

## Degraded and Insecure

### *The “New” Workforce*

Rick had this to say about his first experience working on a document review project as a temporary lawyer: “I thought it was a little stultifying, you know, frankly. I thought it was kind of a waste of time and effort and money. . . . I thought it was a little odd that we were just expected to fill out sheets and code them and separate them into one stack or another, as opposed to actually functioning as temporary litigators, looking for documents that would assist in the prosecution or defense of the case.”

Many of the attorneys I interviewed reported similar feelings. They had come to temporary attorney work as recent law school graduates or because of disruptions in their lives—the closing of a practice, a layoff, or a move to a new town. Most expected that they would be doing traditional legal work on a contingent basis; instead, they were performing tasks that were tedious, repetitive, highly regimented, and well beneath their abilities. Sometimes they worked in warehouses, basements, and even condemned office buildings. The fact that the work was temporary made the situation even more difficult—attorneys were always looking for the next project, they lacked benefits such as health insurance, and they knew that temporary work was hindering their professional advancement. Some of them responded with a stiff upper lip, hoping that a permanent job was just around the corner. Others were barely able to stand the work and felt diminished and demeaned by it. Vince told me that as a result of doing temporary work he had lost his sense of pride in being an attorney and now felt like a “slave” or a “drone.”

Being a professional was not supposed to be like this. These attorneys should have been doing interesting, challenging, socially useful work in an atmosphere that was collegial and at the same time autonomous. They should have been providing individualized services with significant client contact; instead, they were performing a deskilled and regimented task that had been split off (“unbundled”) from the larger case. They performed the work in factory-like conditions, with their discretion strictly limited. They were attorneys in name only.

Although the work was very tedious, it also intrigued me because I was a doctoral student in sociology. On one level, I noticed how poorly the projects were managed, and I wondered why law firms believed that attorneys needed to do this work. On a broader level, I became interested in how the temporary legal industry had arisen and what it meant for the future of the legal profession. Was document review work some strange but insignificant exception to traditional legal practice or was it a harbinger of a creeping deprofessionalization of the law? Over time, I began to view the work we were doing as part of a historical process that began with industrialization and was now affecting the professions. Professional work (or at least some aspects of it) was becoming more like other types of work—increasingly degraded and insecure.

### Has Work Been Degraded?

Understanding what is “really” going on in the world of work can be a confusing enterprise. Broadly speaking, there are two opposing visions that are articulated in both academic and popular analyses. One of them sees workplaces filled with empowered, autonomous employees applying complex skills in the postindustrial “knowledge economy.” The other sees work as deskilled, intensified, and performed in virtual Panopticons,<sup>1</sup> where management control has been perfected through technologies that are frequently disguised.

The degradation of work hypothesis is best captured by Harry Braverman’s *Labor and Monopoly Capital* (1974). Braverman resurrects Karl Marx’s

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<sup>1</sup> The Panopticon is a type of prison building envisioned by the philosopher Jeremy Bentham, although its exact form was never realized. It is designed so that all inmates can be observed by guards without the inmates necessarily being aware that they are being watched. The metaphor of the Panopticon is employed by Michel Foucault (1977) in describing the “discipline” of contemporary society in which citizens are turned into “docile bodies” through constant observation and molding of behavior.

thesis (e.g., Marx [1889] 1967) that the imperative of capitalist production is to maximize profits, in part by reducing the cost of labor. This is accomplished by making work more routine and increasing management control. Braverman analyzes the shift from craft production (where workers use advanced skills to create products largely by hand) to industrial production (dominated by automation and an extreme division of labor). Through industrialization, worker autonomy is reduced by separating the conceptualization and planning of work from its execution. Work is also deskilled as “the automation of processes places them under the control of management engineers and destroys the need for knowledge and training” (Braverman 1974, 225).<sup>2</sup> As skills become less scarce, a wider labor pool is available; at the same time, the efficiencies of machines make fewer workers necessary. An intensified division of labor makes it possible to pay low wages for low-skilled work, and higher wages for the few higher-skilled jobs that remain, a realization of the “Babbage principle.”<sup>3</sup> Each of these factors contributes to driving down labor costs.

Of course, the subjective qualities of work also suffer. Work processes are routinized and intensified; the worker is subordinated “ever more decisively to the yoke of the machine” (Braverman 1974, 231) and workplaces become “dehumanized prisons of labor” (p. 233). Scientific management, pioneered by Frederick Taylor, represents “nothing less than the explicit verbalization of the capitalist mode of production” (p. 86).<sup>4</sup> In its maximally efficient division

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<sup>2</sup> This analysis has not gone unchallenged. For example, Braverman has been accused of romanticizing craft work, as well as nineteenth-century clerical work (see Littler 1978); such work was rarely fully autonomous and unregimented, and was standardized and controlled at least in some respects (Littler 1982). Some point out that certain types of craft work survived industrialization, while others (e.g., Adler 2007) challenge Braverman’s basic assertion that capitalist production necessarily drives deskilling, a point taken up further in this chapter.

<sup>3</sup> Braverman (1974) describes the work of Charles Babbage who in 1832 posited that it is more efficient to divide a manufacturing process into various tasks, each necessarily requiring different degrees of skill and strength. The manufacturer can then purchase only the exact quantity of each type of labor power that is needed, saving money because “dividing the craft cheapens its individual parts” (p. 80). Braverman sees this process as fundamental to the development of labor under capitalism. While capitalists claim that the Babbage principal “preserves scarce skills,” according to Braverman it in fact “destroys all-around skills where they exist,” shapes remaining skills to capitalist needs, and distributes technical capacities on a “need to know basis” (p. 82). Labor power thus becomes a commodity, organized according to the needs of its purchasers rather than its sellers.

<sup>4</sup> Frederick Taylor (1911) believed that the then existing means of production—based on tradition and rules of thumb—resulted in wasted work. The goal, then, of scientific management

of labor, its shifting of control from worker to management, and its dehumanizing tendencies, scientific management represents to Braverman the epitome of the degradation of work.<sup>5</sup>

Braverman's thesis gave new energy to critical labor studies and led to a great deal of refinement, elaboration, and contention.<sup>6</sup> Several challenges to

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(or "Taylorism," as it came to be known) was optimum efficiency. Its means included a careful study of all the steps in the work process, the development of highly specific standardized procedures ("the one best method") to perform the work, and the selection of appropriate persons to complete each procedure. Taylorism was meant to replace the judgment of individual workers with "science," and thus had the effect of transferring control over work process and output from the worker to management. Some of Taylor's writing appears to the modern ear as quite ruthless. For example, he suggested that in assigning the task of handling pig iron, management should select a man who is "so stupid and so phlegmatic that he more nearly resembles in his mental make-up the ox rather than any other type. The man who is mentally alert and intelligent is for this very reason entirely unsuited for work that, for him, be the grinding monotony of work of this character" (Taylor 1911, 41). Nevertheless, Taylor's principles were broadly accepted at the time and widely applied in workplaces throughout the twentieth century, in the United States and elsewhere. This resulted in huge increases in productive capacity and a rising standard of living; however, it also created a fair amount of misery. Application of Taylor's "scientific" principles in today's fast-moving economy is arguably a "recipe for disaster" because they hamper an organization's ability to adapt quickly (Freedman 1992, 6).

<sup>5</sup> Braverman has been criticized for conflating capitalism with Taylorism, and thus ignoring other forms of management control. However, Braverman (1974) does in fact address bureaucratic and some postbureaucratic measures at length (e.g., pp. 35–37), but ultimately finds them to be Taylorist in intent, application, and result.

<sup>6</sup> Three rather distinct threads have emerged in response to Braverman's 1974 work, *Labor and Monopoly Capital* (see Sawchuk 2006). The first directly challenges Braverman's theories, for example, by arguing that capitalist production does not necessarily lead to deskilling, intensification, and other outcomes negative to workers. The second mitigates what many see as Braverman's deterministic tendencies, for instance, by giving more weight to worker subjectivity (resistance and dissent), to localized factors, to other large-scale processes (such as globalization), and to the effects of social stratification (aside from class). Most recently, poststructuralist theories have gained prominence; these are based on Foucault (1977), Marcuse (1964), and others. Broadly, these reject Braverman's suggestion that control is possessed by one party to wield against the other. Rather, control emerges as relative "power" rather than as hegemonic "exploitation" and is created and maintained through processes of language ("discursive practices"). In addition to theoretical and methodological concerns, one must acknowledge that the partial eclipse of Braverman is also rooted in the "defeat of the left" over the past thirty years (Hassard, Hogan, and Rowlinson 2001). Braverman tapped into the then prevailing zeitgeist of general economic uneasiness and concern with the state of the working "man." Today, his hopes for class consciousness seem hopelessly romantic. Yet at the same time, he continues to be relevant because of his recognition of several factors: (1) the negative effects that late capitalism may have on workers' skills and quality of life, (2) the central importance of control in understanding the labor process, and (3) the polarization and proletarianization of at least some labor sectors.

*Labor and Monopoly Capital* seem particularly relevant in this context. These suggest that work in recent decades has actually become more—not less—skilled; that post-Taylorist methods have made work more humane and more autonomous; and that worker resistance, largely overlooked by Braverman, plays an important role in understanding the labor process.

### *Upskilling in the Information Economy*

Braverman (1974) suggests that deskilling is the inevitable outcome of capitalist production. However, the best evidence is that large-scale deskilling does not seem to have occurred in recent decades (see Form 1987; Spenner 1979, 1983). Some believe that the postindustrial “knowledge economy” has created more complex work environments that demand greater technical and social skills from workers (see Bell 1973; Castells 1999; Frenkel et al. 1999). In this new economy, “even” factory workers and providers of basic services must become knowledge workers (Hirschhorn 1984; Zuboff 1988). In fact, some research has found evidence of “upskilling,” whether localized (e.g., Fernandez 2001) or more broad-based (e.g., Kim 2002).

However, the development of a knowledge economy has been uneven at best. For example, there is evidence that deskilling has occurred, at least for some workers in some sectors (see Hecht 2001), and certainly there are workplaces that still rely on Taylorist management practices and industrial era technology. Even where knowledge-intensive work is growing, it appears that certain population segments are not being integrated, such as the urban poor (Lewis 2007). In addition, it appears to be simplistic to equate advances in technology with an automatic upskilling of jobs. New technologies represent a double-edged sword; while they may provide a platform for the exercise of advanced skills, they can simultaneously be deployed by management to increase the division of labor and to deskill some tasks, resulting in skill polarization (e.g., Gallie 1991; Penn, Rose, and Rubery 1994). We are all familiar with the concept that as information technologies become more complex, they also become easier to use. Thus, increasingly greater skills are required to *design* technological systems (requiring relatively few workers), but fewer skills may be needed to *operate* them (involving jobs performed by the mass of workers).

The polarization hypothesis is theoretically appealing for several reasons. It implicitly recognizes that new technologies are continually being deployed in the workplace, and thus generalized deskilling is implausible. It also acknowledges marked societal divisions in access to training and education (Lewis 2007), as well as increasing divisions between standard and nonstandard employment

(Standing 1999). Skill polarization also has empirical support. There is evidence that much of the growth in “knowledge workers” has occurred in relatively low-level information handling positions (e.g., Fleming, Harley, and Sewell 2004; Thompson, Warhurst, and Callaghan 2001). Such positions are not entirely devoid of skill; neither are they highly credentialed, terribly complex, or well remunerated. In his 1991 work, Robert Reich estimated that only 20 percent of future jobs would be truly knowledge-centric; his prediction was recently deemed optimistic (Fleming, Harley, and Sewell 2004). Skill polarization is also supported by findings that indicate an increasingly “hourglass-shaped” society, where the proportion of workers in both higher- and lower-paying jobs has increased both in the United Kingdom (Anderson 2009) and in the United States (Massey and Hirst 1998).<sup>7</sup>

### *Changing Forms of Control*

Taylorism is a type of direct control over work processes, and it was initially deployed in industrial settings. As nonindustrial sectors expanded, and as organizations enlarged and became more rationalized, bureaucracy (and its partner, human resources management) replaced Taylorism as the chief form of direct control. However, other forms developed to control the work of managers and professionals, which tends to have less structure. Andrew Friedman (1977) labels one of these “responsible autonomy,” an indirect form of control wherein workers have some freedom to decide how their work is conducted but are held accountable if they fail to perform adequately. This form is most often employed with professional workers; it is useful for management because it heads off potential resistance that workers might employ against direct methods.

An additional form of indirect control has arisen, found in postbureaucratic structures. “The distinguishing feature . . . is the creation of shared meaning, which obviates the need for the principles of hierarchy and explicitly rule-governed behavior” (Sewell 1998, 408). Such postbureaucratic structures and methods typically exist within or alongside bureaucratic ones (Fournier 1999), but this alliance may be rather uneasy (Hodgson 2004).

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<sup>7</sup> An hourglass-shaped wage spread does not necessarily mean that skills have been polarized in the same pattern, for at least two reasons: First, skill and pay are not perfectly correlated (although they tend to be positively related); second, “skill” is a socially constructed measure, while “pay” is an objectively measurable one. In addition, the hourglass economy has not been found in all nations or all sectors within nations. Anderson (2009) finds that in the United Kingdom, male pay rates are hourglass-shaped, while women’s display a more traditional, “pyramid” shape.

These post-Taylorist, post-Fordist, and postbureaucratic practices are said to empower workers by giving them more control over work processes and working conditions. However, some see these new forms as representing “the transformation of people issuing from the same capitalist need as the transformation of other production inputs” (Lewis 2007, 402). They can serve as new, disguised forms of control through identity shaping; they are the “Trojan horse” by which management delivers control in the guise of participation (Yates, Lewchuk, and Stewart 2001).

Management control over knowledge-centric skills may be more difficult to achieve than over manual ones. However, researchers (e.g., Gutek 1995a; Hecht 2001) and popular press accounts (e.g., Fraser 2001) have demonstrated that white-collar work also has been increasingly deskilled, intensified, and surveilled.

### *Worker Resistance*

Braverman (1974) sees the worker as an inert object of hegemonic management control. Many have criticized this view as deterministic and have taken pains to locate the “missing subject”—the worker. Michael Burawoy (1979) shows how management achieves control through gaining workers’ consent, and others (e.g., Edwards 1979; Friedman 1977) stress the importance of considering worker resistance. Control and resistance have come to be conceptualized as part of a symbiotic process that is constantly being enacted on a “frontier” of mutually reinforcing behavior between managers and employees (Edwards 1990, 130). Thus, put simply, “control is the outcome of struggle” (Gottfried 1994, 105). Workers are not passive recipients of employer rules; rather, they are constantly “adapting, interpreting and challenging those rules, in part because they are orienting their conduct to a conception of informal norms, and in part because it is a product of a relationship—albeit unequal” (Ackroyd and Thompson 1999, 29). Worker resistance in turn shapes management response, which leads to new or altered types of resistance.

Conflicts between employer and employee can be conceptualized in four different realms: work output, time, product, and identity (Ackroyd and Thompson 1999). Within each of these spheres, employers make demands while employees attempt to “appropriate” more of that sphere to themselves. Employee resistance also can be classified as either formal or informal, and either type can be individual or collective. Formal types of resistance include strikes, grievances, and worker protests. Informal resistance has a myriad of forms, including sabotage, absenteeism, resignation, noncooperation, humor,

“bitching,”<sup>8</sup> and even violence. The specific forms that control and resistance take are shaped by the organization of the work process, its physical location, and relative access of the various parties to information. Patterns of control and resistance may lead to the formation of particularistic employee “sub-cultures” that differ in material ways from the “management culture” (see Ackroyd and Thompson 1999). Thus, patterns of employee behavior—including resistance—can become quite entrenched and self-perpetuating.

Many have noted (and some have bemoaned) the decline of collective, formal employee resistance, and some even have gone as far as to suggest the “end” of employee dissent, citing a number of external and internal factors. External factors include increasing competition causing the restructuring of labor markets, the shift from manufacturing to services and from blue-collar to white-collar work, increasing use of contingent labor, and state regulation that has become opposed to organized labor (Ackroyd and Thompson 1999). Internal factors include postbureaucratic management practices that attempt to align workers’ views with those of management, thus obviating dissent. Within this framework, some see both individualized and informal resistance as inferior, reactive, accommodative behavior that seeks only to adapt to management rules rather than to fundamentally change them. However, a rich body of work is developing on “everyday acts of resistance,” which shows that even in the most stringent work environments, employees can exert at least some degree of autonomy in the employment relationship (Ackroyd and Thompson 1999; Tucker 1993). For example, workers can resist direct attempts at control through work limitation, relying on the “hidden knowledge” they have acquired about work processes (Kusterer 1978).<sup>9</sup>

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<sup>8</sup> Complaining to other employees about management or the work process in general is, of course, a time-honored practice. In one study, undergraduate students were surveyed about how they dealt with complaints involving their employment (Tucker 1993). The most common mechanism, reported by half of the respondents, involved discussing their complaints with others, usually coworkers. James Tucker (1993, 31) views complaining (which he labels “gossip”) as a form of informal resistance—“a type of settlement behavior,” where employers are tried for their wrongs *in absentia*. Tucker found that these student employees rarely took the problem up with their employers after discussing it with someone else. Thus, it appears that gossip served the function of a “safety valve,” providing employees an outlet for their frustration while sparing them the risk of confronting their employers. It is also possible that fellow employees served as a sounding board, encouraging employees to drop complaints they thought lacked validity or significance.

<sup>9</sup> Work limitation is one type of employee resistance that has been studied at length. Stephen Ackroyd and Paul Thompson (1999, 26) write that “[w]ork limitation is in many ways an obvious recourse for people because they retain degrees of control over their activities at work,



They may also resist ideological control by resorting to humor or cynicism.<sup>10</sup> However, much informal and individual worker resistance is difficult to locate and assess because it is hidden from public view, and even if it is observed, it can appear ambiguous. For example, the same employee behavior can be perceived by different viewers as either “resistance” or merely “coping” (Prasad and Prasad 2000). Thus, identifying and evaluating informal resistance requires some familiarity with the workplace and the employee subculture. Participant-observer methods provide one way of gaining a nuanced perspective of worker behaviors and group dynamics (Tope et al. 2005).

Thirty-five years after the publication of Braverman’s *Labor and Monopoly Capital*, debates continue about skill, control, and resistance in the workplace. Given all the competing theories and evidence surrounding Braverman’s legacy, one author finds the research at an impasse, with “roughly equal proportions of persuasive work/skills research demonstrating that disempowerment and resistance occur, new forms of technological and socio-emotional control occur, rising educational requirements and attainments continues [*sic*] to occur, de-skilling occurs, and up-skilling occurs—all with little agreement as to their inter-relations” (Sawchuk 2006, 594).

The challenge to understanding work in the twenty-first century is to reconcile these contradictions. This would involve delineating the ways that opposing trends are simultaneously occurring, and exploring differential outcomes through testing a host of macroeconomic and situational variables, including patterns of stratification (e.g., race, gender, education) and state

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however tightly their work is specified or closely their activities regulated.” One type of work limitation is “soldiering,” a term coined by Frederick Taylor (1911) in his famous study of the Midvale Steel Works. Taylor believed that workers naturally choose to perform their tasks at the slowest speed they can get away with. He observed employees deliberately slowing down work while at the same time hiding their knowledge about work processes from management, thus limiting the ability of managers to even diagnose the work limitation as a problem. Taylor interpreted soldiering behavior as rational—not for the purpose of raising wages or serving other employee interests, but rather as a response to inefficient or unplanned management action. Thus, Taylor thought that soldiering would stop once management had learned and applied scientific principles. Taylor, of course, failed to realize the myriad other reasons why employees might want to regulate the flow of work.

<sup>10</sup> Gideon Kunda (1992) describes attempts by a U.S. computer company to impose a new set of corporate values. Middle managers resisted these attempts through humor, parody, and irony. However, and as an interesting illustration of the dialectic of control/resistance, upper management co-opted these efforts, redefining them as evidence that management valued the open expression of disagreement.

interventions (or lack thereof).<sup>11</sup> It would also require consideration of an additional factor—the decline in workers’ security.

### Is Temporary Work Particularly Degraded?

When Braverman wrote of the degradation of work, he did not focus much on employment insecurity. (One exception is his description of the “reserve army of labor,” a segment of the working population that possesses few skills and is irregularly employed.) This lack of attention is understandable because the United States was still experiencing relatively high levels of job security in the early 1970s. However, various measures of security have declined significantly since then. One such indicator is a rise in temporary and other nonstandard employment.

#### *Increase in Temporary Employment*

Throughout the nineteenth century and into the Great Depression, work was relatively insecure for most American workers. Wages were unstable and benefits were uncommon (Edwards 1979), and there were few legal protections for workers (Jacoby 1985). The 1930s ushered in a wide range of worker protections including unemployment insurance, the right to collective bargaining, and minimum wage laws. From the 1940s through the 1970s, there was a period of relative employment stability and security, particularly for unionized labor and middle-class white-collar workers. Large organizations made use of “internal labor markets,” whereby entry-level employees were hired, trained, and then promoted to fill vacancies. This resulted in minimal churning of employees (Stone 2007). The norm was the “standard employment arrangement,” where work was done on a fixed schedule at the employer’s

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<sup>11</sup> Such an effort also would involve addressing some of the theoretical challenges involved in defining skill, and the methodological difficulties in measuring it (see Form 1987). Paul Adler (2007) identifies autonomy and complexity as the components of skill. However, Braverman (1974) recognizes that “skill” is a social construction and thus cannot be objectively measured, a point that others have continued to forcefully make (e.g., Littler 1982). Perceptions of “skilled” work are gender-bound, tending to favor traditionally male work over traditionally female work (Phillips and Taylor 1980), and also class-bound, neglecting to account for the “hidden knowledge” or “tacit skill” contained in the most apparently basic work (see Kusterer 1978; Peña 1996). Measuring skill also presents challenges. Using job categories such as “professionals” as a proxy for higher skill can be misleading (Fleming, Harley, and Sewell 2004). Using education as a proxy can be similarly problematic because skill resides in the job and not in the worker (Lewis 2007).

place of business and with an expectation of continued employment (Kalleberg 2000).<sup>12</sup>

Beginning in the 1970s, global competition, rapid technological change, and shifting markets created greater uncertainty. Businesses were encouraged to adopt new flexible forms such as the “core/periphery” framework, whereby key functions are performed in-house and the remaining functions are externalized (Atkinson 1985). While there is debate regarding the extent to which such new organizational structures were implemented, there is little question that businesses were successful in shifting more risk onto workers (Stone 2007). One result was a sharp increase in nonstandard work arrangements, which grew at an annual rate of 11 percent from 1972 to 1998 (Kalleberg 2000). By 1995, only 65 percent of American workers were employed in a standard full-time job (Kalleberg, Reskin, and Hudson 2000), less than 20 percent of U.S. employers used only full-time workers, and more than half used some sort of staffing intermediary for at least some work (Kalleberg, Reynolds, and Marsden 2003). The use of temporary workers has become a central personnel strategy for many businesses (Nollen 1996). Some employers continuously employ the same “temporary” workers for many years, and such workers may make up a substantial percentage of total personnel. For example, temporary workers at Microsoft at one time accounted for approximately 40 percent of the employees at its headquarters (*Washington Post* 2000).<sup>13</sup>

While some workers seek out nonstandard work for its flexibility or other perceived benefits, it is clear that most part-time and temporary workers are

<sup>12</sup> “Nonstandard” work, then, lacks any or all of these components. It can involve use of independent contractors, temporary direct-hire, temporary agency-hire, and contract workers, or some combination of these (Kalleberg 2000).

<sup>13</sup> Claims about the current “age of insecurity” should be carefully considered because there is a tendency to see the current moment as a pivotal one (see Nuñez 2007). Some believe that employment insecurity is just a “moral panic” (see Heery and Salmon 2000) or an overblown “nightmare” scenario (Fevre 2007) concocted by social scientists with little objective basis. For example, the apparent growth in temporary employment may be explained by businesses’ greater reliance on agency temporaries rather than on direct-hire temporaries; thus, the numbers reflect a shift, not a growth (Polivka 1996). Some believe that the growth in temporary workers was real, but was itself temporary (see Green 2007). Others point out the variation in insecurity across particular sectors and occupations (du Gay 2004). However, most others (e.g., Crain 2004) recognize that while there may be quibbles about particularized effects, the overall evidence of a decline in security is quite substantial. It can be seen across a host of factors, such as the increase in nonstandard employment, a decline in the size and power of unions, the elimination of defined-benefit pension plans, greater job “churning,” and widespread downsizing and layoffs.

in such arrangements involuntarily (e.g., Cohany 1998; Golden 1996; Golden and Appelbaum 1992; Tilly 1996). Thus, the growth in temporary and other nonstandard employment is best explained by its benefits to employers. Through externalizing employment, firms experience three types of flexibility: (1) numerical (using temporary, part-time, or contract workers for peak-period staffing), (2) financial (reducing overhead costs for administration and worker benefits), and (3) functional (temporarily tapping special expertise that is not regularly needed) (Broschak, Davis-Blake, and Block 2008). In addition, employers can test-drive potential employees without the risks that a longer-term promise contains. They also can shift unpleasant work to noncore workers, thus maintaining morale among their core workers (Parker 1994).

Arguably, the increase in nonstandard work also has been encouraged by changes in labor laws designed to protect permanent employees (Lee 1996), as well as by the increasing costs of providing benefits such as health care (Magnum, Mayall, and Nelson 1985). In addition, the temporary help services industry itself appears to have been a key player in creating demand for its services, as well as in heading off legislation that could constrain its growth (Gonos 1997, 2001; Ofstead 1999; Parker 1994). Vicki Smith and Esther Neuwirth (2008) detail the ways that temporary agencies sold the ideal of the “good temp” (compliant, efficient, capable) to potential employers and to prospective temporary workers, much as a business would market any new product. Thus, the growth in temporary employment is “not the result of inexorable economic forces, but rather the mobilization of well-organized political forces” (Stone et al. 2006, 235).

### *The Qualities and Effects of Temporary Employment*

Is *nonstandard* work necessarily *substandard*? This question is difficult to answer in the abstract because nonstandard employment is highly heterogeneous. For example, independent business consultants who apply advanced skill sets and command high pay surely have very different work experiences, attitudes, and behaviors compared to day laborers or clerical temporaries. Thus, it is important to distinguish between the various forms that nonstandard work can take. Temporary work, particularly agency temporary work, tends to be associated with a high number and greater intensity of “bad job” characteristics. Jackie Krasas Rogers (2000, 5) asks whether it is the “temporary” or the “work” that makes it so bad. The answer seems to be “both.”

Certainly, the quality of temporary *work* tends to be particularly degraded—deskilled, fragmented, and intensified—as compared to work per-

formed in standard employment. Fragmentation of work occurs both spatially and functionally. Spatial fragmentation occurs when temporary workers are physically placed to have little interaction with each other and with standard workers (Gottfried 1994). Through task fragmentation, assignments are unbundled and given to temporary workers, resulting in tasks that are simple and narrowly prescribed, allow little autonomy, and prevent the temporary worker from having an overview of the total work process. In addition, this task unbundling allows the more unpleasant, monotonous, or (sometimes) dangerous tasks to be reserved for the temporary worker. Because much temporary work has been simplified and fragmented, it is also intensified and thus can be more easily supervised and controlled: It is easier to place a quota on typing one hundred letters or filing one hundred documents than to put output demands on a multitasking employee, particularly if that employee is involved in creative tasks. In his interviews with temporary clerical workers, Kevin Henson (1996, 95) found that “much of the job has been so routinized that one can tell from observing (or listening) to a temp whether the temp is actually working, or how hard they’re working.”

The *temporary* nature of the work also leads to “bad job” qualities. Employers do not need to offer loyalty incentives; thus, temporary workers earn less pay and receive fewer benefits such as health insurance and pension plans (Kalleberg, Reskin, and Hudson 2000). They receive little or no training (Nollen 1996; Dale and Bamford 1988), and there are few opportunities for advancement. While some temporary workers are able to transition to a standard job within the same organization (see Broschak, Davis-Blake, and Block 2008), ethnographic studies (Henson 1996; Rogers 2000) indicate that low-skilled temporary work typically does not provide an easy stepping-stone to permanent employment, and if a worker *is* offered a permanent position, it is likely doing the same routinized work he or she had been doing as a temporary employee.

One might assume that these “bad job” aspects of temporary work would contribute to a number of direct and indirect negative effects for workers. Temporary workers might be expected to have more job stress, less organizational commitment, less job satisfaction, and poorer well-being than workers in standard arrangements. Temporary workers also might experience broader “employment strain” from “the constant search for new employment, the effort to keep employment, the need to ensure a positive employer assessment of work performance and, for some workers, the effort to balance demands from multiple job holdings and multiple employers” (De Cuyper et al. 2008, 29). However, a recent review of the literature indicates that findings have been inconsistent, with studies (mostly in Europe)

indicating temporary workers are variously worse off, better off, or no different when compared to workers in standard jobs, on a number of outcome variables (De Cuyper et al. 2008).<sup>14</sup>

Notwithstanding this divergence in findings, temporary employment clearly is associated with characteristics of “bad jobs” and has negative effects on at least a significant subset of temporary workers. The fact that a high percentage of temporary workers are “involuntary” is further cause for concern. In addition, the growth of temporary work has pernicious social outcomes. Women and ethnic and racial minorities are more likely to be performing low-wage, low-skilled temporary work (Kalleberg, Reskin, and Hudson 2000). The potential collective organization of temporary workers is limited due to both an absence of legal protections and the social fragmentation of the work. Laws that allow temporary agencies to be the legal (“de jure”) employer of temporary workers suppress those workers’ wages because of the “cut” that the agency receives from the client, typically 30 to 40 percent of the amount the client pays the agency for the worker’s services (Gonos 2001).

Ethnographic studies of low-skilled temporary work clearly show the significant negative subjective effects on workers, including stigmatization and alienation. For example, Henson (1996, 98) studied temporary clerical employees and found that temporary work “frequently did not satisfy workers’ needs for meaningful employment.” This is because the work has been so routinized and deskilled that the temporary worker gains neither satisfaction from its completion nor any connection to the larger project or to the organization. Temporary workers also face considerable stigma about their abilities, intelligence, and commitment. They are seen as being “flaky and simple tasks are overexplained” (p. 148). They are depersonalized and often referred to as “the temp.” The source of this differential treatment is located

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<sup>14</sup> This multiplicity of findings likely has a variety of causes. For example, insecurity in temporary work is assumed to lead to lower job satisfaction; however, it may be that workers in *standard* arrangements would be more affected by insecurity because their “psychological contract” would be violated (Nolan, Wichert, and Burchell 2000). The lack of consensus also may be explained by the heterogeneity of temporary work. For example, some temporary workers have a clear opportunity to move into a standard work arrangement; thus they may adopt attitudes and performance patterns similar to those of standard workers, perhaps because of “anticipatory socialization” into the organization (Broschak, Davis-Blake, and Block 2008). Temporary workers who are highly skilled and experience high autonomy—“free agents”—also might be expected to fare better on various outcomes. One study (Kunda, Barley, and Evans 2002) finds such workers to be more satisfied with their incomes, but also to experience significant anxiety about locating work.

within the nature of temporary work itself, but the deviant label also arises from gender-laden assumptions about the temporary worker.<sup>15</sup>

Developing a coherent and stable identity in such an insecure work context would appear to be difficult. Researchers have found that workers in nonstandard work arrangements can develop work-based identities, particularly if they are performing skilled work (Van Wijk and Leisink 2004; Westenholz 2004). However, the work identity of temporary clerical workers seems to be formed mostly in opposition to the stigma that is attached to the work (Henson 1996; Rogers 2000).

### *Control and Resistance in Temporary Employment*

The structure of temporary work provides special challenges to, but also unique opportunities for, employee resistance. As discussed previously, temporary work is highly fragmented. Employees are typically scattered geographically and placed individually at work sites. Thus, the potential for formal collective action—such as strikes or other organized protest—is severely limited (Gottfried 1994; Henson 1996). In addition, the stigmatized nature of temporary work militates against employees identifying with the role and seeking to protect its status (Rogers 2000). Most temporary workers—including the attorneys I interviewed—are well aware of their “second-class” status. Some types of informal resistance employed by standard workers may also be unavailable. Quitting or complaining are perceived by the temporary worker to be futile (because the worker is easily replaced) or even self-defeating (because workers may harm their chances for future assignments). Other acts of individual resistance such as absenteeism or tardiness also are not effective because the temporary worker is only paid for actual time at work.

The dispersion and isolation of temporary workers usually benefits both the agency and the employer. For example, temporary workers may be unable to absorb group norms on work restriction (Gottfried 1994). At the same time, the dispersion of workers creates challenges to control because the agency cannot directly observe the worker. Thus, agencies have developed

<sup>15</sup> Kevin Henson (1996, 27) finds that temporary workers in placement agency literature are described through gendered categories including the “gregarious grandma” and the “chipper coed.” In the media, a temporary employee may be gender-stereotyped as a “vixen” or a “ditz” (pp. 28–29). The implication is that primarily women are interested in temporary work, and that they take on the work for “extra” money. Jackie Krasas Rogers (2000, 132) also uncovers a highly gendered depiction of temporary work, beginning at least with “Rosie the Riveter,” where temporary work is feminized and portrayed “as supplemental to a male ‘permanent’ income.”

various control mechanisms, such as offering higher pay for better performance or promising return engagements (Henson 1996). Agencies also rely on more indirect methods of control, such as an appeal to professional norms in the case of skilled workers (see Peck and Theodore 1998), or discursive control through ideological indoctrination in the case of less-skilled workers (see Rogers 2000).

Another challenge to control lies in a unique aspect of temporary work that involves duality of control—the agency is the *de jure* employer while the client is the employer-in-fact. (With attorney temporaries, this becomes a four-part relationship involving the attorney, the law firm, the placement agency, and the law firm's corporate client.) Thus, both entities can exert control over the worker. Intensification of work seems an obvious outcome, and it might appear that opportunities for resistance would be limited. However, there is a tension inherent in this duality that involves a divergence of interests: the client wants to maximize work effort, while both the temporary agency and the worker want to maximize time at work (Gottfried 1994). This duality can be exploited by the temporary worker to extend assignments. Where temporary workers are placed together, the potential for group soldiering exists; where there is spatial fragmentation, individual soldiering also can occur. One study (Henson 1996) found that temporary workers rationed the flow of work while making sure to appear busy. Rogers (2000) found a similar phenomenon in her study of clerical temporaries. Since they could not predict the flow of work, some would do their own work, sleep, or “cruise” (work very quickly for a while, then take breaks).

### **Degradation and Insecurity in the Professions**

The professions are different from other occupations in their public prestige, remuneration, credentialing, and degree of independence and autonomy. The professions of law and medicine stand out as the “purest” form of the professions, given their extensive use of peer review, lengthy education and training, and high proportion in self-employment. Professional services tend to be highly individualized, with their delivery tied to a specific time and place; thus, they would appear to be resistant to deskilling, management control, intensification, and commoditization. However, various social and economic factors have been combining to make professional work more like other employment. For example, insecurity appears to be increasing. Formerly independent professionals are being absorbed into bureaucratic organizations, subjecting them to the same risks of downsizing or externalizing that apply to other types of workers.



Nonstandard professional work arrangements are also on the rise. There are now a number of agencies that specialize in placing physicians in temporary positions (so-called “locum tenens” appointments). The field is small but growing—total billings were estimated to be \$1.5 billion in 2005 (Skidmore 2006). The expansion of the legal temporary services industry has been even more significant; its origins and growth are discussed in some detail in Chapter 2.

Besides becoming more insecure, some professional work is also becoming degraded, deskilled, and intensified. Professionals are proletarianized as they are increasingly employed by large organizations, and their work is deprofessionalized as it becomes subject to the same drive for economic efficiency that characterized the shift from craft work to industrial work. These processes are likely to be as complex and uneven as the patterns of work degradation in other employment sectors. Some professionals likely will see upskilling, some deskilling, some will experience increased autonomy as part of a new “professional-managerial class,” and others will find their jobs highly regimented.

### *Theories of Professionalization*

There are two basic, competing views regarding professionalization, identified as “functionalist” and “revisionist” (Spangler and Lehman 1983). Functionalists define an occupation as a profession if it possesses certain characteristics such as extended formal training, autonomy, self-governance, and an ethical code. Functionalists believe the professions arose because scientific and technical expertise was needed by increasingly complex, rationalized societies (see Bell 1973). In this view, the professions are relatively immune from the degradation of work that Braverman (1974) outlines. Skill expropriation and standardization are unlikely because of the professions’ monopoly, autonomy, and possession of specialized and abstract knowledge. In fact, some have predicted that the professions will expand and achieve even greater dominance in the “postindustrial” society (Bell 1973) because capitalism requires constant innovation that originates in large part in the work of professionals and other knowledge workers (see Adler 2007). Thus, professionals will thrive because they are needed.<sup>16</sup>

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<sup>16</sup> Over the last several decades various occupational groups have increasingly sought to claim the status of “profession” (see, e.g., Pulskamp 2005, discussing computer programmers). However, their lack of autonomy, monopoly, or both, renders claims to professional status rather hollow (see Wilensky 1964).

Revisionists reject the notion that there is anything inherently unique about the professions that separates them from other occupations, and they seek to demystify professional knowledge, authority, and status. Marie Haug (1975, 211) asks: “What then is the difference between a plumber and a urologist?” Her answer: “Both require training, both deal with pipes. Neither works for nothing.” Revisionists do not define a profession in terms of static qualities but rather advocate a “professional dominance model.” This historical and process-based view emphasizes that the professions were active in developing a monopoly over their services (or, in Eliot Freidson’s [1994] term, a “market shelter”), sometimes even before they had developed *effective* services.<sup>17</sup> The professions must constantly work to protect their monopoly from encroachment by other groups—Carol Kronus (1976) terms this “boundary maintenance.” The professions also have been successful in reserving autonomy in the way their monopolized services are performed and delivered. “Autonomy” refers to collective freedom from outside interests dictating the form and content of professional work, as well as autonomy of the individual to work in his or her own way. Revisionists question whether autonomy is truly a necessary component of professional work, or if it is simply a privilege that comes with professional power (see Larson 1977). Another difference is that while functionalists believe the professions serve the greater good by providing needed public services, revisionists believe that professional monopolies may sometimes harm both public and professional interests, for example, by stifling innovation (Timmermans 2008).

Within the revisionist view, three relatively distinct theories have emerged: *reprofessionalization*, *deprofessionalization*, and *proletarianization*. These claims are not entirely new,<sup>18</sup> and they are not limited to the legal

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<sup>17</sup> Crain (2004, 549) distinguishes between three potential types of monopoly control: economic monopoly (over “recruitment, training and credentialing”), political monopoly (“over areas of expertise”), and administrative monopoly (“over determining what standards shall apply to practitioners”). The legal profession exercises all three.

<sup>18</sup> Sociologists since Durkheim have been “intrigued” with professional work (Haug 1975, 198), including claims of its demise. Within the law, such concerns have occurred in several cycles (see Nelson and Trubek 1992, 177–78). John Heinz and associates (2005, ii) quote an author who wrote in 1905 that lawyers were more part of “the great organized system of industrial and financial enterprise” than members “of a distinct professional class.” Similarly, Harlan Stone wrote more than seventy-five years ago: “The rise of big business has produced an inevitable specialization of the Bar. The successful lawyer of our day more often than not is the proprietor of a new type of factory, whose legal product is increasingly the result of mass production methods” (in Katherine Stone 2004, 6–7). These concerns seem quaint in light of the current and potential application of information technology to legal work, discussed briefly in this chapter and explored in more detail in Chapter 7.

profession.<sup>19</sup> The first predicts rather subtle shifts, while the other two portend major disruptions that include the degradation of professional work, echoing at least to some extent Braverman's thesis. Those who advocate reprofessionalization acknowledge that the professions are changing, but assert that their core aspects will stay largely intact for two main reasons: (1) the professions will continue to exploit their control over expert knowledge that others need but do not have (a difference Talcott Parsons [1970] refers to as the "competence gap"), and (2) professional organizations are highly resilient and possess significant social power to maintain their monopoly and autonomy. Freidson (2001) suggests that greater bureaucratization will lead to further stratification of the professions and the ascent of a professional-managerial class that will serve as a point of contact between corporate and professional interests. He suggests this process will strengthen professionals' hold on both monopoly and autonomy.

Others predict less-significant changes, in such aspects as "opportunity structure, the terms and loci of employment, and salaries" (Anleu 1992, 200). Generally, authors such as Eliot Freidson and Sharon L. Roach Anleu see the professions as having a great deal of control in crafting responses to changing market and regulatory conditions; regardless of the specifics, they see reprofessionalization as defensive adaptation, never co-optation (e.g., Muzio and Ackroyd 2005). For example, some (e.g., Adler, Kwon, and Heckscher 2008) predict that professionals will resist certain aspects of rationalization by turning to more collaborative forms of organization.

The deprofessionalization hypothesis suggests that a variety of structural and cultural factors will combine to seriously erode the monopoly and autonomy of professional work. These include increased competition between professions, the diffusion and routinization of expert knowledge, a decline in public trust, absorption of professionals into bureaucratic organizations, government deregulation, and less solidarity caused by intensified intraprofessional stratification. Haug (1975) predicts that technology will combine with an educated, increasingly skeptical populace to more broadly allocate expert medical knowledge.<sup>20</sup> Robert Rothman (1984) foresees deprofessionalization

<sup>19</sup> Deprofessionalization concerns have been raised in nearly every professional or quasi-professional category, including physicians (McKinlay and Arches 1985), teachers (Filson 1988), college professors (Krier and Staples 1993), and social workers (Carey 2007). The issue also has been raised regarding various occupations that have struggled to be recognized as professions, including law enforcement (Sharp 1982).

<sup>20</sup> Scholars continue to debate the extent of deprofessionalization among physicians. Most seem to agree that fundamental shifts are occurring in medicine, such as changes in technology, in physician self-employment, in government regulation, and in the rise of rationalized practice norms such as "evidence-based medicine" (see Timmermans 2008). However, there is

of the law caused by increasing competition among legal services providers, the demystification of legal knowledge, and advances in technology.

The proletarianization argument suggests that professionals will slowly lose autonomy, status, and reward as they are absorbed into large bureaucratic organizations (see Oppenheimer 1973). Charles Derber (1983) refines this view by distinguishing between two types of proletarianization—ideological and technical. Technical proletarianization—the type emphasized by Braverman (1974) and discussed above—involves workers losing control over the *means* of work (i.e., their skills). This occurred to craft workers under industrialization. Conversely, ideological proletarianization is a process by which workers lose control over the *ends* of their labor—the uses to which their labor is put. This results in a “powerlessness to choose or define the final product of one’s work, its disposition on the market and its uses in the larger society, and the values or social policy of the organization which purchases one’s labor” (Derber 1983, 313). Drawing on Stephen Marglin’s (1975) historical analysis, Derber writes that ideological proletarianization happened to skilled workers first through the “putting out” system whereby merchants took control of the market for products produced by skilled labor, and even of the final form of the finished product. However, the worker maintained control over the *means* of the work for some time after. It was only through the factory that technical control over the means of labor was achieved.

There appears to be broad agreement that professionals are experiencing ideological proletarianization because of their increasing employment within hierarchical organizations.<sup>21</sup> Derber (1983) finds this troubling because professionals can be reduced to mere technicians whose work is drained of freedom, creativity, and a connection to the larger community. At the same time, he

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disagreement as to the likely outcome. Some see proletarianization and deprofessionalization as inevitable outcomes (e.g., McKinlay and Arches 1985; Ritzer and Walczak 1988). Others (e.g., Filc 2006; Pickard 2009) predict a reprofessionalization and further stratification of the profession. Law appears to be somewhat better equipped than medicine to resist standardization. First, even though medicine also involves confidential services, it leaves a more public “trail” because of third-party billing. Second, there is a greater emphasis on development of a single “standard of care” for particular diagnoses, and thus, governmental entities, consumer interest groups, and professional bodies can more easily facilitate standardization.

<sup>21</sup> Physicians and attorneys always have been much more commonly self-employed than members of other professions, and therefore have been referred to as the “free professions” (Gerth and Mills 1946). Thus, a tendency toward more bureaucratic employment would affect the autonomy of these two groups most significantly. However, even among those professions with a history of organizational employment (such as architects and university teachers), a greater “intensity” of bureaucracy (in terms of specialization and control) could also have significant effects on professional autonomy.

believes that technical proletarianization has not yet been realized because professionals continue to maintain control over the *means* by which their expert knowledge is applied. He sees two potential future outcomes: In the first, professionals will continue their current bargain with management, ceding ideological control in return for technical control. In the second, management will successfully appropriate and control expert skills; such “technical proletarianization may be introduced with surprising speed in the coming decades” (p. 316).

### *Rethinking Deprofessionalization and Proletarianization*

Whether reprofessionalization, deprofessionalization, or proletarianization is occurring has obvious implications for professionals’ identity, autonomy, quality of work, remuneration, and job satisfaction. It also may have profound social effects. Professionals play a role in generating and diffusing innovation and contribute to the general welfare of society (Adler, Kwon, and Heckscher 2008). Some professional work contains a public service component, and this could be altered or “hijacked” by other interests, to social detriment. Notwithstanding these ramifications, there has been an apparent decline in interest in this area in recent years. This book is in part intended to reenergize this debate. This section addresses three factors that have been explored in prior theory but rarely have been fully realized in their potential future implications, especially for legal practitioners.

#### **The Corporatization of Law Practice**

Historically, the dominant form of organization for attorneys was the solo practice, and the legal profession was relatively stable. Beginning in the 1970s, a number of factors—including the complexity of the legal and regulatory environment, competition, technological change, and globalization—led more attorneys into law firms, as well as into government service. Law firms dramatically increased in size and complexity. By 1987, Baker and McKenzie became the first law firm to employ 1,000 attorneys. By 2008, it had 3,627 lawyers, while another megafirm, DLA Piper Rudnick, became the largest firm, with 3,785 attorneys (*National Law Journal* 2008). Baker and Mackenzie also was the first firm to reach \$1 billion in annual billings, in 2001; by 2007, there were ten additional firms in that category.<sup>22</sup> Law firms

<sup>22</sup> While large corporate law firms such as Baker and McKenzie are quite large, they employ a relatively small percentage of the total number of licensed attorneys in the United States. However, their influence is felt beyond their numbers. Their practices “trickle down” to smaller firms, they tend to represent the largest corporate clients, they hire from the most

increasingly began to resemble the corporations they served—employing nonlawyer managers, outsourcing their noncore functions, and downsizing when faced with reduced demand, such as during recessions (Gross-Glaser 1990).<sup>23</sup> During periods of growth, they competed for the best law school graduates; salaries increased nearly tenfold from 1969 to 1989 and then nearly doubled by 2007, reaching \$160,000 (without bonuses). Firms' billing rates also increased at a pace faster than inflation, year after year.

Firms also changed their internal organization. For many years, they employed the “Cravath model,” named for one of the first and premiere New York law firms, Cravath, Swaine, and Moore. The Cravath model involves two tiers of attorneys—equity partners and associates. The equity partners have an ownership interest in the firm, and the associates march, lockstep, on a “track” toward eventual partnership. (If associates are not voted in as partners, they are asked to leave the firm.) The partners' income is supported by “leveraging” of associates, ideally more than one associate per partner. The associates together produce more revenue than the partner but are paid significantly less, thus supporting the partner's higher income. This model could not hold as firms ballooned in size; thus, firms began to create additional hierarchies, adding non-equity partners, “of counsel” attorneys, staff attorneys, and senior attorneys.<sup>24</sup> It also became much more common

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“elite” law school students, and they are frequently profiled by the media and thus shape public expectations (Johnson and Coyle 1990). Many observers therefore believe these large corporate law firms hold disproportionate influence in their ability to shape policy. Many of them also commonly utilize temporary legal help, another reason for a particular focus here on their practices.

<sup>23</sup> Notwithstanding their size, income, power, and increasingly corporate organization, prohibitions remain on the public ownership of law firms in the United States and many other nations. However, in 2007, an Australian law firm became one of the first to offer public stock (see Susskind 2008).

<sup>24</sup> Non-equity partners earn a salary rather than own shares in the partnership, but they are allowed a vote on management issues. Senior attorneys are ex-associates who were not asked to become partners (perhaps because they were not considered sufficient rainmakers), but are asked to stay on as salaried attorneys because they offer useful skills to the firm. Staff attorneys are junior attorneys who are hired to perform specific and limited types of work such as project management or litigation support. They are not considered associates and thus have no potential to become partners. Of counsel attorneys are neither associates nor partners, but are otherwise affiliated with the firm in one of several ways permitted by an ethics ruling from the American Bar Association (1990). They may wish to work part-time or may have retired from the firm but want to maintain a connection with it. The status also may be conferred on attorneys who are brought in laterally with the expectation that they will soon become partners, but of counsel attorneys also may occupy positions between associate and partner, with no expectation of advancement.

for partners and associates to decamp to other firms, sometimes taking entire practice groups (and clients) with them.

The effect of these changes has been debated. For example, most seem to agree that more bureaucracy in law firms decreases ideological autonomy because each individual attorney has less power to influence the organization's direction, focus, and engagement with clients and other groups. However, the effect upon technical autonomy is less clear. Some (e.g., Harrison 1994) point out that an organization's structural form (such as bureaucracy) does not translate neatly into a prescribed set of work practices, especially where professional work is involved. Enhanced division of labor (such as in legal specialization) may mean gaining and using more esoteric knowledge, not deskilling and loss of autonomy. More hierarchy may mean an enhanced need to coordinate with others, but still may leave attorneys relatively free to design the timing and process of their work (Anleu 1992).

However, others claim that bureaucracy is ultimately a form of control. It is "softer" than scientific management and thus may appear to be a set of neutral rules, yet it tends to subtly shape individual behavior toward organizational objectives (Derber 1982) and therefore has negative effects on professionalism (see Freidson 2001; Liecht and Fennell 1997). It also may lead to a loss in collegiality and an intensification of work. Marion Crain (2004) notes that as firms became larger, annual billable hour requirements increased from a mean of 1,100 in 1950 to 1,900 in 2000. Factors such as these are blamed for the decline in lawyers' work satisfaction that has been found in some studies (see summary in Johnstone 2008, 741n15), but not others (e.g., National Association for Law Placement 2004). Associates who work for large firms are particularly dissatisfied with the intellectual challenge of their work. This may be because they take on more responsibility at a slower pace than at smaller firms; also, it may be because attorneys hired by large firms have higher expectations and therefore are more susceptible to frustration and discontent (see Sterling, Dinovitzer, and Garth 2007).

While bureaucracy itself may not reduce technical autonomy, it can provide the necessary *framework* for the regimentation and standardization of work when combined with technology, management practices, or client demands. For example, public sector lawyers experience more standardization of work because of increased hierarchy and required application of lengthy, elaborate rules (e.g., Eisenstein 1978). This is perhaps expected from the "heavy hand" of government; however, decreased technical autonomy also can occur in private lawyers' work when market pressures combine with advances in technology.



### Efficiency Pressures

Competition in legal services began to increase in the 1970s. Law experienced some erosion of its borders as nonattorneys began to perform some law-related services. For example, realtors in some states won the right to draft property transfer documents (Rothman 1984). Competition between attorneys also intensified. In separate opinions, the U.S. Supreme Court struck down limits on law firm advertising and on fixed-fee arrangements. Opening up competition among attorneys, or between attorneys and other professional groups, theoretically could have driven down fees, which in turn could have forced law firms to be more efficient, leading to greater standardization. However, the areas of practice most affected by increased competition involved consumer legal services, which were already relatively standardized. Thus, for some, the lasting importance of these rulings is that the Supreme Court for the first time clearly labeled law as “commerce” and therefore made it subject to the same freedoms and limits that apply to the buying and selling of nonprofessional goods and services.

A much more significant pressure toward deprofessionalization in recent years has come from perhaps an unlikely source—the corporate client. The great majority of work done in private law practice is billed by the hour; at worst, this leads to overbilling and at best, it encourages inefficiency as firms repeatedly “reinvent the wheel” for each client facing similar issues (see Susskind 2008). Until recently, most clients had little leverage concerning billing issues because law firms usually have better information than clients about what sorts of resources legal matters require. However, this balance began to shift in the late 1980s. Legal fees rose dramatically, and corporate executives ordered their legal divisions to cut costs, much as they had required their other corporate divisions to do. Many in-house counsel previously had worked for private law firms and thus had insight into how cost savings could be achieved. Some corporations hired outside consultants to help them reduce their legal costs. Law firms cooperated with these measures because waves of corporate mergers left them with fewer available large clients.

These efforts took many forms. DuPont decreased the number of law firms it employed and required the remaining firms to institute a number of cost-cutting policies (*Metropolitan Corporate Counsel* 2002). General Electric farmed out some domestic legal work to its operations in India, saving \$1.7 million per year (Reisenger 2003). Some of these savings were achieved by reducing technical autonomy, including more standardization. For example, Cisco Systems entered into a fixed-fee arrangement (rather than hourly billing) for all of its litigation. This forced its outside counsel to be more efficient



and resulted in the hiring of temporary attorneys for some work (Susskind 2008). At the urging of their corporate counsel, firms began to adopt a variety of commoditizing practices, including the unbundling of legal services that is described in the following section. By the end of the 1980s, it was noted that even in large law firms “[p]ressures favoring conformity and assembly-like standardization are readily apparent” and work within law firms was becoming boring, dehumanized, routinized, and fragmented (Johnson and Coyle 1990, 397).

### **Technological Innovations: Unbundling and Multisourcing**

Even among those who acknowledge that stratification, bureaucratization, and competition are reshaping aspects of professional work, there is a tendency to believe that professionals will not lose technical control. For example, Sharon Anleu (1992, 200), in considering legal practice in the United States and Australia, writes that “although professional employees are required to conform to organizational procedures and to coordinate work with other employees, they maintain exclusive control over their knowledge base, which preserves their autonomy and reduces managerial encroachments.” Others similarly acknowledge that bureaucratization might lead to a narrower division of labor and thus to greater specialization, but not to deskilling.

However, these pronouncements and others like them make two related errors: First, they overstate the actual expertise involved in much professional work. Second, they assume that professional work is “unitary”—that it cannot be isolated into its constituent components, with the less-skilled parts reallocated to more-efficient and therefore cheaper labor. As to the first issue, many commentators (e.g., Susskind 2008) have pointed out that there is a great deal of mystification of legal work, through use of jargon and other means. In fact, a fair amount of legal work is rather rote and standardized. This includes various types of consumer law, such as wills, property transfers, uncontested divorces, and simple bankruptcies (see Derber 1983). Some of this work is even performed by franchise law firms in near “factory” settings, with legal secretaries doing much of the drafting of documents and lawyers seeing clients during fifteen-minute meetings (Van Hoy 1995). There is also much standardization of simple criminal matters, and the term “assembly line justice” has become a commonly used phrase (Wheeler and Wheeler 1980). However, it is not just in traditionally understood “commodity” legal work that one finds the potential for commoditization through standardization and routinization. Even the most complex legal process potentially can be unbundled; advances in information technology make this

increasingly easy to do (Crain 2004).<sup>25</sup> Commoditization would obviously change the *form* of legal services, but it would also affect the *process* through which such services are delivered. For some, the attorney-client relationship would mutate from a professional one rooted in mutual trust to an “encounter relationship” based on speed, efficiency, and uniformity (see Gutek 1995b).

## Conclusion

Paul Adler (2007) is not quite right when he claims that capitalism needs knowledge *workers*; rather, it simply needs their *knowledge*, just as industrialists needed craft workers’ knowledge in designing more efficient means of production. Put another way, professionals possess a monopoly over knowledge that capital needs, and capital will find a way “to take measures to control and constrain that monopoly” (Crain 2004, 553), that is, by appropriating it for itself. Chapter 7 explores potential future applications of unbundling, multisourcing, and other deprofessionalizing practices while Chapters 2–6 describe in detail how unbundling currently is being widely deployed in document review and management.

Thus, it appears that the proper questions to ask are not whether work in general is deskilling or whether “law” is deprofessionalizing or proletarianizing, but *which aspects* of legal work are or are not, and *which lawyers* are likely to be most affected. We also might wonder how the legal profession is responding—and will likely respond—to the forces causing deprofessionalization. Thus far, individual law firms have been fairly reluctant to unbundle and multisource. This may be due to attorneys’ well-documented risk aversion or simply to their protecting traditional income streams (Susskind 2008). At the same time, there has been little organized resistance. Perhaps some attorneys believe their practices are too complex and customized to ever be unbundled; others may feel they have little choice but to unbundle if their corporate clients insist on it. In any event, bar associations have permitted the use of offshore lawyers and temporary lawyers with few conditions, and have allowed nonlawyers to conduct legal research as long as a licensed attorney

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<sup>25</sup> Of course, attorneys have long delegated work within their firms among partners, senior associates, and junior associates. More recently, attorneys have made more use of paralegals and highly skilled legal secretaries. This type of shared work is quite different in both quantity and kind from unbundling. Unbundling involves a much-heightened division of labor and may involve entities outside the firm delivering or coordinating services (e.g., through “multi-sourcing” [see Susskind 2008]). It is also quite different from outsourcing back-office functions like human resources, accounting, or photocopying, because it involves the delivery of core legal services.

prepares the actual court pleadings and provides the ultimate advice to the client.

It remains to be seen how much *individual* resistance will be encountered. The legal profession has largely relied on professional autonomy as a means of control. However, the unbundling of tasks has the potential to largely deskill the work through extreme standardization and routinization. Attorneys could become bored, frustrated, and resentful, and their professional identities could become eroded. This could be particularly true where the work is being done on a temporary basis, because attorneys' connection and commitment to the law firm and to the corporate client would be even more attenuated.

In such a setting, several questions arise: Will responsible autonomy be sufficient to control attorneys' labor? If not, must management more directly control work process and output, perhaps by taking advantage of the extreme division of labor and greater intensification of work inherent in unbundled tasks? Even if such controls are attempted, will attorneys find space for individual resistance, for example, by relying on the "hidden knowledge" that Kenneth Kusterer (1978) finds in even the most seemingly routinized labor? Finally, even if informal resistance occurs, will it really "matter"—is having *some* control over the flow and output of miserable work any kind of victory for a professional worker?