-specific rules, judicial administration of discipline, and malpractice regimes. Clients and third parties may also play a 'regulatory' role, exercising both their authority under the 'standard conception' of legal ethics and the economic power large consumers wield over their law firms.

For what purposes do self-regulatory organisations, state actors, and clients regulate lawyers? Their stated public interest goals – correcting market failures, promoting competition, and especially upholding lawyer independence and the rule of law – resonate with some scholars. Others advance convincing accounts showing how legal services regulation serves the interests of those who regulate. Thus, even in established bastions of lawyer independence, the state uses regulation to increase competition and weaken lawyers' control of the market. Co-regulation by professions and state agencies may be the ultimate outcome. We expect professions to remain responsible for entry and discipline, while other agencies take a leading role in practice regulation because of the significance of the competitive agenda. We expect that these spheres may clash where the length and cost of legal education is perceived to affect the cost of legal services.

Other important regulatory features, attributed by some to lawyer self-interest, can also be understood as necessary safeguards for lawyers' independence and the rule of law. Insulating rules are said to guarantee that lawyers' loyalty to clients is insulated from economic dependence on profit-seeking managers or investors (Green, 2000). Efforts to preserve occupational unity and control entry can be seen as ways to ensure that a single, independent legal profession includes all those – and *only* those –willing to work together to advance the cause of law (Freidson, 2001 : 202).

The future of lawyer regulation resists easy generalisation. Some trends erode professional control: centralisation of regulatory regimes, separation of representative and regulatory functions, and the creation of specialist regulatory agencies (IBA, 2016; Boon, 2017d). Others suggest the strengthening, or perhaps the adaptation, of professionalism: increasing fusion of sub-professions, the professionalisation of paralegal groups, harmonisation of international ethics regimes, and increasing co-regulation by professions and other agencies. There are also some contrary indicators; while England and Wales is in the vanguard of legal services regulatory reform, Scotland--a neighbouring jurisdiction but part of the same country--has seen little change over the past 30 years. Given the variety of lawyer regulation, the comparative approach introduced 30 years ago and reflected in the country reports continues to be a fertile source of insight.

Lawyer self-regulation may be a historical accident rather than a necessity. By expanding the range of jurisdictional examples we see there is no ideal type of regime. There are a significant minority of jurisdictions where legal professionalism does not operate. This highlights the many alternatives to self-regulation. The increase in state involvement in regulation in some Western liberal democracies suggests that the market shelter offered by traditional professional control is becoming less secure. Although occupational unity is strengthening in some countries, insulating rules and self-regulation remain vulnerable. Inability to control the supply of new licensees is a fatal chink in the professional armour. Lawyers, it seems, have less control over their markets. Such developments may reduce their authority in civil society and undermine their support for the rule of law. Yet, in many jurisdictions, the aspiration to establish independent legal professions remains a component of efforts to strengthen the rule of law. While the proliferation of examples may seem to weaken the scope for overarching theory, for the reasons we have identified, we expect co-regulatory models to dominate increasingly over the next 30 years.

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