



Is independent lawyering under siege?

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The rise of big law firms is having a significant impact, not only on the social representations of how 'an independent lawyer' is perceived among the general public, but within the legal profession itself. Is independent lawyering under siege?

The Big law firm paradigm, the Firm, born in the USA after the IIWW, had a great impact on the way independent lawyering was practiced in the UK, favouring collective models such as the partnership or the modern legal "corporations".

But the Firm's paradigm also changed the particular image of what an independent lawyer is, does and looks like. The time has come to question whether the model that the Firm has brought with it and the image of lawyering that has been created in the public imagination is a fair representation of the legal profession across the board or whether it is skewed in favour of an unrepresentative minority.

The big firms' model is the predominant model, at least financially. Their figures do not pass unnoticed. According to *The Lawyer*, the UK's 100 largest firms generated a total revenue of £27.7bn in 2019/20, and this is the lowest year-on-year increase in five years!

However, those figures do not represent the tons of legal work done by a large number of lawyers practicing independently in the UK. Underpaid work in many instances but also, in most cases, the largest representation of the "real" work needed to sustain the Rule of Law, allowing access to justice to millions of citizens in Britain.

According to the Bar Standards Board, out of a total of 17,087 barristers practicing in England & Wales in 2020, 13,502 are self-employed, of which 608 were sole practitioners. On the Law Society side, there are 40,000 sole practitioners – 20% of the 200,000 solicitors in the role in January 2020.

Sole practitioners, in many cases, belong to underrepresented minority groups, and they lack the financial and political lobby to advocate for their rights and be heard. However they are judged by the same standards that the Firms, despite lacking the resources and the power the latter has.

The viability of independent lawyering in our legal system is a matter of great concern – not only for the Bar, where independence is paramount, or for those 40,000 solicitors working independently – but from the perspective of a viable legal system valuing the "justice for all" motto.

On the other hand, some former partners, employees and clients of those Firms often question whether these corporate giants are upholding the traditional values of the legal profession or whether some of their practices might be perceived as bringing the profession into disrepute. We might also inform ourselves of any discriminations within the working model of these big law firms that might jeopardise traditional values long held by the legal profession such as fairness, independence and justice for all.

There is no question that big law firms continue their march towards world domination of the legal profession. But are they truly representative of the profession? Their 'partnership model' may be spreading throughout the world but is it a model that distorts the underlying traditions, values and work practices of a profession priding itself for being independent?

These big firms portray an image of hot-shot corporate lawyers, represented by John Grisham's novels or television dramas like "Suits" and "Damages" which depict the dog-eat-dog world of those striving to advance within this corporate structure. An aspiring young lawyer must have her eye on the next rung of the greasy pole to achieve her career ambitions. This version of what a lawyer is and should be is seeping ever deeper into the collective consciousness as somehow reflecting the reality of all lawyers.

Today, the influence of this American corporate mentality on the legal profession far outweighs the numbers it represents. Based on some figures extracted from the Lawyers' Portal, the magic circle firms account for approximately 12,000 lawyers, around 6% of the total number of solicitors on the role, billing in the £6bn – a significant chunk of the total legal services market.

Despite their small number, they have the power to steer the legal market in entirely one direction. Not only does the corporate model that they promote fail to account for the working practices of the large number of independent lawyers but it presents a very partial and therefore distorted view of what a lawyer is and does.

The business model of these large law firms fails to highlight the care and attention that independent lawyers are used to offering their clients. The impression that those Firms give is that lawyers are more interested in their rankings and profit than servicing their clients. Through television and other media outlets, the image portrayed of a lawyer is ruthless and cut-throat – a misleading stereotype. This image of the lawyer is settling into the public psyche and becoming accepted by many influential parties, including universities.

Coming from a family of traditional Spanish lawyers and currently practicing as a barrister in London, I see the stereotype presented as one of individuals whose prime motivations are high-rankings in the directories and financial gain.

This takes the emphasis away from independent lawyering, the core of the profession. Independence that does not mean solitude, as many independent lawyers work in small partnerships or chambers.

Independent lawyering understood as a profession means the ability to spend time on study and research to win the best outcomes for their clients. This care and attention is

not able to be offered to the same degree in big firms with their financial pressures and the timesheet tyranny. The corporate structure of such firms forces individuals to be hyper aware not only of their career track and all the politicking this demands but the constant pressure to hit their targets. In this way the corporate firm model puts huge psychological pressures on its workforce. It breeds an atmosphere of rabid competition rather than cooperation and teamwork.

In thinking about the ramifications of the transmission of this corporate model on the legal profession as a whole, and how it presents lawyers to the wider society, we might set the scene within the traditional context and backdrop of the legal profession and its long-established code of ethics.

Independent lawyers have traditionally taken on cases based on ethical considerations, such as whether they have the correct expertise for their client's needs and whether they have the time to conscientiously work on their case. Historically, the quality of their work has not been compromised or diluted in any way by the pressures of big business or Governments. Many Big law firms experience many conflicts relating to company politics or interlocking shareholdings that prevent their lawyers from being able to take on cases and do their jobs. Those big firms may be very successful in attracting top clients and trainees, as well as turning a profit, but at what cost to the reputation of the legal profession as a whole?

In addition, the corporate model does nothing to alleviate discrimination, with

inequal pay between men and women, as well as with underrepresented minorities in the legal profession still rife. So, not only are a big number of independent lawyers not represented by the big firms' model but women are not being supported in achieving their right to equal pay.

All in all, then, there is a pressing need for lawyers to be seen and understood in a much more balanced and inclusive way. Big firms should not be allowed to continue to monopolise the image of a lawyer. Other faces of a 'lawyer' need to be presented because the benefits of independent lawyering are not being gotten across in these stereotyped offerings from the big firms. The bias needs to be redressed so that independent lawyers have a chance to be represented fairly in the marketplace.

It would benefit the profession if it were to become more widely known and recognised that the concept of independent lawyering contains within it a fundamental ethos. It indicates that those independent lawyers, an increasing number in the entire legal profession, are free to work without corporate pressure, which detract from client service and care. In other words, they are free to give all their focus and attention, not on the bottom line, but on their clients' needs, desires and expectations.

The public would have a much greater appreciation of the reality of the legal profession were they to understand the advantages independent lawyers have, whose working lives are not dictated by corporate orders coming down the food chain. This knowledge would improve

the social representations of the legal profession among the public at large. The independent lawyers could well be role models, not only for prioritising the needs of clients, but by pressing for better and fairer conditions by making sure the gap between salaries for men and women closes.

It is evident that there is still work to be done across the board for the legal profession to be fairly and accurately represented, both within its own ranks and through the prism of the wider public.

One way forward is to plant new seeds through universities, but also, fundamentally, by the legal regulators, who should be much more concerned about their own bias towards the corporate lawyering model. But it is also important to promote a wider sociopolitical and cultural awareness on the importance of being represented by lawyers valuing ethical traditions and practices.

Independent lawyers are free to concentrate on individual clients, offering the best service possible, with total confidence that plans will be actioned and not overturned or altered by senior partners whose interest is top ranking and financial output.

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Unlawful killing following Maughan - new guidance issued

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Overview

In the case of *R (on the application of Maughan) (Appellant) v Her Majesty's Senior Coroner for Oxfordshire (Respondent)* [2020] UKSC 46, the Supreme Court found, by a majority of three to two, that all conclusions in coronial inquests, including unlawful killing and suicide, whether short form or narrative, are to be determined on the civil standard of proof i.e. 'on the balance of probabilities'.

A striking effect of the judgment is that for an inquest conclusion of unlawful killing a lower burden of proof is now sufficient (previously the burden of proof applied was the

criminal burden of proof i.e. 'beyond reasonable doubt'). This is a departure from the applicable burden of proof in any related criminal proceedings. The Supreme Court placed an emphasis on consistency between inquest conclusions, arguably giving insufficient consideration and weight to significant issues relating to unlawful killing.

Following the judicial dust settling, the Chief Coroner recently issued 'Law Sheet Number 6'. The Chief Coroner anticipates that unlawful killing is likely to be relevant in "*relatively few*" inquests. However, the relatively low number of historic unlawful killing conclusions cited were constrained by

the previous higher burden of proof and this opinion may be optimistic. In addition, inquests which do involve consideration of unlawful killing, for example arising from workplace fatalities, medical negligence cases and deaths in custody, will be substantially affected by the Maughan judgment.

Lowering the Burden of Proof

In a criminal prosecution, for example regarding corporate or gross negligence manslaughter, a jury needs to be sure (i.e. beyond reasonable doubt) that each of the ingredients of the offence is proved by the prosecution to convict the defendant.