



RCSL Webinar: the WG for Comparative studies of Legal Professions

Studying Lawyers Comparatively in the 21st Century: Issues in Method and Methodology

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Comparative connective sociology modelled on Abel & Lewis study

Origins of Working Group in Abel & Lewis's cross disciplinary comparison of national legal professions *Lawyers in Society* (Abel & Lewis 1988a; 1988b; 1989).

Stimulated by range of forces eroding conditions underpinning profession's 'golden age; eg social modernization, competing expertises.

The need to revisit the Abel & Lewis project

- ▶ Since 1988, the nature and scale of change and its impact on the nation state and its supporting institutional architecture has been extraordinary, while transformations in the production and re-production of information and knowledge, the growth of competing expertise and post-colonial and feminist scholarship represent a parallel challenge to modern political epistemology.
- ▶ There was thus a clear need for a new cross-disciplinary comparison of national and global legal professions, grounded in the Abel/Lewis methodology. I proposed this at the 2014 meeting; Ole Hammerslev had been thinking along the same lines and we therefore developed a new sub-group of the WG, with the invaluable support of both Ulrike Schultz, who had been involved in the original project, and Rick Abel.

Lawyers in 21st Century Societies Volume 1, Bloomsbury 2020
<https://www.bloomsbury.com/uk/lawyers-in-21stcentury-societies-9781509915156/>

Project explicitly modelled on Abel & Lewis:

- ▶ Vol. 1 comprised empirically grounded comparison through reports on national professions
- ▶ aimed to reveal divergences & interconnections between national professions, illuminate field's logics & forms of practices that (re)produce & legitimise lawyers' status
- ▶ 46 jurisdictions, covering North America, Western Europe, Latin America, Australia, Asia, North Africa & the Middle East, sub-Saharan Africa; former communist countries

National Reports (Vol 1)

Research questions:

- ▶ What is the contemporary relationship between the international order, the state, market, civil society and law and lawyers?
- ▶ How has this relationship changed over the last 30 years?
- ▶ What forces have produced that change?

The variety of the jurisdictions required our 78 reporters to develop additional research questions appropriate to their jurisdictions

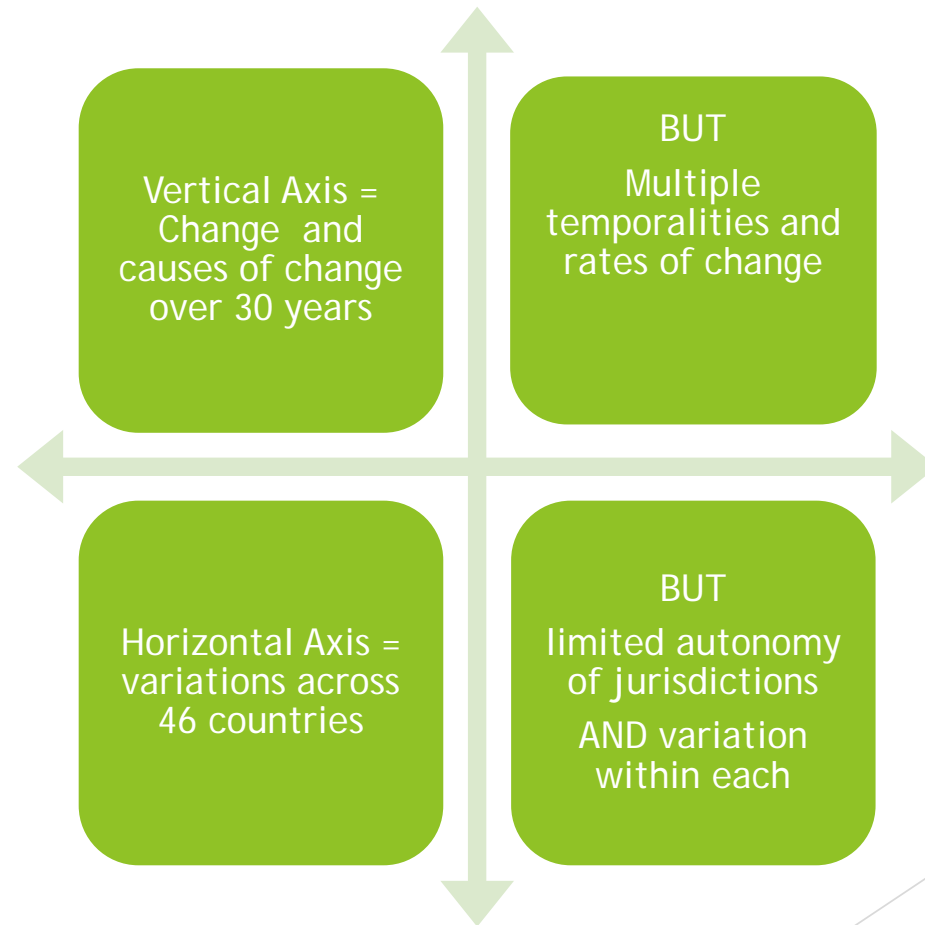
National reports (volume 1)

Key data collection indices designed to uncover the universality of some features & the spatial, temporal and historical particularities of others, some key data collection indices e.g.:

- size and demographics of the profession & its subdivisions;
- law school enrolment, education & training methods;
- size & types of firms & in house counsel;
- working practices, including paralegals & outsourcing;
- regulation & structures of self-governance; access to justice

Also added an historical dimension

Methodology



Volume 1's national reports revealed universal (interlinked) changes:

Expansion, diversification & disaggregation of **national** professions, specialisation > multiple legal labour markets

Expansion of corporate / commercial international sectors

Erosion of traditional characteristics eg professional autonomy; commercialisation of logics, new organisational practices

Legal tech – industrialisation of practice > casualization;

Jurisdictional competition

Decline in legal aid > 'business case' for access to justice but expansion of rights oriented non-profit sector

Contestation of meanings of professionalism and justice

But Volume 1's national reports also revealed continuities

Virtually everywhere solo or small firm practice remains norm

Patterning of the profession by social hierarchies

Counter-hegemonic political movements 1960s onwards continue to stimulate lawyering and scholarship committed to law as a social justice mechanism

Globalisation -new stage of economic (and cultural) imperialism - hegemonic power and reach of Anglo-American law facilitates asymmetrical relationships with global capital

Persistence of mixed legal systems implanted during colonial period, and of Sharia courts (eg Libya, Iran and Egypt).

But historical and spatial contingency

Socio-economic and political context inflect universal trends; e.g.:

- ▶ US: disaggregated profession reflects fractured & unequal society
- ▶ Europe: differing rates, & extent, of embrace of neo-liberal globalisation (e.g. UK; Germany; Italy)
- ▶ Iran: profession's key role in struggle over modernity - clerical establishment's ideological hegemony vs. lawyers' vision (autonomy, rule of law, due process)
- ▶ Former colonies: professions generally lacked formal organisation & depended on kinship and 'tout' networks. National cultural-political path-dependencies adapt Western model; articulation with indigenous forms of dispute resolution
- ▶ Former Communist bloc - legacy of feminised and low prestige professions

Complex topography of contemporary legal field

- ▶ This picture of change inflected by continuities makes for a highly complex topography of the contemporary legal field
- ▶ Underlines the problems associated with all comparative sociologies: issues of definition and context
- ▶ For us these converged in the meaning of profession.
- ▶ The methodological challenge this posed was accentuated by diverse understandings of 'law' and 'legal' practice, which spanned the transnational professional fields of corporate and international human rights law to more local modalities of legal professionalism and law work.



Methodological difficulties of applying comparative lens to complex topography of contemporary legal professions

Multivalence of concept of profession -

- ▶ an abstraction which depends for its meaning on its distinction from other occupational groups, themselves subject to rapid and drastic change.
- ▶ therefore a theoretical concept rather than a descriptive label.
- ▶ Western model taken as normative form - fails to acknowledge its central role in, and shaping by, imperialism and colonialism
- ▶ Necessarily fluid - accentuated by liquid modernity - generating extremely varied organizational forms and types of practitioners.
- ▶ Globalisation's integration of these multiple, heterogenous temporalities and social modalities

Solution

- ▶ Abbott's processual sociology (2016) & Bourdieu's field theory (1994) provided a basis for addressing the fluidity, conceptualisation & construction of professional forms.
- ▶ Both situate professions within their wider ecologies of inter-professional relations, & understood as social entities which, emerging from the process of constructing boundaries, are processual rather than fixed forms.
- ▶ Eg Bourdieu: the profession is the historical work of construction of a group and its *representation*, which is then used to justify its monopoly of certain societal tasks and, following Weber, a site of elite competition.
- ▶ Abbott's theory understands change as the normal state, linking processes playing out at different rhythms and levels.

Weber's interpretive sociology

Open definition of law enabling recognition of range of practitioners in different temporalities & settings

Concern with 'patterns of action and constellations of groups', seen as product of history and generative of new patterns and groups paved way for comparative methodologies where the aim is not necessarily to conduct systematic comparisons of developments or institutions across similar units in order to produce general theories or explanations but rather to develop 'mirror-cases' which can serve as a 'vague background against which the main case in focus can be contrasted'



Comparative methodology - the example of paralegals

H. Sommerlad, S. Gustafsson, L. Verzelloni, J. Hersant, N. Holvast, R. Sandefur & T. Clarke) 'Paralegals and the casualisation and de-professionalisation of lawyers'
'Paralegals and the casualisation and de-professionalisation of lawyers'
Sommerlad et al. in Abel, R.; Sommerlad, H.; Hammerslev, O. and Schultz, U. (eds) *Lawyers in 21st-Century Societies: Vol. 2: Comparisons and Theories*, 2022:

Study of the paralegal in 5 very different jurisdictions

Revealed it to be a liminal, changing figure, the mirror image of the lawyer, and illuminated the distinction which makes 'lawyer' a viable concept – ideal type delineated by trait theory

But this ideal type is socially constructed & processual at all levels, institutional, organisational and individual

Yet has real world effects ie in terms of how people conceptualise themselves and are conceptualised

Indeterminacy and permeability of boundaries between different forms of labour

- ▶ Boundary work underpinned formation of profession – distinctive division of labour central to institutionalisation of expertise
- ▶ Paralegal obverse of the professional - mutually reinforcing relationship
- ▶ In practice para-legalism and legal professionalism highly malleable social constructs: inherent dynamism of legal work & 'complexity of professional life' makes intra-organisational divisions of labour susceptible 'to continual organizational perturbations'
- ▶ vulnerability of external boundaries to challenge from other occupational groups
- ▶ Recent changes eg expansion of profession, ambivalence about what constitutes law, & emptying of normative meaning of professionalism, industrialisation of work etc – increased demand for low cost labour
- ▶ But also underlined continuities – eg marginalised social categories more likely to be paralegals
- ▶ Persistence of ancient forms of paralegalism

CONCLUSION

- ▶ Contemporary professional field - neo-liberal globalisation, increasing juridification of society, diversification of clientele, proliferation of normative orders etc have accentuated the competing conceptions of the role of law and of justice within the profession
- ▶ However, also continuities, notably significance of class, gender and ethnicity in career trajectories & the cultural practices and ideologies that naturalise and support professional hierarchies.
- ▶ **Result:** complex ecology in terms of both organisation and social groups competing for markets, intensifying the definitional difficulties which beset all comparative sociology - exemplified by multivalence of the concepts of legal work, and of para-professionalism and professionalism.