

The Resisting Legal Profession: Why We Haven't Seen Much Change

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It is often argued that the superior cognitive powers of *homo sapiens* enabled them to overcome the limitations of the Neanderthals through better abilities to make tools and diversify their agricultural processes. As a result they had better nutrition and were stronger and so dominated others. Harari in *Sapiens* argues it is to do with human's abilities to communicate and learn from such communication, or the ability to gossip. It sounds trite but from one's communicative abilities come myths, stories, and fictions (how much of the common law is based on fictions?). And it is this which makes professions so successful—their capacity to create myths and legends to ensure their place within society.

Is this so different to the stories professionals tell today? I suggest not. What has changed is there is now intense competition among creators and interpreters of myths. The narratives told are often contradictory, even among professionals who ought to agree. Knowledge and expertise—often ignored in the studies of professions—are crucial to understanding the situation of professions and professionalization today. Why is the situation for professions more precarious now than before? I put forward some reasons:

- The democratization of knowledge through such intermediaries as the internet
- Increasing difficulty of distinguishing between scientific and non-scientific knowledge
- The loss of self-regulation of professions, including loss of trust within and between professionals and clients, and the increased role of external regulation and audit (i.e. governmentality)
- Increased role of states intervening in delivery and training of professional services and professions
- The historical move towards bureaucratic organizations as the mode of professional delivery with a consequent adoption of new audit techniques such as New Public Management
- Increasing permeability of professional boundaries—who controls whom?
- Increased marketization of professions or their financialisation
- Professionals' loss of autonomy and subsequent "gain" in discretion
- The disruptive (rather than sustaining) power of technology to hollow out professional skill sets
- Better understanding of how the mind works, via cognitive science, especially in relation to hive minds versus individual limitations

This list is by no means exhaustive and some may question its content. But I think it contains historical and sociological truth.

The strength of narrative has other consequences. It enables organizations and institutions to create "lifeworlds" that become self-sustaining and powerful. Within enterprise cultures narrative becomes a dominant force towards creating domination. Consider, for example, how Apple has created a self-contained technological microcosm that is hermetically sealed from open source software. Consumers allow themselves to be captured by the compelling narratives that Apple spins around ideals of "the good life".

Tesla, more recently, has created a new lifeworld centred on energy capture and storage that enables self-sufficiency of a kind through batteries and continuously updated electric cars. By contrast, Samsung was ensnared in crisis management when its phones started spontaneously combusting and it rapidly lost its grip over the ensuing stories. Stories, while enabling us to communicate, are ways of creating and losing trust.

Narratives have many roles to play and my argument is that professions have to recreate their stories and myths or risk losing their established positions in society. Stories create the capability to retain their legitimacy and power. These are the stories told to the world about how essential professions are to civilized society. They justify their use of power and self-regulation, their status, and of course their earnings. They are about trust and usefulness, the value of their knowledge and expertise. There is double aspect to story telling for professions. They must consider the internal dynamics of the institution: how will it reproduce itself and with whom? The production of producers is not a mechanical process. Different professions are in competition with each other to get the best graduates from business and law schools. If professions lack legitimacy, they will diminish in attraction to graduates. So the two sets of narratives must mesh and mutually reinforce each other. But this is beset with difficulties because the trajectories of the narratives can run at different speeds causing a kind of arhythmical disjunction. This was evident in the Great Recession where professional service firms laid off many associates while preserving the positions of the partners and senior members. Disjunctions such as these affect the building of trust and respect. Without them the *raison d'être* of professions disappears. Narrative is therefore the connective tissue that enables various scenarios in professions to play out and hopefully thrive. Managing divergent and convergent streams of narratives is complex and difficult and never-ending.

In my list earlier I referred to the democratization of knowledge. This speaks to the shift from a class-based occupational category to one founded on apparently meritocracy and talent, despite one's family and social background. We could probably say education, grades, and credentials became important in the 19th century. The academy was fighting to become the gatekeeper of professionalism and so professionalize itself in the process. Medicine becomes increasingly scientific and law degrees are established. Craft was still probably the most common route into the professions. Articles and apprenticeships give the feeling of learning to master subjects, becoming skilled like a carpenter or cabinetmaker. Yet they also allowed social contacts to flourish as the key entry point to the professions. For example, the Ivy League universities in the US still favours "legacy students", the children of graduates and donors, e.g. Jared Kushner, Trump's son in law. And the big welfare state reforms of the 20th century have enabled children from all classes to access higher education and move into the professions.

Not only did this expansion of knowledge and entrants stimulate interest in the professions, and indeed expand the number of professions—software and IT, the narratives of the professions shifted as well. The shift coincides with the move to regulatory control and globalization. New sets of myths emerge caught between hankering for a past "golden age" (*ancien regime*) (whether or not it existed) and brashness of the new regime. Sensemaking narratives such as legend, myth, and folk tale attempt to reconstruct the present by creating a new past that acts as a controlling vision for the present. The most common form of the legends is the founding story of an institution. The way Cravath in New York invented itself as *primus inter pares* by virtue of its in house training and partner selection processes is a classic legend that is still retold in the modern day. Stories of how Joe Flom remade Skadden by turning it into a mergers and acquisitions powerhouse or how Marty Lipton created the poison pill give their heroes mythic status. These stories are powerful and repeated in popular culture (see *Suits, Boston Legal*), but now they are changing to tackle a world that seeks to undermine them,

globally and technologically. Law and other professions are always creative in the ways they build precariousness into their structure. Associates compete for partners' favours; and partners live now in a permanent state of uncertainty, not much different from associates. I argue, where professions have control or influence over the regulatory apparatus, and, despite the onslaught of globalization and technology, they will continue to erect barriers that primarily reward incumbents. And those narratives will present a picture that harks back and so recreates the present and future.