The System of Professions

An Essay on the Division of Expert Labor

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Lawyers and Their Competitors

Professions' histories are littered with splinter groups and faltering competitors. These are usually ignored in official mythologies, although occasionally recalled as precursors, charlatans, or worse. How can we write a fair history when surviving data pertains largely to successful competitors? When Hobsbawm, Tilly, and other "new social historians" studied the common people of Europe, they faced a similar problem. Common people did not write the memoirs on which history was based, nor were they discussed in the memoirs extant. To find the "people without history," these writers studied the riots by which those people communicated with the governing classes of their time.[1] We can do the same. By studying interprofessional conflict, we can set the successful professions in their real context and correct our theories of their development.

Let us consider, then, a classic problem in the history of professions: how to explain the differences emerging between the legal professions in America and Britain during the critical period from 1880 to 1940. The English solicitors initiated the structural changes of "professionalization" early in the nineteenth century, and had become an effective professional power by 1900. Possessed of secure professional monopolies, particularly of conveyancing, the solicitors seemed to fight only with the barristers, who still excluded them from audience in the higher courts. American lawyers, on the other hand, came to the structural changes of professionalization much later in the nineteenth century and developed a monopolistic ("integrated") bar only in the twentieth. Yet by the mid twentieth century, American lawyers had clearly surpassed their British cousins. Their intense involvement in modern society, both in business and government, contrasted with the solicitors' isolation. Why and how did the English profession lose the preeminence that the American one came latterly to enjoy?

Under my theory, these differences should be traceable to the differing competitors and competitions faced by the two professions. Although we know very little about these competitors, we can use the techniques of the

new social history to find them, studying lawyers' complaints of invasion by outsiders. Fortunately, lawyers keep careful records about such "poachers"; these are our basic data. Unlike the preceding chapter, this one will study primary data in serious detail. It will even make predictions about interprofessional differences. Yet the aims remain the same: to illustrate the utility of a system-based theory of professional development. As that theory tells us, however, the lawyers' complaints by themselves are not enough. We must create a framework to interpret them. As Steven Lukes has argued, one cannot infer a system's structure from its conflicts alone. Potential conflicts may be suppressed by dominant groups or hidden by external circumstances. We must therefore first envision the conflicts we might reasonably expect the two legal professions to have, outlining the potential changes in legal jurisdictions in relation to the actual structures of the legal professions.

Potential Jurisdictional Conflicts of the Legal Profession

Two organizational forms emerged in the late nineteenth and early twentieth centuries that generated enormous demand for legal services—the large commercial enterprise and the administrative bureaucracy.[2] The growth of business practice involved some problems never before encountered—large-scale reorganizations, massive bond issues, tax planning, and, in America, antitrust. There were also vastly increased quantities of traditional business work. Governmental work grew similarly. It often involved practice before new tribunals, tribunals with their own staffs, their own forms of procedure, and their own sense of prerogative. Like business work, government-related work was extremely diverse, ranging from personal matters associated with the welfare state's involvement in housing and education to the corporate business generated by the state's regulatory intrusions into the economy. By contrast with business and government work, matters of land and property did not multiply but merely expanded additively with the population. Indeed a general contraction of this jurisdiction appeared imminent. Many European governments tried to place land ownership under state guardianship through compulsory registration. Although this possible abolition of legal work did not succeed in England, there was for some time serious danger of it. (In the United States, a state-registration threat never developed.)[3]

Potential legal jurisdictions in this period thus grew rapidly. In business and government there appeared qualitatively new areas of work. Even

traditional business work expanded very rapidly. In land and property the expansion was slower, but still proportionate to population.

Did the legal profession grow in relation to this changing body of work? Garrison's detailed survey of the Wisconsin bar in the early 1930s estimated the growth in legal work since 1880 using data on deeds filed, civil and criminal cases begun, tax appeals, divorces, probates, and adoptions, as well as data on such indirect measures as population and the value of manufactured and agricultural product. He concluded that for the state as a whole and for nearly every county legal work had vastly outstripped the growth of lawyers; work per lawyer was more plentiful than ever before. Even in urban Milwaukee the increase of lawyers did not keep pace with most of these indicators.[4] Others, however, believed in overcrowding at the bar. In New York City, Isidor Lazarus noted, there were in 1930 264 lawyers per hundred thousand population, about five times the number in England. Indeed, the number of lawyers in the United States increased by over 30 percent from 1920 to 1930 alone. Yet Lazarus too saw large reservoirs of untapped demand in the "lower middle, and the more or less employed or active lower, sections of the community," as well as in "the legal needs of the economically submerged army of the practically unemployed." But he recognized that this demand would be effective only if "the facilities were created for bringing together the supply and demand and adjusting them on an efficient, reasonable, and profitable volume basis."[5]

In America, then, potential legal work apparently increased well beyond the increase of the profession during the entire period. Although there are not similar studies for England, there seems little reason to think the situation there different. The economy grew more slowly, but the ratio of solicitors to population actually fell steadily from 1841 to 1921, increasing only marginally thereafter until the 1970s.[6] On the tentative assumption that output of professional services is a fixed function of professional manpower, we can infer that potential work outstripped potential professional output in both countries, except perhaps in the cities.

In considering such ratios of potential work to potential output, we may envision three types of conflicts between a profession and its competitors. It is important to examine their general character. The first type of conflict arises when potential jurisdiction is expanding relative to potential professional output, either qualitatively (as here in big business and government work) or quantitatively (as here in traditional business work). I

shall call this the case of excess jurisdiction. If the incumbent profession does not either expand numerically or increase output per professional, it faces invasion by outsiders. In areas of *quantitative* expansion, where the incumbent already has the kind of cultural jurisdiction discussed in chapter 2 and currently enjoys one of the settlements discussed in chapter 3, invasion means a potential worsening of the settlement, with loss of cultural jurisdiction as a potential long-run consequence. In areas of *qualitative* expansion, the incumbent's cultural control is weak or nonexistent, and invaders have a clearer chance at cultural jurisdiction itself.

A second kind of conflict arises when current jurisdictions are insufficient to support the profession; potential output is expanding faster than jurisdiction. The profession is then looking for work. Expansion (of jurisdiction) may be undertaken either by improving current settlements or by moving into wholly new areas. An overstaffed profession can abolish a clientele settlement, for example, and serve all potential clients itself. (Medicine periodically does this in the area of primary health care.) This necessitates no change in the cultural structure of jurisdiction. A move into a qualitatively new area, by contrast, requires the cultural work to create the new cultural jurisdiction.

These expansion conflicts and professional responses produce characteristic successions of claims for jurisdiction. When expansion reflects insufficient jurisdiction, it occurs first in the workplace and only later becomes established in public and legal eyes. Precisely the reverse happens with sudden quantitative expansion of a jurisdiction relative to professional output; there legal and perhaps public jurisdictions are secure, but workplace control comes to be shared with outsiders. In sudden qualitative expansion of a jurisdiction—as in the case of business and government work—there is no preestablished jurisdictional pattern; the move therefore occurs simultaneously in all three arenas for jurisdictional claims. In practice these patterns mean that we can use the relative extents of legal, public, and workplace jurisdiction to judge a profession's situation. Where workplace jurisdiction exceeds legal or public jurisdiction, there is expansion reflecting excess manpower and output. Where the reverse is true, there is invasion by outsiders, generally reflecting a professions inability to provide services.

A third general type of conflict is often studied in the literature on professional monopoly—the invasion of a settled jurisdiction by groups providing equivalent services at lower prices. Such invaders generally

assault public jurisdiction, usually through an extensive advertising campaign. Attackers may be new to professional work or members of another established profession; they may also use special organizational forms that enable their price cutting. Price-cutting conflicts, like those arising from excessive and insufficient jurisdiction, are ubiquitous. We shall see below all three forms of conflict among professions contesting lawyers'jurisdictions.[7]

Knowing the types of interprofessional conflicts does not tell us where in a profession's jurisdictions these conflicts will appear. Professions normally maintain control of several different areas of work, and which of these are contested is a question of some interest. It seems reasonable to expect that the jurisdictions invaded will be peripheral or weakly held. For example, professions' classifications for diagnosis and treatment always leave considerable residual areas, filled with cases that are neither standard problems nor effectively classifiable along the various dimensions of professional knowledge. Since a profession exercises its weakest subjective jurisdiction over such cases, they should be the most easily poachable. But residuality is not the only aspect of subjective jurisdictional strength. Successful outcome, acceptability of treatments, and legitimation of cultural knowledge are all important. Thus, invaders can seize more central areas if they can clearly provide more effective service or more acceptable or legitimate treatments.

Of the three forms of conflict, two involve the failure to adjust output and demand. In many professions—and the law is one of them—output is closely tied to manpower. This connection provides a first explanation of the difference between American and British lawyers today. In chapter 5 I introduced the concept of demographic rigidity to denote the degree to which a profession's size in the short or long run was determined by its current demography and its career practices. Now both of these may in turn depend on forces other than demand for service; for example, desires for social status or for centralized professional control have often led professions to establish rigid career lines. The professionalization-monopoly model assumes that the more rigidly a profession structures itself, the more powerful it is. In fact, as I argued, a rigid demographic structure leaves a profession quite unable to respond to sudden expansion in demand.

Indeed, the solicitors offer a particularly clear example. The five years of clerkship delayed by at least that time any response to sudden demand

increase. More importantly, the necessity of articled clerkship under a certificated solicitor tied the profession's future size directly to its present one. There is an intervening variable, to be sure: the number of such articled clerks taken by a solicitor. But in fact law and professional etiquette prevented the training of multiple clerks, and thus the profession could not expand rapidly with expanding demand. Precisely the mechanisms involved in what Larson calls the "professional project" of advancing solicitors' status were thus mechanisms that made the profession incapable of meeting its demand.

The problem perceived by English solicitors as the unqualified practice problem thus arose through the first type of conflict discussed; an insufficient supply of legal services invited other professions, old and new, to start providing them. The only countervailing factor was the rise of managing clerks who did conveyancing work under solicitors' direction. These clerks enabled an individual solicitor to multiply his effort, breaking the link between numbers and output. Using a subordinate group to respond to demand is a classic solution to the problem of demographic rigidity. Nonprofessionals can have much less structured (and less permanent) careers, since their work acquires its professional quality from the professional himself and from the division of labor in the professional organization (office, hospital). Such work therefore does not require extensive training. One could argue, however, that the resort to these personnel is the best evidence possible of the shortage of solicitors. It seems fair to conclude that the shortage, albeit mitigated by these "unauthorized personnel," was a reality.[8]

Two developments allowed the American profession to avoid this situation. The first was the large firm, whose extensively divided labor accomplished more work with given resources; the Cravath firm, for example, had twenty-five lawyers by 1906 and fifty by 1923.[9] The second was the replacement of clerkship with law school. In 1870, one-quarter of new lawyers had gone to law schools. By 1910, the figure was two-thirds. This shift decoupled the profession's rate of growth from its current size in two ways. First, not only could law schools take extra students more easily than could individual practitioners, but also, since schools were both profitable and prestigious, there was an enormous incentive to found them. There resulted an immense potential for recruitment. Second, the typical

law-school career in this period was two years, not five, providing a much shorter response to demand changes.[10]

This rapid expansion was, however, accompanied by a stratification of the American bar, indicated in part by the separation of the night law school graduates from the full-time law school graduates. This stratification has important implications for the interpretation of competition between lawyers and others. Roughly speaking, the night school graduates, along with some day school graduates, dealt with the land and property jurisdiction—individual matters expanding at the rate of population growth. The graduates of the elite full-time schools and their newly huge law firms controlled the qualitatively expanding area of big business practice as well as extensive parts of the new government practice. Work in the traditional business jurisdiction, expanding in amount but not kind, was split between the two groups. Since the majority of the United States lawyer expansion came in night schools and nonelite day schools (whose graduates entered the relatively slowly expanding area of land and property), the American legal profession was moving towards the paradoxical situation of having a lower tier oversupplied with lawyers and an upper one under-supplied.[11]

We can summarize the relation of potential work and output in the two countries as follows. Work in the legal matters of individuals expanded proportionate to population and little more. The amount of business work, on the other hand, grew by orders of magnitude, and in some areas qualitatively new forms of work arose. The same is true of governmental work. In England, the profession's demographic and career structure—adopted to help advance professional status—prevented it from expanding rapidly to meet these demands, although the managing clerks provided some multiplication of professional effort. In the United States, the move to law schools and to the large, differentiated firm made lawyers more able to handle the new work, although at the price of stratification within the profession.

These considerations predict the following patterns of interprofessional conflicts. In England, the lack of solicitors should appear in a general invasion of the basic legal jurisdictions by all kinds of alternative professions. This invasion should occur first in peripheral areas—areas of low client status, of slight economic reward, and of weak cultural jurisdiction. Given the rigid structure of the English profession, it is not unlikely that this invasion might result in some loss of cultural jurisdiction,

not just in a move from settlement as dominant to some weaker settlement. Moreover, the qualitatively new jurisdictions of big business and governmental work should be almost completely open to outsiders and hence sites of substantial conflict. In the United States, too, these areas should see serious conflict, but less because of underservice than because of the lack of preexisting cultural jurisdiction, a fact obscured in England by underservice. In addition, the law's move into these areas may have weakened its hold elsewhere, with consequent change in settlements. The demographic power of the American profession, however, should prevent any loss of cultural jurisdiction, despite a possible weakening of settlements. Again, we expect conflicts to appear at peripheral points, and expect differential patterns in the different status levels of the profession.

Having made these rough predictions, we can now survey the jurisdictional squabbles visible in the professional literature. Already, however, we have found a good general answer to the question of why American and English lawyers fared differently during this period. The strong structure of the English profession, however it may have advanced professional status, proved a dangerous strategy in the rapidly shifting work environment. The demographic and institutional flexibility of the American lawyers, so disturbing to the elite WASP lawyers of the East Coast, in fact enabled the Americans to handle the demand expansion with relative ease. But as we shall see, this simple picture is by no means the whole story.

Complaints about Unqualified Practice and Other Invasions

GENERAL MATTERS

To study lawyers' interprofessional conflicts, we can study records relating to what the English call "unqualified practice" and the Americans, "the unauthorized practice of the law." This data can be augmented by the study of other, general claims of invasion by outsiders. Formal response to unauthorized practice of course long postdates the practice itself. Outsiders can be impugned for lacking knowledge and character only once there is a credible presumption that insiders in fact possess them, and building this presumption takes time. I have thus tried, where possible, to find sources predating official ones, in order to discover early aspects of the problem. Formal response itself arose at different times in the two countries. In England, the Attorneys and Solicitors Act of 1874 (37 & 38 Vict., c. 68)

gave the Law Society powers over those pretending to be solicitors, a power exercised by the Professional Purposes Committee of the Society. The Committee also dealt with professional misconduct. This joint function reflected the importance of solicitors themselves in promoting unauthorized practice, since an early and persistent violation was the employment of uncertificated solicitors and other unqualified personnel to do solicitors' work within the offices of the certificated. This problem was equally common in America.[12]

In the United States, organized concern with unauthorized practice was a later matter.[13] It began with the Committee on Unlawful Practice of Law of the New York County Lawyers Association in 1914, and spread from there to such other urban jurisdictions as Chicago, Nashville, Kansas City, and Memphis. In the late 1920s, unauthorized practice became a serious concern of the American Bar Association, which directed a national attack on it throughout the 1930s. Americans generally handled unauthorized practice and external competition by councils and agreements if possible. Direct legal action, the more usual course in Britain, was a last resort.[14] The delayed beginning of American action reinforces my earlier conclusion that the Americans balanced supply and demand more effectively than the English. Moreover, the urban origins of the first unauthorized practice committees are significant. Since city lawyers were by this time quite stratified, the first conflicts appeared either in the qualitatively new jurisdictions of the upper-tier or in the oversupply of lower-tier lawyers, who were pushing out for new work.

Summary sources permit an approximation of the overall level of enforcement activity in both countries. The Law Society's activity was remarkably constant from 1895 to 1950. There were usually about ten complaints of unqualified practice per year. Acting upon these various complaints was clearly *not* the major work of the Professional Purposes Committee, since complaints by clients against *certificated* solicitors numbered from six to ten times this figure. That American lawyers approached unauthorized practice differently is shown by the higher level of American activity. The New York County Lawyers Association committee reported on ninety-two complaints in 1915 alone, at a time when the population of New York County was about 7 percent that of England. American unauthorized-practice committees characteristically started with large caseloads, then settled down to a lower but fairly steady level of work.

"The number of inquiries does not vary much from year to year," said the Pennsylvania Bar Association committee in 1950, speaking of "the routine problems of the relationship between lawyers, bankers, realtors, accountants, justices of the peace, aldermen, and notaries public." This surprisingly constant pattern of activity, common to both countries, implies that enforcement became something of a formality. But still the differences tell us that organized law in England either recognized less conflict or felt that less could be done about it.[15]

Despite the apparent stability of routine enforcement, lawyers' *sense* of the degree of unauthorized practice had definite cycles. Partly this reflected phases natural to any social movement. In both countries interest in the problem would suddenly wax, with violent speeches, excited talk, and often some new kind of organization or interprofessional agreement. But then the newly created enforcement organization would go on to a fairly routine existence, indeed often complaining of lawyers' inattention. Agreements like the code of ethics negotiated between the Pennsylvania lawyers and the Pennsylvania Bankers Association in 1922 could endure a decade of benign neglect before grassroots complaints generated renewed Bar Association action.[16]

DATA AND METHODS

Neither the steady level of general activity by enforcement committees nor the waves of professional interest in the problem, however, tell us much about the actual content of the professions' conflicts with outsiders. Yet it is these conflicts that in fact shape the two professions. Who did the lawyers fight and why?

For solicitors, I have used two bodies of data to investigate these questions. The first comprises material from the Law Society: *(a)* the Annual Report of the Council to the membership for the period 1896–1950 and *(b)* the *Proceedings* of the Annual Provincial Meeting for the period 1875–1911. Since even the provincial meetings were dominated by the London elite, I have sought more broadly representative data. This comes from the *Law Notes*, a monthly legal publication oriented toward the provincial solicitor and edited by Albert Gibson, a Londoner fiercely vigilant of unqualified practice and openly suspicious of the Law Society's position towards it. I have drawn my second body of English data from this journal, for the period 1882–1935.[17]

In America, unauthorized practice issues are handled more locally.[18] Therefore, in seeking comparable data, I turned first to two important urban committees on unauthorized practice, those of the New York County Lawyers Association and the Association of the Bar of the City of New York. I have followed the annual reports of the first of these organizations from its founding in 1916 to 1936, and the second from its founding in 1926 to its disbanding in 1950. As in England, I sought in addition a provincial perspective, and found it in the records of the Pennsylvania Bar Associations statewide committee on unauthorized practice. This material, dating mostly from after 1930, has the advantage of providing the perspective of another state legal system and the disadvantage of not "completing" the New York data series.

The formal data, then, consists of material from six basic sources, which represents metropolitan and provincial concerns in both countries: the New York data and the Law Society data represent the metropolitan concerns, while the *Law Notes* material and the Pennsylvania material represent the provincial ones. (The two metropolitan datasets are pooled in both countries, so that four data series will actually be reported.) From these sources I have taken a coded record of each identifiable complaint of invasion of legal turf by outsiders. Each record contains three simple items of information: the occupation accused of poaching, the area of work invaded, and the year of the occurrence. There are about four hundred mentions each in England and America.[19]

A word is necessary about the interpretation of these data. The presence of complaints in an area signifies two things: (1) that lawyers consider the jurisdiction important enough to fight for it, and (2) that the jurisdiction is open to invasion. As I argued earlier, invasion may mean either that lawyers are too few for their own work or that they are invading someone else's. We can distinguish the two cases only by comparing the relative extent of public and workplace jurisdiction. The absence of complaints is harder to interpret, since it could mean the absence of either condition—importance or openness. In interpreting absence, therefore, we must rely on discursive materials in these records and on other secondary work. Interpretation of change over time is even more difficult. Increasing rates of complaints may indicate either an increase in the level of poaching or an increase in the degree of concern with poaching, possibly arising out of the decreasing availability of work, either in the poached area or elsewhere. Nonetheless, in

areas where lawyers have sufficient or excess business, we can assume that increased complaints imply increasing levels of poaching. An increase followed by a decrease seems to be reasonably interpretable as a successful defense of jurisdiction. A steady or episodic level of complaints suggests an unstable border or possibly a settlement by client differentiation. When the nonlawyers step across the client lines—which occurs regularly because of the common skills—the lawyers rush in to enforce the *official* jurisdictional line, which usually gives them complete official control.

AREAS OF CONFLICT

The areas about which lawyers complained included all of the chief legal jurisdictions—business affairs like bankruptcy and companies; property matters such as conveyancing, wills, and trusteeship; advocacy before courts and administrative tribunals; and finally, general advice on business, legal, and personal affairs. In England another area contested was appointment to various positions of national and local administrative or judicial authority, as well as certain kinds of local work (e.g., prosecution) performed for those authorities.[20]

Table 4 shows the distribution of complaints. Advocacy received about the same attention in both countries, with the detailed figures ranging from 10 percent in Pennsylvania to 21 percent in New York. The problem of lawyers' monopolies of appointments did not occur in America and made up about 5 percent of the complaints in England. Monopolies of local work again mattered only in England. Problems with legal and other advice, by contrast, were largely an American problem, making up 19 percent of the New York episodes and 11 percent of the Pennsylvania ones. Business matters—liquidation, bankruptcy, making of companies and partnerships, writing threatening letters—comprised from a quarter to a third of the complaints in all data except that on Pennsylvania. Property matters, by contrast, comprised over half of the complaints in that Pennsylvania data, around one-third of them in England, and about one-fifth in New York.[21]

TABLE 4 Areas of Jurisdictional Conflict

Dataset	Jurisdictions[a]								
	Advoc	Nat	Locp	Locw	Advic	Bus	Land	Gen	*N*
New York	21				19	34	21	5	154
PABA	10				11	14	58	7	101
U.S. total	17				16	26	34	5	255
Law Society	15	5	6	3	7	23	33	8	150
Law Notes	16			15	2	38	29	2	192
England total	15	2	3	10	4	31	30	4	342

		By Decades						
		1880	1890	1900	1910	1920	1930	1940
Advocacy:	England	17	4	11	29	27	17	—
	U.S.	—	—	—	15	19	11	38
Advice:	England	9	8	2	0	0	0	—
	U.S.	—	—	—	8	17	17	27
Business:	England	38	34	37	29	9	12	—
	U.S.	—	—	—	28	34	25	8
Land:	England	26	20	40	20	32	46	—
	U.S.	—	—	—	49	21	40	19

Note: All figures in percentages except *N*. —means data not available.

[a] Advoc = advocacy; Nat = national offices; Locp = local offices; Locw = local work; Advic = advice; Bus = business; Land = land and property; Gen = general.

These figures indicate that the invasion of lawyers' jurisdiction was not peripheral, at least in terms of areas. On the contrary, the rates of complaints seem to follow the rates of work. For example, figures from Pennsylvania on distribution of lawyers' actual work show that property matters were the most important work for 62 percent of the Pennsylvania profession outside of Philadelphia and Pittsburgh. The correspondence with the complaints of unauthorized practice in property matters (58 percent) is extremely close. Similarly, the greater level of business complaints in the American cities reflects the equally greater importance of business work there.[22] Of course lawyers are more likely to act on a complaint the more central the area invaded. But still, it is noteworthy that jurisdictional enforcement is not just a matter of professional borders. That this invasion occurred with peripheral

clients, however, is easily verified from discussions of the complaints. Both in America and Britain the cases often involved small shopkeepers who refused to pay lawyers' rates for enforcing debts, as well as private individuals who sought inexpensive wills and deeds. The conflicts thus involved not change of cultural jurisdiction but largely change of clientele settlements.

The national differences, however, reflect important aspects of jurisdictional claims. Advocacy, the classic heart of lawyers'jurisdiction, was of equal concern to both, as was business, perhaps because of the rapid expansion that had called forth competitors in both countries. (It is notable that business conflicts were urban in the United States and rural in England.) Advice was a different matter. Although the British believed advice to be an important legal function, they never really attempted a dominant settlement in the area.[23] American lawyers did, presumably because their greater numbers made them believe they could reasonably uphold the claim. Finally, land and property conflicts sharply differentiated urban from upstate lawyers in the United States, but not urban from provincial solicitors in England. This indicates a second division among United States lawyers—that between rural and urban attorneys. The two status-tiers discussed before were both largely urban. The extensive competition rural lawyers faced in their basic property jurisdiction suggests possible underlawyering in the countryside, a fact often noted by rural lawyers in debate. Primary and secondary sources confirm this interpretation.[24]

The lower part of the table compares the development of these complaints over time in four areas—advocacy, advice, business, and property. While advice was a decreasing area of concern in British legal work, it was an increasing one in America. There was either less invasion in England, or less ability and inclination to protect the work. Perhaps, too, it was an area of American expansion. Also, in each country problems with business formed a major concern in the first worries about unqualified practice, but fell off as time passed. Apparently these problems could be settled, with effort, and the jurisdiction secured. Problems with advocacy, by contrast, seem episodic in both countries; there are no clear trends. Finally, land and property became increasingly important in England, although the uproar over the Public Trustee Act (6 Edw. 7, c.55, 1906) left its obvious mark on the decade 1900–1910. This indicates both that land and property were becoming increasingly central as solicitors' work and that the jurisdiction was proving hard to settle

properly. In the United States, the trend in concern with land and property is unclear.

These national differences become even more pronounced when we consider the detailed figures in table 5. In America concern with land and property seems to be partly an early issue (that is, an issue unauthorized practice committees entered immediately upon their foundation) and partly a rural issue (since it seems so important in Pennsylvania). Advice, conversely, is an urban one and a later one, growing with time. Advocacy, too, seems an urban issue, in the United States, and also seems to increase in importance. Business, although also an urban issue, may have declined as advice and advocacy problems increased. Most of the decline noted in the United States business figures seems to be rural. But such trends may also reflect the upper-tier lawyers' expansion into the new jurisdictions of big business and government, which involve advice and advocacy more than does traditional business work like partnerships and collections. (Advice and advocacy as coded include such areas of government work as practice before the tax courts and other agencies.) Since the jurisdictions were qualitatively new, conflict was inevitable. The conflicts may also reflect expansion in the overlawyered lower tier. Advice may have been a particularly important expansion area there, and as we shall see, business work—in particular collections—was a central issue for lower-status urban lawyers.

Few of these detailed patterns are observed in England. The urban Law Society's concern with unqualified practice in business does decline with time, but the more provincially oriented *Law Notes* shows an enduring and major concern with the issue. The pattern thus reverses the American one. A similar reversal takes place in land and property practice, where the urban groups concern exceeds the provincial one and increases with time. The solicitors' retreat to the solid foundation of conveyancing is clear. Although advice is largely an urban issue, it disappears even there very early. Advocacy still shows no consistent pattern. As for the peculiarly English concerns of national and local offices and work, they too are episodic, if enduring, concerns.

This preliminary survey of conflicts with other groups already tells us much about how the general constraints imposed by the balance of supply and demand for legal services worked themselves out in the contingencies of actual history. Both professions faced serious external invasions, and in heartland jurisdictions. In both cases the invasion came first with peripheral

clients. Both professions regarded advocacy as a central jurisdiction and faced serious competition there. Both faced serious invasions of their traditional work with business.

TABLE 5 Areas Invaded by Decades Within Datasets

	1880	1890	1900	1910	1920	1930	1940
Advocacy							
New York	—	—	—	19	21	18	[43]
PABA	—	—	—	[0]	[0]	7	[33]
Law Society	8	6	8	[36]	30	17	—
Law Notes	21	[0]	12	26	—	—	—
Advice							
New York	—	—	—	10	15	27	[36]
PABA	—	—	—	[0]	[33]	10	[17]
Law Society	23	13	0	[0]	0	0	—
Law Notes	3	[0]	3	0	—	—	—
Business							
New York	—	—	—	31	34	41	[14]
PABA	—	—	—	[18]	[33]	14	[0]
Law Society	38	35	31	[21]	0	12	—
Law Notes	38	[32]	39	32	—	—	—
Land							
New York	—	—	—	40	19	10	[7]
PABA	—	—	—	[82]	[33]	62	[33]
Law Society	23	29	42	[21]	35	46	—
Law Notes	27	[11]	39	19	—	—	—
National Office							
Law Society	0	0	0	[0]	20	8	—
Law Notes	0	[0]	0	0	—	—	—
Local Office							
Law Society	4	6	0	[0]	5	8	—
Law Notes	0	[0]	0	0	—	—	—
Local work							
Law Society	0	3	4	[21]	0	0	—
Law Notes	11	[58]	5	19	—	—	—

Note: [ ] = based on *N* 20. Complaints with unspecified area are omitted. All figures in percentages.

But beyond these common patterns, the two professions have little in common, as we might expect from their different ability to supply services. American urban lawyers pushed out into advice giving, an area the solicitors rapidly gave up. This expansion occurred both in the upper and lower tiers of

the urban profession. These lawyers had little trouble in land and property, although their country cousins—the few who remained—faced a massive invasion of this heartland jurisdiction. In England, land and property clearly became the obsession of both urban and provincial solicitors. The reversal of patterns in business practice seems, at this point, to be quite anomalous.

This picture complements and expands the predictions made earlier. A somewhat unsuspected urban-provincial distinction has proven central, at least in the United States. But the other evidence conforms to the pattern expected. In the United States, a relatively understaffed urban upper tier of lawyers pushed into corporate and government work and found substantial competition there. The overstaffed urban lower tier perhaps pushed out into general advice and other areas, looking for work. The rural group was desperately understaffed and was losing its central monopolies. In England, both provincial and urban solicitors surrendered nonessentials like advice to concentrate on the heartland of advocacy and land and property, facing substantial conflict over the latter. The provincials, unlike their urban brethren, were unable to defend even the traditional business jurisdiction.

The overall pattern thus emerging is one of activity within constraint. Professional groups take certain jurisdictional actions partly for internal reasons involving their own structure and knowledge base, partly for external reasons like status and power, and partly because these actions are constrained by the competitive environment. As yet, however, we are hardly certain of the directions of jurisdictional expansions and contractions, nor are we aware of which particular areas of legal work involved especially competent competitors. We can deal with the first of these questions—the hypothesized directions of change—by studying extents of jurisdiction in different arenas for professional claims.

AUDIENCES FOR JURISDICTIONAL CLAIMS

Efforts to curb unqualified practice are efforts to make the workplace relations of jurisdiction conform to the legal and public ones. As I argued before, if the lawyers have workplace jurisdiction but not public or legal jurisdiction, then they are expanding into the area. If, by contrast, they have legal and perhaps public jurisdiction, but not workplace jurisdiction, then they are facing an invasion.

The only sources where lawyers are fighting to get legal jurisdiction established are city sources. Both New York committees had active

legislation and court subcommittees dedicated to solidifying legal control of jurisdictions lawyers had acquired in the workplace. The Law Society's lobbying activities in Parliament were equivalent. Rural lawyers tended to demand a very different thing of the courts. They wanted enforcement of the jurisdictions unquestionably established in law and legal precedent. Particularly in England, the provincial lawyers' complaint was that courts would not enforce legal limits in actual workplace practice. There is thus plain evidence that urban jurisdictions were the only sites of lawyer expansion. The rural lawyers of both countries were fighting invasions.

Additional evidence comes from the differing extents of legal and public jurisdiction. On the one hand, what was law for the city was law for the countryside; in the legal arena, lawyers' jurisdiction was theoretically uniform from one place to another. Yet throughout the provincial data from both countries rings the message that the public simply doesn't know lawyers' prerogatives: "There undoubtedly does exist throughout the State in many places, throughout the laymen, a certain reluctance to go to a law office." ". . . the detestation of the law and lawyers evinced by the public, the general unthinking public . . ."[25]

Such complaints seldom appear in city sources. That the public jurisdiction was less extensive than the legal one in the countryside reemphasizes the interpretation here given—that provincial lawyers were too few for the business and were facing serious invasion. This is further strengthened by the fact, which we know from the actual complaints, that large amounts of legally routine law work—conveyancing and other property matters—were being done by nonlawyers. The workplace jurisdiction was even less extensive than the public one.

In the city, as we have already seen, the arena pattern of jurisdiction shows evidence of expansion. An elegant example of this comes not from the expansion into advice giving and similar areas by the too-numerous lower-status lawyers. Rather it bespeaks an earlier expansion, at the expense of a group called conveyancers. We know that the expansion was old because the uncertainty about jurisdiction was merely at the legal level; the workplace and public jurisdictions, at least in the cities, were secure. The area immediately concerned was the drawing of wills. The legal status of this work was confusing even for lawyers themselves. Thus while most lawyers in both countries assumed that the drawing of wills was a legally established jurisdiction, it was in fact not so. In England, the Stamp Act of

1870 (33 & 34 Vict., c.97) allowed an unqualified person to draw a will, power of attorney, or transfer of stock (provided the transfer contained no trusts or limitations) and to be paid for these activities.[26] In America, when the Pennsylvania Bar Association's brand-new unauthorized practice committee reported in 1932, its chairman, a Philadelphia suburban lawyer, asserted that "the Committee feels that the writing of wills is the practice of law." W. G. Littleton of Philadelphia rose to his feet and thundered:

> Is it not a fact that the writing of wills is not only not the practice of the law but in the English system lawyers themselves were not permitted to draw wills until the year 1760, when the exclusive privileges of the English association which formerly had that right were thrown open to members of the Bar, and when I come to speak, my mind running back personally as far back as 1885, when I was thrown in with that class of men who were known as conveyancers, who prepared deeds, mortgages, and other legal instruments, and wrote wills, it would be perfectly astonishing to the lawyer of that day to say that members of the conveyancers' association, whose names you probably know, some of whom I recollect, were violating any law.[27]

This passage is notable not only for its total disagreement about the legally established jurisdiction, but also for its reference to an invisible group of nonlawyer legal professionals, who had in workplace fact been ousted from this jurisdiction within the half century of Mr. Littleton's memory. The new social-history method—studying conflict to find the lost people of history—has produced a lost profession.

The Philadelphia conveyancers had been, in fact, a small, elite group of practitioners, some of whom were lawyers and some of whom were not. They normally both drafted and stored title papers, wills, and other documents. At first employed as hired specialists to abstract titles, they eventually became independent consultants. A family lawyer would consult a conveyancer concerning property to be purchased, and the conveyancer would then abstract the title and take counsel from a consulting real-estate lawyer on the title's encumbrances. As specialists in property documents, the conveyancers naturally handled wills, mortgages, trusts, and related property matters. Apparently they had strong professional structure; as Littleton mentions, they had an association. Other sources report that their examinations were felt by many to be considerably more difficult than those of the lawyers.

Nonetheless, the conveyancers were destroyed, very rapidly, by a convergence of forces. The lawyers were rapidly increasing in numbers and looking for work. This threatened the conveyancers' control of wills, trusts, and similar documents. In their heartland title work, a crucial court case both

gave them “professional” stature and destroyed them. In *Watson* v. *Muirhead* (57 PA 161, 1868), the court held conveyancers not liable for bad titles if they had taken reasonable precautions. But this left purchasers without recourse in cases of bad title, a situation the growing business community would not accept. A coalition of exasperated businessmen, lawyers, and conveyancers created in 1876 the Land Title Insurance Company (the first such corporation), to provide a mechanism for pooling the risks of property transfer. In a similar move, lawyers and bankers founded the Fidelity Trust Company to take up work with trusts and other financial matters. As a result of these changes, the conveyancers rapidly disappeared.

The example of the conveyancers shows again how the relative extents of jurisdictional claims can tell us much about the direction of jurisdictional change. For lawyers of the 1930s, the writing of wills was an old expansion jurisdiction, one in which they sought to convert a successful workplace invasion into publicly and legally recognized domination. That the rural public persisted in having wills drawn by banks, trust companies, prothonotaries, and aldermen indicates that this expansion had never had the success in rural areas that it enjoyed in the city.

COMPETITORS

The lawyers had other antagonists besides the vanquished conveyancers. These antagonists, as I have argued throughout, provide the structure that bends the two professions in different directions. They fall into seven groups. The first are the other free professions—the accountants, the bankers, and others. The second are the other professions affiliated with the law. In America this meant notaries, foreign (out-of-state or out-of-country) lawyers, and disbarred individuals working for other lawyers. In England it meant barristers, law stationers, and solicitor’s clerks, and, as in America, uncertificated solicitors. A third group, the land professions, comprises the simple category of real estate agents in the United States, while in England embracing the much wider variety of house agents, estate agents, land agents, valuers, surveyors, and so on. A fourth group is local officials—justices of the peace, magistrates, police, and other municipal authorities, as well as their various clerks. In England this category includes registrars in probate and their clerks. Fifth, a group of negligible importance in the United States, but of great importance in England, is national officials. These included officers of the Board of Trade, of the Office of the Public Trustee,

of the Inland Revenue, and of a variety of other administrative bodies. Conversely, the sixth group was more important in the United States—corporations. These include title and trust companies, insurance companies, collection agencies, legal aid societies, trade associations, and various other groups. The seventh category of offenders is a miscellaneous group of outsiders—chiefly "debt collectors" in England and insurance agents in the United States.

Table 6 shows the impact of these competitors. Competition from other free professions is more common in the provincial than the metropolitan data in both countries, but the general level seems somewhat higher in England. Competition from other legal professionals, by exact contrast, is more common in metropolitan than provincial data, and distinctly more common in the United States. Competition from the land professionals is, as one might expect, largely a provincial concern, and perhaps a little more common in England. Competition from local authorities is purely a rural phenomenon in the United States, although about equally common for both groups in England. A sharp contrast between the two countries arises over competition from officials of national administrative bodies: in the United States, this was negligible, while in Britain it made up nearly a quarter of the Law Society's complaints, and was a substantial problem for the more provincially oriented *Law Notes.* The figures for competition from organizations—companies of various shapes and sizes—exactly reverse this situation. Companies supply the majority of urban complaints in the United States, and one-fifth of the rural ones. They supply about one-tenth of the English complaints. It is not unfair to summarize these patterns by saying that the English lawyers faced an invasion by officials and other free professionals, and the Americans an invasion by companies and other legal professionals.

TABLE 6 Jurisdictional Competitors

Dataset	Competitors[a]							
	Free	Law	Land	Loc	Nat	Orgs	Other	Unsp
New York	5	19	1	0	0	51	7	16
PABA	15	9	14	20	1	20	5	14
U.S. total	9	15	7	9	1	38	6	15
Law Society	11	9	4	11	24	7	11	22
Law Notes	23	5	18	14	8	11	19	1
England total	18	7	12	13	15	9	16	10

Note: All figures are percentages.

[a] Free = free professions; Law = legal professions; Land = land professions; Loc = local judicial and administrative officials; Nat = national administerative officials; Orgs = corporations; Unsp = unspecified.

This striking contrast raises important questions about the predictions of conflict made above. True, the amount of American jurisdiction in property was expanding with the population, and the business jurisdiction much more rapidly. Yet in both jurisdictions, American lawyers faced competition not from individuals but from specialized corporations—trust companies, title companies, collection agencies.This competition was directed not against the expanding law firms in the qualitatively new jurisdictions of big business and government, but against individual lawyers and small partnerships working in more slowly expanding areas. This conflict arose out of external invasion of areas under full lawyer jurisdiction, and proceeded by price cutting; it exemplifies the third form of conflict discussed above.

In England the invaders were also organizations, but in that case state organizations. There seems to be clear evidence that the conflict arose through underservice; the state vowed to provide faster and more equitably distributed service. That state work was cheaper was to be a by-product; in fact, it seldom was.[28]

IMPORTANT CONTESTS

To gain a clearer picture of the actual settlements of the major jurisdictional disputes, we may analyze problem areas and competitors in detail. This means replacing general classifications (free professions, national officials, land and property) with actual groups and bodies of work (accountants, the

Board of Trade, trusts). I include in this analysis any group or problem responsible for more than ten mentions in the relevant country.

Tables 7 through 10 show this data for problems and competitors respectively. I shall discuss England first, considering first the problems by decade, with the competitors chiefly responsible (table 7) and second the detailed totals for each major competitor, combining all areas of conflict (table 8). In England, the most important areas of conflict, in decreasing order, were the writing of legal threats, prosecution, and general advocacy, followed at some distance by trusts, general probate work, bankruptcy, wills, briefing barristers, writing contracts, general debt work, and general property work.

It is interesting that the writing of threatening letters—the main activity of debt-collecting work—should be the most central problem of British solicitors. The vast majority of these complaints were provincial in origin (forty-one of forty-six), and came from competitors—agents, accountants, debt collectors—who follow a temporal succession. Agents were a general group from whom various land professions officially separated in the late nineteenth century—Chartered Surveyors in 1868, Valuers in 1882, Auctioneers and Estate Agents in 1886, Land Agents in 1902.[29] Each of these groups formed a specialized qualifying association, usually removing itself from debt collection in the process. The provincial accountants continued to do much of it, but accountancy itself became an officially qualified profession in the eighties with the foundings of the Institute of Chartered Accountants and of the Society of Incorporated Accountants. While provincial accountants were seldom members of those bodies, accountancy rose in status and standards throughout the period and was also rapidly filling an enormous new jurisdiction generated by the Companies Acts. There was thus less impetus to compete. But the accountants were simply replaced by the "debt collectors," a nondescript group who provided the majority of the later complaints. It appears, then, that this persistent conflict arose from lawyer underservice and a clientele settlement. Solicitors' rates for collection work were simply too high for the provincial merchants.[30]

TABLE 7 Problems by Decade with Competitors Involved: England

Problem	1880	1890	1900	1910	1920	1930	Competitors
Advocacy							
General advocacy	15	1	6	8		1	Accountants, 5 Debt collectors, 5 Corporations, 4 Agents, 3
Briefing			4	2	4	2	Clerks, local, 5
National positions							
National office	1				4	1	Barristers, 3
Local work							
Prosecution	7	12	5	9			Police, 29
Advice							
Advising families	3	2					
Business							
Bankruptcy	5	6	3	1			General officials, 6 Bankruptcy Office, 5
Liquidation		4	4				Bankruptcy Office, 4 General officials, 3
Winding up estates	1	1	3				
Making companies	1		5				
Threat letters	16	6	11	10	2	1	Debt collectors, 14 Agents, 10 Accountants, 7
Contracts	5		5			1	Auctioneers, 4
General debt	4		5	2			Accountants, 4
Land and property							
Conveyancing	1		2	1	2	3	Building socs., 3
Wills	5		5	1	1	2	Corporations, 3
Registration	2	1	4				General officials, 5
Trusts		5	13	1		1	Public trustee, 17
Leases	5	1	2			1	House agents, 5
General probate	4		9	4		1	Law stationers, 4 Probate registrars, 3 Inland Revenue, 3
General property	3	3	3		1		

Note: All figures are counts of mentions. All individual problems with more than five mentions in the full English data are included. Competitors are listed if they have more than three mentions for the particular problem involved.

TABLE 8 Competitors by Decade: England

Competitor	1880	1890	1900	1910	1920	1930	*N*
Free professions							
Accountants	17		12	2			31
Auctioneers	5	1	6	4			16
Bankers			1		1	8	10
Law professions							
Barristers							7
Law stationers							6
Unadmitted in solicitor office							5
Land professions							
Estate agents							5
House agents	2	2	7				11
Agents, general	16	1	2	1	2	1	23
Local officials							
Clerks to local authorities							5
National officials							
Bankruptcy Office							9
Public trustee		6	13				19
Officials, general	1	9	9	4			23
Corporations							
Corporations, general	6		8	4		1	19
Others							
Debt collectors	1	3	10	9		1	24

Note: Each competitor with more than five mentions in the total English data is listed. Decade figures are given when there are more than ten total mentions.

Police prosecution and general advocacy (usually involving matters of debt collection) were both matters of enduring concern to solicitors. Although lawyers generally like the idea of courts (rather than legislatures) controlling legal practice, in England most judges were barristers or laymen. Solicitors again and again failed to persuade these men to exercise their authority under Section 72 of the County Courts Act of 1888 to forbid lay people to advocate in court. The *Law Notes* went so far as to publish a blacklist of those County Court justices who permitted accountants, debt collectors, and others to practice before them. It also investigated the

common provincial practice of hearing the collection professional as witness rather than as advocate. But these practices were apparently never curtailed until the 1920s. Complaints about general advocacy, then, were like those about letter writing: they arose mainly in connection with debt collection and involved the same settlement by division of clientele.[31]

Prosecution by nonsolicitors increased courts' ability to handle minor complaints and so embodied another, equally unacceptable, settlement by clientele differentiation. *Legal* jurisdiction of prosecution was not in fact restricted to solicitors, at least in the lower courts, and indeed as late as 1914 the Home Office was directing chief constables to examine the witnesses in borough police courts in cases where they themselves had laid the information. Solicitors accused police of imprisoning many innocent men and believed justices' clerks favored the police because "they know the procedure of the Court, and save time."[32] But the importance of this jurisdiction to the solicitors was largely symbolic. Criminal prosecution in borough courts was neither a major monetary attraction nor a business source. By serious activity here solicitors hoped to persuade the public of their disinterested wish for public justice. The jurisdictional settlement sought was what I have called intellectual jurisdiction, a claim to control how a particular area is served without in fact having the manpower or the inclination to serve it.

Such disinterest was hardly present in the areas of trusts, general probate, and bankruptcy. These were central areas of solicitors' work, and all three were seriously invaded, not by other professionals, but by Her Majesty's Government. The Bankruptcy Act of 1869 had allowed receivership into the private sector (the work was largely done by accountants), but that of 1883 returned most duties of receivership to the Board of Trade. As if this were not enough, while the Law Society fulminated, the Lord Chancellor (Halsbury) astounded the solicitors by announcing in 1887 his intention of seeking compulsory land registration. (The Law Society noted with some malice that neither Lord Halsbury nor Sir Robert Torrens, inventor of the registration system used in Australia, registered his own titles.) Although the land registration plan was eventually watered down to a limited test of registration in certain districts of London, one of Halsbury's other schemes, for the creation of an Official Trustee, became law as the Public Trustee Act of 1906 (6 Edw. 7, c.55). These developments explain the chief governmental competitors listed in table 7, officials of the Board of Trade,

general officials, and the Public Trustee. Two other sets of officials appear in connection with probate work—the registrars, who often did legal work for private parties in connection with their official duties, and the Inland Revenue, who under Section 33 of the Customs and Inland Revenue Act, 1881, and Section 16 of the Finance Act, 1894, had full probate jurisdiction in cases under £500.[33]

This invasion by the government, labeled "officialism" by the solicitors, originated in the impulses that built the welfare state. Services were to be provided to the unserved. Legal delays would be avoided by bureaucratic solutions. The government repeatedly argued its ability to provide these services not only with more rapid and equitable distribution, which solicitors never disputed, but also at less expense, which they emphatically did.[34] Nonetheless, the solicitors were forced to accept coequal jurisdiction with the state in several of these areas, since most bankruptcy remained in state control, trusts became state or private work at the discretion of their principals, and land registration was made voluntary in some areas and compulsory in others. The state, that is, was able to force a jurisdictional settlement by division of labor, rather than merely by client differentiation.

In America, the detailed story of competitors and problems merely verifies a picture we have already surmised from the general data (tables 9 and 10). First, there is a distinct difference between the urban and rural complaints. The rural complaints concern bread and butter property work—wills first and foremost, followed distantly by conveyancing, general property work, the winding up of estates, and trusts. In the city, the specific problems are general debt work, bankruptcy, and advocacy on retainer, followed distantly by legal, tax, and published advice, the writing of threatening letters, wills, and trusts. It is noticeable that the two lists overlap only in wills, trusts, and general property work, and that much of this competition is attributable to one type of competitor—the trust company and the bankers who ran it. The collection agency, by contrast, seems a completely urban phenomenon, as do the title company and other corporations. Local officials are important chiefly in the countryside, while other legal groups have their chief impact in the city, although notaries do cause some problems in the country.

This detailed pattern confirms much about the interpretation of American legal conflicts so far given. The urban bar's lower tier, over-supplied by the night law schools, is fighting to expand into (or perhaps to retain) a

collection business that is apparently conceded in the country, where the declining lawyer populations are fighting to defend more central jurisdictions against invasion. The urban groups' most important competitors are corporations offering efficient services. (These corporations, as one might expect from the discussions of chapter 6, were usually multiprofessional in nature; virtually all included lawyers as important, though not dominant, elements.) Having achieved great economies of scale in searching titles, the title companies next sought to construe their right to draft legal instruments directly affecting insurability as a right to draft deeds.[35] The lawyers managed to turn back this attempt to seize a coequal jurisdiction in land affairs—one that would have been fatal to them—but did have to settle for the removal of much title work that had once belonged to them. The same thing happened in collections. The lawyers defeated the collection agencies' bid to seize coequal legal jurisdiction—by denying them the rights to have lawyers on retainer, to write certain kinds of threatening letters, and so on. But the collection agencies in fact performed that centralization of demand which Lazarus had foreseen as necessary and absorbed a considerable amount of demand for legal services in the process. The story was repeated with trust companies. The trust companies' bids to write wills and draft trusts were denied, retaining crucial aspects of property jurisdiction under lawyers' legal control. But the lawyers still lost most administrative work connected with trusts and probate.[36]

TABLE 9 Problems by Decade with Competitors Involved: United States

Problem	1910	1920	1930	1940	Competitors
Advocacy					
Government advocacy		1,	2, 4		
General advocacy	1,	5,	1,		Corporations, 3
Minor tribunals				3, 2	
Tax appeals	2,		1, 1	1, 3	
On retainer	5,	4,	3,	1,	Collection agencies, 3
Advice					
General advice	1,		7, 3	1, 1	Foreign lawyers, 5
Tax advice	2,	3,	1, 3	1,	Accountants (PA), 3
Published adv.	1,	3,	4,	1,	
Business					
Bankruptcy	3,	5,	6,	2,	Collection agencies, 7
Winding up estates	1,	, 2	, 6		
Threat letters	1,	4,	4,		Collection agencies, 4
General debt	7,	6,	4,		Corporations, 5 Collection agencies, 4 Unauthorized in lawyer's office, 3
Land and Property					
Conveyancing	2, 3	, 1	, 4	, 1	
Wills	6, 3	3,	1, 21	, 1	Trust companies: NY, 3; PA, 7 Bankers (PA), 5 Real estate agents (PA), 3 Notaries, 3
Trusts	2,	3, 1	2, 6		Trust companies: NY, 5; PA, 5
Mortgages	2,		2,	1, 1	
Contracts/sale	1,	1,	, 3		
General prop.	3, 1	2,	, 6	, 1	Real estate agents (PA), 4 Title companies, 3

Note: All figures are counts of mentions. The figure before the comma is NY, the other figure is PA. All competitors listed are NY unless identified as PA. All individual problems with more than five mentions in the full U.S. data are included. Competitors are listed if they have more than three mentions for the particular problem involved.

TABLE 10 Competitors by Decade: United States

Competitor	1910	1920	1930	1940	*N*	NY	PA
Free professions							
Accountants	2	9	4	15	5	10	
Bankers	4	11	1	16	5	11	
Law professions							
Unadmitted in lawyer office					8	6	2
Foreign lawyers		1	7	4	12	12	
Notaries	9	5	14	1	29	18	11
Land professions							
Real estate agents			19	5	24	1	23
Local officials							
Justices of the peace	3	2	11	1	17		17
Aldermen		2	8	2	12		12
Corporations							
Trust companies	10	7	18	3	38	19	19
Title companies	12	4	3	4	23	19	4
Collection agencies	7	9	26	4	46	40	6
Corporations, general	10	7	4		21	20	1
Insurance companies					5	3	2
Others							
Debt collectors					7	7	
Insurance agents					6	2	4

Note: Each competitor with more than five mentions in the total U.S. data is listed. Decade figures are given when there are more than ten total mentions.

In each of these competitions with companies, the lawyers preserved what I have called an advisory jurisdiction. Their competitors' administrative efficiency provided far more effective services in the collection, trust, and title areas than could lawyers. In defense against them, the best the lawyers could manage was to retain legal and public control over the purely legal residual of these areas. The companies took over the administrative work in the workplace and, as time passed, were conceded the public right to it in bar association arguments and the legal right to it in court cases. These jurisdictions proved poachable because, in the terms of chapter 2, the subjective jurisdictions over them were weak; only a small fraction of the traditional work in them actually involved lawyers' special skills. Most of it was administration for which lawyers were neither specially trained nor

specially able. Yet all of it had been considered part of trusts, collections, or title work as the case might be. The courts tried for some time to defend the lawyers' view by holding *workplace* jurisdictional standards to apply to lawyers (practice of law includes anything that lawyers have customarily done) while holding *legal* standards to apply to their opponents (practice of title companies includes only what statutes say it does). Ultimately, however, the courts retreated and the poachers relented, satisfied with the lucrative administrative work they could so effectively handle.[37] The result split each of the three old legal jurisdictions in half, giving their administrative portions to the corporations and their legal ones to the lawyers. The meaning of trust, title, and collections as areas of work thus radically changed.

The notaries and foreign lawyers offer two interesting footnotes to unauthorized urban practice. The New York bar attributed the notarial problem to the city's large foreign population. The bar associations attacked "ignorant foreigners coming from countries where the 'notary' is a quasi-lawyer" for supposing that notaries were capable of performing legal actions. Eventually, perhaps because America entered the First World War as France's ally, the committee's remarks became a little less nativistic. The (later) foreign lawyer problem was similar; foreigners arriving in the 1930s often saw fit to advise fellow countrymen concerning the laws of their own land, something the bar association originally tried to attack, but later permitted. But the chief problem with foreign lawyers was their procuring offshore divorces for clients, something which drove the bar committees quite mad. Under the heading of foreign lawyers came also those large law firms from other American cities that opened New York offices. These provide the lone example in these data of a conflict, within the qualitatively new big-business jurisdiction, between members of the upper tier of the profession. Although these invaders were nationally reputable firms, the New Yorkers insisted that they announce on their letterheads their incapability of New York practice. The competition for the new commercial work was so intense as to cause fighting within the profession.[38]

The American rural scene was quite different. There lawyers were scarce and even lawyers were frank about the necessity of nonlawyers doing some legal work. In 1921, half of Pennsylvania's counties had less than forty lawyers apiece, and a quarter had less than twenty. Justices of the peace, aldermen, notaries, prothonotaries, and various other officials and laymen had perforce to do a variety of lawyers' work. Complaints about this practice

surfaced most in the smaller cities like Wilkes-Barre, Allentown, and Williamsport, where the clearly defined legal systems of the cities met the locally negotiated divisions of labor characteristic of the true countryside. The rural conflicts concerned basic heartland legal work in land and property and betray all the usual signs of invasion of an underserved jurisdiction. It is striking, by comparison with the urban data, that Pennsylvania shows no sign whatever of the problems associated with collections—complaints about letters, about representation on retainer, about debt work. This too signifies a retreat to heartland work.[39]

Surprisingly, many problems related to the new government business—tax appeals and advocacy before minor and government tribunals—seem to be equally split between urban and rural American lawyers. The presumption that governmental work provided an expansion area mainly for upper-tier urban lawyers may thus be incorrect. The tax advice findings do support it, for that problem is a largely urban matter. But still, the government work may have offered more general opportunities than it seemed at the outset. Perhaps it was the attempt to enter this new jurisdiction that left the rural lawyers so open to invasion in their land and property work.

Conclusions

This analysis aimed to answer a classic question in the history of professions: how and why did the English solicitors lose the preeminent position that American lawyers rapidly gained in the early twentieth century? The answer here given is a complex one, as befits a complex question. Three things interacted to produce that outcome: the actions of the two professions themselves, the general social environment that produced both new work and new means of doing old work, and a host of competitors trying to control areas centrally important to the legal professions. None of the three can be omitted in a full account; each has its part to play.

The structural cause of the difference lay in the interaction between the two professions' actions and their general environment. The period in general was one of rapid expansion in potential legal work. Yet for reasons largely related to immediate status gains, the solicitors chose a set of rigid professional structures—in particular, clerkship—that sharply limited their ability to expand manpower, Nor did they invent techniques for seriously increasing individual output, although the use of managing clerks helped somewhat. American lawyers had freer professional structures, whether by

accident or design, and therefore handled the expansion much more effectively. They grew both in manpower and, in certain areas at least, in output per individual.

This difference in professional action led, given the environment, to a loss of jurisdiction by the solicitors far exceeding that of the American lawyers. The exact course of this retreat to the "heartland" of professional work was determined considerably by the types and numbers of competitors. We have seen several different patterns among rural and urban lawyers, among high-status and low-status lawyers. The competitors have been not only other professions, but also state officials and lay people. Deprofessionalization of certain areas of work occurred extensively in various areas. The actual development of any particular professional subgroup thus comprises a series of events shaped but not determined by constraining factors—the general social environment and the environment of professional competitors. Within these constraints those histories work themselves out somewhat freely. It was virtually certain from the general constraints that solicitors would fall back on some form of basic work. That the basic work would be conveyancing—that 60 percent or more of a modern solicitor's income would come from that source—was by no means foreordained. Rather it reflected the intersection of peculiarly strong legal and public jurisdiction by solicitors with the inability of competitors to produce alternative methods for exchanging property, an inability which the solicitors, of course, used all means in their power to maintain.

The actual decisions made by professions within these constraints reflect many factors discussed in earlier chapters. A profession is likely to fall back on areas in which its subjective jurisdiction is particularly strong, in which its general cultural legitimacy is unquestioned, and in which the work is sufficiently esoteric to justify professional service, but not so esoteric as to make its prescriptions unacceptable or its work unlegitimable. The decision may also reflect external considerations like social status—the solicitors may have chosen conveyancing because of its associations with land, rather than collections with its associations with trade and commerce. The decisions may also reflect the social structure of a profession—the strength of its associations, schools, and work organizations—or the potential of its knowledge base for development. These various internal factors provide the sufficient impetus that chooses a course of action within the necessary constraints imposed by the competitive system surrounding the profession.

At the same time as it opened and closed areas of work, the larger social environment directly shaped the nature of the lawyers' competitors. It is no accident that the solicitors faced officials and American lawyers faced corporations. The rise of interventionist government and of multiprofessional organizations were both noted in chapter 6 as general changes gradually reshaping the nature of competition in the system of professions. Their implications here are clear. In Britain, the government became a major provider of legal services to large sectors of the population. Not content with regulating the professional environment, the government actually entered it as competitor. In America, the new organizations found that they could handle most of the work involved in trusts, titles, and collections at a fraction of the cost of traditional legal service. By separating adminstrative from purely legal work, they deprived lawyers of large areas of traditional jurisdiction. Again, in this case external forces actually invaded the jurisdictional system as competitors, rather than simply changing the nature of competition.

Substantively, then, this chapter has produced a clear and yet suggestive answer to the problem with which we began. It not only tells why American and British lawyers differ today, but suggests a number of questions to ask about other professions. Was the pattern of corporate invasion characteristic of other American professions, and if not, why not? Similarly, is government invasion a general British pattern or a localized one? Do the later arrivals of big government in America and of big business in Britain bring further invasions of legal jurisdictions, and if not, why not? Why were some competitors of the legal profession successful and others not? Can we find reasons for this in the other interprofessional conflicts in which *they* were involved?

This substantive fertility reflects the power of the general theoretical approach taken here. The present chapter has illustrated central parts of that approach. Rather than focus on such structures of professionalization as schools, licenses, degrees, and associations, it focuses on the relation between a profession and its work, the relation of jurisdiction. The analysis of this chapter focuses particularly on different audiences for jurisdictional claims—legal, public, workplace—and on the different jurisdictional settlements achieved before those audiences: by division of labor, by intellectual control, by subordination, by advisory control, and by clientele differentiation. I have pursued these specific aims by a particular method—

by outlining the conflicts I expected a particular profession to have, and then investigating them with data on claims of jurisdictional invasion.

This method produced some startling results. It abundantly verified the assumption of extensive interprofessional conflict. It found the vanished conveyancers—an expropriated nonlawyer group of whom I find no mention whatever in standard secondary sources. It discovered the striking differences between the invasions faced by American and British lawyers. It used the differing extents of jurisdiction in legal, public, and workplace environments to verify directions of expansion and contraction. It showed the unforeseen consequence of excessively rigid professionalism in England—inability to handle demand. It emphasized the different invaders of American and British jurisdictions—corporations and government—a difference rich in implications for both professions. In short, the method proved an effective way to answer many of the questions with which we began and produced a number of unexpected benefits.

But there are serious drawbacks, as well. A focus on conflicts means that changes occurring without conflict make very little mark. Yet one of these was in fact central in this period—the quiet loss of the new work in big business by the British solicitors. The financial men of the City, exasperated with the dawdling of the High Courts of Justice, slowly removed most of their disputes from the legal system in this period, settling them either directly or through arbitration. Since no competitor stole this business, nor did it vanish in a clear, abrupt fashion, the change was not noticed by a method aimed mostly at conflict. Another problem is that stable and unconnected jurisdictions, however important they may be, are eclipsed by more conflicted areas. The concentration on unauthorized practice complaints means a general emphasis on workplace jurisdiction, rather than legal or even public jurisdiction, when the latter may have great long run implications.

These problems can, of course, be met by alternative methods working within the same theoretical approach and the questions it generates. Jurisdictional importance can be assessed directly by studies of the distributions of types of practice. (Indeed, such studies identified the resemblance between areas in which conflict was extensive and areas in which practice was extensive.) Such a measure would capture the invisible withdrawals just mentioned, although in practice only rarely are data specific and reliable enough to differentiate areas of practice as do the unqualified

practice complaints. The problem of deemphasizing legal and public jurisdiction is less of a worry than that of biased jurisdictional importance, since these arenas of jurisdictional claims are generally well studied. Yet many of these studies are written by professional participants who mistake their own professions version of a task for eternal truth. Good studies require a clear conception of the objective task and its possibilities in order to analyze in detail how the subjective jurisdiction was actually constructed. This problem will be investigated in the next chapter.

These methodological quibbles should not obscure the fundamental strengths of the present method. On balance, studying interprofessional conflict provides one of the best possible avenues to analysis of professional development. By studying a familiar question from a new vantage point, the present chapter has shown that interprofessional conflict over work is not simply a peripheral phenomenon, providing detail to the general outline of professionalization. Professions evolve together. Each shapes the others. By understanding where work comes from, who does it, and how they keep it to themselves, we can understand why professions evolve as they do.