Reflections on Regulation & the Keynote Address

Harvard Law School, Oct. 9, 2013

Preparing for the Future: Changes in Structures, Technology & Regulation
IBA BIC Showcase Panel

Laurel S. Terry (LTerry@psu.edu)
Penn State Dickinson School of Law

Global Lawyer Regulation is in Flux
Putting the Pieces Together

The relationship between lawyer regulation developments and the structural changes highlighted in the *Keynote Address*

#1: Globalization’s Effect on Regulation

- **WHO regulates?**
  - New global actors (the WTO, FATF, the Troika)
- **WHERE regulation occurs**
  - Shall local regulators monitor global firm activity?
  - Client choice & choice of law issues (double deontology)
- **HOW regulation occurs**
  - Do global clients need one-size fits all regulation?
- **Now common for all regulatory questions:**
  - Cross-cultural & cross-professional comparisons

#2: Technology’s Effect on Regulation

- **WHAT** is regulated?
  - Technology has led to new providers. Regulated?
  - Legal services aren’t limited to lawyers
- **WHERE** does regulation occur?
  - Technology creates a mismatch between virtual practice and geography-based regulation
- **WHEN & HOW** regulation occurs?
  - Technology facilitates cross-cultural comparisons
#3: Blurred Categories and Regulation

- **Shift in focus from inputs to outputs**
  - Day 1 studies in Australia, Canada, the UK & US
  - Europe: Bologna Process requirements
  - US: Changed ABA accreditation standards

- **Reduction in “Information asymmetry”**
  - It affects WHO, WHY & HOW issues of regulation

- **Effect of rise in networks**

## Conclusion

The structural changes & themes cited in the *Keynote Address* have affected lawyer regulation
<table>
<thead>
<tr>
<th><strong>WHO regulates?</strong></th>
<th>Self- regulation? Co-regulation? Other?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• See global changes; The Troika? WTO?</td>
</tr>
<tr>
<td></td>
<td>• The Financial Action Task Force (FATF)?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>WHAT is regulated?</strong></th>
<th>Providers or Services?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Which providers? Paralegals? ABS?</td>
</tr>
<tr>
<td></td>
<td>• Entities and/or individuals?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>WHEN to regulate?</strong></th>
<th>Prospectively or Retroactively?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• [See New South Wales’ ILP results]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>WHERE to regulate?</strong></th>
<th>Mismatch between geographic regulation &amp; virtual practice (via technology)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>WHY regulate?</strong></th>
<th>The “Regulatory Objectives” Movement</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>HOW to regulate?</strong></th>
<th>Outcomes focused regulation?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• One size fits all regulation?</td>
</tr>
<tr>
<td></td>
<td>• Antitrust &amp; regulatory reform initiatives</td>
</tr>
</tbody>
</table>

---

### To Read More About It...

- **ABA Commission on Ethics 20/20**
  - [http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html](http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html)

- **CCBE Committees Page**

- **UK Legal Services Board, SRA &BSB Consultations**
  - [http://www.legalservicesboard.org.uk/what_we_do/consultations/index.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/index.htm)
  - [http://www.sra.org.uk/consultations/](http://www.sra.org.uk/consultations/)

- **International Conference of Legal Regulators**

- **APEC Legal Services Inventory**
  - [http://www.legalservices.apec.org/overview.html](http://www.legalservices.apec.org/overview.html)
More Sources to Read All About It…

- **International Association of Legal Ethics** (and the biennial International Legal Ethics Conferences including BANFF ILEC V)
  - [http://www.stanford.edu/group/lawlibrary/cgi-bin/iaole/wordpress/](http://www.stanford.edu/group/lawlibrary/cgi-bin/iaole/wordpress/)
- **LawWithoutWalls Materials**
  - [http://www.lawwithoutwalls.org/](http://www.lawwithoutwalls.org/)
- **Archived program materials from conferences at, inter alia, Harvard, Stanford, Georgetown, Fordham, McGeorge, MSU, Akron, & Hofstra**

---

To Read More About It… by Laurel Terry

- **NOTE:** All articles (and presentations) available online here:
  - [http://www.personal.psu.edu/faculty/l/s/lst3/](http://www.personal.psu.edu/faculty/l/s/lst3/)
My Presentations Webpage:

- Global Developments in general (See 1-11, 9-09 and 11-09) (See also 2008 Service Provision article, “The Legal World is Flat”, and other “Global Legal Practice”

***
To read my law review articles on the topic listed below, please visit my “Publications By Topic” section of my webpage.

- Alternative Business Structure (ABS) developments (including the UK’s Legal Services Act 2007, Australia’s publicly traded law firms, EU, and OECD developments)
- Antitrust initiatives directed towards the legal profession, including the EU’s Professional Services Competition Initiative (See 1-06, 4-09)
- the APEC Legal Services Initiative (See 6-09)
- Australian Legal Profession Developments, (See 5-08, 3-09)
- the Bolagora Process (See 3-06, 1-05; see also 1-11)
- Classification Systems for Counting Legal Services (See 10-04, 4-97)

http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm