Para-lawyers: Other legal occupations

Herbert M. Kritzer


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by great scholars, from Montesquieu to Max Weber, to which can be added a theory proposed by chemistry (saturnism). None is fully comprehensive, but each one enlightens part of the phenomenon. The history of social sciences is not a history of paradigmatic upheavals, but of competing theories, with many being invalidated, but many others constituting the foundations of the contemporary social sciences. Without competing theories, social sciences would not advance. The clash of theories leaves no room for paradigms. In some cases a paradigm may assume the features of a dogmatic orientation. No wonder if not so many scholars adopt it: “The notion of paradigms and paradigmatic revolutions often seem to be taken up only in order to be rejected. The beneficiary of this exercise in several cases is Lakatos, mostly because he appears as a type of moderate Kuhn” (Weingart 1986, p. 267). In the social sciences, theoretical disagreements are beneficial to the advance of knowledge. Nevertheless, the word paradigm has taken root, particularly in sociology, political science, psychology, and normative philosophy. Yet most philosophers of science reject it; most historians are reluctant to make such generalizations; most economists continue to think in terms of assumptions. It may be too late now to try to exclude this word from the lexicon, in spite of the fact that many other expressions are available (conceptual framework, assumption, dominant theory, theoretical breakthrough, grand theory, general model, axiom, and so on). It has become necessary to specify it, or to limit its use to particular domains, such as cognitive science, international relations, or hybrid demography.

See also: History of Science; History of Science: Constructivist Perspectives; Problem Selection in the Social Sciences; Methodology; Quantification in the History of the Social Sciences; Science, Sociology of; Theory: Conceptions in the Social Sciences

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M. Dogan

Para-lawyers: Other Legal Occupations

1. Definition

Para-lawyers are persons performing ‘law work’ who themselves are not lawyers. Law work in turn refers to those activities requiring at least some of the specialized legal knowledge and skill of the type associated with the work of lawyers. Thus, para-lawyers are ‘law workers’ who lack the full credentials and/or status associated with the legal profession but who provide services that draw on expertise in law and/or legal processes. This negative definition reflects the complexity of defining the practice of law and what constitutes membership in a legal profession.

Drawing the line between lawyers and para-lawyers varies from country to country because of variations in the nature of legal tasks within different legal
systems, and how those tasks are assigned to particular occupations. In many countries, the exact line is not clear. In some countries, the term most equivalent to 'lawyer' is customarily applied to an occupation engaged in a very narrow range of activities, while there are other occupations requiring substantial formal legal training that perform work which elsewhere would be the exclusive domain of the legal profession. Deciding whether to include such occupations under the label lawyers or para-lawyers requires drawing an arbitrary line. One example is the legal occupation of 'notary' as it exists in many civil law countries (Malavet 1996). Historically, the occupation of notary arose to provide a neutral person who could be trusted to draw up fair contracts to be executed by one or more persons unable to read or write; today, notaries continue to play a role in the drawing up of and execution of contracts, and apply specialized legal knowledge related to those activities. If the notary's tasks involve anything more than ministerial functions such as witnessing the execution of contracts, it is arbitrary whether or not the notary is part of the legal profession or should be categorized as a para-lawyer.

In addition to problems of drawing a line between lawyers and para-lawyers, it is difficult to draw a line between para-lawyers and 'nonlaw' occupations. For example, many nonlaw occupations require the use of some very specific legal knowledge, typically applied in a very routine way. Examples include drawing up contracts for routine property transactions (in the United States typically done by real estate sales agents), drawing up routine loan contracts (done by bank officials), settling tort-based injury claims (done by nonlawyer representatives of insurance companies), or advising on estate or tax issues (done by financial advisors and accountants). In one sense, all of these occupations could be labeled para-lawyers; for some of the occupations the para-lawyer work is only a part of their activities (e.g., real estate sales agents) while for others (e.g., insurance claims representatives) it is the vast bulk of their work.

Finally, there is no recognized standard of education or specialized training to become a para-lawyer. While there are training courses for occupations variously labeled 'paralegal,' 'legal assistant,' or 'legal executive,' these courses do not provide formal qualifications, and most people enter such occupations without any formalized training (Johnstone and Wenglinsky 1985, pp. 121–3). Other kinds of para-lawyer occupations involve the application of knowledge learned in some other role; examples include former police officers representing persons charged with driving while intoxicated in Ontario, former Internal Revenue Service (IRS) auditors representing or assisting taxpayers in disputes with the IRS in the United States, former insurance company claims inspectors or adjusters representing injury claimants in England, and legal secretaries who take on increasing responsibilities to the point where they are engaged more in law-work than in secretarial work. Thus, there is no clear way to decide whether a person offering a particular set of services, or engaged in a particular set of tasks, should be classified as a para-lawyer; nor is the term para-lawyer in common use in a way that would allow for self-identification.

2. Empirical and Theoretical Issues

Even with these definitional and boundary problems, the concept of para-lawyers, and para-professionals more generally, is useful theoretically and important for practical purposes. It raises the issues of how law-work is and should be structured, and what qualifications are needed to be effective in law work. In addition, there are two other lines of theoretical inquiry that are important vis-a-vis para-lawyers: 'deprofessionalization' and the gendering of occupations.

2.1 Structure of Law Work

Law work readily divides along at least three dimensions: institutional setting, legal advice vs. legal assistance, and routine vs. nonroutine tasks. The degree to which para-lawyers have in the past, and are today, providing legal services varies along these dimensions. As one moves among institutional settings—from office, through tribunal, to lower courts, and finally to the higher courts—the role of para-lawyers tends to decrease. Para-lawyers are most often excluded from law work in upper level trial and appeal courts, and least often from tasks that can be completed in the privacy of an office. For example, in England, lawyers enjoy a monopoly on representation in the higher courts; in contrast, office-based work generally is not limited to lawyers, nor is representation before administrative tribunals. Recent developments are bringing nonlawyers into some courts in England, particularly to handle preliminary matters in criminal cases.

Continuing with the example of England, para-lawyers direct a larger proportion of their effort toward providing advice on legal matters, broadly-defined, while lawyers are more likely to engage in active assistance. In part this is because accounting firms and advice bureaus staffed by nonlawyers are major providers of legal advice in England. In other countries, it is likely to be the case that para-lawyers are more involved in advice-giving simply because it is less visible, and hence difficult for regulators to limit or otherwise control.

The more that routines can be established to handle a legal task, the more possible it is for someone with very specific training and/or expertise to handle the task, even if it is highly technical. For example, in the
US, appeals of certain types of government benefit claims involve highly technical issues of both regulations and medical assessment. Such cases tend to be handled by specialists, some of whom are lawyers and some of whom are para-lawyers. On the less technical side, there are many legal processes that are routine but require the completion of various kinds of forms; para-lawyers can both identify the forms needed for various processes and assist consumers in the completion of those forms.

One final issue concerning the structure of legal work and para-lawyers is whether they work as independent service providers or under the supervision of lawyers. Many lawyers employ para-lawyers to complete routine and/or specialized tasks within the lawyers’ practices (Johnstone and Wenglinsky 1985); many legal departments inside organizations employ a mix of lawyers and para-lawyers all under the supervision of senior lawyers. Typically, para-lawyers working under the supervision of lawyers is an accepted delegation of responsibility, although there is substantial variation in drawing the line between what a para-lawyer may do and what requires a lawyer. One frequent boundary is the courtroom door: representation in court tends to be limited to lawyers, although that may be less so in the lower courts (the example of drunk driving cases in Ontario noted previously), and is changing under both political and economic pressures (the example of para-lawyers handling certain criminal matters in England, and the role of specialized advocates in certain types of cases such as domestic violence).

2.2 Effectiveness in Delivery of Legal Services

A key question with regard to the work of para-lawyers is how it compares in quality to the same activities carried out by lawyers. While lawyers claim that use of para-lawyers raises threats of poor quality work, efforts to compare systematically the work of lawyers and para-lawyers fail to support this contention (Kritzer 1998). The extant research demonstrates that para-lawyers can be as effective as lawyers in providing specific legal services. Achieving effectiveness involves a combination of specific knowledge or expertise vis-a-vis substantive law, institutional process, and other actors in the system. Para-lawyers who obtain this combination can achieve levels of effectiveness comparable to that of lawyers, and specialized para-lawyers will tend to be more effective than lawyers lacking one or more of the three core elements of knowledge.

The relationship between the service provider and the client can also influence the relative effectiveness of the provider. Specialist para-lawyers who have ongoing relationships with clients may be more effective than even specialist lawyers brought in on an ad hoc basis to handle a specific matter; this reflects the knowledge base created by the ongoing relationship. The payment arrangement between service provider and client may also make a difference. One study that found specialist lawyers to be more effective than specialist para-lawyers in a particular area attributed the difference in significant part to the lawyers being paid on a no-win, no-fee basis while the para-lawyers’ compensation was unaffected by the outcome of specific cases.

2.3 Deprofessionalization and Postprofessionalism

‘Deprofessionalization’ refers to the shift from professional to nonprofessional status. Professional status is conferred on those occupations which maintain a monopoly over a theoretical base of knowledge, have expectation of autonomy in regulation and day to day work, and have among their clientele a belief in the professional having a service ethos. Deprofessionalization refers to the loss of these supposedly unique occupational qualities (Haug 1973, Rothman 1984). Nonprofessionals such as para-lawyers increasingly do work once the province of professionals.

Deprofessionalization reflects several specific developments. First is the combination of the rationalization of knowledge, the rationalization of tasks employing knowledge, and the growth of tools to assist in applying knowledge. The more that tasks can be compartmentalized and the more that knowledge-based tools can be applied, the easier it is to assign the task to a person with limited, specific expertise. The result is the deskilling of knowledge-based occupations. A second development is the loss of governmental support for restrictions limiting the role of para-lawyers. In England solicitors held a monopoly on handling land transfers for many years, but these tasks are now open to licensed non-lawyer specialists; in the US, limitations have been under attack politically at both the national and state level (Commission on Nonlawyer Practice 1995). The third development is the increasing bureaucratization of legal service delivery; once organizational structures become established, there is a drive to rationalize, compartmentalize, and reduce costs. Bureaucratic structures also provide means for supervision and control, which both creates tensions for professionals expecting autonomy and provides a setting to monitor the work of para-lawyers.

A traditional claim by lawyers seeking to secure and maintain restriction on the delivery of legal services is that opening such work to para-lawyers and other nonlawyers jeopardizes the interest of clients both because of lack of competence and the absence of the stringent ethical norms of the professional. As noted in the previous section, systematic research in the United States and elsewhere increasingly challenges this claim. The loss of this argument combined with drives to contain costs through broadening options in
service-oriented markets pushes toward less and less control of ‘professional’ services.

The concept of deprofessionalization suggests the loss of something. An alternative concept, ‘postprofessionalism’ (Kritzer 1999) reflects most of the same elements but sees the opening of legal and other professional services to para-professionals such as para-lawyers as part of a natural development. Postprofessionalism builds on the growth of technological tools to access knowledge previously the exclusive realm of persons with professional-level training (Susskind 1996). These developments parallel the industrial revolution when the rationalization of tasks and the development of machines led to the shift from crafts-based production to factory-based production. Postprofessionalism captures the image of a similar shift for people who work with their heads rather than their hands: rationalization of knowledge combined with information technology tools make it possible to produce services using workers with lower levels of training and knowledge.

2.4 Gendering of Occupations

A final issue in the analysis of para-lawyers relates to the gendered nature of occupations. Historically, professions have been male-dominated while many para-professions have been female dominated. Within law-work, women were largely excluded from the professional ranks until about 1970. In the early twentieth century some of the American states formally excluded women from the bar; even where they were not excluded, women were often confined to roles such as legal secretary even if they had the formal credentials of a law degree. Since 1970, most countries have witnessed the opening of the legal profession to women, and the number of women who practice as lawyers has increased sharply.

Nonetheless, para-lawyer roles tend to be dominated by women; this is particularly true of para-lawyer positions that are specifically subordinate to lawyers (Johnstone and Wenglinsky 1985, p. 69). Even for those para-lawyer positions that function independently of lawyers, the gender composition may limit the likelihood of achieving some sort of professional status as long as they are seen as in competition with the existing legal profession (Hearn 1982). At the same time, efforts to increase occupational status may lead to certain kinds of ‘closure’ strategies which bear a resemblance to those employed by lawyers: formal licensing, testing requirements, educational qualifications, etc. (Witz 1992, Johnstone and Wenglinsky 1985, pp. 165–6). Whether such efforts ultimately improve status or lock in gendered distinctions is an important theoretical and empirical issue.

A final gender-related issue concerns the professional roles assumed by many of the increasing number of women in the legal profession. A common observation in the literature on the struggles of women to achieve status and economic parity with men in the legal profession is that women lawyers are disproportionately to be found in law-work positions that are themselves in some sense gendered (e.g., family law practice, as employees rather than as principals, etc.). In some ways, the professional roles occupied by many women lawyers are closer to those of para-lawyers than to the traditional image of the work of male lawyers (Sommerlad and Sanderson 1998). This development may lead to a blurring of lines between lawyers and para-lawyers while preserving patriarchal status structures in the workplace.

3. Future Research and Theory

As theoretical and empirical concepts para-lawyers and para-professionals more generally, are underdeveloped. Current dynamics in the changing occupational structures, such as postprofessionalism, suggest that the para-lawyers should become increasingly important in the study of law work and in the delivery of legal services. The relationship of para-lawyers to the increasing role of information technol-ogy is one avenue of potential theory and research; a second is the economics of service delivery; and a third potential area is in the relationship of para-lawyer occupations to broader patterns of changing social structures, particularly the changing impact of gender on social structure.

See also: Counsel, In-house; Lawyers; Lawyers, Regulation of; Legal Professionalism; Professionalization/Professions in History; Professions, Sociology of

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Parapsychology

According to The Journal of Parapsychology the term ‘parapsychology’ designates ‘The branch of science that deals with psi communication, i.e., behavorial or personal exchanges with the environment which are extrasensorimotor—not dependent on the senses and muscles.’ The same source defines ‘psi’ as ‘A general term to identify a person’s extrasensorimotor communication with the environment.’ Psi includes ESP and PK, ‘ESP’ (extrasensory perception) is defined as ‘Experience of, or response to, a target object, state, event, or influence without sensory contact.’ ESP includes telepathy (mind to mind communication without normal channels of communication), clairvoyance (extrasensory contact with the material world), and precognition (the knowledge of future events that cannot be inferred with present knowledge). The other component of psi, PK (psychokinesis) is defined as ‘The extramotor aspect of psi: a direct (i.e., mental but nonmuscular) influence exerted by the subject on an external physical process, condition, or object.’

J. B. Rhine adapted the term parapsychology from the German word Parapsychologie in the 1930s to replace the earlier term psychical research. More than a change in terminology was involved. Psychical research covered a broad range of systematic investigations into spiritualistic phenomena, haunted houses, premonitory dreams, visions, and the like. Rhine’s program avoided much of this material, especially that which dealt with questions of survival after death. Instead, he emphasized controlled laboratory experiments using normal individuals as subjects. Thus, the change in terminology signaled that parapsychology aspired to become an accepted scientific discipline.

1. Historical Background

1.1 Scientists and Psychic Phenomena

In 1848, the two young sisters Margaret and Katherine Fox initiated modern spiritualism with their demonstrations of rappings and other material phenomena which they claimed were caused by the spirits of dead people. Soon many other individuals, calling themselves mediums, were regularly producing phenomena which they attributed to spirits of the dead. Because science deals with material phenomena, and because material phenomena were what the spiritualists were offering as support for their paranormal claims, some major scientists became interested in investigating these claims. In 1853, Robert Hare, an important chemist from the University of Pennsylvania, began an investigation of table-tilting. He attended seances where he became convinced that the spirits of the dead were moving the tables.

In 1865, Alfred Russel Wallace, the cofounder with Darwin of the theory of evolution through natural selection, began his investigations of spiritualistic phenomena. He quickly became convinced of the reality of the paranormal and for the remaining 48 years of his life he continued his investigations and outspokenly defended the reality of spiritualistic phenomena. Sir William Crookes, the discoverer of thallium and the inventor of the cathode ray tube, began his investigations of the paranormal in 1869. He concluded, to the dismay of his scientific colleagues, that a psychic force was operating in these seances.

1.2 The Society for Psychical Research

Inspired by the investigations of such eminent scientists as Hare, Wallace, and Crookes, a group of scholars and spiritualists formed The Society for Psychical Research in London in 1882. The philosopher Henry Sidgwick, its first president, stated that the goal was to collect more evidence of the kind that had been reported by those scientists who had investigated mediums. Although Sidgwick believed that the previous investigations of mediums had already provided evidence sufficient to prove the existence of the paranormal, he was aware that the majority of the scientific community were not convinced. Therefore, the aim of the Society was to accumulate enough additional evidence of the same sort so as to force the scientific community to admit that the case for the paranormal had been proved or to accuse the proponents of insanity or gross incompetence.

In his inaugural presidential address, Sidgwick claimed that, in fact, some members of the new society had already collected just the sort of evidence that proved beyond a doubt the existence of telepathy. Sidgwick was referring to the investigations involving the Creery sisters. Unfortunately, the Creery sisters were later discovered to be signaling to each other using a code. Although an attempt was made to claim that such a code could not have accounted for some of the results of their investigations, this body of evidence was subsequently removed from the republished proceedings of the Society for Psychical Research. A similar fate befell the very next set of investigations which the Society originally offered as solid proof for the existence of telepathy. These investigations involved two young men, Smith and Blackburn, who apparently could communicate with each other tele-