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LEGAL ADVICE BUREAUX
AND
THE LEGAL PROFESSION
MAINTAINING COLLEGIATE CONTROL

A thesis presented in partial
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ABSTRACT

Legal Advice Bureaux appear to minimise the traditional professional-client relationship in which the professional establishes his or her ascendancy over the client.

The present study investigates whether Legal Advice Bureaux are, therefore, weakening the New Zealand legal profession's control over its occupational domain. It is based on T.J. Johnson's "radical" theory of the professions and rejects both "conventional" and "reactionary" explanations of professions and professionalism.

Following this perspective, it is proposed that Legal Advice Bureaux and those who work in them are nevertheless engaged in establishing the legal profession's occupational dominance. An inquiry into the structure, processes and ideology of Legal Advice Bureaux and the personal and professional characteristics of those who work in them form the empirical core of the present study.

The findings presented are based on the responses of 29 Legal Advice Bureaux supervisors and 273 lawyers from a stratified multi-stage varying probability sample of four urban areas in New Zealand. Response rates were 71.9% (N = 32) and 84.5% (N = 323) respectively. Data are presented in 50 in-text tables.

Whilst finding some support for its propositions, the study concludes by raising some problems in Johnson's theory of the professions which remain to be solved.

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TABLE OF CONTENTS

	Page
Acknowledgements	iii
List of Tables	vii
Glossary	x
 Introduction	 1
Study Outline	4
Methodological Considerations	6
Notes	10
 Chapter I	
Current Points of View on the Professions and Professionalism	11
The Conventional Perspective	13
The Revisionist Perspective	16
The Radical Perspective	22
Notes	28
 Chapter II	
The Structure of Legal Advice Bureaux	33
Notes	58
 Chapter III	
Legal Advice Bureaux Processes	60
Notes	73
 Chapter IV	
Ideology and Legal Advice Bureaux	74
Economic Issues	75
Political Issues	84
Social Issues	91
Notes	104
 Chapter V	
Legal Advice Bureaux and Professional Control	105
Legal Advice Bureaux in Political, Economic and Ideological Processes	110
Notes	117

	Page
Appendices	
Appendix I : Correspondence	122
Appendix II : Questionnaire to Legal Advice Bureau Supervisors	129
Appendix III : Questionnaire to Participants and Non-Participants	136
Bibliography	
Books and Journals	151
Reports and Surveys	157
Other Sources Quoted	158

LIST OF TABLES

Number	Title	Page
S	Survey Design and Sample	8
1	Years Since Admitted as Barrister and/or Solicitor in New Zealand	35
2	Main Areas of Practice	36
3	Lawyers' Incomes According to Experience in Years	38
4	Career Positions of Lawyers	39
5	Law Education	40
6	Ages of Lawyers	41
7	Sex Distribution of Lawyers	42
8	Father's Occupational Status	43
9	Mother's Occupational Status	44
10	Relatives in the Professions	46
11	Father's Occupational Status and Relatives' Professions	47
12	Frequency of Criminal Legal Aid Work	48
13	Frequency of Civil Legal Aid Work	49
14	Frequency of Duty Solicitor Work	50
15	Frequency of Involvement in Law Society Affairs	51
16a	Frequency of Work as Honorary Solicitor, Participants	52
16b	Frequency of Work as Honorary Solicitor, Non-Participants	53
17	Frequency of Involvement in Non-Legal, Voluntary Activities	54
18	Frequency of Involvement in Non-Legal, Voluntary Activities by Years of Practice	55
19	Major Sources of LABx Clients	65
20	Numbers of Clients and Participants in 23 LABx	68
21	Establishment of LABx	70
22	Participants' Length of Service in LABx	70
23	Clients' Legal Problems as Reported by LABx and Participants	71
24	There is no need to restrict the number of those wishing to enter the legal profession	76

Number	Title	Page
25	The market situation will assure that competent lawyers are successful	77
26	Real incomes of lawyers are nowadays considerably lower than six years ago	78
27	Civil legal aid work is uneconomic	80
28	Criminal legal aid work is uneconomic	80
29	Lawyers should be in partnership with specialists in other fields	82
30	The most serious professional competition to lawyers comes from accountants	83
31	Lawyers should not be restricted by special rules any more than businessmen are	84
32	Government inroads into traditional areas of practice are a serious threat to the profession	85
33	Too much power has been concentrated in the hands of the government executive	86
34	Too much power has been concentrated in the hands of the government bureaucracy	86
35	The legal profession should instigate legal reform in such areas as homosexuality and abortion	88
36	The law should be used in the service of social goals	89
37	More emphasis should be given to schemes which enable people to represent themselves in court	90
38	Laymen should be included in the law reform committee	91
39	People who use legal aid get as good a service as other, fee-paying clients	92
39a	Participants' opinion about the quality of legal aid	93
39b	Non-Participants' opinion about the quality of legal aid	93
40	Certain people like MP's, Social Workers and Trade Union Officials give "legal advice" of dubious value	95
41	The long period of training for law students is necessary because of the complexity of the law	96
42	The law is incomprehensible to ordinary people	97
43	Only the law can protect the ordinary citizen against the state	98

Number	Title	Page
44	The ordinary lawyer remains isolated not only from the world of business and industry but also from the day-to-day problems of the man-in-the-street	99
45	Lawyers' high standing in the community is well deserved	100
46	Criticism of the work of a fellow lawyer should only be made within the profession, if at all	101
47	Employment of Law Graduates	120

Figure I

Rate of Attrition During Referrals to LABx	66
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GLOSSARY

CAB or CABx	Citizens' Advice Bureau(x)
LAB or LABx	Legal Advice Bureau(x) Agency in which gratuitous legal advice is given at set times by qualified legal practitioners who attend the LAB according to a roster
LAB Supervisor	Legal practitioner who arranges the roster of Participants
Non-Participant	Legal practitioner who does not work as a voluntary legal adviser at a LAB
Participant	Legal practitioner who has volunteered to attend a LAB as an unpaid legal adviser

INTRODUCTION

New Zealanders tend to regard the professions with considerable awe. This exalted position is usually granted on the basis of claims to specialised knowledge and the exclusive possession of professional competence. The professions provide this "image" by instituting standards of practice, educational requirements for positions in the profession and licensing regulations. It is an "image" endorsed by popular culture and reinforced by social scientists who study "the professions".

The ideological promulgation of professionalism seems to be based on a number of assumptions. First - it is assumed that professional expertise is rooted in knowledge which is complex and enigmatic. Consequently, this knowledge can only be acquired by persons of rare intellect and probity. Secondly - the professions are believed to provide essential services for the efficient functioning and social well-being of society. The awarding of incentives for professionals is thus considered an appropriate means of facilitating "service".

Conversely, the professions are criticised for their single-minded pursuit of self-preservation as they maintain boundaries between themselves and other interest groups. As recipients of benefits which accrue to those who control some aspect of the power structure, "professionals" are considered unlikely to voluntarily jeopardise their status, their power, or their prestige by embracing a state of equipollency.

Although these contradictory images have provided information about the professions and insights into the nature of professionalism, the theoretical models which inform these images are deficient.¹ They are incapable of explaining the existence or persistence of "professionalism" and when applied to a particular field such as law, they are unable to cope with changes to the socio-economic and political environment. But it is this environment which over time conditions the social position and indeed survival of a profession in society.

Whereas most "theories of the professions" are content to justify the existence of professions, we have attempted to reveal the mechanisms which are used by one profession to maintain itself in its preeminent social position. More specifically, we are interested in identifying the structure, processes and ideological underpinnings of one particular set of social relations.

This thesis centres on LABx as mediators of the legal profession's superior social position and power in New Zealand society.

There are three reasons for adopting this particular focus. First - we see all social relations as the result of policies which determine the possible scope of action. Secondly - within the range of lawyer-client relations, social relations at LABx are most likely to be catalytic because of Bureau policy which aims at minimising the usual asymmetrical lawyer-client relations. Thirdly - the problems of maintenance and survival for the profession in the face of potentially deleterious processes is more likely to become acute if the characteristics of lawyers who are engaged in LABx as volunteer legal advisers differ significantly from those of lawyers who are not so engaged.

Having regard to these processes we attempt to establish two propositions which hold that:-

1. "The structure, processes and ideology of LABx in New Zealand are designed to assure the continuance of the legal profession (against potentially detrimental political, economic and ideological processes) by reproducing the dominant social relations."
2. "Lawyers who work as volunteer legal advisers in LABx do not differ significantly from lawyers who are not involved in LAB work."

Study Outline

To examine these propositions the present study is arranged into five chapters. The first chapter provides an overview of current theoretical perspectives on the professions and professionalism. It must be stressed that the literature in this field is extensive and the selection which is presented has been limited by two factors. Knowledge of, and a degree of familiarity with, the work of an author and the potentiality of a theory or thesis to exemplify a certain ideological perspective.

Chapter I, therefore, surveys some of the contributions to "the theory of the professions". Theories are grouped in one of three sections, according to their ideological perspectives. "Conventional" theories which attempt to account for professions and professionalism by reference to cognitive foundations may be found in the first section. The next section deals with "reactionary" theories. These are theories which hold that the services which the professions provide are necessary for the well-being of society. Professions are, therefore, granted a mandate of autonomy by society so that they might be able to serve the community competently and selflessly. The third section subsumes theories within a "radical" tradition. Radical theories, while admitting the existence of such a mandate do not agree that it has been freely given to the professions. Radical theorists regard the task of a theory of the professions as accounting for the professions' ability to maintain their positions of power and privilege.

The present study rejects both "conventional" and "reactionary" perspectives and adopts T.J. Johnson's² "radical" theory of the professions. Johnson argues that a profession is a particular form of institutionalised control over an occupational domain and that the various forms of occupational control are linked to social relations of production. The decision to adopt Johnson's theory dictates the format of the present study. Its focus is limited, however, to three levels at which social relations may be reproduced within the LAB framework. An examination of LAB

structure, processes and ideology respectively are the subject of the next three chapters.

In chapter II it is argued that Participants constitute the most important element in the LAB structure as the delivery of LAB services is the task of Participants. Claus Offe³ writes that:-

"the structure of each system of political institutions can... be interpreted as an institutional exclusiveness, as a selection-programme which establishes action premises and action barriers and itself sets up a more or less narrow scope of possible policies." (4)

Participants' characteristics, therefore, provide indicators of the limitations and scope of possible policies when compared with those of Non-Participants.

In Chapter III we examine the content and assess the outcome of LAB processes and gauge their effect on the legal profession's efforts to maintain control over its occupational domain.

By limiting their activities to verbal legal advice, LABx draw a fundamental distinction between themselves and other "free" legal services such as Neighbourhood Law Offices, Law Shops and Law Communes. It is recognised that this rule and the consequences flowing from it:-

"Are never mere procedural formalisms but...determine as such the possible content and possible outcome of the process." (5)

Chapter IV deals with the LAB ideology which enables LABx to be something other than what they are: Monuments to legal equal opportunity. We are not concerned with the content of this assertion but the image it projects. That image is not rejected out of hand, because:-

"diffuse ideological tendencies of a humanitarian and charitable kind (should not) be a priori denied all causal significance." (6)

Indeed, Offe suggests that:-

"there is something like an inarticulate ideology in political institutions...in the sense that it promotes the selective perception and articulation of social problems and conflicts." (7)

Chapter V concludes the study by drawing together the findings regarding LAB structure, processes and ideology and placing them into their theoretical contexts. Both propositions are supported. Having dealt with the focal concerns of this study, wider issues are briefly introduced. For whatever the effects of LABx on the collegiate professionalism of the legal profession in New Zealand it is recognised that both LABx and the profession are shaped by broader political, economic and ideological processes.

Finally, it is suggested that further advances in the sociology of the professions depend on the solution of several theoretical problems raised by the present study.

Methodological Considerations

The objectives of this study required an enumeration of LABx and Participants as well as a control group of Non-Participants. The research design for the present study was thus determined by two factors: First - the absence of any earlier systematic study of LABx rendered their number unknown; secondly - the percentage of Participants within the legal profession was also unknown.

Preparatory Work

Support in principle for this study was sought from the New Zealand Law Society. This was granted in March 1980, but withdrawn two weeks later in April, shortly after the commencement of the pilot study.⁸

All fourteen District Law Societies were asked for their support for this research project and asked whether any LABx operated in

their districts. Enclosed with each one of these letters was a synopsis of the research and a supporting letter by Professor G.S. Fraser, Head of the Sociology Department, Massey University (Appendix I). Eight District Law Societies responded by stating that there were LABx in their districts.

Budget

This research was financed by means of a contractual agreement with the Department of Justice, Wellington.

Methods of Data Collection

Questionnaires were used for stages 2 and 3 (c.f. Survey Design, below) of the survey. Facsimiles of these instruments are attached to this study as appendices II and III. The questionnaires used for stage 2 contained mostly open-ended items to obtain information relating to LAB processes (c.f. Chapter III). These questionnaires were mailed to 32 LAB supervisors. The questionnaires for stage 3 contained 63 precoded items. These were also mailed to all Participants and Non-Participants in the sample (N = 332). (A subset of 29 Participants was also interviewed in the course of this research but the analysis and evaluation of these interviews has been excluded from the present study).

Survey Design and Choice of Sample Design

The survey design was a stratified multi-stage design which was related but independent for each one of the three strata. Eight Law Society Districts⁹ formed the first stratum. A purposive sample was taken to represent one Metropolitan area, one South Island city and two North Island cities within different Law Society Districts. The next stratum was comprised of the 32 LABx within the four Districts sampled in the first stage. 1745 lawyers (196 Participants and 1549 Non-Participants) formed the third stratum. The number of Non-Participants sampled was derived by a systematic random sample (8.8%), choosing every eleventh unit

in the universe after a random number had been drawn to indicate the first unit. This rationale is represented below in Table S.

TABLE S
Survey Design and Sample

Stage	Unit	N in Universe	N in Sample	Selection Method
1	D.L.S.	8	4	Purposive
2	LAB	32	32	Enumerative
3	Participants	196	196	Enumerative
	Non-Participants	1549	136	S.R.S.
Key: D.L.S. : District under a District Law Society which operates LABx				
S.R.S. : Systematic random sample				

Pilot Test

The questionnaires used for Participants and Non-Participants (stage 3; Appendix III) were tested on 24 respondents, all practicing lawyers, in a central North Island city. Although pilot testing had to be abandoned after five days (c.f. "Preparatory Work"), thirteen questionnaires had been returned, leading to several alterations in the final questionnaire design.

Processing of Data

The questionnaires to LAB supervisors (stage 2; Appendix II) were hand-tabulated by the researcher. Questionnaires used for Participants and Non-Participants (stage 3; Appendix III) were first scrutinised by the researcher. Peter Davis'¹⁰ 7 step "Occupational Prestige Ranking Scale for New Zealand" was used to code the occupational status of respondents' parents. The edited information was then transformed into "files" on Massey University's PDP 11 and batch processed on a Burroughs B6700. SPSS Version 7 was used throughout. Levels of significance are presented up to four decimal points in this study; this conforms to the data presentation of SPSS.

Time Frame and Response Rates

32 questionnaires to LAB supervisors were mailed on 15 May 1980. Two reminders were sent but by 30 July only 23 (71.9%) had been returned.

323 questionnaires to Participants and Non-Participants were mailed on 29 August 1980. Nine (2.7%) could not be completed because respondents had left the area or had retired, leaving 323 questionnaires in the survey. Clearly, sample bias is small for these reasons but is increased to an unknown extent by lawyers with very short tenure. In any event it would only be a very small number.¹¹ Of these 323 questionnaires, 273 (84.5%) had been returned by 14 October 1980. As expected, there was a considerable difference in response rates between Participants and Non-Participants; the former clearly found the survey more relevant. Of 196 questionnaires to Participants, 181 or 92.35% were returned; by contrast only 92 (67.65%) of the 136 questionnaires to Non-Participants were completed.

NOTES

1. These elements are suggested by GRAEME SALAMAN who argues that "A sociological approach to organisations...takes as the topic to be investigated exactly that which is assumed and glossed over by conventional organisational analysis: the relationship between internal organisational structures, processes and ideologies, and the society within which they exist." (:519)
G. SALAMAN, 1978, "Towards a Sociology of Organisational Structure:", Sociological Review, 26: 519-554.
2. T.J. JOHNSON, 1972, "Professions and Power", MacMillan, London.
3. C. OFFE, 1974, "Structural Problems of the Capitalist State", in KLAUS VON BEYME (ed), German Political Studies, Vol.1, Sage, London.
4. Ibid.,: 39
5. Ibid.,: 40
6. GORAN THERBORN, 1978, "What Does the Ruling Class Do When It Rules?", N.L.B., London : 237.
7. C. OFFE, op.cit.,: 39.
8. While this turn of events was not entirely unexpected, c.f. ERWIN O. SMIGEL, 1958, "Interviewing a Legal Elite: The Wall Street Lawyer", A.J.S., 64 : 159-164, it jeopardised the research project severely. Separate approaches to each of the fourteen District Law Societies upset the timing of the research at an early stage.
9. New Zealand is divided into fourteen Districts, each one under the jurisdiction of a District Law Society. C.f. "The New Zealand Law Register", 1980, Sweet and Maxwell (N.Z.) Ltd, Wellington.
10. PETER DAVIS, 1977, An Occupational Prestige Ranking Scale for New Zealand, University of Canterbury, Research Project 24.
11. The assistance of District Law Societies in supplying up-to-date membership records was an invaluable addition to the necessarily out-of-date information contained in The New Zealand Law Register, 1980, op.cit.