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A Lot Of Knowledge is a Dangerous Thing: Will The Legal Profession Survive the Knowledge Explosion?

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A Lot Of Knowledge is a Dangerous Thing: Will The Legal Profession Survive the Knowledge Explosion?

Professor Arthurs argues that with the growth and diversification of knowledge, the common body of knowledge that underpins a unified profession is becoming more difficult to sustain. The desire to know, the need to know and the resources to know have divided lawyers into subprofessions, increasingly defined by the non-lawyers with whom they work and the clienteles they serve, bound together—if at all—only by nostalgia and some residuum of self-interest.

I am going to be saying some difficult things tonight about Canada's legal profession, and by extension about its members, who are fine, principled men and women, good citizens, and according to traditional standards of what lawyers should know and do, obviously able and knowledgeable people. I will say these things, I assure you, with affection and respect, even though what I say may disturb lawyers, law students and legal academics.

Essentially, I will argue that we are in the midst of a fundamental shift in the nature of legal knowledge which may in the end fundamentally transform the legal profession. If we end up with any kind of common professional future, it will likely be as a congeries or collection of subprofessions clustered around different kinds of knowledge, bound together—if at all—only by nostalgia and some residuum of self-interest. And finally, I will suggest that the new contours of legal knowledge are clues to the location of fault lines along which our relationships with our clients and society may also fracture.

Let me begin at the beginning: what does it mean to speak of law as a profession? There is a good deal of controversy in the literature about whether there is any such creature as a profession, about whether a profession is simply an occupation with pretensions or, as Shaw maintained, a conspiracy against the laity. But even the most sceptical sociologist acknowledges, as we ourselves often contend, that the Bar's claim to professional status, privileges and rewards stands or falls on the assertion that lawyers know things which other people do not.

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1. Professor of Law & President Emeritus, York University. The Wickwire Lecture, Dalhousie Law School, November 24, 1994.

Because we have special knowledge, our clients are dependent on us. Because they are dependent on us—so the argument runs—we have an ethical responsibility to use our knowledge in their interest. Because members of a profession are uniquely knowledgeable about the special area of human activity in which they are engaged, they alone are able to judge whether their fellow-professionals have treated their clients competently and responsibly. Because they alone can judge—the argument continues—members of a profession are also uniquely qualified to legislate standards for admission to practise and for continued enjoyment of the right to practise.

Because the profession is to perform all of these important functions, it must be able to create structures within which proper professional practises can be defined, disseminated and enforced: hence our claim to be self-governing. And finally, because each profession has a monopoly over a certain kind of knowledge, and the sole right to determine on what terms that knowledge will be made available, like all monopolists we owe the public a correlative obligation to ensure that the legal system is working as well as possible, and in the public interest. Here is the root of whatever title we may have to be the custodians of legal aid, law reform and the rule of law.

All of this is pretty standard stuff. You will hear it in after dinner speeches; you will read it in the social science literature. If nothing else, I hope you will at least agree that knowledge is central to the very notion of professionalism. If you do not, I am in some difficulty, because that is the central thesis of my lecture. If you do, we are all in some difficulty, because—as I have suggested—we are in the midst of a profound change in the nature of legal knowledge.

Well then, what do lawyers know? John Willis, one of the wisest men I ever met, spent one of his lives reincarnated as a legal practitioner in Nova Scotia. He coined a motto for his law firm: "We know everything; we do anything; we stop at nothing." "We know everything": vintage Willisonian irony that, and characteristically to the point. Practising lawyers are indeed licensed to "do anything", a privilege which, given the logic of professionalism, necessarily implies a claim to "know everything". To know what? To know real estate and criminal law, company and municipal law, income tax and the Charter; to know how to advocate, negotiate, strategize and draft; to know about advising large banks and small businesses, quarrelling spouses and nervous testators, governments and protest groups.

And more yet. We are supposed to know about the mechanics of legislation and adjudication. We are supposed to be ethicists capable of working out difficult moral dilemmas—our own, and those of our clients.

We are supposed to be fluent in the epistemology and semiotics of law, so that we can continue to decipher its mysteries as they are handed down in monthly tablets from the Supreme Court of Canada. And—not finally, but finally enough—we are supposed not only to know all these things at any given moment, but to keep our knowledge current over careers which might last thirty or forty years or more.

Have I made my point? In plain English, the claim of any given lawyer to know all the things she or he is supposed to know is bound to be vastly overstated. And so, alas, is the collective knowledge claim of the profession.

Sometime toward the end of the nineteenth century, legal professions all over the common law world began to come to grips with this disturbing revelation. They began to worry about creating a true "science of law", and about education and training for practitioners of that science. Harvard showed the way in the United States and Dalhousie in Canada; even England began to talk of establishing a legal university. But these early initiatives soon ran their course, and here we are, a century on, and not yet seriously addressing the issue.

Medicine, by contrast, understood at least from the time of the Flexner Report in the 1920s, that it had to be well-grounded in the natural sciences. It understood at least from the 1940s that it was deeply implicated in fundamental political and economic conflicts, including such wrenching controversies as Nazi medical experiments and the establishment of the British National Health Service. And by the 1960s, medicine began to understand that knowing how to treat illness was ultimately far less important than grappling with the genetic, social and environmental determinants of health.

I do not mean to romanticize the medical profession: quite the contrary. Medicine has got itself into a compounding series of crises which no one would wish upon the Bar—certainly not I. But I do want to say that it is long past time that lawyers started to take knowledge seriously—especially knowledge of law as a social system.

Research in law's equivalent of natural science is negligible, and what does take place receives scant attention and even less approval or support from the practising profession. Nonetheless, we still go on amending constitutions and enacting legislation and making judicial pronouncements as if we had even the slightest evidence that doing so might produce any results at all, let alone those we are trying to achieve. Attempts to acquaint law students with the social causes and consequences of law—and they are valiant attempts, at most law schools—tend to be greeted with glazed looks and blank screens: does not contribute to the bottom line; does not compute. This is still a profession, I am sorry to say, which

devalues systemic knowledge, the institutions which produce it, and the potential of such knowledge to contribute to the well-being of society and, ultimately, of individual clients. In fact, it is a profession which apparently felt so uncomfortable with knowledge that until 1974, it was not even prepared to state publicly that lawyers could be disciplined for not having it or using it. Only with the adoption of the Canadian Bar Association Code of Professional Conduct did we begin to legislate against professional incompetence and—if I may put it this way—legislating should never be confused with actually doing something.

Which is not to say we know nothing. Lawyers—well-educated, modern lawyers—have a considerable stock of technical knowledge, information about legal rules and procedures. Our current problem is to manage the exponential growth of this technical knowledge, and to fit it into intellectual structures and information systems which will make it accessible, reliable, coherent and, ultimately, useable.

Modern lawyers, like their nineteenth century forbears, also generate and use a great deal of what might be called craft knowledge—practical information and techniques which are of the essence of legal practise: how to deal with a difficult witness? how much to charge a client? what sort of arguments are likely to work with a particular judge? what constitutes state-of-the-art boilerplate in a securities prospectus or an estate plan? This craft knowledge is common property, and is largely tacit. It is defined and validated by an unstated consensus about what constitutes "good lawyering", and transmitted through apprenticeship, mentoring and collegiality. However, given that professional consensus is dissolving and professional collegiality is waning, the future of craft knowledge as common property must be regarded as uncertain at best.

Thus we do have problems in dealing with technical knowledge and craft knowledge. But our greatest difficulties arise in the sphere of systemic knowledge. We know very little about law as a system for distributing justice, resolving disputes or allocating economic benefits and burdens. Ironically, however, what we know least about is becoming more and more important. Let me offer two examples.

First, the Charter. No one would deny that the Charter seeks to enhance the rights and freedoms of all Canadians. But it is far from clear that having more rights and freedoms makes any difference at all in the real world. Women, aboriginal peoples, accused persons and others have won some famous victories in the Supreme Court. But do we actually know whether their lives are better than they were in 1982 when the Charter was adopted? If their lives are better, do we know whether these improvements are the result of Charter victories, rather than of social and political changes, similar to those which occurred over the past dozen years in

countries which do not have a Charter? And can we measure the benefits of Charter victories against the possible costs—not financial costs particularly, but costs such as the effect of Charter litigation on parliamentary democracy, on the effectiveness of government, and on our capacity for social mobilization?

I ask these questions only partly to provoke. Mostly, I ask them to make the point that we know very little about the actual effects of Charter decisions. And we ought to know more—much more. A recent, controversial American study[2] suggests that such famous victories as *Brown* v. *Board of Education*[3] and *Roe* v. *Wade*[4] did not produce the positive outcomes which the victors claimed and we have all assumed. To the contrary, school segregation increased and abortions decreased following these two landmark decisions. If this study is sound, is it wise for so-called Charter groups to place such emphasis on litigation as a strategy for emancipation and social transformation?

Let me take quite a different example in the field of civil justice. Some years ago, Quebec established the Montreal Small Claims Court, a novel institution intended to enhance access to justice for ordinary citizens. To guarantee that the Court would achieve its purposes, corporations were prohibited from suing and lawyers from pleading. However, a recent study[5] shows that one third of all claims in this court are initiated by professionals seeking to recover unpaid fees, and fully half of those are claims by lawyers suing on their own behalf. In general terms, the docket and clientele of the Montreal Small Claims Court are not what was intended, and most ordinary citizens apparently continue to take their disputes elsewhere.

Clearly, we ought to be asking some questions: why did this noble experiment fail? or indeed did it fail? was there ever an unmet need for formal adjudication of small claims? whose small claims? for what? and how satisfactorily are such disputes now resolved, by whom and for whom, and according to what criteria?

Although we are "learned in the law", lawyers can hardly begin to pose these questions because we lack a conceptual framework which accommodates models of dispute resolution other than formal adjudication; and

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2. G.N. Rosenberg, *The Hollow Hope* (Chicago: University of Chicago, 1991).
3. 74 S.Ct. 686 (1954).
4. 93 S.Ct. 705 (1973).
5. Prof. R.A. Macdonald of McGill University and his colleagues have been documenting the work of the Montreal Small Claims Court in a series of studies, several of which are *en route* to publication. See *e.g.* S.C. Maguire & R.A. Macdonald, "Wizards of Oz: Judicial Scripts in the Dramaturgy of the Small Claims Court" (1995) Can. J.L. & Soc. [forthcoming].

we cannot develop credible answers because of the almost total deficit of background information about the social statistics of civil justice.

Now, one could fairly say: "These are big questions, systemic questions: how should we enfranchise groups which have been marginalized by Canadian society? how should we make justice more accessible to people who cannot afford the cost and wear and tear of litigation in the superior courts? These big, systemic questions," lawyers might say, "are not for us. We do not have to know about them in order to advise our clients. These are questions for politicians, civil servants, academics, and editorial writers."

All true, to a degree. But many lawyers do advise clients on just such matters, Charter litigation being the prime case in point. Lots of lawyers do become civil servants, academics, editorial writers, politicians—even premiers; and as a profession, we collectively pontificate on precisely the issues about which we profess individual ignorance and no need to know. To borrow the medical metaphor again: we would be outraged if an internist or allergist—let alone the College of Physicians and Surgeons—were to tell us that they have no reliable evidence to indicate whether standard procedures and commonly prescribed medicines will make us better or worse.

I want to urge, then, that—collectively and individually—we lawyers should know a great deal more than we do about whether the legal system works, and if so, how and why. If we do not acknowledge our need to know, if we do not learn how to know, we run a well-deserved risk of being ignored in any situation where systemic knowledge is pertinent. I am not just talking about public policy debates or Charter litigation. I am talking about all aspects of the practise of law, other than routine paper processing which is now mostly done by clerks or paraprofessionals or by lawyers functioning well below the level of their professional qualifications.

My first point, to summarize, is this. We are in the midst of a crisis which encompasses the creation, management, transmission and validation of all forms of lawyers' knowledge—technical knowledge, craft knowledge and systemic knowledge. This crisis affects our ability to serve our clients and to serve society.

And to come directly to my second point, as we attempt to solve this crisis, we are going to find it extremely difficult to maintain our collective identity as a profession.

Before explaining this second point, let me deal with one possibility: that we can avoid the crisis of knowledge by promoting delegalization. In theory this is possible: society might opt for less law rather than more; people with grievances might opt for less reliance on lawyers rather than

more; lawyers might opt for less power, influence and affluence rather than more. All possible in theory; all developments for which there is a great deal to be said; if I were in charge of the world, delegalization might have a fighting chance. But somehow, I doubt that I will be or that it does.

Hence we must proceed on the assumption not that we are going to have less law, but rather that we are going to have more. This entails the further assumption that more law will mean not just more of the same, not just more legal knowledge overall, but also more highly differentiated knowledge pertaining to specific areas of social and economic life. How will the profession deal with this change in the quantity and quality of legal knowledge?

Essentially, we have two choices: either we will continue to insist that lawyers can and should know everything, or we will accept that lawyers must become expert in some fields of knowledge and know very little about others.

The first choice is not a practical one. There are intellectual limits to what each of us is able to know, and more importantly, there are practical limits to what any of us needs to know and can afford to know. Attempts to make us all omnicompetent are doomed. Until we admit and act on this fact, we will continue to make false claims about what we know, continue to offer bad advice to clients and society, and worst of all, continue to delude ourselves about our own capacities and contributions. In short, we will implode intellectually.

On the other hand, if we pursue the second option, if we expand and diversify our collective store of knowledge, we will trigger a knowledge explosion as dramatic as the explosion of the Mont Blanc in Halifax Harbour—and quite possibly as destructive.

Here is what will happen. Our collective knowledge will increase exponentially, but we will each be able to know less and less of the whole. Some of us will take hold of one part of legal knowledge, and others of quite a different part. And which of us will know what? Three rationing principles will come into play: first, the desire to know—for those of us privileged to lead academic careers; second, the need to know—for those who practise law; and third, as amongst practitioners—the material resources to know, those having access to the greatest resources knowing the most.

These three rationing principles have already been at work for some time, dividing us more and more in terms of what we know, and causing us less and less to perceive ourselves as members of a single profession with common interests and values. As a corollary, however, we are developing greater and greater affinities with members of adjacent

professions, and new affiliations and identities built around shared configurations of technical, craft and systemic knowledge.

Let me try to show how each of the three principles produces these results, and what the effects might be for the future of the profession.

To begin, the desire-to-know principle has produced serious divergences between the academy and the practising Bar. To offer you a thumbnail history of Canadian legal education, law teaching was once dominated by part-time lecturers who epitomized the values, knowledge and preoccupations of the practising Bar. Today, legal academics look pretty much like other university professors, with similar credentials, career patterns and reward systems, with a similar psychopathology of participation in faculty unions and university administration, and with essentially similar intellectual interests.

Precisely because of these intellectual interests, the law teachers' drift away from the Bar and towards academe is likely to accelerate. The reason is that systemic knowledge—in which law teachers specialize—is growing in importance. On the one hand, we are experiencing the legalization of almost everything: politics, the family, business transactions, land use and employment relations. On the other hand, however, society is becoming increasingly concerned about the value, consequences and costs of these legal interventions. Inevitably, we are going to be asked whether law can indeed produce what society wants and needs at a price it can afford—a question which can only be answered by new and better systemic knowledge.

And where is that knowledge going to come from? If legal practitioners were in the habit of asking such questions, if they even had the means of asking them, the Bar itself might provide credible answers. But such questions cannot be answered without the aid of concepts and data borrowed from other disciplines—economics, for example, or sociology. Consequently, law professors—especially those with interdisciplinary training—are going to assume the burden of response.

Then it's down the slippery slope: the more we work across disciplinary boundaries, the greater the change not just in what we know but in how we know it, not just in our fund of systemic information, but in our epistemology. In other words, we will be thinking less like lawyers and more like sociologists or economists. But we are not just thinkers ourselves; we are teachers; we influence the thinking of future generations of lawyers. Thus, over time, we will gradually transform the deep structures of traditional legal knowledge, and destabilize the professional culture which is built upon those structures. In practical terms, this means that we will begin to change how lawyers think about the source and nature of legal authority, about what constitutes a persuasive argument,

and especially about themselves as autonomous and individualistic actors, rather than as participants in a system. These changes are likely to affect the arguments new lawyers make in court, the way they relate to senior partners and judges, and the career patterns they adopt.

We can already see the early effects of this process. Senior—and not-so-senior—practitioners are often surprised and occasionally alienated by what recent graduates regard as legitimate forms of professional knowledge—especially by "radical" forms of knowledge. They do not quite know what to make of law and economics or rights discourse, let alone feminist or critical theory. Well, to put the matter very simply, this is the "desire-to-know" principle at work: lawyers closest in time and space to the academy will know some things; those farthest away will know other things.

What about the "need-to-know" principle which also rations legal knowledge? The principle rests on the bedrock truth that time is money. Busy lawyers will spend the time to learn what they need for their practise, but generally speaking, will not bother with knowledge or technique for which they have no apparent use. In effect, important groups of lawyers function in knowledge-based sub-professions—specialists and generalists, house counsel and academics, clinic lawyers and government lawyers. And these sub-professions tend to develop very different perspectives on important issues of professional conduct and governance. Thus the need-to-know principle both derives from and reinforces the long-term trend towards specialization in practise, a trend more advanced in some places than others, but as clearly visible in Halifax as in Toronto or Boston.

To some extent, the crucial link between specialized knowledge and specialized practise has been formally recognized. For example, the Canadian Bar's Code of Professional Conduct explicitly acknowledges that the standard of performance expected of any individual practitioner should be measured against his or her role in practise and the special body of knowledge required for that role. The Code of Professional Conduct imposes a duty "to keep abreast of developments in the branches of law wherein the lawyer's practise lies", to cease to act for a client "if it develops that the lawyer is not competent to handle the matter", and in appropriate cases to "retain, consult or collaborate" with a legal specialist or "experts in scientific, accounting or other non-legal fields."[6]

A quick check of discipline reports suggests that not one of Ontario's lawyers has fallen below the required standard of specialized knowledge

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6. Law Society of Upper Canada, *Professional Conduct Handbook* (Toronto: Law Society of Upper Canada, 1992) rule 2, paras. 5 & 6.

over the past few years—or perhaps the fact that almost no one has been disciplined for lack of knowledge suggests that the Law Society is unable to formulate or apply operational standards of competence. Whichever is true, it is still important to note that the Bar Association, and the governing bodies which have adopted its Code of Professional Conduct, have formally acknowledged the link between specialized practise and specialized knowledge.

But specialization and the need-to-know principle have not been universally welcomed. Indeed, they pose an obvious threat to traditional notions of legal culture. This may explain why legal professions—and law schools—are so diffident about specialization. This diffidence is visible in the denigration of specialized, and especially systemic, knowledge in academic and professional training, in the slow progress towards the credentializing of specialists, and in the inability of governing bodies to devise appropriate regulatory arrangements for "boutique" firms, specialist departments, and inter-professional partnerships.

Nor is this diffidence unwarranted. Divisions amongst the branches of professional knowledge have indeed produced conflicts amongst professional constituencies. For example, during the 1970s, Errors and Omissions insurance became mandatory, and rapidly increasing premium costs forced many provincial governing bodies to become self-insurers. As self-insurers, they came rapidly to understand the need to reduce claims and raise the standards of practise. This generated a flood of regulatory initiatives: continuing education programs—first voluntary, then mandatory; practise advisory services; soon, perhaps, competence audits and re-testing and re-licensing of all lawyers at periodic intervals.

These initiatives, in turn, have provoked some of the most divisive controversies in recent professional history. They are costly; they are intrusive; they are threatening; and they are being resisted. Young lawyers, for example, argue vehemently that they are unable to pay ever-increasing Law Society fees and continuing education costs. Indeed, some of them have been forced out of practise. Litigation specialists object strenuously to having to pay the same insurance premiums as conveyancers, because litigation gives rise to very few claims. Some of them are muttering darkly about refusing to pay.

Specialized knowledge has also been used by contending groups within the profession as the basis of their efforts to control professional markets and resources. For example, criminal law specialists in Ontario have argued that their skill and expert knowledge earns them a prior claim on whatever is left of the provincial legal aid budget. Of course, amongst other explanations for the depletion of legal aid budgets is the fact that

those very criminal lawyers have used the Charter and other knowledge-based strategies to up the ante of criminal trials and appeals.

The use of knowledge to control markets makes specialists vulnerable to sudden obsolescence, due to changes in substantive law. Thus, the introduction of no-fault automobile insurance knocked the bottom out of the market for plaintiffs' lawyers. This, no doubt, caused many of them to shift into the adjacent civil litigation market, the nearest field in which their knowledge capital could be reinvested with a minimum loss of value. As they did so, they would surely have encountered some resistance and resentment from established general litigation firms.

Finally, knowledge does not simply separate specialists from non-specialists; it also links them more closely with non-lawyers. A recent study has shown how labour lawyers and personnel experts together constructed modern "employment law".[7] A similar story could be told, I suspect, about real estate lawyers collaborating with developers and planners, about wills and estates lawyers working closely with banks and trust companies, about tax lawyers cooperating with accountants. The extreme case would be lawyers who leave private practise for other work settings which require them to redefine the intellectual content and practical direction of their daily work. This group includes high-powered corporate lawyers who become corporate executives, and at a more mundane level, the one member in four of the Law Society of Upper Canada who is now employed outside of private practise.

All of these collaborations and interactions have a centrifugal effect on the legal profession: the loyalties and identities of many lawyers are now being shaped more by the knowledge nexus which they share with non-lawyers, and less by the professional culture which they share with fellow members of the Bar.

To sum up the "need-to-know" principle, individuals in different professional roles acquire very different kinds of professional knowledge including, often, knowledge shared with non-lawyers rather than lawyers. Knowledge thus becomes the defining characteristic of each branch of the profession, but it is also a divisive characteristic. Knowledge shapes claims to professional privileges and market positions, and sharpens conflicts over professional interests, identities and ideologies.

Now, finally, I want to turn to the third of the "rationing principles" which links lawyers in different practise roles with specific profiles of legal knowledge—the principle that knowledge will be distributed to those who possess "the resources to know". To state the principle very

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7. L.B. Edelman, S.E. Abraham & H.S. Erlanger, "Professional Construction of Law: The Inflated Threat of Wrongful Discharge" (1992) 26 Law & Soc. Rev. 47.

crudely and unsubtly: lawyers can only afford to know what their clients can afford to pay for. Thus, the economic dimension of practise tends to shape the professional ideology, ethical preoccupations and symbolic behaviours of individual practitioners. As someone inelegantly observed, you are who you eat.

In principle, of course, all lawyers have equal access to any part of the corpus of legal knowledge, to advance their clients' interests and their own career prospects. Some lawyers, however, seem to have more equal access than others. This is both a cause and an effect of the stratification of the profession revealed by many American studies[8] and apparently confirmed by English[9] and Canadian studies.[10]

Strata within the legal profession are marked off from one another by the affluence of the clientele they serve, by the character, extent and intensity of knowledge required to serve that clientele, and by distinctive patterns of professional recruitment and socialization peculiar to each stratum. Generally, lawyers in the "upper stratum" tend to be specialists; those in the "lower" tend to be generalists. Both tend to have the knowledge which their clients can afford, which is to say that specialists have more and generalists less.

Thus specialists, and others in the upper stratum, tend to practise in large firms, serve affluent corporate and institutional clients, work on complex and/or important legal tasks, enjoy privileged work environments, employ large staffs, have considerable capital invested in their offices and equipment, are very well paid, and enjoy considerable prestige within and beyond the ranks of the profession. And, because there is some principle of divine retribution at work, they also experience considerable stress and disaffection.

Generalists are mostly found outside the charmed circle these days. They tend to handle more mundane and routine matters, often for small businesses or individual clients; they practise in humbler surroundings; and they make less money. Consequently, they have—or at least use—less knowledge, because their clients cannot afford more. Obviously there are qualifications, exceptions and intermediate cases. For example,

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8. J.E. Carlin, *Lawyers on Their Own: A Study of Individual Practitioners in Chicago* (New Jersey: Rutgers University Press, 1962); *Lawyers' Ethics: A Survey of the New York City Bar* (New York: Russell Sage, 1966); J. Heinz & E. Laumann, *Chicago Lawyers: The Social Structure of the Bar* (Chicago: American Bar Foundation, 1982); J. Ladinsky, "The Social Profile of A Metropolitan Bar: A Statistical Survey in Detroit" (February 1964) Mich. State B.J. 12.

9. R. Abel, *The Legal Profession in England and Wales* (Oxford: Blackwell, 1988).

10. J. Hagan, M. Hunter & P. Parker, "Class Structure and Legal Practice: Inequality and mobility among Toronto Lawyers" (1988) 19 Am. J. of Political Sci. 9; D. Stager & H.W. Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1989).

some generalists belong to a sort of professional gentry; they practise profitably, and are often leaders in community and professional organizations. But all too many generalists, especially those who practise alone or in small partnerships in metropolitan areas, have become members of what has to be called a professional proletariat.

Given the stratification of the profession, to allocate knowledge on the basis of who has the resources to know is to affect prejudicially both clients and lawyers who come from disadvantaged groups in our society. It is fairly well-known, I suspect, that someone charged with welfare fraud, is unlikely to get the same quality of defence as someone charged with stock fraud. Someone moving into a corner store is likely to be signing an off-the-shelf lease form; someone about to take over five floors of a downtown office building is likely to be putting their signature to a considerably more complex document. That too is well-known. But it is somewhat less notorious that lawyers who defend welfare recipients and arrange storefront leases display very different demographics from those who defend stock brokers and arrange the affairs of corporate landlords and tenants.

I am sure we all agree that it ought to be otherwise, and we might even agree that there are some signs of change. But the fact is, elite firms have not been equal opportunity employers. Women, members of visible minorities and First Nations, mature students, and other individuals from disadvantaged or marginal backgrounds have not been recruited in proportion to their talents. As a consequence, people from these groups are over-represented in the profession's middle ranks and especially its proletariat.

Thus stratification creates, perpetuates and reinforces anomalies and injustices concerning access to legal knowledge. The most sophisticated and rewarding work is assigned not on the basis of ability, but on the basis of status. Some very able lawyers are unlikely to be able to use their knowledge and abilities to their fullest, because their poor or middle class clients cannot afford to pay them for hours of research or custom-made transactions. And of course, these same clients consequently fail to benefit from the full range of legal knowledge relevant to their needs because their lawyers cannot afford to deploy such knowledge.

Nor are the effects confined to the outcomes of individual cases. The production of legal knowledge does not take place evenly across the profession: much of it tends to be concentrated in the upper echelons. Assembling sociological evidence about the effects of discrimination or developing arguments for or against proposed legislation is a costly business; one normally needs a wealthy client to pay for studies, surveys, consultants and the like.

Moreover, the construction of novel legal arguments or instruments built on technical knowledge—legal rules and commentary found in law reports, texts and journals—is also much easier for elite firms with elite clients than it is for the legal proletariat and its poor clients. Elite firms can afford to maintain large libraries, hire librarians, deploy students and juniors to sift and summarize information, assign especially difficult or novel cases to skilled in-house research departments, and draw upon the knowledge and experience of senior lawyers in their specialist departments. Solo practitioners and small generalist firms simply cannot match this well-financed, highly trained and tightly organized knowledge machine. The results of all of this are that elite lawyers are much more able to influence legal innovation, presumably in ways which benefit their clients.

Nor, alas, will the computer level the playing field. Initial hardware costs, installation fees, and especially time charges for searches, can be born much more easily by rich firms and rich clients than by poor ones. Even assuming financial barriers to computer access were somehow reduced or eliminated, the very volume of information delivered by computer searches is the cause of further distortions. Large, affluent law firms can afford to follow up computer-generated leads; poor, small firms cannot. In short, the advent of on-line searches will not guarantee equal access to legal knowledge, much less fair legal outcomes. On the contrary, the growing importance of computers may even reinforce existing tendencies within the profession to an unequal distribution of capital, power, knowledge, clienteles and rewards. Soon we may have a two-tier profession: those who can afford to log on and those who cannot.

The picture is not entirely one-sided. We have tried to counter the regressive effects of the resources-to-know principle by providing funding through legal aid, specialized clinics, the federal Court Challenges program, and litigation-minded community groups with focused interests and resources sufficient to afford expert legal representation. All of these have the same ultimate objective: to permit legal knowledge—especially expensive systemic knowledge—to be used by lawyers acting on behalf of individuals and interest groups who would otherwise be seriously disadvantaged in litigation. But by and large, poor litigants and their proletarian lawyers are likely to be out-gunned in the knowledge wars. That is the pernicious aspect of the "afford to know" principle.

Let me now sum up. Central to the very notion of a profession is the existence of a common body of knowledge which binds its members together, and which defines the profession's relationship to clients, to the state, and to other groups in society. In the case of the legal profession, belief in the existence of such a common body of knowledge is reflected

in our continued adherence to a single model of education and training, a single practise credential, a single code of professional ethics, a single standard of competence, a single constituency of electors for the governing body, a single catalogue of professional honours, a single repertoire of professional regulatory strategies.

But with the growth of knowledge and the diversification of knowledge, that common core has ceased to exist. The desire to know, the need to know, the resources to know have divided us into subprofessions clustered around differing bodies of knowledge. Furthermore, these subprofessions are increasingly defined by the non-lawyer collaborators with whom they work, and the particular clienteles they serve. As a consequence, the notion of a single unified legal profession is becoming increasingly less plausible.

Finally, differences in the knowledge needed and used by different types of lawyers generate a series of fault lines which run deeply through the profession, sometimes running parallel to and sometimes cutting across other fault lines generated by differences in class and generation, race and gender, clientele and geography. These fault lines come to the surface in debates over professional issues such as mandatory CLE, annual dues and assessments, legal aid, advertising and proposals to limit entry to practise. They help to explain variations in professional lifestyles, voting in benchers' elections, debates over the authority of the governing body, public controversies over pending legislation, and conflicts over economic interests.

And, to pursue my geological metaphor to its inexorable—if melodramatic—conclusion, since the source of these fault lines is a shift in the tectonic plates of professional knowledge, they may ultimately provoke a volcanic explosion—streams of intellectual lava, mudslides of knowledge, a sooty shower of expertise. The legal profession may soon share the fate of Pompeii—or Halifax.