Review Essay

An Elusive Profession? *Lawyers in Society*

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Richard L. Abel, *The Legal Profession in England and Wales*. Oxford: Basil Blackwell, 1987. Pp. xxiii+548. $75.00. ("*LPEW*")

Richard L. Abel & Philip S. C. Lewis, *Lawyers in Society*, Vol. 1: *The Common Law World.* Berkeley: University of California Press, 1988. Pp. xiv+399. $40.00. ("*LIS* 1")

Richard L. Abel & Philip S. C. Lewis, *Lawyers in Society*, Vol. 2: *The Civil Law World.* Berkeley: University of California Press, 1988. Pp. xiv+459. $40.00. ("*LIS* 2")

Richard L. Abel & Philip S. C. Lewis, *Lawyers in Society*, Vol. 3: *Comparative Theories*. Berkeley: University of California Press, 1989. Pp. xii+555. $40.00. ("*LIS* 3")

In 1980 a Working Group for Comparative Study of Legal Professions was set up by the Research Committee on Sociology of Law (a constituent of the International Sociological Association). In subsequent annual meetings this working group discussed theoretical approaches to the study of the legal profession and developed an inventory of information for national reporters to collect. This prestigious project resulted in a monumental trilogy, *Lawyers in Society*, edited by Richard L. Abel and Philip S. C. Lewis. Both editors are contributing authors as well; they have written the introductory chapters to the separate volumes and a concluding one. Nor is this all for Abel. He also has produced two of the national reports; and it is his adaptation of existing socioeconomic theory that served as the

If there is such a thing as mega-lawyering, we might as well introduce the phenomenon of mega-reviewing. As my text will show, Max Weber's work looms large over the four books reviewed. If his demands for social scientists have inspired the views expressed here, the demands of the Protestant Ethic have much to do with the fact that the job got done. However, the Weberian spirit was not enough. For additional support I therefore wish to thank I. Bol and R. G. Jansen as well as E. A. Baerends and E. Niemeijer, who criticized my text with care.

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guiding theoretical approach for the empirical research, or at least provided items for the inventory of information.

Two volumes of the trilogy are devoted to a historical description and analysis of the development of the legal professions (or at least some of their segments) in 19 countries. Volume 1, *The Common Law World* (hereafter referred to as "*LIS* 1"), deals with England and Wales, Scotland, Canada, the United States, Australia, New Zealand, and India. Volume 2, *The Civil Law World* hereafter referred to as "*LIS* 2"), concerns Norway, Germany,[1] Japan, the Netherlands, Belgium, France, the city of Geneva in Switzerland,[2] Italy, Spain, Venezuela, and Brazil.[3] Volume 3, *Comparative Theories* (hereafter referred to as "*LIS* 3"), is devoted to analytic articles. They summarize the findings of the national reports from different perspectives and analyze their meaning in the light of diverse approaches to the study of the legal profession. Also, these articles assess what the first two volumes have to offer, suggest possible routes for future research, and present a variety of concrete research suggestions. All this makes the trilogy an unparalleled, formidable collection of data and analysis for which all involved deserve lavish praise.

The choice of a focal point is a decision every reviewer must make, and the trilogy offers a bewildering display of tasty bits from which to choose, as well as several controversial subjects to tackle. Tempting as many other options would have been, I will direct my review to the basic shortcomings of the sociology of the legal profession[4] as a social-scientific discipline and the failings of the trilogy in this respect. As a result of this decision, only limited attention can be paid to summarizing and analyzing the findings of the project. However, even if I had decided otherwise, it would have been difficult to make the accurate presentation the trilogy's manifold aspects deserve. Fortunately many of the authors in Volume 3 have already undertaken this task, in particular Richard Abel (1989), who offers a summary of the findings, and Lawrence Friedman (1989), who provides a critical analysis of the project and the sociology of the legal profession in general.

Nevertheless, a bare outline is needed, and will be given

[1] The development up to 1945 covers "Germany"; after that it is exclusively devoted to the Federal Republic.

[2] The development of the legal profession apparently has been widely divergent in the various Swiss kantons. Editor Abel informed me that Geneva was chosen because of its economic and political importance and for practical reasons.

[3] The choice of these particular countries was pragmatic: a scarcity of financial means and the availability of reporters. For financial reasons, a number of countries already dealt with in *Lawyers in the Third World* (Dias et al. 1981) were also omitted.

[4] Although the study of legal and other professions is commonly called a "sociology," it is not the exclusive domain of that discipline. Several social sciences are involved, among them political science, history, and economics.

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later in this review, although such a sketch can in no way do justice to the richness, variety, and local flavor of the national reports that make the first two volumes a collection of information nowhere else to be found. In saying this, I do not mean to downgrade the effort that went into Volume 3. But these analytical contributions confirm what has been rumored for at least a decade: that the sociology of the legal profession is in a serious theoretical and empirical impasse. The reasons for the impasse are several. The legal profession is studied with many interests in mind and from a number of theoretical standpoints (Friedman 1989:1). Also, the theory available is not particularly coherent. However, this is more or less the normal situation in the social sciences, and it does not preclude scientific progress. The sociology of the legal profession, however, suffers from another, more fundamental problem: The field has adopted an incorrect point of view. All this is reflected in the trilogy.

Although the approach chosen by the Working Group is claimed to be sociological (Lewis 1988:2), this is hardly the case. The trilogy hopes "to provide some background to the activities of both reformers and practitioners" from a scholarly distance (ibid.), but the scholarly reflection on the legal profession is not as social scientific as it would seem. Although the project does offer theory-guided research, the theory involved and the adaptation used are never adequately presented and discussed in the trilogy. To understand its theoretical context, one has to turn to a separate book, *The Legal Profession in England and Wales* (hereafter referred to as "*LPEW*"). Because its introductory chapter would have provided the necessary theoretical overview, it is unfortunate that it has not been included in the trilogy.[5] A remarkable additional flaw is the absence of a clearly defined unit of analysis (which in this case would also be the unit of comparison). The Working Group does not explain what they mean by "the legal profession" or a "lawyer." One may even suspect they never agreed on a unit of analysis to use. At the basis of this disregard for theory and methodological rules is, I believe, the point of view that seems predominant in the trilogy. It is an internal legal point of view, not an external, social-scientific one.

Because it is part of my argument here that the matter of the points of view is closely tied up with the impasse, I begin, therefore, with a short explication of the internal-external debate. Using this distinction, I comment on the state of affairs in the sociology of the legal profession and present the main theoretical approaches and perspectives this discipline has em-

[5] To support my argument and inform the readers, I find I must review Abel's *Legal Profession in England and Wales* ("*LPEW*") as well as the trilogy.

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ployed. Next I discuss the theory that inspired the research in the trilogy, the specific adaptation the working group used and the practical research problems they faced. Only then do I present a summary of the findings. I conclude with some suggestions on possible routes away from the dead end. One of those routes I have chosen myself, and it is from that point beyond the impasse this review has been written. It was the need to find better explanatory theoretical notions for my research material from an observational study of lawyers and clients (Berends 1979) that turned me away from the sociology of the legal profession and toward a theory of litigation (Griffiths 1983).

Internal and External Points of View

There is a fundamental difference between the internal and external points of view in the study of law (Hart 1961) or, more generally, legal phenomena. They differ in the nature of the questions asked and the concepts employed, in the criteria appropriate for assessing the validity of statements, and in methodology (Griffiths 1979). The internal legal point of view is a participant's point of view (and the participants may include any citizen, not just lawyers, politicians, and other policymakers). This is a normative point of view: it is oriented toward legal behavior as it should be under certain conditions, given positive law. As such, the internal legal point of view concerns itself with the dominant legal ideology, which it may endorse as well as criticize in terms of "good" and "bad." The discourse and its concepts derive their meaning from this practical context: They are directed at decisions and judgments.

The external point of view is an observer's perspective (and the observer may be anyone, including a social scientist). Here the legal interaction process and the behavior involved are observed as part of everything that is going on in social life. The external point of view is oriented toward describing and explaining legal behavior. The discourse of this external point of view, although it may sound like the discourse of the participants, is not the same, for it derives its meaning from a different context.

The empirical[6] external point of view aiming at description and explanation, is the appropriate one for the social scientist who wants to study legal phenomena and the legal profession. For this purpose (s)he has a choice between an extreme external point of view and a moderate one (Hart 1961; Mackor 1988). From the first point of view legal behavior is studied as

[6] Law can also be studied from a normative external point of view (e.g., utilitarianism) in which law is subjected to criticism based on moral criteria external to the legal system itself.

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a biologist would study the behavior of birds or sheep: only regularities or laws of behavior are registered. The method is respectable enough, but, to cite Lewis (1989:35), this point of view "overlooks a substantial part of what participants in the system . . . think they are doing." In other words, the extreme external point of view does not pay attention to rule-oriented behavior and the meaning legal (inter)actions have for the observed actors themselves. From the moderate external point of view rule-oriented behavior is a central research concern. This seems to me the most fruitful approach to the empirical study of law and lawyers.

One last remark must be made concerning the participants' discourse, which takes place in what has been called a "natural" language by Larson (1977:xi) and "folk" concepts by Bohannan (1957:5). Such discourses are fraught with ideology and vague, implicit language. This may not be a problem for the participants, but it makes legal concepts insufficient tools for research purposes. However, because the social scientist cannot avoid the use of everyday language, (s)he necessarily employs terms that are also used in the internal legal discourse, albeit in a different way. The specific analytic purpose of the scientific enterprise demands that the meaning of these concepts be attuned to the theories guiding research and that concepts be as unequivocal as possible. This is nicely illustrated by the way Black and Baumgartner (1981) reconstruct such folk terms as "mediator," "arbitrator," and "judge" in their typology of third-party roles. Other examples that will concern us here are the many and imprecise meanings of the folk terms "legal profession" and "lawyer."

The Sociology of the Legal Profession

After some 30 years,[7] the sociology of the legal profession is at an impasse. The combined laments in the trilogy reflect this situation clearly. "Scarce empirical research" (Olgiati & Pocar 1988:336), lack of "sufficiently complex theoretical models" (ibid.:356), "speculative, raising questions rather than answering them" (Halliday 1989:377). In the first chapter of Volume 3, Lawrence Friedman (1989) deals in detail with the discrepancy between the pretenses and the actual performance of the discipline. This is done in an understanding tone, but the message is clear enough. Moreover, it has been heard before from several others.

Among those is one of the editors of the trilogy, Richard Abel. In 1979, when he reviewed Margali Sarfatti Larson's *The*

[7] Empirical research following or criticizing the mainstream structural-functionalism (Parsons 1951) begins with such legal professional studies as Carlin's (1962) and O'Gorman's (1963).

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Rise of Professionalism: A Sociological Analysis (1977), he hailed her rich, multistranded work as one that remedied the manifold failings of the sociology of the legal profession. The particular failings he mentioned were its inadequate theory and its ahistorical, parochial, noncomparative perspective. He added that although empirical studies had become larger and methodologically more complicated, writings often gave an ethical or critical analysis instead of a social-scientific one. Abel's criticism was aimed primarily at the dominant perspective in the sociology of the legal profession, structural-functionalism. This he called a model presented as social-scientific theory, but in essence nothing but "professional ideology cloaked in value-neutral garb" (Abel 1979:82).

The sociology of the legal profession as a whole has invited severe criticism from others as well. As already mentioned, Larson pointed out the dangers involved in the use of legal folk discourse for analytic purposes. She was specifically referring to the use of the U.S. and English legal terminology. Her observation is closely tied up with the complaints of parochial and noncomparative research. In an overview of the literature on the legal profession, Huyse (1980) points out that the field has been dominated by U.S. and English contributors who have restricted themselves mostly to their national professions. Obviously they have also adopted the respective legal folk discourses. This may also help to explain the surprising lack of comparative studies between legal professions in different countries and between different professions within one country. This reluctance to compare is remarkable for a number of reasons. The sociology of the legal profession has borrowed many of its assumptions from a neighboring discipline, the sociology of the medical profession. That would seem to invite comparison between the two, but instead there has been a general lack of interest in doing so (Lewis 1989).

Research has focused on what has been regarded as unique characteristics and problems of the legal profession, disregarding the extent to which it shared these with other professions and occupations in general (Abel 1979). This, in my view, has much to do with the discipline's close link to sociology's long preoccupation with social engineering (Schuyt 1971) and the legal aid reform discussion (Schuyt, Groenendijk, & Sloot 1976; Abel 1985b). The main concern has been with such matters as the quality of legal work, professional pretenses and actual performances, or law as an instrument for social change and its role in the emancipation of the underprivileged. This would explain why so much of what has passed as social-scientific analysis, or wanted to do so, has been essentially ideological, political, or ethical.

Considering this strong emphasis on reform, one would

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have expected an abundance of empirical studies designed to find out how the legal profession actually functions. Quite contrary to the situation in the medical profession, however, empirical research is rather scarce. Most studies have been based on interviews (usually either with legal professionals or clients, only rarely with both), on court files, or a combination of both. Observational research has been virtually nonexistent (Danet, Hoffman, & Kermish 1980). Only recently has empirical work which looks into the actual performances of legal professionals begun to build.[8] But if this micro-social research has long been neglected, neither has the attention paid to meso- and macro-social studies led to a very impressive accumulation of theoretical explanations and empirical knowledge.

The gist of these complaints is that the sociology of the legal profession hardly deserves the name "sociology." For the objective of sociology, like all scientific enterprises, is explanation and ultimately prediction, on the basis of empirically testable theory (Griffiths 1983). Therefore only research explicitly embedded in empirical theory has any chance of contributing to a cumulation of scientific knowledge. If these requirements are not met, whatever one is producing (on the legal profession) is something other than social science, be it high journalism or muckraking (Friedman 1989:22), census taking (Griffiths 1983:147), or whatever name would be appropriate for such products and the various inspirations behind them. There is no denying that such products may be great fun to read or quite enlightening; they also may correctly portray and analyze the actual situation. They may represent very respectable causes and serve high ethical goals; they can play a crucial role in bringing about changes in society, much more so than any serious social-scientific project ever does; and they may inspire and influence social-scientific research and theoretical progress. But they will not be social science.

Theoretical Perspectives

Perhaps surprisingly the state of the sociology of the legal profession cannot be excused by a lack of theoretical notions. There actually are a number of well-defined theoretical perspectives, but one gets the impression they have served more as ideological stances than as theories to be adapted for and tested in empirical research. Much research has either ignored theory or used it at best implicitly and inadequately (Cain 1979; Lewis 1989). It is again Abel in *The Legal Profession in England and Wales*, who has summarized its three main theoretical

[8] The earliest observational studies I am aware of are Cain (1979) and Hosticka (1979). My own followed (Berends 1979, 1983, forthcoming), as did the project of Sarat and Felstiner (1986). More projects are under way or being published.

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streams: the structural-functionalist, the Marxist, and the Weberian one.

The first perspective has Durkheimian roots (Durkheim 1964), but is much better known as the structural-functionalist approach, a name provided by its most important exponent, Talcott Parsons (1951, 1964a, 1964b, 1968). This perspective focuses on the question of social order in light of the classical sociological concern with the consequences of industrialization and urbanization or the transition from *Gemeinschaft* to *Gesellschaft*. *Gemeinschaft* describes a community of all-embracing, intimate, and reinforcing personal associations, where occupations are organized as crafts. *Gesellschaft* describes a society with more discrete, distant, and extensive associations and a tendency toward assembly-line production. When, as a consequence of the Industrial Revolution, polarization between capital and labor intensified and the old ties seemed to crumble, the question emerged what was to keep a society full of egoistic individuals from falling back into a Hobbesian state of anarchy. New binding structures and roles would have to prevent this from happening, and in the structural-functionalist view the professions are playing such a role. They are seen as the modern equivalent of the old *Gemeinschaft*, with a common tradition, common values, self-regulation, and a common commitment of service to all who need it, regardless of class, race, religion, or whatever else divides society (Halliday 1989). This basically romantic idea of a unitarian community with high altruistic, ethical, and quality standards fits the structural-functionalist theoretical notions.

The Marxist perspective (Marx 1967) focuses on production. Although methods of production may have changed through the ages, there always has been a vertical division between two opposing classes: under capitalist conditions these classes are the bourgeoisie and the proletariat. Abel draws this simplified picture of Marxist analysis to emphasize that in this perspective the members of the professions are a marginal group, often no more than the historical residue of the old petit bourgeois artisans. As such the professions seem doomed to disappear as victims of the polarization between the classes. However, Marx also understood that more and more functionaries would be needed to mediate between the classes. This ambiguity became an acute problem for Marxist theorists after World War II when the professions grew tremendously, both in size and in variety. These theorists consequently have been much preoccupied with the question whether the growing number of professionals would merge into one of the existing classes or, instead, would become an independent new class and thus an extra force in the class struggle.

The central concern in the Weberian perspective (Weber

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1954, 1978) is how actors manage to achieve and to maintain a competitive position in a relatively free market: a market that is (more or less) structured by the state but mainly controlled by private producers. The goals of these actors are economic profit and its accompanying social status. This behavior results in competition between groups within certain social classes, and the byproduct of this struggle is a functional division of labor. To stave off the most unpleasant effects of free competition, actors try to protect themselves. This can be done in different ways, but the professions have done so mainly through a strategy of monopolizing (in different respects) their markets and the training and control of members through organization.

Folk Discourse and Analytic Concepts

As easygoing as the sociology of the legal professions has been on theory, it has been even more so concerning developing its concepts, even central ones. The implicit meaning of such terms as "legal profession" and "lawyer" more often than not reflect the national legal usage. Their meaning is elusive, which makes them questionable analytical instruments in (comparative) research.

What might be a conceptually adequate term to define "the legal profession" or a "legal professional"? Although in the past the requirements to qualify as a legal professional were widely divergent, today the common minimum prerequisite is a completed academic legal education. In some countries this is an undergraduate degree, in others a graduate degree. Additional training may be compulsory for certain legal jobs. In English, all these legally trained academics are called "lawyers," but this term has too many different meanings[9] to be useful. It may be preferable to speak of "jurists," who by their training can be split in two categories: those who do "law jobs" (i.e., work more or less directly related to their legal training), and those who do not.[10] This leads to the following concept: All jurists doing law jobs make up the legal profession. That is, I believe, the unit of analysis (and of comparison) which can be deduced from Larson's theory. It certainly seems

[9] In Africa, for instance, the scribe who has some legal knowledge is likely to be called a "lawyer" (Adewoye 1986).

[10] The empirical world rarely allows for perfectly fitting operational definitions; as a result they usually are either under- or overexclusive. My concept of jurists is no exception. For instance: as Abel points out, a small minority of English and Welsh jurists has not been trained in universities. Also at this stage it is extremely difficult to indicate what is and what is not a "law job," since very little is known about the work jurists do. And even if much more were known, any demarcation chosen will probably result in over- or underinclusive units as well. But those are practical research problems.

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the most appropriate one to demarcate the population of legal professionals studied in the trilogy.

Another distinction needed is between entrepreneurial and employed jurists. Entrepreneurial jurists are, in a very strict sense, only the single or joint owners of law firms. However, there are good reasons for including all those jurists who work with them as their employees, for together they make up the independent units that sell their legal expertise to customers or, if one prefers that term, to clients. Clients can be either individuals or organizations in the public or private sectors. The situation of employed jurists is a principally different one: they sell their services to their employers. And they do so by entering into the units of these employers, who will usually be organizations of various sizes in the public and private sectors. Again, this seems to me more or less the division Larson had in mind, and it may serve for the trilogy as well.[11]

This attempt at a suitable unit of analysis is certainly not a synonym for what local legal usage considers to be "the legal profession" or a "lawyer." Both can denote any number of things, such as all jurists by training, only the members of professional associations, entrepreneurial jurists, or only those who hold the monopoly on presentation in courts. In the fields of work where jurists have exclusive rights, the differences between countries are profound. The privilege varies in both breadth and degree of segmentation. In some societies it is very wide and in principle all areas of practice are open to all jurists; in others, various segments of the profession have their own territories and have lost some of their privilege to occupations that do not necessarily require legal training.

Even when we restrict our consideration to the members of professional associations, the size of these groups and the varieties of law jobs their members do can be baffling. In one country one association may be compulsory for all jurists doing law jobs and in others several associations may compete for membership. Elsewhere only some segments of the profession are organized, either voluntarily or compulsory. Canada (Arthurs, Weisman, & Zemans 1988) seems to be the only country where virtually all the jurists doing law jobs are organized in one compulsory association. That makes this nation not only the exceptional case where one association speaks for nearly all, it also makes it the exceptional case where the local legal concept of the legal profession is almost a synonym for the social-scientific one.

Finally, there is one rather deep rift between the professions studied in the trilogy. In (in legal parlance) the "civil

[11] This distinction is not unproblematic either, and other divisions may turn out to be more important. But discovering what is in fact true is for empirical research to find out.

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law" countries the professions have always been clearly segmented, with relatively little job exchange between them. Here the entrepreneurial jurists do not dominate the field; many jurists have always been employed. If these different segments have associations at all, either compulsory or voluntary ones, they represent relatively small groups. In the "common law" countries, the situation is entirely different. Here the entrepreneurial jurists (the actual entrepreneurs and their employees) make up the majority of the "bar" or the "legal profession," or if not that, at least they represent the ideal of the profession. In these countries mobility between different segments is higher than it is in the "civil law" countries. With the exception of England, Wales, and Scotland, even the right to representation in the (higher) courts is not the privilege of one specific group of jurists (*LIS* 1 & *LIS* 2).

In short, a Babylonian confusion reigns in the realm of legal folk discourse, and the problems inherent in translation only add to it. Imagine for instance, an American and a Dutch jurist or legal profession researcher discussing their national "bars." The Dutch bar, *de balie*, is a very small segment of (now) some 5,000 entrepreneurial jurists, called *advocaten*, who have the monopoly of representation in the higher, classical courts.[12] Exact figures are unknown, but *advocaten* are probably no more than 15% of all jurists doing law jobs in the Netherlands. Their range of activities is very small compared to the great variety of activities the members of the U.S. bar can cover. To arrive at the same variety of functions in the Netherlands one probably would have to add all other Dutch jurists, plus an unknown percentage of the members of other occupations who may not be legally trained (Schuyt 1988; Abel 1986, 1988c).

With neither participant aware of these differences, the Dutch jurist or researcher may correctly translate *balie* into *bar* and assume, incorrectly this time, that the English word for *advocaat* is *lawyer.* In fact, actual comparisons have been made repeatedly on the basis of such misunderstandings. Both Galanter (1983:176) and Abel (1985b:640) use the Dutch *advocaten* segment as a comparative figure, resulting in such ratios as 1,406 *lawyers* in the United States per million inhabitants to 199 *lawyers* in the Netherlands. Verwoerd and Blankenburg (1986:1047) make the same mistake when they compare the *advocaat-judge*[13] ratio in a number of countries. This leads to such comparisons as 6.5 *advocaten* to 1 *judge* in the Netherlands; 2.5

[12] In the Netherlands a wide variety of alternatives exists, such as administrative courts and arbitration councils. There, and in the lowest classical court, the *advocatuur* has no privilege. Parties can plead their own cases or can be represented by others, with or without a legal training.

[13] *Judge* may of course be as elusive a word as *lawyer.*

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Anwaelte to 1 *judge* in Nordhein-Westphalen in the FRG, and 20 *lawyers* to 1 *judge* in the United States. Admittedly, these figures only play a minor role in the articles mentioned, but they still convey the wrong message. And although all these authors are well aware of the differences in litigation cultures between and within countries and the alternatives available for dispute resolution (Felstiner, Abel & Sarat 1980–81; Galanter 1981), the incomparability in this particular respect seems to escape them all.[14]

A Historical, Comparative Theory of the Professions

Considering the above, Larson's study indeed was a milestone. It is what a lot of profession research is not: historical, comparative, and, most of all, explicitly embedded in theory. Her argument includes all three of the above mentioned perspectives, with an emphasis on Weber's market theory. To Larson (1977:xvi),

> professionalization [is] a process by which producers of special services [seek] to constitute *and control* a market for their expertise. Because marketable expertise is a crucial element in the structure of modern inequality, professionalization appears *also* as a collective assertion of special social status and as a collective process of upward social mobility.

The legitimation of professionalism, she adds, is not based on class and property but on the achievement of socially recognized expertise and on the creation of a systematic body of knowledge acquired in a university education. Its image of formal training and meritocratic standards is a desirable asset, lending high public credibility to the claims of expertise.

Larson limits the range of her comparison to the English and U.S. professions. She justifies the exclusion of their continental European counterparts with theoretical and practical arguments. Continental European governments have long used the universities to train their (legal) civil servants. This initial close relationship between state and legal profession has set the stage for a comparable development of younger professions. One of the consequences is continental Europe's high percentage of professionals employed in government service, as well as in other nonprofit or profit organizations. In Eng-

[14] Galanter does mention that some differences can be explained by counting methods, for instance, whether judges and retired lawyers are included. But that ignores the more basic problem of comparison. If we multiply the number of Dutch *advocaten* (199) by 6 to get an approximate figure of jurists doing law jobs, this results in a total of some 1,200 per million inhabitants. Although even this remains a speculative way of comparing, it does seem more appropriate, and it certainly gives the Netherlands a ratio fairly close to the U.S. one. This alone might serve to counter some of the wilder speculations done on the basis of such comparisons of which the supposed greater litigiousness of the U.S. population is one.

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land and the United States, on the other hand, a predominantly entrepreneurial professional community developed more independent of state influence. In addition, for a long time, these two communities kept the training of their new members in their own hands. It was not turned over to the universities until late in the 19th century or even the early years of the 20th (*LIS* 1 & *LIS* 2). These entrepreneurial groups, operating in a relatively free market, represented the purest type in terms of Weber's market theory; hence Larson's focus on the Anglo-American experience. As she points out, the inclusion of continental European professions would have required a more complicated theoretical model that allowed for closer relations with the state and included a theory of the marketability of the labor of employed professionals, be it in terms of Marx's theory of exploitation or otherwise. Such an extension certainly would have pushed Larson's project beyond the practically possible. Her actual study covers all older and newer professions.[15]

Abel chose to use a condensed version of her theoretical argument for his work on the legal profession in England and Wales (*LPEW*; 1988a) and in the United States (Abel 1985a; 1988b). His extensive historical study of the English and Welsh profession (*LPEW*) is an impressive empirical work and an invaluable source of information. Unfortunately Abel's work has some of the very failings he pointed out as a critic. His point of view turns out to be implicitly legal, and parochially so. This seriously diminishes the value of his contribution, because the potential of Larson's theory, with its external sociological perspective, has not been realized.

That is not too evident in *The Legal Profession in England and Wales*, which opens with the summary of the aforementioned theoretical approaches, including an overview of the many and often conflicting ideas concerning the legal profession. That alone turns the book into a first-class contribution. A minor flaw in the first chapter is the omission of a definition of professionalism, but elsewhere Abel (1986:2; 1988a:23) has stated clearly that to him "professionalism [is] a specific historical formation in which the members of an occupation exercise a substantial degree of control over the market for their services, usually through an occupational association." The sociology of the professions is, in his view, a subdivision of the sociology of occupations; and all occupations under capitalism are compelled to seek control over their markets. It sounds like a good

[15] However, some, such as teaching and social work, are only mentioned in passing; the main emphasis is on medicine, law, and engineering. Clergy and military are excluded on the grounds that in a bourgeois state they do not operate in a market situation.

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general definition, bringing to mind a series of multidisciplinary comparative studies.[16]

The legal profession, as defined for the purpose of the study includes "all those formally qualified and practising as barristers or solicitors, either independently or in the public and private sectors, as well as students preparing for either branch and law teachers." Also included are the subordinates of private practitioners such as legal executives and barristers' clerks. Excluded are magistrates, judges, politicians, and company officials who are legally qualified (*LPEW*, p. 4). Abel is apparently following Larson's lead in selecting entrepreneurial jurists as his unit of analysis. The inclusion of law students and teachers is necessary if he wants to assess the measure of control the profession has over the training of its new members. The remainder of the book, devoted to an empirical analysis, is a pleasure to read. The author carefully compares his findings with the theoretical notions he has presented, thus enabling his readers to draw their own conclusions step by step. It is a stimulating experience, and one looks forward to Abel's own final evaluation of the merits of his approach. Alas, there is no such discussion; nor is this essential task picked up again in the trilogy. On the contrary, the next and very unexpected thing Abel has to offer in the trilogy is a very (American) legal participant's stance. The closing remarks made in his chapters on the English, Welsh, and American professions leave no other conclusion (Abel 1988a:66; 1988b:238).

To put these conclusions in a proper perspective, a short summary of his research findings in England, Wales, and the United States is needed. The entrepreneurial segments of the two national legal professions have undergone profound changes in the past few decades. Although the barristers still may succeed in insulating their chambers from changing times, this is not the case for solicitors and U.S. entrepreneurial jurists. Whether they fight it or ride with the tide, their world is changing. Nonjurists are nibbling at variously sized chunks of their monopoly, and the numbers of employed jurists, both in public and private sectors, are growing. Another important change is the continuing increase in the size of law firms. Its extreme is to be found in the phenomenon of "mega-firms" (Galanter 1983). In such large and ultralarge firms most legal employees will never climb to the status of associates and owners but will remain part of the growing legal labor force.

How far these changes will go, and how profound they will be, is not clear yet. Nor is it certain how they will affect the lives, status, and income of jurists in various geographical

[16] The very first project one thinks of, considering the subject of his book, is a comparative study of the guildlike organization of English barristers and English labor unionists with their closed-shop system.

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areas, fields of law, kinds of legal services, or the clients or employers they serve. Seen in historical perspective, the development of the legal profession has not been a stable one and the recent developments may be another ripple. In *The Legal Profession in England and Wales* Abel wisely refrains from making any predictions; he only presents a carefully worded, personal opinion. Very unexpectedly this prudence is missing when he summarizes his research on the English and Welsh profession in Volume 1 of the trilogy:

> Professionalism—in the sense in which both champions and critics have used that concept during the last two centuries—will not disappear. It will persist as both a nostalgic ideal and a source of legitimation for increasingly anachronistic practices, although it will lose considerable credibility. It will continue to reflect the experience of a dwindling elite . . . . For the mass of lawyers, however, occupational life will mean either employment by a large bureaucracy, dependence on a public paymaster, or competition within an increasingly free market. Whichever they choose, these lawyers no longer will enjoy the distinctive privileges of professionals—control over the market for their services and high social status. The age of professionalism is ending. (Abel 1988a:66)

The quotation reveals a number of internal legal conceptions. The "legal profession" Abel has been discussing is the segment named by jurists themselves: a rather clearly defined group in England and Wales but a very fluid one in the United States. Although Abel has excluded lawyer politicians in his study of the profession in England and Wales, he includes them in his essay on the U.S. profession (1988b:227). This is hardly done for theory-inspired reasons. Rather, it neatly reflects the U.S. legal fascination with this phenomenon, which is the very locus of the assumption that jurists are important and powerful. Also typically American is another implicit assumption: that professions are the antithesis of bureaucracy (Larson 1977:xvii). Lastly, professionalism as a concept now seems tied up with the decline of small scale entrepreneurial jurism, whereas earlier it was presented as a generic form of occupations under capitalism. Since neither the legal occupation nor capitalism seems about to decline, why would professionalism?

Additionally, the observed collective decline of the legal profession in matters of market control and status appears to assume a uniformly high rise in the past. However, Abel's own empirical reports, as well as various others in the trilogy, clearly show that the legal profession has a history of problematic control over various legal markets, over legal education, and over its own members. Moreover, the profession is stratified in terms of income and intercollegiate prestige ratings. This is certainly the case with the U.S. legal profession (Carlin

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1962; O'Gorman 1963; Blumberg 1967; Macaulay 1963; Heinz & Laumann 1982).

Further in the trilogy, in Volume 3, Abel (1989) presents a more realistic analysis of this empirical reality. But there is no further theoretical discussion. Not even the Marxist theme that resounds in his prophecy is picked up. However, his remarks on professionalism seem to be based on the assumption that small-scale entrepreneurial jurism is destined to vanish as a result of the progressive polarization between capital and labor. Abel seems to assume the legal profession will split up into a small group of bourgeois entrepreneurs and a large majority of employed jurists who will join the ranks of the proletariat. This theme is picked up by Szelenyi and Martin (1989) in Volume 3, when they discuss Larson's theory, in particular its Marxist part. These authors speak of "de-professionalization" and "bureaucratization" in the same vein as Abel has, but they conclude that the legal profession is likely to shake off the threat of proletarization. Does that imply they will all assimilate into the bourgeois class, despite the fact that a growing percentage of jurists is employed? To quote Abel (*LPEW*:25): "[T]his suggests that class analysis is not a particularly powerful tool for understanding the legal profession."

All this is symptomatic of what happens to the theoretical background of the research project as a whole: it is ignored. The Marxist aspects are treated in this less than meticulous way; the Weberian and Durkheimian parts are not discussed at all. Reading Abel's empirical analysis of the development of the profession in England and Wales and the research reports in *The Common Law World*, however, one gets the impression that neither Weber's market theory nor the other theoretical perspectives deserved such a perfunctory treatment.

Theory and the Trilogy

The Working Group leaves a number of questions unanswered. Even if they had formulated a clear concept of profession and a proper unit of analysis, Abel's adaptation of Larson's theory is at best a theory fit to study (some) entrepreneurial segments of the legal profession in a limited number of countries and for a rather short period of time. It seems to me that Larson's original version might have served better. Its stronger emphasis on the academically trained specialist status of all jurists might have narrowed the gap between entrepreneurial and employed jurists. The profession as a whole could have been placed firmly within the wider range of occupations; and the changes observed might have been tackled with a number of additional theoretical approaches, including

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some concerned with an increasing division of (social control) labor (Abel 1973; Griffiths 1984).

There are several indications that the Working Group has had its problems with Abel's adaptation of Larson's theory, which may explain why both are only mentioned but never presented in full in the trilogy. Both editors make contradictory remarks on the topic. In the introductory chapter to Volume 1 Lewis (1988) points to the adaptation as the guiding light for the empirical research. By Volume 3, however, Abel (1989:80) speaks of "agnosticism about the most fruitful analytical strategy" and encouragement of the inevitable "theoretical pluralism."

There too, he owns to his "thoroughly ethnocentric" theoretical approach (ibid., p. 81). Apparently his colleagues convinced him of this "ethnocentricity." However, that may not be the most adequate term here. His is an internal legal point of view, and a parochial one. There is no evidence in the trilogy that other Working Group members, diverse as their ethnic backgrounds may have been, were any more aware of this problem than he was. If they had been, they could easily have avoided such seemingly contradictory conclusions as the following. Abel, as we have seen, argues that professionalism is dying. He does this on the basis of his concept of profession, which seems to provide only for (small-scale) entrepreneurial jurists. His Canadian neighbors (Arthurs et al. 1988), who discuss both entrepreneurial and employed jurists, come to the very contrary conclusion that professionalism is alive and well. Although fortunes are shifting between different segments, the Canadian legal profession as a whole is thriving.

Apparently it was not initially obvious to the Working Group how widely divergent national professional realities are. Otherwise the "common law" authors would hardly have written their contributions as they did: never bothering to explain their local vocabulary for the benefit of foreign readers.[17] The "civil law" authors try harder to explain all the different names for what in English often simply is labeled a "lawyer." But the comparability problems are never adequately resolved. Abel (1989) discusses extensively the problems with the unit of comparison, and Lewis (1989:35) even discusses the matter of points of view. But, like the others, he, too, remains silent on the relationship between these methodological problems, theory, and points of view. As a result, all through the trilogy, one

[17] Abel starts off, plunging right into the description of such wigged and wigless exotic birds as "barristers," "solicitors," or "Queens counsel," who seem to nest in "chambers" and to sit in "Inns." The bewildered foreigner is helped somewhat by the Canadians, but is not really enlightened until the penultimate chapter in Volume 1, when Weissbrot (1988) does the necessary explanation for the Australian legal profession. Since this one is, for colonial reasons, more or less modeled on the English one, the birds become more familiar.

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never knows for certain which profession is being discussed: Is it simply some local legal version? Or one construed with a social-scientific concept in mind?

The problem of the points of view is also reflected in the organization of the trilogy. The decision to divide the national professions into common law and civil law worlds inevitably invites comparison with the discipline of comparative legal studies, where terms such as "civil" and "common law" legal systems are analytic concepts. Both editors find these terms suitable for social-scientific purposes; and Lewis even seems to believe one can divide the nations on this globe into four law worlds: the two mentioned ones, plus a "socialist" and an "Islamic" law world (Lewis 1988). That foursome, however, sounds much more like an uneasy mixture of legal, political, and religious labels than a useful social-scientific concept.

However, to an observer from the "common law" world, as Lewis is, this is not immediately evident. The "common law" system may very well, for historical-political and geographical reasons, represent the only pure legal type. The British Isles did not suffer from continuous foreign influences, went their own legal way, and then shipped the result more or less wholesale to the colonies. Continental European countries, on the contrary, have been mixing and changing internally for centuries. As a result they reflect a jumble of influences in their legal systems. They in turn enforced these mixtures on their colonies, or exported them literally, as was true of the imperial German legal code, which served as the model for the modern Japanese system (Rokumoto 1988:160). Finally the colonies added their own ingredients, if their indigenous population was not decimated and/or their legal systems successfully suppressed. India (Gandhi 1988) is a case in point, and so, for instance, is Indonesia, where Dutch law, *adat* (Indonesian indigenous law), and Islamic law together make out the legal reality (von Benda-Beckman 1990).

The Empirical Research and the Combined Handicaps

Sharing a common language and a colonial heritage, the "common law" authors dealt with fairly comparable legal professions and legal discourses, and subsequently could manage more or less with Abel's theory—certainly "less" in the case of the Scottish contribution. For historical, political reasons Scotland has old legal ties with the European continent, and although the grumbling between the lines in Paterson's (1988) contribution is partly a matter of different interpretations, it is also a prelude to the problems the authors from the "civil law" countries were bound to have with a theory strictly meant for entrepreneurial jurists. Evidently, all they used was the inven-

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tory of information to collect, as far as practical research problems permitted even that.

These authors could have limited their analysis to the entrepreneurial segments of their national legal professions. That, however, would have created its own severe problems, for how relevant are comparisons on such factors as market control between units constituted of a national majority of jurists, with one association speaking for all, and other units consisting of the jurists from a few small segments with or without associations? The civil law authors faced additional problems as well. With very little knowledge available on several segments of a national profession, there sometimes was little to analyze. Trying to obtain the relevant information would have involved research efforts far beyond the available means in time, funds, and personnel. Given these limitations, making the theoretically correct choice would have been a most unproductive one. It would also have defeated the other purpose of the trilogy: the presentation of all these national legal professions. Under the circumstances the choice they made was a wise one.

For all authors the scarcity of relevant data must have been a problem in itself. Serious social-scientific research on jurists is scarce, whether it is on their training, their work, their role in society, or the role of their associations. Instead there is an abundance of information based on internal legal sources, ranging from very accurate observations to downright prejudiced gossip. There also is statistical data from governments, universities, or associations of jurists. However, if these exist at all and are available, they are at best sources for a limited range of information. Furthermore, they usually are not collected with research purposes in mind, and to interpret them is not always easy, if they are at all reliable.

In the face of all these handicaps the authors had to make a choice. Some have blended information from all sources into well-told stories, very pleasing to the reader but leaving the social scientist slightly uneasy about their empirical basis. Others have struck admirably to verified sources, but they leave the reader wishing to be entertained slightly dissatisfied. The contribution from the Netherlands, the country I know best, reflects many of these shortcomings. Schuyt (1988) does give an overview of the different segments of the profession but then concentrates on the *advocatuur*, those entrepreneurial jurists who have a monopoly in the higher classical courts. On the argument that notaries are appointed by the state and therefore are not truly free professionals, Schuyt excludes a group that is otherwise a distinctly entrepreneurial segment of the legal profession and, like the *advocatuur*, has one association with compulsory membership. His argument may well be an

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excuse for a very practical problem: the only research findings available and appropriate for his subject dealt with the *advocatuur*.

The consequences of the combined handicaps are severe. The trilogy only offers more of what the sociology of the profession has offered before. It is above all a theoryless description and discussion of the class backgrounds of jurists, their training, their career routes, and the actual segmentation and stratification within the profession, in terms of class, gender, ethnicity, income, and status. There is, of course, comfort in the fact that now for the first time it has been done on a large scale, systematically and comparatively.

Jurists in Their Societies

With two exceptions[18] the reports are historical descriptions and analyses of the development of the 19 legal professions. Although some European professionals are easily traced back to the 15th and 16th centuries, the emphasis is on two periods: from approximately the middle of the 19th century to World War II and the period thereafter. The first emphasis reflects the chosen theory; the second one has everything to do with the large socioeconomic changes in the second half of this century and its consequences for law schools and the legal profession.

If market control is supposed to be a distinctive feature of the entrepreneurial segments of the legal profession, what, then, does the empirical research in the trilogy have to say about the control these jurists have over the market for their services? To answer these questions, it suffices to quote three reporters and one of the analytic contributors. "Every society seems to be able to shape its own profession" (Arthurs et al. 1988:164), and "[i]n every country, factors of history, structure, or tradition work to produce a relatively large, or small, professional cohort" (Friedman 1989:9). As this last author emphasizes, it is very difficult if not simply impossible to analyze adequately such macro-social processes; and it certainly cannot be done on the basis of the available insufficient theory, limited empirical research, and ambiguous statistical data.

It is not very surprising to find that major national and international events and changes have had their impact on the legal profession. Revolutions (Burrage 1989) were turning points for French and U.S. jurists; inevitably, the economic depression in the 1930s had its effects on a profession in part closely related to economic activity; two world wars decimated

[18] These two exceptions are the Netherlands and Belgium. Schuyt (1988) and Huyse (1988) have confined themselves to the postwar period. Their limitation strikes a discordant tone, and unnecessarily so, it seems to me.

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the number of jurists in the countries involved, and not all professions recovered quickly. Very dramatic changes also were worked by the economic, political and demographic developments after World War II. The postwar economic boom and the resulting economic and legal expansion led to dramatic changes in the scale of markets, industries, commerce, and economic relations. These increased the market for legal work as did the growth of welfare states, their subsequent expansion of legislation, and the need for legal services.

Babies also boomed after World War II, and this, combined with the effects of a democratization of (higher) education, has, in the last few decades, in most countries led to rapidly increasing numbers of entrants in the universities. Legal studies were no exception, and thus larger numbers of law students moved on to legal careers. At least this was the case in the industrialized states. In the developing countries a legal training is much more a general education for business and politics, as it was in many industrialized nations at an earlier age. In an expanding market for legal work the new entrants generally found a niche for themselves, including the latest wave of entrants, women. Women now form almost half of all law school students in most countries. Their entry into the profession, however, seems to have exhausted its capacity to expand, at least for the time being.

If the research has not been able to confirm or refute a number of ideological notions about jurists in society; it has once more confirmed the empirical reality as opposed to the ideology of the pure meritocratic standards of law schools and the legal profession. Where once the costs of long and poorly paid apprenticeships and the resulting delay of one's earning years were a formidable obstacle to less wealthy applicants, the costs of a law school education can still be prohibitive. For example, in the United States, high tuition and high entrance requirements plus fierce competition to get into the more prestigious schools favor students of the higher social classes. More prestigious firms tend to select graduates from more prestigious schools, which strongly affects the career paths of law school graduates and reinforces the class bias of the profession. Elsewhere, in the "civil law" countries in Northern Europe for example, where law faculties have more or less the same quality levels and the costs of academic studies are generally lower, the less wealthy are less handicapped. In developing countries the costs of a legal education, no matter how moderate, are prohibitive to all who do not come from the (small) middle and upper class.

In many industrial countries, the postwar educational democratization has helped many students from lower-class backgrounds (men predominantly) to receive a legal education and

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to enter legal careers. Despite such softening effects, class is still a major factor (and one not wholly independent of wealth) when it comes to stratification within the profession. The impact of class differences varies per country, but the best-paid segments of the professions are still mostly the preserve of the upper-middle and upper classes. Or, to paraphrase Galanter (1974), the haves who come out ahead tend to be upper class, white and male. And what about the latest influx of women? They are, as it turns out, mostly of upper-middle- and upper-class background. Their entry seems to have lowered or stopped the entry of men from lower classes. If so, the feminist drive for equal opportunities turned out to be a drive for equal opportunities for (white) women of the upper classes.

So much, then, for the dream of equal opportunities for all. And what about the equality between sexes in the legal profession? The women who have entered the legal profession are still predominantly found in the less prestigious jobs in those fields that allow them to work part-time. Certainly it is too early to say anything definite about their climb up the ladder, but their run on less time-consuming jobs is a discouraging sign. It indicates the too familiar pattern of women dividing their attention between (in this case) law and the main burden of household and child care jobs, while their partners devote most or all their time to their own, nonhousehold careers. If this is indeed the case, these women will remain the disadvantaged gender within their own classes, and all they will have achieved is a broadening of the gap between upper and lower classes. In the long run even the one positive outcome from this feminist move may then be lost: a new culture of gender equality, starting at the upper-class level and filtering down.

The Impasse and How to Get Out

No coherent theory, methodologically inadequate research; that has been the state of affairs in the sociology of the legal profession for a long time. The trilogy, for all its other merits, does not alter that situation. The Working Group members apparently did not understand that one of the discipline's basic methodological shortcomings has been the failure to work toward the more coherent theory needed. Until the field starts to take seriously the social-scientific status it claims and adopts an external social scientific point of view, it will not find a way out the impasse.

None of the authors who contributed to Volume 3 has a very promising theoretical perspective to offer. Considering the negligible role theory seems to have played in the project, this comes as no surprise. Whatever the merits and shortcomings of the theoretical perspectives mentioned, therefore, they

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still await a serious test. The same is true for Larson's complex theory. Also, her example should encourage others to try to integrate existing theoretical notions into a more comprehensive theoretical frame. After all, there is nothing against an opportunistic attitude toward the use of existing theory: it is there to be taken and, if necessary, adapted, transformed, reinterpreted, and integrated into alternative conceptual frames.

If the Working Group does not suggest any particularly promising theoretical approach, it does point to a definite course for empirical research. Both editors (Abel & Lewis 1989) and at least one author (Friedman 1989) suggest what is most needed is to start looking at what jurists actually do. This means doing micro-social research, among other things, to study jurists' roles and their functions. The combined plea is not, I would think, one for a return to an orthodox structural-functionalist perspective. It could hardly be expected of Abel and Lewis, and Friedman's is one of the most social-scientific contributions in the trilogy. He has several good suggestions to make; and, at the same time he debunks some favorite maxims of the sociology of the legal profession.[19]

Empirical research into the daily activities of jurists and their associations may produce the desired effects of opening new theoretical avenues by itself. Several examples of this line of investigation are already available and they all inspired a search for alternatives. Halliday (1989), one of the contributors to the trilogy, studied the American Bar Association and found that neocorporatist theory models could not grasp the complexity of internal bar politics. Unfortunately, he could not find an alternative conceptual apparatus equal to the challenge. While his experience may not be very encouraging, others have been more successful.

A decade ago, Cain (1979) was among those who criticized the sociology of the legal profession for its failures and its resulting inability to explain the roles of (entrepreneurial) jurists in their daily practice. She reached her conclusions on the basis of a micro-social study, which involved the way four solicitors in the London area handled a large number of cases. Lawyer-client interactions were a central concern of her project. She argued that the concept of profession obscures more than it reveals about the work people do, and she proposed, as an alternative, to study jurists in terms of a theory of social structure. Her argument is aimed primarily at the assumption that jurists are "social controllers." She defined them instead as

[19] Only when he seems to suggest that in all societies all functions are always present, even if they may be carried out by different occupations, does he become too deterministic to my taste. Would it not be wiser to allow for the possibility that sometimes and somewhere functions are missing, or are only insufficiently presented? Such variations might, for instance, help to explain differences and changes.

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"conceptive ideologists." The theorists inspiring her were Weber (1954), Marx (1976) and, foremost, Gramsci (1971).

My experiences with the sociology of the legal profession were similar to Cain's. After observing the daily activities of two Dutch *advocaten* for six months (Berends 1979) and comparing my findings with the existing theoretical notions on the legal profession, I, too, realized their explanatory power was inadequate. Like Cain, I turned elsewhere, but in a different direction—a direction inspired by my research material itself, which suggested that there was much to be explored and explained at the micro-level, before anything definite could be said about the macro-social role(s) of jurists. My *advocaten* obviously became involved in complex, dynamic dispute processes, in which claims oriented toward all kinds of rules played a prominent role. I needed a theory to explain the role of lawyers, legal rules, and legal institutions in that kind of setting, and I found one: a theory of litigation.

As yet it is only a partially filled-in sketch, an effort to integrate several existing notions and a rapidly building body of empirical and conceptual research into a comprehensive general empirical theory (Griffiths 1983). It is much indebted to the newer processual approach in anthropology of law (Nader & Todd 1978). That is the one social-scientific discipline which is hardly mentioned in the trilogy, but all the same it has something to offer.

The theory of litigation[20] must be seen in the context of the assumption that legal pluralism and the division of social control labor are the normal situation in all societies of some size and complexity (Friedman 1989:11; Griffiths 1986). Legal pluralism presupposes the presence of more than one normative order in the available structure of social norms and institutions in society; and these normative orders are to be found in the multifarious, interlocking, overlapping, and interacting social groupings which Moore (1973) has called semi-autonomous social fields. Social control (labor) is "all of the human activity entailed by the maintenance and operation of systems of rules and behavior" (Griffiths 1984:150). This implies that it is not the exclusive province of official (state) law and its structures; the state normative system is one of the many legal systems operative in a given society. All these systems are "legal," but they vary in their degree of differentiation, specialization, and formalization (in functions, roles, and institutions) of social control labor (Abel 1973; Griffiths 1984).

The theory of litigation itself addresses the processes by which normative claims (claims oriented toward rules) emerge, are transformed, and get disposed of. A litigation process

[20] The short outline given here borrows freely from Griffiths (1983).

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emerges when an actor, implicitly or explicitly, invokes a rule as the reason why his or her position should prevail. Such claims are often asserted in the absence of opposition and without implying opposed values or interests, but others do meet with opposition and then a dispute ensues. Over the life of a particular dispute process various dispute institutions (state legal ones among them) may come into play, sequentially, comparatively, or as alternatives; the issues involved may develop and change; the actors[21] involved and the roles they play may change in the various phases of the dispute's career. The factors determinative of, and associated with, variation in litigation behavior are the characteristics of the actors, the characteristics of their relations, and the available litigation structures. These factors are not stable, but are transformed in the course of a litigation process by reciprocal influences, feedback, and exogenous influences (Griffiths 1983).

Concerned as it is with norms, structure, and process, the theory of litigation offers a comprehensive framework for many types of inquiry, among them the long neglected issue of the work lawyers do for their clients and employers and what difference it makes that lawyers do these jobs (Abel & Lewis 1989:514). That inquiry, in turn, will require the micro-social research so long neglected by the sociology of the legal profession, and it will have to employ longitudinal (observational) field studies as one of its research methods.

My own subsequent observational studies (Berends 1984; forthcoming) convince me that longitudinal field studies and litigation theory are worth the effort. *Advocaten* who serve individuals typically become involved at later stages of litigation processes. These jurists play a number of roles which should enable us to compare their position and performance with very diverse legal and nonlegal actors, as Black and Baumgartner's (1983) typology of third parties suggests. This may be a promising beginning for a theory of different parties involved in different kinds of disputes. Also, the behavior observed in litigation processes and the patterns of these processes themselves seem to make it worthwhile to pick up once more the strands of the sociology of conflict (Simmel 1955; Coser 1956; Gessner 1976). These routes certainly lead away from a theory exclusively devoted to the legal profession, but why not? The sociology of the legal profession, which is only a subdiscipline of a sociology of occupations, at best explains some aspects of the

[21] The actors (who may be individuals, groups, or organizations) are either first, second, or third parties. The first parties are the actual litigants. The second parties are actors who are part of the normal environment of one or more of the first parties, and have become involved for some reason and in some role. Third parties do not belong to the normal environment of the first parties; they become involved for occupational reasons because they have a certain expertise, play certain litigation roles, etc.

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role of jurists in society. If jurists are important enough to study, such research must be done from different theological angles and with attention to all the settings in which jurists do their work.

In sum, let's all change perspectives and research again. Who knows how soon the secrets of the legal profession will start to reveal themselves? The other option is to continue as before, which will not get us out of the impasse at all, or at best will lead right into the next dead end. It seems a waste of time and energy to continue to stumble around until another generation of masters of sociological thought (to borrow from Coser (1971)) comes along and presents us with the major theoretical work we need. Certainly the genius of a Maxine Weber, a Carlita do Marx, or an Emilia Dourkhhaimme will succeed in creating a body of inspiring sociological knowledge regardless of the quality of existing research. Nevertheless, their major works might reach us sooner if we pave the way for them.

References

NOTE: The volumes under review are listed at the beginning of the Review Essay. Chapters in those volumes are cited to year and listed here with abbreviated volume titles.

Abel, Richard L. (1973) "A Comparative Theory of Dispute Institutions in Society," 8 *Law & Society Rev.* 217.

——— (1979) "The Rise of Professionalism," 6 *British J. of Law & Society* 82.

——— (1985a) "Comparative Sociology of Legal Professions: An Exploratory Essay," 1985 *American Bar Foundation Research J.* 1.

——— (1985b) "Law without Politics: Legal Aid under Advanced Capitalism," 32 *UCLA Law Rev.* 474.

——— (1986) "The Decline of Professionalism?" 49 *Modern Law Rev.* 1.

——— (1988a) "England and Wales: A Comparison of the Professional Projects of Barristers and Solicitors," in *LIS* 1.

——— (1988b) "United States: The Contradictions of Professionalism," in *LIS* 1.

——— (1988c) "Lawyers in the Civil Law World," in *LIS* 2.

——— (1989) "Comparative Sociology of Legal Professions," in *LIS* 3.

Abel, Richard L., & Philip S. C. Lewis (1989) "Putting Law Back into the Sociology of Lawyers," in *LIS* 3.

Adewoye, Omoniyi (1986) "Legal Practice in Ibadan, 1904–1960," 24 *J. of Legal Pluralism* 57.

Arthurs, Harry W., Richard Weisman, & Frederick H. Zemans (1988) "Canadian Lawyers: A Peculiar Professionalism," in *LIS* 1.

Benda-Beckmann, Franz von (1990) "Rechtsanthropologie, Rechtssociologie en Rechtspluralisme," 1 *Recht der Werkelijkheid* 47.

Berends, Miek (1979) "Een Tipje van de Toga . . . " (Master's thesis), Sociologisch Instituut, Rijksuniversiteit, Groningen.

——— (1983) "De Interactie van Advocaten en hun Echtscheidingsclienten," *Rechtssociologische Mededelingen nr. 11.* Juridische Faculteit, Rijksuniversiteit, Groningen.

——— (forthcoming) *Geschilbeslechters: De Advocatuur door een Andere Bril Bekeken.*

Black, Donald, & M. P. Baumgartner (1983) "Toward a Theory of the Third

https://doi.org/10.2307/3053840 Published online by Cambridge University Press

Party," in K. O. Boyum & L. Mather, eds., *Empirical Theories about Courts.* New York: Longman.

Blumberg, Abraham S. (1967) "The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession," 1 *Law & Society Rev.* 15.

Bohannan, Paul (1957) *Justice and Judgement among the Tiv.* London: Oxford University Press.

Burrage, Michael (1989) "Revolution as a Starting Point for the Comparative Analysis of the French, American, and English Legal Professions," in *LIS* 3.

Cain, Maureen (1979) "The General Practice Lawyer and the Client: Towards a Radical Conception," 7 *International J. of the Sociology of Law* 331.

Carlin, Jerome (1962) *Lawyers on Their Own.* New Brunswick, NJ: Rutgers University Press.

Coser, Lewis (1956) *The Functions of Social Conflict.* Glencoe, IL: Free Press.

——— (1971) *Masters of Sociological Thought.* New York: Harcourt Brace Jovanovich, Inc.

Danet, Brenda, Kenneth B. Hoffman, & Nicole C. Kermish (1980) "Obstacles to the Study of Lawyer-Client Interaction: The Biography of a Failure," 14 *Law & Society Rev.* 905.

Dias, C. J., et al., eds. (1981) *Lawyers in the Third World.* New York: International Center for Law in Development.

Durkheim, Emile (1964) *The Division of Labor in Society*, trans. George Simpson. New York: Free Press.

Felstiner, W. L. F., Richard L. Abel, & Austin Sarat (1980–81) "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . . ," 15 *Law & Society Rev.* 631.

Friedman, Lawrence M. (1989) "Lawyers in Cross-cultural Perspective," in *LIS* 3.

Galanter, Marc (1974) "Why the 'Haves' Come out Ahead: Speculations on the Limits of Social Change," 9 *Law & Society Rev.* 95.

——— (1981) "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law," 19 *J. of Legal Pluralism* 1.

——— (1983) "Mega-Law and Mega-Lawyering in the Contemporary United States," in R. Dingwall & P. Lewis, eds., *The Sociology of the Professions: Lawyers, Doctors, and Others.* London: MacMillan.

Gandhi, J. S. (1988) "Past and Present: A Sociological Portrait of the Indian Legal Profession," in *LIS* 1.

Gessner, Volkmar (1976) *Recht und Konflikt: eine Soziologische Untersuchung privatrechtlicher Konflikte in Mexico.* Tübingen: Mohr.

Gramsci, A. (1971) *Selections from the Prison Notebooks.* London: Lawrence & Wishart.

Griffiths, John (1979) "Enkele onderscheidingen die aan alle zinvolle vraagstellingen ten aanzien van het recht voorafgaan," 28 *Ars Aequi* 839.

——— (1983) "The General Theory of Litigation—A First Step." 5 *Zeitschrift für Rechtssoziologie* 145. Reprinted as (1983) SPR-13. Madison, WI: Institute for Legal Studies.

——— (1984) "The Division of Labor in Social Control," in D. Black, ed., *Toward a General Theory of Social Control.* New York: Academic Press.

——— (1986) "What Is Legal Pluralism?" 24 *J. of Legal Pluralism* 1.

Halliday, Terence C. (1989) "Legal Professions and Politics: Neocorporatist Variations on the Pluralist Theme of Liberal Democracies," in *LIS* 3.

Hart, H. L. A. (1961) *The Concept of Law*, Oxford: Clarendon Press.

Heinz, John P., & Edward O. Laumann (1982) *Chicago Lawyers: The Social Structure of the Bar.* New York: Russell Sage Foundation.

Hosticka, Carl J. (1979) "We Don't Care About What Happened, We Only Care About What is Going to Happen: Lawyer-Client Negotiations of Reality," 26 *Social Problems* 5.

https://doi.org/10.2307/3053840 Published online by Cambridge University Press

Huyse, Luc (1980) "Sociologie van de Advocatuur," 2 *Nieuwsbrief voor Nederlandstalige Rechtssociologen* 12.
——— (1988) "Legal Experts in Belgium," in *LIS* 2.
Larson, Magali Sarfatti (1977) *The Rise of Professionalism: A Sociological Analysis.* Berkeley: University of California Press.
Lewis, Philip S. C. (1988) "Introduction," in *LIS* 1.
——— (1989) "Comparison and Change in the Study of Legal Professions," in *LIS* 3.
Mackor, Anne Ruth (1988) "Enkele beschouwingen over het onderscheid tussen interne en externe gezichtspunten ten aanzien van het recht." Master's thesis, Centrale Interfaculteit, Rijksuniversiteit, Groningen.
Marx, Karl (1967) *Capital.* New York: International Publishers.
——— (1976) "The German Ideology," in *Collected Works.* London: Lawrence & Wishart.
Macaulay, Stewart (1963) "Lawyers and Consumer Protection Laws," 14 *Law & Society Rev.* 115.
Moore, Sally Falk (1973) "Law and Social Change: The Semi-autonomous Social Field as an Appropriate Subject of Study," 7 *Law & Society Rev.* 719.
Nader, Laura, & Harry F. Todd, eds. (1978) *The Disputing Process: Law in Ten Societies.* New York: Columbia University Press.
O'Gorman, H. J. (1963) *Lawyers and Matrimonial Cases.* New York: Free Press.
Olgiati, Vittorio, & Valerio Pocar (1988) "The Italian Legal Profession: An Institutional Dilemma," in *LIS* 2.
Paterson, Alan A. (1988) "The Legal Profession in Scotland—An Endangered Species or a Problem Case for Market Theory?" in *LIS* 1.
Parsons, Talcott (1951) "Social Structure and Dynamic Process: The Case of Modern Medical Practice," in T. Parsons, *The Social System.* New York: Free Press.
——— (1964b) "The Professions and Social Structure," in T. Parsons, *Essays in Sociological Theory.* New York: Free Press.
——— (1968) "Professions," 12 *International Encyclopedia of the Social Sciences.* New York: Macmillan.
Rokumoto, Kahei (1988) "The Present State of Japanese Practicing Attorneys: On the Way to Full Professionalization" in *LIS* 2.
Sarat, Austin, & William L. F. Felstiner (1986) "Law and Strategy in the Divorce Lawyer's Office," 20 *Law & Society Rev.* 1.
Schuyt, C. J. M. (1971) *Rechtssociologie: een Terreinverkenning.* Rotterdam: Universitaire Pers.
——— (1988) "The Rise of Lawyers in the Dutch Welfare State," in *LIS* 2.
Schuyt, C. J. M., Kees Groenendijk, & Ben Sloot (1976) *De Weg naar het Recht.* Deventer: Klewer.
Simmel, Georg (1955) *Conflict and the Web of Group Affiliations,* trans. K. H. Wolff and R. Bendix. Glencoe, IL: Free Press.
Szelenyi, Ivan, & Bill Martin (1989) "The Legal Profession and the Rise and Fall of the New Class," in *LIS* 3.
Verwoerd, J. R. A., & E. R. Blankenburg (1986) "Beroep op de rechter als laatste remedie?" 33 *Nederlands Juristenblad* 1045.
Weber, Max (1945) *Law in Economy and Society,* ed. Max Rheinstein; trans. E. Shils & M. Rheinstein. Cambridge, MA: Harvard University Press.
——— (1978) *Economy and Society.* 2 vols., ed. G. Roth & C. Wittich. Berkeley: University of California Press.
Weissbrot, David (1988) "The Australian Legal Profession: From Provincial Family Firms to Multinationals," in *LIS* 1.

https://doi.org/10.2307/3053840 Published online by Cambridge University Press