19 Entrepreneurship, managerialism and professionalism in action: the case of the legal profession in England and Wales

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INTRODUCTION

The world of the professions is a world of lasting stereotypes, rhetorical claims and deceptive appearances; it is a world where often things are not as they are claimed to be or even as they initially appear to be. In particular, there seems to be a certain gap between public conceptions and imageries of professionalism (often including the professions' own self-representations) and current realities of professional work and organization (Sugarman & Pue, 2004).

The world of professionalism has historically been represented as qualitatively different to the world of commerce, business and industry. Indeed, professionalism has often been defined as a specific occupational principle distinct from alternative work organization methods such as entrepreneurship and managerialism (Freidson, 2001). Notions and vocabularies of public interest, erudition, collegiality, self-regulation and individual autonomy or responsibility are routinely emphasized in both orthodox accounts and public representations of the professions. This is viewed as an alternative if not a palliative or corrective to the cut-throat world of business dominated by large bureaucratic organizations, competitive markets, managerial control, deskilling or dehumanizing tendencies and a markedly for-profit logic.

It is of course debatable whether such understandings of the professions were ever accurate or if they were simply an unquestioned part of the mythology of the professions designed to render privileges and restrictive practices more palatable and publicly acceptable. This is increasingly so given some wide-ranging developments in the realities of professional work and its organization. Contemporary professionalism is certainly no small-scale affair, and the global professional services firms which employ thousands of practitioners in dozens of jurisdictions, providing the infrastructure of transnational capitalism, are far removed from the small, informal and familiar realities of a past era, when professional practice meant self-practice or partnership with a few others (usually relatives) (Abel, 1988). Today the majority of professionals are not self-employed but employees in large autonomous or heteronomous professional organizations (Larson, 1977). Employment status is certainly relevant, as it implies an exposure to managerial principles and bureaucratic practices, thus constraining traditional notions of professional autonomy, discretion and independence (Faulconbridge & Muzio, 2008; Raelin, 1991). Equally important, large professional services firms explicitly embody an entrepreneurial spirit, as they try to compete by continuously developing new markets, competences and products or services for their corporate clientele (Brock, Powell & Hinings, 1999; Cooper, Hinings, Greenwood & Brown, 1996; Empson, 2007). The result is a

commercialized version of professionalism (Brint, 1994; Hanlon, 1998) where the premium lies in adding value (and crucially demonstrating value) to clients through the real-time delivery of technical solutions which address real or perceived business needs.

Today professional services firms (PSFs) are a relatively new but increasingly established topic within management and business studies. The rise of PSFs is often portrayed in the literature as the result of radical change, whereby exogenous developments such as globalization and deregulation have fuelled a process of archetypal migration from the traditional professional partnership (P^2) to the new managerial professional business (MPB) logics and practices (Brock et al., 1999). In this context entrepreneurship is portrayed as exactly what is different about contemporary professionalism and professional organizations (Brint, 1994; Brock et al., 1999; Hanlon, 1994, 1998; Leicht & Fennell, 2001). However, the study of PSFs and the sociology of the professions more generally tend to suffer from a lack of historical memory, a fault which obscures how entrepreneurship and commercialism, rather than new radical developments, are intimately woven into the fabric of professionalism from its inception. Indeed, nineteenth-century professionalism beneath its rhetoric of gentility anticipated the logic (proactive client service, entrepreneurial development of new markets, the international orientation) and practices (high leverage ratios, eat-what-you-kill pay systems, up-or-out career progression, etc.) of contemporary professional services firms.

This chapter seeks to provide a historical background to contemporary studies of entrepreneurial PSFs by looking back to the development of the nineteenth- and early- to mid-twentieth-century legal profession in England and Wales through a range of key concepts drawn from the sociology of work: professionalism, managerialism and entrepreneurship. The legal profession has been chosen as a case study insofar as it represents a long-established form of collegial professionalism (Johnson, 1972) against which other professional projects have often been benchmarked. Here traditional images, symbols and conceptions of professionalism are perhaps most pronounced, whilst at the same time many empirical studies (Abel, 1988, 2003; Brock et al., 1999; Empson, 2007; Faulconbridge & Muzio, 2008, 2009; Flood, 1995, 1996; Muzio & Ackroyd, 2005) alert us to the fundamental changes experienced by this profession (see also Chapter 7).

We will first review the key concepts of professionalism, managerialism and entrepreneurship and consider their intersections, revealing how traditional boundaries between these ideal-types of work organization may be analytically problematic and empirically contested (see also Chapter 9). We flesh out this analysis through a historical overview of the legal profession, its work and its organization, focusing on its birth, institutionalization and historical consolidation in the nineteenth and early twentieth centuries. This analysis reveals how entrepreneurship rather than being a recent and perhaps alien development for professionalism (Freidson, 2001) was an intrinsic feature of the nineteenth-century professional project. Indeed commercial logics and orientation characterized legal practice right from the very beginning, with the boundary between professional advisor and entrepreneur, as indicated by the biographies of leading lawyers of the time, if anything more fluid and ambiguous than today. Thus, in doing so we provide a historical perspective on recent debates on the commercialization of professional work, whilst somewhat qualifying tendencies in the study of the professions to read commercialization as an instance of radical change or even of de-professionalization (Brint, 1994; Broadbent, Dietrich & Roberts, 1997; Freidson, 2001; Krause, 1996). Second, our

historical analysis of shifts in the logics and practices of the legal profession throughout the nineteenth and early to mid-twentieth century provides an example of how different occupational principles such as professionalism, entrepreneurship or managerialism coexist in a fluid mix. Our analysis indicates how over time the balance between different components varies following changes in the profession's work and regulation and in the broader political economy. In particular we note how the marked entrepreneurial orientation of the nineteenth-century legal profession was connected to the lack of sufficiently large and stable work jurisdiction and to the existence of a lighter regulatory framework, which generated both an imperative and a possibility to procure work through entrepreneurship and innovation (see also Chapter 17).

PROFESSIONALISM AS A WORK ORGANIZATION METHOD

The idea that professions are somewhat different, even special, is long established and colors initial writings on this topic (Carr-Saunders and Wilson, 1933; Durkheim, 1957; Parsons, 1954). The key issues identified by these early writers were the professions' moral fiber and their functionality to social and individual wellbeing. In the typically hagiographic style of these early writings professions are in other words different because they are "characterized by an admirable sense of responsibility; it is one of pride in service given rather than of interest in opportunity for personal profit" (Carr-Saunders & Wilson, 1933: 471); this sense of responsibility allegedly allows them to act as "stabilizing elements in society" and "centers of resistance to crude forces which threaten steady and peaceful evolution" (Carr-Saunders & Wilson, 1933: 497). For these writers professionalism is, therefore, equated to a system of ethical values and behavioral standards, and professions are distinguished in the light of their unique ethos, deontological norms and social functions which makes them rather distinct if not antithetic (and preferable) to the world of business.

Whilst in the following years a lot of effort was put into producing checklists which could analytically distinguish professions from non-professions (Barber, 1963; Greenwood, 1957; Millerson, 1964), a key moment in the study of professionalism is the realization that this does not refer so much to a type of occupation with specific traits but to a particular way of controlling an occupation (Johnson, 1972) which crucially favors the producer over the consumer. The ensuing refocusing of research around the notion of the "professional project" (Larson, 1977) is, therefore, accompanied by a critical agenda as professionalism becomes more readily associated with self-interest rather than public concern. Despite this political re-orientation, this body of work retains at its heart and indeed develops the distinction between professionalism and other occupational principles such as managerialism and entrepreneurship (Freidson, 2001).

Here professionalism is viewed as a distinctive work organization method where the workers themselves, through their association, rather than "consumers in an open market [entrepreneurship] or functionaries of a centrally planned and administered firm or state [managerialism]" (Freidson, 1994: 32), retain control over their own work. This includes direct control over the definition, execution and evaluation of work, as well as, ideally, a degree of authority over "the social and economic methods of organizing the performance of [such] work" (Freidson, 1970: 185). Quality and expertise are the key source of

authority here and together with appeals to public interest the usual rhetoric used to justify such arrangements. This contrasts with alternative occupational principles, such as entrepreneurship and managerialism. Managerialism places in a dedicated and specialized cadre of full-time administrators (management) the authority to define and control what tasks exist, how they should be performed and by whom; in other words management enjoys "the legitimate right to exercise imperative coordination" (Freidson, 1994: 64). This is regulated through a rational-legal apparatus of formal regulations emphasizing efficiency (formal rationality) and predictability and implemented through developed administrative hierarchies. Finally, under entrepreneurship work is organized according to free contractual exchanges between independent producers and independent consumers within (relatively) open markets. This arrangement emphasizes competition, innovation and customer focus, as successful operators are those who are able to develop new markets for their products or services and to respond to and even anticipate shifts in consumer demands and expectations.

Of course, professionalism like managerialism and entrepreneurship or in organizational theory terms clans, hierarchies and markets (Ouchi, 1981) is an ideal-typical construct whose scope is heuristic rather than descriptive. Its schematic simplicity cannot, and indeed is not meant to, capture the messiness, elusiveness and contested character of empirical reality. In real-life scenarios the boundaries between professionalism, managerialism and entrepreneurship are ambiguous and fluid, as these logics coexist and co-penetrate each other. Whilst on a basic level professions have always been businesses that to survive must act in a commercially minded fashion (Sugarman, 1993), an obvious and current case of this co-penetration is the professional services firm (Brock et al., 1999) which employs and is run by professionals but increasingly uses managerial hierarchies and processes (managerialism) to develop new services and markets for its expertise (entrepreneurship). Indeed, as recognized by archetype theory, new practices and values, such as the new commercial rubrics developed by professional services firms, are inevitably grounded in territories which are imbued with the deep-rooted institutional and cultural residue carried through from a previous era (Cooper et al., 1996). The result is a process of sedimentation where old and new coexist (Cooper et al., 1996), producing new hybrids such as organizational (Faulconbridge & Muzio, 2008) or commercialized (Hanlon, 1998) forms of professionalism where professionalism, managerialism and entrepreneurship are entangled in a close embrace. Furthermore, their relationship is not mutually exclusive, as assumed in the de-professionalization literature (Broadbent et al., 1997; Krause, 1996), whereby, for instance, more emphasis on markets must necessarily come at the expense of communitarian and professional principles, structures and practices. Rather, as argued by Adler, Kwon and Hecksher (2008), recent changes seem to be increasing the relevance of all three occupational principles to professional work and its organization. For instance, somewhat paradoxically, the commercial pressure on professional organizations to become more competitive and capture new markets is lending renewed salience to communitarian structures and practices such as communities of practice, matrix structures and multidisciplinary teams which are best placed to guarantee the required levels of innovation, customer centeredness and service quality or simply to allow firms to achieve more with less in the context of increasing budget cuts (see e.g. Chapters 2 and 6).

Having clarified the conceptual foundation of professionalism as a work organization

principle and problematized some of the neat ideal-type taxonomies developed in the sociology of work, this chapter moves on to the historical case study of the legal profession in England and Wales. Our case study focuses primarily on the nineteenth century, when the modern legal profession developed and became institutionalized, and by way of contrast on the first half of the twentieth century, when the profession underwent a period of transformation, assuming a new distinctive logic and set of practices. This analysis will suggest firstly how the profession displayed a very pronounced entrepreneurial and commercial orientation from its early development (indeed some of the commercial activities and practices routinely performed by lawyers then would not be allowed today in the age of entrepreneurial PSFs) and secondly that the balance between different occupational principles changes through time following developments in the broader political economy and resulting in distinct historical phases with their own different logics, discourses and practices.

PROFESSIONALISM, LAW AND ENTREPRENEURSHIP IN NINETEENTH-CENTURY BRITAIN

Early representations of the professions are connected with images of gentility and tradition (Burrage, 1996). Indeed the gentlemen's club is the implicit model for early professionalization projects, including law. Corfield relates that group identity in the nineteenth century was a feature of professional life, and "professional solidarity was also encouraged by the prolonged training that their careers increasingly entailed" (1995: 206). In particular, the rise of the Law Society as promoter and monitor of solicitors and attorneys—part private, part public—in the eighteenth and nineteenth centuries helped to raise the standing of the legal profession and shape professional etiquette (Corfield, 1995; Sugarman, 1996). This occurred against a backdrop of a dramatic increase in the number of lawyers. Statistics vary, owing to difficulties in establishing the verisimilitude of contemporary records, but around 1780 there were between 2300 (Brooks, 1998: 184) and 4000 (Corfield, 1995: 91) attorneys and solicitors. By the 1850s Brooks recorded over 10 000 and Corfield more than 11 000. Kirk (1976: 108) attempted to produce reliable numbers by counting solicitors' practicing certificates. He shows that numbers rose strongly, apart from declines during wartime. See Table 19.1.

These figures do not tell the whole story, however, as they exclude the managing clerks who worked for solicitors and the barristers' clerks who did much of the legal work. According to Kirk (1976: 115) the census records show total legal staff employed as 32 000 in 1851, 34 000 in 1861, 39 000 in 1871 and 44 000 in 1881.[1]

Thus in the nineteenth century a combination of government regulation with the consolidation of the Law Society and improvements in legal education began to shape the modern legal profession. Yet, despite the development and consolidation of professional institutions, in nineteenth-century imperial Britain being entrepreneurial was the name of the game, and within this context commercial logics inevitably inflected legal practice from the start.

The mid-nineteenth century was a vivid and bright period for the City lawyers and barristers (Duman, 1983). Many companies were being formed, and this was accelerated

Table 19.1 Numbers of solicitors' practicing certificates

Year	Population (millions)	No. of practicing certificates	No. of people per solicitor
1784	9	4400	2050
1821	12	7090	1700
1831	14	9083	1550
1841	16	10073	1500
1851	18	9957	1800
1861	20	10229	1950
1871	23	10576	2200
1881	26	12688	2050
1891	29	15175	1900
1901	32.5	16265	2000
1911	36	17000	2100
1921	38	14623	2600
1931	40	15608	2550
1941	41.5	14430	2900
1951	43.75	17396	2500

Note: Women were admitted into the profession from 1922 following the Sex Discrimination Act 1919 (Kirk, 1976: 111), and possibly up to 40percent of the profession in 1853 failed to take out certificates because of cost yet worked in solicitors' offices (Kirk, 1976: 114).

Source: Adapted from Kirk (1976: 108).

with the passing of the Joint Stock Companies Act in 1844 and eventually the Limited Liability Act 1855. These Acts made company formation a simple matter of registration rather than obtaining a cumbersome Act of Parliament. The final seal on commercial liberalization was put in place with the Companies Act of 1862, which consolidated prior legislation (Harris, 2002; Slinn, 1997: 35).The growth of the railways further fuelled the dynamism of the nineteenth century. As Slinn notes, between 1844 and 1848 "over 9000 miles of railway line were authorized by Parliamentary Acts" (1984: 85, 1997: 36). The essential role played by lawyers in supporting and furthering these commercial enterprises is illustrated by the early participation of practices like Norton Rose in the development of the railways:

> Individual members of the legal profession like Philip Rose, Henry Elland Norton or Robert Baxter were on the verge of changing what lawyers customarily did and how lawyers habitually saw themselves. The railways provided a powerful combination of legal, financial, technological, political and social forces. Every sleeper had to be negotiated across land already owned; every bridge and every station built had to be planned, contracted, completed and seen through every stage of construction and function. (St George, 1995: 34)

One of the most notable and biggest projects was the Great Northern railway, a route from London to York that could take one of several routes. It took around six years of persistent lobbying and public relations to bring the line to fruition. Four rival projects competed and involved the Board of Trade, the House of Commons and its committees,

various banks, litigation in the courts and finally royal assent. Solicitors like Rose and Norton were involved from their scheme's inception: Rose invested £1500 of his own money and Norton, more cautious, put in £500, and "Rose offered the firm's time and expertise for nothing" (St George, 1995: 35). At the height of railway frenzy in 1845 there were 224 railway bills in Parliament. Their committees were flooded with lawyers: the Great Northern bill was represented by 32 barristers in committee. The promoters used all kinds of tricks and deceits to win. Despite these the Great Northern line had to be ready to build if it won in Parliament, so during 1845–46 the lawyers bought the land required for the 327 miles of track from London to York. As St George states, "the conveyancing task was immense . . . the firm took on 300 clerks" (1995: 38).

Thus, lawyers were very much at the forefront of industrial enterprise, providing the legal infrastructure which supported business ventures and developing new legislative instruments such as the Limited Liability Act to facilitate their client businesses' interests. However, lawyers were also particularly active and successful in developing and colonizing new markets for their expertise (Hanlon, 2004). Crucial to this was their ability to combine their legal knowledge and skills (such as negotiation and drafting, which were essential in the developing of a whole range of new products such as mortgage agreements or other financial instruments) with an in-depth knowledge of local circumstances and affairs. Their proximity to wealthy clients and the insights into their affairs gained through their estate planning and probate work provided lawyers with a convenient foundation to develop new financial products such as investment trusts and other financial instruments (Sugarman, 1993). Their involvement in conveyancing provided brokerage and direct investment opportunities, as solicitors arranged financing, acted as intermediaries between lender and borrowers and of course invested their own capital in a number of ventures. Conveyancing—residential and commercial—again, as discussed above, allowed lawyers to occupy a strategic role in the development of new industries such as railway, canals and telegraph systems and to position themselves to solve any new problems these companies might encounter (for instance dealing with industrial accident claims) (Hanlon, 2004; Sugarman, 1993). Thus as we can see in an era when it did not enjoy any stable monopoly (conveyancing accounted for less than 20 percent of fees) the legal profession was particularly entrepreneurial and elastic in what it would do for its clients. Indeed "attorneys and solicitors performed many functions for their clients including the collection of debts, conveying land, money lending and investment brokerage, estate management, and the keeping of accounts" (Sugarman, 1993: 271).

Such a clear commercial verve was characteristic of the time and was not limited to using the law in a commercially orientated way creating new services for their clients (and markets for themselves), but often involved legal professionals developing substantial business interest and roles in their own right.[2] Indeed, men like Norton, Rose, Morris, Slaughter and others were as much businessmen as they were lawyers. Morris invested £5000 in the publishing business of one of his clients, Cassell (Slinn, 1997: 56). Morris, moreover, was a director of 13 successful public enterprises who had "frequently been employed . . . to start at a few hours' notice, on a voyage across the Atlantic to assist in unravelling some vast complication in the American railway system" (Dennett, 1989: 23).

William Slaughter of Slaughter and May, an offshoot of Ashurst Morris Crisp, was the chairman of Home and Colonial Stores from 1888 to 1917 and was actively involved in promoting the company in the 1880s and 1890s, engaging in commercial matters as much

as giving legal advice (Dennett, 1989: 41). And William May, his partner, set up a private investment company with others. Indeed, it was customary for lawyers to be appointed to the boards of directors of their clients, even chair them. There is, of course, an international dimension to this; since London was the financial capital of the world at that time, its business was global and so were the lawyers' practices. All the City lawyers mentioned had clients with interests in Africa, South America, Canada and the East. The lawyers in question acted as a transnational professional elite, as they struck and facilitated deals across the world, exporting their business practices and legal institutions in the process.

Clearly legal practice in the late nineteenth century was lucrative but, as Dennett concludes, "those solicitors who made real fortunes . . . seem always to have been those who had, in addition to their legal practices, some outside business interests, 'the most fruitful source of wealth coming from the promotion of the railways'" (1989: 88). After all, lawyers were ideally placed to reap the opportunities of unbridled capitalism through their ability to navigate the intricacies of government departments, Parliamentary committees and financial houses, as well as their role in drawing up legislation, such as the Companies Act 1862, that facilitated and regulated economic activity (Hanlon, 2004). Of course, this intermingling of business and law, so common at the time, meant that the potential for conflicts, errors and their disclosure was ever present. Even Slaughter and May found itself tied up in litigation, as plaintiff, and was criticized by the judge for attempting to rig the market by purchasing shares to inflate their value, although this was a commonplace activity at the time (Dennett, 1989: 103; Phillips, 2007: 79). Phillips even argues that junior partners were impelled to speculate in the markets because they were paid so meanly:

> it was common form for the professionals involved in flotations to apply for shares as members of the public. Indeed salaries at Herbert Smith were so low that assistants . . . claimed to need the extra income to live on. Even Aubrey [Smith], a junior partner, complained that his meagre share of the profits made him depend on gains of this type. Moreover promoters expected support from all concerned. (2007: 78–9)

Of course, this entrepreneurial orientation was facilitated by the lax (self-)regulatory regime in place. The principle of self-regulation of solicitors was established as early as 1729 when Parliament enacted a statute, "for the Better regulation of Attorneys and Solicitors," which required entrants to be examined by a judge. As a qualification system it was lax and weakly enforced (Sugarman, 1996: 86); furthermore it emphasized social and cultural capital over technical skills and legal knowledge, thus explaining the importance of homology with the leading elites discussed later on in this chapter. Similarly, the rules governing the conduct of existing solicitors were under-developed despite dogged attempts by the Law Society, through the Solicitors Acts of 1844 to 1907, to obtain more powers to regulate practice and discipline errant solicitors. Yet, as Sugarman notes, "increasing regulation did not immediately result in a tougher regime governing professional discipline and conduct. Only a small proportion of the complaints about misconduct brought by clients led to proceedings" (1996: 106). In many ways the roles of family, status and income, among others, played a more determinative role in guiding "ethical" behavior than explicit rules. These more informal codes permitted a much greater range of activity and behavior among lawyers, including the entrepreneurial orientation

described above. Even in the case of lawyer advertising, which was rampant in the nineteenth century, the courts refused to endorse the Law Society's view that it amounted to unprofessional conduct, whilst until the end of the nineteenth century the profession operated in a regime of open fees leading to undercutting and price-based competition (Boon & Levin, 2008). Such "commercial" practices were finally disallowed much later in the twentieth century as professional norms retreated to tight confines before being reintroduced by the Thatcherite neo-liberal revolution of the late 1980s (Burrage, 1996: 56).

Organizing the Nineteenth-Century Law Firm

This entrepreneurial logic necessitated appropriate organizational structures and systems, which in many ways represent historical antecedents to some of the trends currently reconfiguring the legal profession (Abel, 1988; Muzio & Ackroyd, 2005). Partnerships were kept small and reviewed in light of performance and economic circumstances. Hanlon (2004: 189) characterizes this as periodic blood-letting, something which stresses the importance of individual financial performance in nineteenth-century legal practice. In some firms partnership agreements would be set up as short-term arrangements with quinquennial redrafting. The only stable figures would be the founders. While this scale of change would have been controversial, if not unthinkable, in the collegial lockstep model of the twentieth-century firm, historical evidence points to regular adjustments at Freshfields (Slinn, 1984), Linklaters & Paines (Slinn, 1987), Herbert Smith (Phillips, 2007) and Cravath (Swaine, 1946).

Whilst the size of the partnership was kept small, the numbers of managing clerks, anticipating the recent drive towards leveraging (Faulconbridge & Muzio, 2009), grew in line with the increase in work. Linklaters & Paines employed 27 clerks in 1882, and by 1893 these were 44 (Slinn, 1987: 41). Ashurst had over 40 in the same period. Clerks generated the income for the law firms, as associates do today, but they were not qualified, only very experienced. A very few would rise to partner, but most earned small incomes that remained low despite the booming business of the firms.

St George highlights the importance of clerks to the economics of the nineteenth-century law firm with his discussion of staffing ratios, which were considerably more stretched than even today. Ratios of partners to clerks in 1850 could be as high as 1:20, and in Norton Rose during the railway boom of the 1840s it rocketed to 1:100. By 1860 the number was usually 70 clerks (St George, 1995: 82). The motivation was financial, as senior partners, along with founders, were able to leverage the surplus generated by these salaried subordinates to increase their own takings. Junior partners and associates had to subsist (not inconveniently, however) on quite small shares and were exposed to the pressures and uncertainties of the up-or-out system, as only a minority (subject to their ability to display the appropriate behaviors and cultural dispositions and of course generate the necessary fees) would be accepted into partnership. Junior partners were usually salaried, with a small share of profits, and might not graduate to equity status (Phillips, 2007). Thus leveraging strategies and hierarchical structures, which are very much in place today, defined the age of gentlemanly professionalism, as firms were structured around small partnerships supported by expanding strata of subordinate workers.

The nature of practice and its organization cannot be ignored here, as this was

functional to the entrepreneurial orientation of the nineteenth-century law firm. What is key here is the notion of individual autonomy, as single partners were expected to "act entrepreneurially and to develop income generating relationships with clients" (Hanlon, 2004: 190). This is something which could not be centralized but required the development and maintenance of trust within the context of individual and highly personal client relationships. For these reasons, while partnership offered a suitable ownership structure for the conduct of business, operationally most partners practiced as if they were sole practitioners, as they were largely responsible for developing their own clients and generating their own business. Thus, nineteenth-century City lawyers were more independent, individualist and entrepreneurial than their modern counterparts. This, as discussed above, is reflected in the shares that partners awarded themselves: there was no notion of lockstep (or cohort payment systems); it was an "eat what you kill" approach where senior partners appropriated the major part of the firm's profits to themselves. Indeed, Allen & Overy introduced lockstep into the firm only in 1975 (Pease, 2006: 108). The distribution of fees within the nineteenth- and early-twentieth-century law firm could be quite inequitable. The senior partner always took the lion's share of the profits, with junior partners receiving quite paltry amounts. In the forerunner of Linklaters, the senior partner took 38 percent of the profits in 1910; in its sister firm, Paines, W.W. Paine received 40 percent of the profits in 1917 to 1923 (Slinn, 1987: 98, 113). Senior partners also had directorships to augment their remuneration, which were profitable. It was not until the twentieth century that directors' fees were considered part of the firm's earnings, which could be as much as 10 percent of the firm's income (Dennett, 1989: 152).

Key to success was the ability to develop trusting relationships with key clients (Hanlon, 2004). These were nourished through "co-presence, familiarity and face to face contact" (Hanlon, 2004: 190), but what is of paramount importance here is the cultural and reputational capital of the individual lawyer, as he attempted to establish his trustworthiness, gentility and erudition in the eyes of the client by displaying the right (meaning shared) values, pursuits, contacts and networks. Notably the system included a strong pressure towards homology, as professionals claimed a close association with (if not membership of) the leading elites. Reputational capital was cultivated through an active process of socialization designed to build networks, develop the right cultural dispositions and above all acquire an appropriate professional image. Elite educational institutions such as Winchester School and Trinity College, Cambridge thus become key networking sites putting lawyers in contact with their future clients (Hanlon, 2004). Similarly, family ties and kinship networks are used strategically to cultivate key relations and project the right image; thus wives are pushed towards charity work and philanthropic activities, children are steered towards the right clubs and schools and family members are parachuted into key positions within client organizations (Hanlon, 2004). Similar logics are reproduced within the firm's own ownership and governance structure, as partnerships were dominated by family memberships (Galanter & Roberts, 2008). Partnership agreements acknowledged that sons could be granted articles as of right, granting to legal practice a dynastic orientation, although not all firms, for example Slaughter and May, subscribed to that ideal. Outsiders, non-family members, were admitted to the partnerships subjected to rigorous up-or-out systems where prospective members had to assert their fit in the firm's culture (thus their homology with the founding partners and their descendants) as well as prove their financial contribution to the

business. Yet law firm histories relate that these attempts to broaden membership beyond founding partners and their families never seemed as durable and often resulted in splits (Dennett, 1989; Phillips, 2007; St George, 1995; Slinn, 1984, 1987, 1997).

Thus, ultimately, the key characteristics of the legal profession in this era were its fluidity (in terms of what work it would perform), lax regulation, entrepreneurial and individualist orientation and social and cultural cohesion (homology) around values stressing gentility, erudition, philanthropy and liberalism. Whilst these characteristics may seem discordant or loosely coupled, they are in many ways mutually supportive, as the creation and exploitation of commercial opportunities required the credibility, trustworthiness and acceptance that could be derived only through reputational capital and embeddedness in the norms and conventions governing socio-economic exchange and public life.

FROM COMPETITIVE TO COLLEGIAL PROFESSIONALISM

This analysis mainly focuses on the nineteenth century to uncover the distinctively entrepreneurial origins of the legal profession; however, in this section we will refer to changes occurring in the first half or so of the twentieth century which altered the values, structure and work of the legal profession and brought under control its more entrepreneurial and commercially focused tendencies. Thus, if we characterize the nineteenth-century legal profession as entrepreneurial in the sense that lawyers fully participated in their clients' businesses as businessmen as well as lawyers, then in the twentieth century there is a shift in the perception of what a lawyer's role and responsibilities should be. Monopolies, restrictive arrangements and discourses emphasizing quality, standards and a public vocation became more prominent features in the economics and in the representations of the profession. Professionalism, under the increasing control of the Law Society, rather than entrepreneurship became the dominant ideology and work organization method.

This shift in institutional logics was supported and made possible by a series of broader developments in the profession and in the wider political economy. The key event here was the consolidation of the monopoly over conveyancing which provided the profession with a significant, stable and secure market (Hanlon, 2004). Following the monopoly, conveyancing rose from 20 to 50 percent of professional fees (Kirk, 1976), and after World War II it was supplemented by the rapidly growing legal aid market, which was amongst the most comprehensive and well funded in the world.

This is significant, as it injected an element of financial stability and released the profession from the continuous need to develop new markets and seek alternative sources of work. Moreover, the legal market as well as less fluid also became increasingly stratified as small and medium-sized firms became reliant on the conveyancing monopoly and legal aid, while large firms (which were limited to 20 partners until 1967) monopolized the corporate and business advice sector thanks to the strengthening of their working relationships with the merchant banks (Hanlon, 2004). In this context, client relationships became long-term as local lawyers acted as trusted family advisors and corporate clients institutionalized relations with firms rather than individual professionals. This stability was further reinforced by a set of new professional institutions such as the ban on advertising, minimum fees (to curb undercutting and maintain an image of professional dignity), deontological rules and disciplinary procedures (restricting the business roles

that solicitors could discharge and limiting them to more advisory roles) and indeed the partnership size limit which regulated how professional services were produced, distributed and traded (Abel, 1988). This shift in logics and professional identities was partly sustained by the expansion of university-based legal education which prioritized technical knowledge and competence as criteria for a professional career and contributed to the creation of discourses separating the profession from the world of business and trade. Thus the university exercised a key role in changing not only the criteria for accessing the profession but also how individuals came to understand their identity and role as professionals.

In this context, stability and predictability, institutionalized by appropriate restrictive arrangements overseen by the Law Society, curbed the need and scope for entrepreneurship and brought with them a new range of practices, discourses and identities. In particular, lawyers embarked on a new process of self-rationalization embracing the rhetoric of social trusteeship (Brint, 1994), which emphasized, in contrast with the entrepreneurial language of the previous century, their role as gatekeepers of key skills and competences which are essential for individual and social wellbeing. Indeed, conveyancing, legal aid and the role played by lawyers in the post-war restructuring and nationalization of British industry co-opted them within the new fordist system of economic and social relations (Hanlon, 1997, 2004).

Thus the twentieth century sees the institutionalization of a new interpretative scheme (Greenwood & Hinings, 1993), which rearticulates legal work as a professional matter concerned with the discharge of technical functions such as the conveyancing of land or the provision of universal access to justice (legal aid) for the benefit of the wider community rather than a commercial enterprise focused on the creation and exploitation of new business opportunities (Hanlon, 2004). This new logic, emphasizing the technical and professional over the commercial and the entrepreneurial, to operate required a new set of supporting structures and practices. Indeed it is in this period that the modern corporate law firm emerged.

While law firm histories show that family ties within firms remained relatively strong through the first half of the twentieth century, more outsiders were joining as partners, resulting in a move from family control to the domination by *honoratiores* as characterized by Weber (1978: 950). Besides the growth and broadening of the partnership, a key change in the structure of law firms was the move from partners and managing clerks to a tripartite separation of articled clerk, assistant solicitor and partner (Galanter & Roberts, 2008). This was augmented by the growth in the involvement of the academy as gatekeeper to the profession. After all, as the emphasis shifted to servicing stable and mature markets, technical skills and knowledge imparted by the university were prioritized over the cultural and reputational capital required to develop new markets. In this context the (non-qualified) role of the managing clerk declined and faded and to a lesser extent was replaced by trainee solicitors and legal executives (as the new professionalized paralegal) (Francis, 2002).

The classical portrayals of partnership and of the law firm of the twentieth century see the emergence of a formal organizational structure and a firm-specific identity. Partners' selection criteria change so that the haphazard up-or-out system based around the senior partner's whim is relaxed and a meritocratic (within limits) promotion to partnership becomes the norm; similarly, remuneration systems shift towards lockstep rewarding

seniority and broader contributions to the partnership rather than individual financial performance, and internal rules and ethical codes are developed to regulate individual behavior. Thus, professional work becomes more stable and technical and governance more collegial, leading to the institutionalization of the P^2 (classic professional partnership) archetype (Greenwood, Hinings & Brown, 1990). Such developments are symptomatic of the rise of the firm as the primary economic actor within the legal field. In an age of stable markets and resource intensive technical work, the firm's reputational capital or brand, as well as its broader capabilities, becomes more important than that of the individual solicitor, whilst clients developed relations with firms rather than single professionals. The shift from "eat what you kill" to lockstep remuneration regimes is an enactment of this new balance of power, as the new compensation system disciplines and socializes the individual towards working for corporate objectives and becoming a "professional organization man" (Hanlon, 2004). Ultimately, whereas the nineteenth-century firm was not so much a firm but more a collection of individual lawyers who shared an office, the later version became more collegial and collectively bound.

Our case study of the history of the legal profession has focused on the nineteenth century and by way of contrast on the first three-quarters of the twentieth century to reveal how the entrepreneurial professionalism of the previous century was stabilized and brought under control by a combination of expanding monopolies, tighter professional regulation and the expansion in academic legal education. In the remainder of this chapter we comment on some of the developments of the modern legal profession as we understand it today. Current conditions, we contend, reveal an element of historical cyclicality, as they indicate a return to some of the conditions, logics and practices which characterized the nineteenth-century profession.

If we depict the nineteenth century as an entrepreneurial age unfettered by much regulation or ethical standards except those imparted by family, class and education, it is one in which the legal profession was experimental in its role. Unlike the case for civilian lawyers in Continental Europe, its values were not shaped by the academy and the state; they were molded by the market. Lawyers and law behaved radically and so achieved great strides for business and commerce. The rise of the railways throughout the world demonstrated their capacity for business. During the twentieth century the legal profession was professionalized, with standards, skills and values being altered as lawyers retreated to more technical and advisory roles in stable and protected markets and shifted towards a logic of social trusteeship (Brint, 1994). The lawyer became counselor and advisor, not market maker except to mediate between different sectors of the market, for example companies and banks. The lawyer as company director almost died out after the 1960s. The law firm stabilized as its membership grew and consolidated to take on a collegial philosophy. This was idealized in the adoption, as mentioned above, of lockstep remuneration, which became the norm for City law firms in both London and New York for much of the twentieth century. It acted as a cohesive force that gave firms the power of endurance they lacked in their prior incarnation.

The last quarter of the twentieth and the beginning of the twenty-first century demonstrate another set of changes to the profession, as the world became increasingly globalized. Entrepreneurialism, following the deregulation of the legal services markets, gathered force among lawyers, as they lost the stable monopolies and subsidies of the twentieth century. In particular, following the Thatcherite reforms the contribution of

conveyancing to fees dropped once again below the 20 percent mark (its nineteenth-century level), whilst the legal aid budget was severely curtailed (Muzio & Ackroyd, 2005). Whilst these developments affected especially those operating in the "personal hemisphere" of the law (small firms), corporate firms were met by increasing competition from overseas legal practices, global advisory firms (especially the Big Four accountancy firms and specialist consultancies), the growing sophistication of in-house legal departments and, increasingly, off-shoring solution providers. New competition and declining profitability in historically core markets have pushed the profession towards the proactive development of new markets and services, as indicated by the growth of personal injury work (supported by new commercial arrangement such as no-win no-fee deals) or the relentless global expansion of City firms. This is a process which has been facilitated by the deregulation of the legal services markets culminating in the reversal or at least relaxation of many of the professional regulations introduced in the twentieth century (such as conflict of interest rules, the advertising ban or set minimum fees). Suddenly law firms, in the twenty-first century neo-liberal political economy, were presented with both the need and the possibility to rediscover entrepreneurship.

Such shifts in logic are enacted organizationally through a return to some of the values and practices of the early period albeit in a more sophisticated and globalized context. Law firms, for instance, are becoming more hierarchical, as they instituted different grades of personnel of which only a select few will attain partnership. Partnership itself is losing the characteristic of permanency established in the first half and middle of the century, as firms routinely engage in processes of de-equitization (which are resonant of the periodic blood-letting of the nineteenth-century profession, discussed above). Furthermore, increased competition for scarce talent prompts firms to withdraw from lockstep and re-institute hybrid versions of "eat what you kill," to reward "rain making," innovation and individual initiative (see also Chapter 7).

CONCLUDING REMARKS

The purpose of this chapter was to sketch the nature and development of professional work through the nineteenth and (the first three-quarters of the) twentieth centuries, using some key concepts from the sociology of work. Our brief historical overview documented the shift, but also the co-penetration between different modes of organization, as entrepreneurship gave way to professional forms of work organization before making a resurgence at the end of the twentieth century with the rise of professional services firms (Brock et al., 1999; Empson, 2007), which are the object of this handbook. Perhaps more importantly, this chapter has dispelled some of the myths of a golden age of professionalism, documenting how the legal profession displayed very strong entrepreneurial instincts from inception. This included using the law in a commercially oriented way to add value to clients (as illustrated by the development of the railway industry) and being proactive in the development of new services and markets, a tendency which saw lawyers at the forefront of the promotion of new products such as investment trusts (Sugarman, 1993) and the development of new specialisms such as corporate or industrial compensation law (Hanlon, 2004). Whilst such tendencies are in evidence in today's legal profession, entrepreneurship in the nineteenth century took a more direct and explicit form with

lawyers exploiting commercial opportunities in their own right and taking official positions and direct financial participations in their clients' business. Thus, whilst the Legal Services Act is finally paving the way for multidisciplinary practices, the nineteenth-century attorneys included "half a dozen later professional men" (Reader, 1966: 43), as they acted as brokers, financial advisors, investors and general men of affairs. Indeed the boundary between advisor and client, or professional and businessman, was more fluid and porous than today.

This analysis also indicates how professions are in a dialectical relationship with their markets and the broader social context they inhabit (Hanlon, 2004; see also Chapters 16 and 17). In particular, as the nature of their work develops, professions reconceptualize their identities and roles (interpretative scheme), reframing their understanding of who they are and what they do. In turn, a new interpretative scheme has to be supported by dedicated practices and structures bringing about processes of organizational change. Thus, in the twentieth century the acquisition of secure monopolies, the stabilization of client relationships, the institutionalization of university education as an entry mechanism, and the co-optation of lawyers in the new regulated economy curbed the entrepreneurship and occupational fluidity which had been so pronounced in the nineteenth century and spurred a shift towards more collegial logics and forms of organization. Whilst we have touched only briefly on the dramatic changes of the late twentieth and early twenty-first centuries as they are still in motion, it is interesting to observe how the contemporary notion of commercialized professionalism (Hanlon, 1998) with its associated practices, institutions and organizational arrangements is connected to the reversal of many of the developments brought by the twentieth century. Historical monopolies such as conveyancing have been part-liberalized (currently this market accounts again for less than 20 percent of professional fees (Muzio & Ackroyd, 2005)), legal aid expenditure has been brought under control and eventually reduced, and restrictive practices have been deregulated, whilst, as legal work has become transactional, clients have moved from long-term relationships towards competitive tendering. Thus, the loss of stable markets and the deregulation of restrictive practices have unlocked entrepreneurial forces as individual professionals scramble for new markets and opportunities. The result is a new interpretative scheme where professionalism is understood in terms of its ability to solve commercial problems and add value to client operations (Brint, 1994; Gilson, 1984; Hanlon, 1998) and supported by a range of new practices and structures which are captured under the managerial professional business label (Greenwood & Hinings, 1993).

Our historical analysis reveals an element of cyclicality as the profession moved away from its earlier entrepreneurial, individualist and commercially focused orientation before rediscovering some of these characteristics at the end of the twentieth century. Ultimately, entrepreneurship in the legal profession seems to be connected to two considerations: 1) the availability of stable and lucrative monopolies such as conveyancing; 2) the extent of professional regulation over professional practice and behavior. In the nineteenth century, as discussed, the legal profession did not enjoy any protected and regular sources of income, such as the conveyancing and legal aid of the twentieth century, and therefore it was under pressure continuously to develop new markets, services and income streams, which of course implied acting in an entrepreneurial and commercially minded fashion. Furthermore, such practices and behaviors were allowed in the regulatory

context of the time, as lawyers could advertise, were not bound by set fees, and could engage in a broad range of activities including investing and taking executive positions in their clients. In this context there was both the need and the scope for entrepreneurship. As we discussed, the situation changed significantly in the twentieth century as professional monopolies consolidated, providing a secure income stream for the profession, and the regulatory regime tightened, pushing the profession away from its more openly commercial practices and towards a more collegial professional logic. Finally, the weakening of monopolies and deregulation of the legal services market, crucially including the relaxation of rules covering professional practice and conduct, created a need and opened up a space for a return to entrepreneurial logics and practices. Ultimately then, managerialism, entrepreneurship and professionalism may coexist as distinct business strategies and modes of organization in any occupational setting, yet throughout history long-term developments in the broader economic context may alter their balance, leading to the ascendency of one over the others.

In terms of avenues for future research these are predominantly comparative, as it would be of interest to scrutinize the balance and shifts over time between different occupational logics and methods within different professional occupations, especially those that developed from the start a more international and organizational dimension such as accountancy, and across countries. Indeed it would be interesting to research whether the same cyclicality in occupational logics and their ascendency can be traced in Continental countries, which have very different approaches to the organization and regulation of the professions as well as very different cultural understandings of professionalism and its role within society.

NOTES

1. The modern legal profession including its auxiliaries totals 372 000 according to the Office for National Statistics (2010), which gives us 166 people per legal professional in a population of approximately 61 million, a reduction since the nineteenth and twentieth centuries.
2. A modern version of this activity is found in the Silicon Valley law firms that received stock in lieu of fees from technology companies. Wilson Sonsini invested $72 000 in Google, which on its initial public offering in 2004 returned nearly $28 million to the law firm (Elinson, 2009).

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