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Legal professions[1]

Abstract

Legal professions play a pivotal role in modern legal systems. Due to their systemic importance, legal professions had to develop strategies to sustain their existence and retain their influence. One of such strategies would be to foster unity of the legal profession(s) amongst themselves and its members. This strategy is embedded in all the stages of entering legal professions, as well as in the later phases of a career development or progression. Having that in mind, this paper aims at shedding some light on the importance of that strategy employed to maintain the subsistence of legal professions.

Key words: legal professions, professionals, lawyers, law, sociology of legal professions, unity.

Law might be considered a meta-language of society, or rather more precisely, a meta-language of a system in which it operates. Law (1) creates (e.g. establishing constitutional bodies), (2) describes (what is legal and illegal), and (3) (re)interprets the social reality and norms in that society or in a state system (e.g. how something ought to be). Law impacts society, but also a society has certain (mostly limited) impact on law and legal regulations. Law is constantly changing, as is the social reality and both are influencing each other every day. Laws would be subject to change due to the change of the social reality, and the social reality is being forced due to the change in regulations.

On the same note, the rules of law are as complicated as the society (and the system) which are the subject to these legal rules. Constant change and mentioned influence are a part of the process itself. Having said that, currently in the European Countries, one can observe that law entwines most activities of daily life, and the complexity of law is growing apace. Citizens of the member state of the European Union are subject to the local, national, European, and international regulations. The complexity of the law might require a translator of one's position in that system, more precisely a member of a legal profession. With this end in mind, this paper is a modest attempt to draw attention to the development and maintenance of unity of the legal professions.

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A Really Brief Historical Background

The development of the legal profession has been affiliated with the development of legal systems. Roman orators using rhetoric and later the jurists in Cicero times not jet constituted a legal profession. It was with the growth and sophistication of the Roman law professional lawyers were made an indefensible element of Roman legal landscape. In the Imperial Period first schools of law emerged (Vago 2003). By the Middle Ages, the lawyers had three primary functions of agent, advocate and jurisconsult. Middle Ages where a period of time, broadly speaking, where the sedimentation of the legal profession could be observed in most European countries. As rightly pointed out by Dingwall and Lewis (1983) in the Victorian Britain the competitive examination as part of the entry process to the (legal) professions was adopted as a way of ensuring needed efficiency in relation to the new administrative skills required to manage rapidly growing cities. For more on that topic which goes beyond the length of this paper see Brand, (1992); Vago, (2003); Manchester, (1980); and Mrowczynski, (2012).

Definition of Profession?

For the last forty years the discussion around what constitutes legal professions, or rather to some occupation, is still alive to an extent amongst historical sociologists (see Kumar 2009), sociologist (Freidson in Dingwall and Lewis 1983), and legal professionals themselves. Perhaps surprisingly, as noted by Abel (1985: 8), '[h]istorical work is still dominated by biographies of great men and great firms, relatively little work has been done on the formal and informal organisation of practice.'

Likewise, legal professions are often compared and combined with a medical profession to its social status, prestige and requirement of perpetuate knowledge acquisition (see Riska in Cockerham 2001; Manchester 1980: 50; for more on issues regarding the history and sociology of occupations and professions see: Friedson in Dingwall and Lewis 1983: 19; and Abel 1985: 6). Also, as rightly pointed out by Dingwall and Lewis (1983: viii) back in the 1980s 'the development of an adequate theoretical base for the analysis of the professions was being severely hindered by the lack of comparative inquiry' (for more information on the concept of profession see: Rueschemeyer 1986). As noted by Cotterell (1984: 90):

> Durkheim – professions are carriers of occupational morality – the kind of essential regulatory structure which can bridge the gap between state-created laws and the actual conditions of social life. Thus the creation of a viable system of normative regulation-to guarantee and express organic solidarity is seen to depend on the extension of systems of professional ethics to cover all other spheres of life including, particularly, business life.

Lawyers, similarly to sociologists, tend to set themselves apart from the general population in order to establish their impartiality in dealings with the legal system.

This process in return is creating a certain disconnection with the reality and a parallel reality in a form of a bubble preventing access to outsiders.

Entering a Legal Profession

In most cases, in order to be allowed to pretend to join a specific profession one would have to go through the third level educational system (contemporarily, certain legal professions are allowing exceptions to this rule by setting up their own alternative educational path allowing one to join that profession, e.g. The (Irish) Honourable Society of King's Inns and their Diploma in Legal Studies (The Honourable Society of King's Inns 2016).

When one is about to enter a legal profession, one is first going through a (prolonged) period of study and preparations, first in a college or university, then through vocational training offered by appropriate organizations or associations. In that period of time, one is exposed to the basic ideas that would constitute all what that specific professional legal organization stands for. That exposure would be in relation to the actual *modus operandi* and everything that is being offered by this organization or association. This is a transitory period, a liminal space (Gennep, 2006 and Turner 1995), where and when that exposure to the rules and day-to-day operations of the organisation or association, and which would then be transposed into one's dealings and conduct as a member of such a professional group. Correspondingly, one has an opportunity to redefine oneself and one's current position via the specific (power) structure in which one is embedded in during such a period of transition.

It is important to emphasise that during the mentioned transitory (liminal) times (as opposed to the brief festive times, see Turner 1995) one cannot be fully equal to others. It is actually the time where people (and their offspring) who accumulated power and resources have the opportunity to further re-emphasise their position in the society, if not make it even stronger. In some sense, for them, it is an opportunity to grow their position inside and outside of the legal profession via this prolonged rite of passage.

Notwithstanding, after that transitory period of time when all of the above behaviours, routines, and way of dealing with matters will sink in, like water into a sponge, into the mind of that person. On that occasion the pretender to the role of a member of that professional group would, presumingly, try to blend in. The mentioned period of study is actually offering (apart from knowledge acquisition, of course) to a future candidate (at the university level) and later to a candidate, a smooth introduction and entrance to that legal vocation no matter which one that would be.

In this way some students would meet, and know, each other from that period of their education, even if they would decide on a different career choice. The time spent in the (third) university level institution allows for some sort of growth of the social circle that would transcend itself beyond the specific vocation or branch inside legal professions. It is a sort of a bridge allowing one to cross whenever one

might need it in the future. The common experiences are a vehicle, or bounding tools, allowing for that process to happen. Such a process creates in turn a commonality between the members of the greater group of legal professionals. It allows for that bounding process, but also establishes the possibility to influence one another on many levels directly and indirectly. It also allows, and helps, to relate to one another.

In some sense during this period of tutelage/patronage one learns (1) the legal norms (knowledge), (2) professional norms (associated loosely with the professional code of conduct), (3) social norms (how and for what reason one would act in a certain way inside and outside of the profession), and (4) any other information necessary to operate as a legal professional and a member of a legal profession (and for the purpose of forming proper social and professional relationships around that group).

Once the person is well established, it would mean that one internalised, accepted, and obey the norms as prescribed, and recognized in that professional group. This process produces a certain *modus vivendi* (a way of life) of a future legal professional.

Legal Profession and Media

Media will have a role to play in maintaining the unity and steady flow of potential candidates to that profession by romanticising the actions of that profession. Probably one of the most surprising elements of this process of the romanticisation of the legal professions, as viewed by the members of this professions who know their daily routines (examples of mentioned routines can be found in "Work of the Wall Street Lawyer" Smigel in Simon 1968), is how the most daunting and time-consuming tasks appear to be the most attractive, for example, research and preparation of legal documentation.

When considering the above, if students (or future pupils) enter legal profession having in mind the romanticised image of that profession, the same students at the beginning of their professional career might question law and its purpose. In consequence of such a process they may lose faith in law, legal system, and also in the concept of justice underlying the legal justice system.

The Role of Legal Textbooks

The importance of legal textbooks is that these offer an interesting perspective on the development of the entire legal profession. Primarily, legal textbooks are a source of legal knowledge *per se*. However, legal textbooks are, in a sense, placed in the centre of the development of oneself as a legal professional in general. Consequently, it can be argued that one, by the fact of reading legal textbooks, has that possibility of gaining insights into the life of legal professions.

In a way the legal textbooks have not only that role of passing down the knowledge to a person wanting to gain the access to a specific profession, but also consist,

to a degree, of social norms as build in, or embedded in, the code of conduct, actions or *modus operandi* of the legal profession. If one follows that line of thinking, it starts becoming clear that, legal textbooks are not only a repository of knowledge (what should be, presumingly, the main function of textbooks), but also are being used as an instrument in easing the transition to a specific (legal) profession.

The Professional Community

Legal professionals create a closely tied and complicated network of connections. The community that they create would consist of a number of different groups or circles. The inner circle would consist of the professionals – representatives of a specific vocation. Then there is a greater circle consisting of all of the vocations inside of all legal professions.

As one has to conduct oneself in an appropriate manner when already had joined and remain in a specific legal profession, it is one's responsibility to adhere to the rules, as otherwise one might jeopardise not only one's career, but also the integrity of the entire group. When due to misconduct or misbehaviour the integrity of the professional group is being questioned, it is actually undermining the efforts of that group to properly maintain itself as a perceived monolith (which in most contemporary legal systems is not the case after all) and as a trustworthy organisation. This is a way that is crucial for a group, which would form some sort of a community with norms of self-regulation, self-restraining social norms, to prepare people wanting to join their community, so that once the ritual of joining them would finally happen, the person in question would already have the qualities of a "proper" member of a group. In that sense, it is why in some cases the period of study and preparation (studies, vocational training, and in some cases professional practices) is being extended and prolonged as much as possible to make sure that one would be "ready" when the entry ritual would happen. The readiness of the pretender can be judged by the current members via their own internal group norms (informally) and/or a code of conduct (formally).

On the one hand it is a duty on the part of the member of the professional body/group to establish, and then, conduct themselves in a manner that would not allow an outsiders to question their integrity and the integrity of the mentioned group. As when that would happen, and the first cracks would occur in the image of that group or person; it would jeopardise the entire effort of the group and its members. So, the prolonged time invested in getting in which would be paid off in both monetary and non-monetary ways (prestige, personal, professional and political association, also through the association with well-known, respected and powerful, however illusory that might be). Once a person invested in whatever action so much time, effort and resources to gain an entry to that community, it may seem counter-intuitive to refuse all the benefits and throw these away by the way of misconducting oneself (either as viewed by the norms internal of external to the profession). It begs the question, in the light of the misbehaviour of the member of a legal profession, are

there (apart from one's internal motivation) any systemic norms or group pressures which might influence or provoke one's misconduct?

On the same token, one can only assume how damaging to the image of the specific legal profession would a deviant behaviour of the individual member of that profession be. Such a behaviour and its consequences would emanate far beyond the individual situation of that deviant. The impression of any such action will be staining the entire community. This is why the same professional community in prevention and protection from the deviant situations may feel the need for constant self-limitation and self-regulation. One of the ways that the profession can go about doing so is to be simply proactive in order, again, to prevent any of such image damaging activities. The downside of the constant self-regulation is that when one manages oneself in such a self-limiting manner, one might require a way to let off some steam. That might in consequence lead to a creation of (in case of an individual) a habit which not always will be aligned with the projected image of a professional group. Or worse, if such a habit gains inner group acceptance, this might lead to a creation of an informal practice inside of the group.

Professional Cohesion

An example of an act of maintaining cohesion and conformity is the gesture of nodding one's head amongst legal professionals at the begging of court sessions in Anglo-Saxon common law courts. It is one of the features allowing mentioned processes to happen. Nodding shows a respect for one another. It is also exclusionary, it excludes others from being a part of the greater community of legal professionals. It also shows how dangerous that bound can be, so one is to too tightly squeeze that greater professional community, this might in turn produce bribery, favouritism, nepotism and all other 'isms' which bottle up that community preventing access for people from outside of that community of legal professionals. This too tight process might in turn be responsible for disengagement with the rest of the population and the disenchantment of that population (Weber 1966), and on top of that, distrust. Whereas mentioned distrust might be damaging to a specific members and their legal practice, it might be also damaging to the (smaller and greater) community of legal professionals as a whole. What is more, the self-image of professions, their declared ideal of public service and their professional responsibility, matches the concept and understanding of modern society (Miller 1976 as cited in Cotterell 1984).

Legal Professions and Their Unity

The level of conformity to the professional rules will be influenced by the physical proximity of people, members of that profession, to each other. By conformity one might understand the act of changing one's actions to match the responses of others. There are three central motivations for conforming behaviour: '[1] a desire to be accurate by properly interpreting reality and behaving correctly, [2] to obtain

social approval from others, and [3] to maintain a favourable self-concept' (Cialdini and Goldstein 2004 in Klucharev et al. 2009: 140).

Klucharev et al. (2009) argue that conformity is underlined by reinforcement learning, i.e. social norms selectively reinforce certain behaviours. In a situation of one being in a conflict with social norms, one's brain signals an error that is similar to a reinforcement learning signal calling for an adjustment of the behaviour. In other words, when in proximity of each other, members of a group alter their behaviour to suit the group overall norms, so that the group can stay together strong against all odds. In such a situation conformity influences one's perception, and possible as a result of that change of perception, a moral judgement of one can be altered to maintain the unity of that group. This is why a person would stand behind the group and their judgement, or even defend it, especially in the eyes of the common threat to the group and its unity.

The Importance of Self-regulation and Self-limitation

As maintained by Dingwell and Lewis (1983) professions, via their members, are licensed to perform some of the most hazardous tasks of our society – (doctors) to intervene in the bodies of others, (priests) to negotiate for our prospects of future redemption, and (in case of legal professions) to regulate the conflict of rights and obligations between social interests. In order to carry out these tasks, they must acquire 'guilty knowledge' – the priest would be an expert on sin, the doctor on illnesses, the lawyer on crime and law. These professionals have to have the ability to look at these matters in comparative, and in consequence, relative terms. Dingwell and Lewis (1983) try to persuade us that this is the mystery of the professions. More so, they claim that the privileged status of legal professions (amongst others) 'is an inducement to maintain their loyalty in concealing the darker sides of their society and in refraining from exploiting their knowledge for evil purposes...[and, as a result] any occupation may aspire to similar privileges if it can reconstruct its licence and win acceptance of an enlarged mandate' (Dingwell, Lewis 1983: 5–6). In a similar vein, Cotterell (1984) states that there is a price to be paid by (legal) professionals for their autonomy, and for the fact that such a profession as a whole is entrusted with independent safekeeping of an important part of the society's tradition; and effectively, it is allowed to monopolise that knowledge as the basis of special expertise (Cotterell 1984).

Impression management is crucial and can be attained by proposing self-regulation as part of the internal system of the professional organization or association. The community can also go beyond that, and in still be preventive, in proposing of state regulation as part of the 'business of law making' (Chambliss and Seidman 1982: 139), as law might be 'a clever device for maintaining... [professional] interests' (Chambliss, Seidman 1982: 141). Chambliss and Seidman argue that in case of certain large corporations (for the sake of the argument, here, we can use legal professions) it might be beneficial to appeal to the government for the creation of the (self-limiting) legislation. In this case the taking charge activity is beneficial

primarily to the community of legal professionals, and not so much to its individual members, as it might hinder individual behaviours and prevent from disreputable and embarrassing situation to that community as a whole.

As one can argue that, again, due to the media portrayal of the legal professions, and due to the glare of self-importance[2], moral superiority (Sumner 1994), social status, and alleged availability of resources (for more on professional status, see Treiman in Cockerham 2001) to the members of that profession, some disreputable characters can be drawn into the profession. In case these would slip through the net of initial transition into the legal profession, the internal codes of conduct and external state regulation should be creating space where self-regulation and self-limitation of the legal professionals might, to an extent, limit such an undesirable (from the point of view of the whole professional community) behaviour.

The Level (self-)Organization and Hierarchy of Legal Professions

Legal professions, due to their nature and a fact of being immersed in legalese, are prone to have a strict hierarchical structure. It is both in terms of top-down hierarchy (stringent career advancements; a manner in which instructions are being issued and obeyed), and also, the horizontal hierarchy (maintaining invariable boundaries between specific legal professions, as this process will be also a subject to inter-professional regulations).

Tensions Inside of Legal Professions

One of the main tensions occurring inside the community of people practising the same profession is the fact of occupying the same space in their practice, in terms of a physical territory, as well as the specialisation in which these professionals practice.

On the same token, Mayhew and Reiss Jr. (in Mileski and Black 1973) are addressing what they call a 'resources' theory of legal profession. Here, the resources are referring to income, and to lesser extent to education, confidence and social connections. The above authors claim that those who have access to mentioned resources have a greater tendency to acquire (and to be able to afford) the services of legal professionals. Mayhew and Reiss, Jr., as explicitly expressed by them, are not discounting the ability and willingness of less fortunate to gain an access to the services of legal professionals. They admit that '...the resources theory fails to predict the differences in patterns of use of legal services across socioeconomic categories' (Mileski and Black 1973: 186). Their point is that the stratification of access to resources by certain people parallels the differentiation and stratification of legal activity. In response to the above the demand for legal services compel legal professionals to move

[2] An address delivered before the graduating classes at the sixty-eight anniversary of Yale Law School by the president of the University of Minnesota is a vivid example of that attitude: "I have never ceased to regard the law as ,one of the first noblest of human sciences – a science'" (Northrop 1892: 2).

into vacant niches (Mileski and Black 1973: 186). It might be viewed as a coping strategy of avoiding the completion, and a further reduction of the inner tensions in the legal profession. Also, as noted by Mayhew and Reiss, Jr. (Mileski and Black 1973: 186), such actions of pursuance of niches mitigate the relation between resources and access to legal professions by the general population.

On occasion one would cross the boundaries and change sides, so there is a certain possibility to move horizontally between the legal professions. It is possible for a member of one legal professional to transfer oneself to the other profession. Such a possibility might be treated as a career advancement, or simply as a career change. In both cases, this process will be a subject to strict inter-professional regulations. Besides, there are less permanent options of the temporary invasion of the territory occupied by the other branch of the legal profession, an example of that in the British context would be a solicitor with the right to appear in the courts. Due to these possibilities there are, in some way, direct and indirect connections between the specific legal professions which might enforce both competition and cooperation between the specific branches of legal professions.

Independence and Monopoly of the Legal Professions

As rightly noted by Abel (1985: 26) '[it] seems plausible that there is a connection between the two major historical trends identified thus far: the erosion of professional control over the production of producers and the growth in numbers of employed lawyers'. One may question, how is the collective independence of the professions secured? If the entire system is transformed than the boundaries in which the legal professionals operate will change as well. In a sense. the power which legal professionals can exercise, as limited by the law (or more precisely, the legal system in which they operate and specialise) will be restricted, and consequently, the limitation of the independence of the legal professionals can be observed as in comparison to the situation before that change.

According to Osiel (1990: 2013–2014 cited in Abel and Lewis 1996) in case of the English (or more precisely, British) legal system, barristers confirm their monopoly of higher court advocacy based on the fact that only they have sufficient 'independence' – where that assertion would be found by most solicitors insulting and unfounded. Solicitors, on the other hand, claim that the conveyancing monopoly is necessary to subsidize their under-compensated legal aid practice. In that specific example, the affirmation of these narratives prevents (not to mention the financial dimension of the affordability and sustainability of the legal services offered by the legal profession) from blurring of the boundaries between the two specific legal professions.

Conclusions

Throughout this paper certain attention was being paid to the development and maintenance of unity of the legal professions. Unity cannot be mistaken for integrity. A profession can be viewed as a monolith by outsiders and even still be the

subject of some levels of inner tensions occurring in it. Unity refers to a formation of a complex whole (Soanes et al. 2006), where some elements might be more-less integrated, notwithstanding the possibility of inner animosities, transgressions and unpleasantness (when, for example, dealing with the black sheep and the deviant subculture amongst fellow colleagues).

As previously mentioned, the role of the (self-)regulation and (self-)limitation within the legal professions is to maintain the unity. Unity which is build and instilled in the members and persons aspiring to become members of the legal profession via academic and/or vocational education no matter the way in which one wants to access a specific legal profession. Unity means that the member of a legal profession in conducting oneself is being viewed through a lens of that legal profession to which one belongs, and *vice versa*. Unity of the legal profession (and, in reality, any other profession) is its strength and its biggest weakness. Due to the social role and position of the legal professions, and the fact the society vested certain interests in maintaining a certain shape of the system of which legal professions are indispensable part; that specific society through its members might decide to intervene in the way legal professions are conducting themselves. In that case, unity of the group would be viewed as its liability, and might become a factor in further perpetuation of the conflict between themselves and the rest of the society (or rather, a government acting as an agent of that society).

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Zawody prawnicze

Streszczenie

Zawody prawnicze odgrywają kluczową rolę w nowoczesnych systemach prawnych. Ze względu na ich znaczenie, konieczne było opracowanie strategii mających na celu utrzymanie ich i zachowanie ich wpływu. Jedną z takich strategii jest wspieranie jedności prawników między sobą i jej członków. Ta strategia jest widoczna we wszystkich etapach wchodzenia w zawody prawnicze, a także w późniejszych fazach rozwoju kariery. Mając to na uwadze, niniejszy dokument ma na celu rzucenie światła na znaczenie tej strategii wykorzystanej do utrzymania istnienia zawodów prawniczych.

Słowa kluczowe: profesje prawnicze, specjaliści, prawnicy, prawo, socjologia zawodów prawniczych, jedność.