

THE PROFESSIONS BETWEEN STATE AND MARKET
A cross-national study of convergence and divergence

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Abstract

This paper analyses the impact on the professions of changes in their institutional environment during the last two decades. A comparison is made between two professions - solicitors/advocates and pharmacists - in the contrasting societal contexts of Britain and Germany. We suggest that, despite common pressures from the state, the market and technology, there remains a significant degree of diversity between the two societies in the way professions provide their services. A contrast is drawn between British modernisers and German traditionalists. In both Britain and Germany, the combined effects of a more intrusive state, a less protected market and a more consumerist stance from clients have effected some loss of professional autonomy. Professional authority and privilege can no longer be taken for granted, but have to be earned by proven performance and enhanced accountability.

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1. Introduction

Recent economic and political developments have wrought extensive transformations both within individual professions and in societal professional systems (Abbott 1988). For a long time, the professions have been largely insulated from market pressures and have enjoyed both market shelters and a high degree of self-regulation, supported by the national state. A 'free market' ideology, bringing deregulation and intensified competition, demands for cost containment and more service-conscious clients, have been espoused with varying degrees of fervour by different European governments, and policy measures based on it have interacted in different ways with more or less well entrenched professions within and between societies.

This paper will analyse processes of change during the last two decades from a cross-national comparative perspective. Such an approach will establish whether processes of professional transformation have developed in a similar way and extent in divergent social and economic contexts. It will throw light on whether common economic pressures and converging political ideologies, emanating from both internationalization and Europeanization, have ushered in a degree of convergence in professional organization. Alternatively, this study will clarify whether and how institutional differences between political economies have mediated the impact of economic pressures, technological change and political interventions to perpetuate pre-existing divergencies.

The empirical account will focus on two professions in each of two European societies. The societies chosen - Britain and Germany - have had radically different historical trajectories of the evolution of professions and professional systems (Abbott 1988), forged by differing institutional parameters, particularly by the divergent interaction between state, market and professional societies/associations.

There is a long sociological tradition which sees a profession as an occupational grouping which, based on its claim to expert knowledge, enjoys a high degree of work autonomy, in return for professional self-regulation, through the imposition of a code of ethics and collegiate monitoring of its implementation in professional conduct. (For an extended discussion of various theoretical approaches, see Lane et al. 2000). For some authors (e.g. Larson 1977; Freidson 1994), the evolution of Anglo-American professional occupations has been so distinctive that equivalent occupations in other advanced societies have not been deemed to be 'professions'. But most social scientists and social historians see such an approach as far too restrictive (Johnson 1982 and 1993; Abbott 1988; Siegrist 1990; Burrage and Torstendahl 1990; McClelland 1991; Light 1995). They point towards the fact that, in all societies, the relation between state and professions and the degree of self-regulation practised have undergone change over time. Contrasts between societies in the manner of regulation, although significant, are better viewed as dynamically evolving differences of degree, rather than as absolute and static divergencies of kind (Johnson 1993). The convergence in features of professional organization across societies with differing historical trajectories of the state-society nexus becomes particularly evident in a comparison of the far-reaching recent transformations in the British professional system with the more modest and hesitant changes experienced by German professions. These changes in a common direction, but with different outcomes, well illustrate the powerful mediating influence of societal institutions.

The two professions studied - solicitor (advocate) and pharmacist - have been chosen for a number of reasons. First, they permit a comparison between a classical, well established and powerful profession - lawyers - and one whose status as a full profession has often been doubted, for different reasons, by both sociologists - pharmacists (Denzin and Mettlin 1968; Freidson 1970; Turner 1995; Harding and Taylor 1997) and the users of their services. This contrast in professional prestige and social influence has been partly shaped by a second difference between them - the nature of the knowledge on which professional status is based, particularly the degree to which it is

resistant to easy codification and routinization and hence to maintenance of claims of exclusive ownership. Additionally, the profession of solicitor/advocate is particularly deeply inserted into the cultural and political fabric of its society (*cuius rex, eius lex*), as legal knowledge and practice have been both highly culturally saturated and national jurisdiction-bound. Pharmaceutical knowledge, in contrast, is more strongly influenced by supra-national material factors of pharmaceutical innovation and medical practice. Last, solicitors/advocates and pharmacists have a differing distribution of their activities over the public and private sectors, and hence experience a variable degree of dependency on the state.

Although the professions (particularly lawyers and less so pharmacists) have been widely studied, there exist no recent comprehensive and up-to-date analyses of their current transformations. This paper attempts to provide such a broad and up-to-date account from a comparative and institutionalist perspective. It draws on a number of in-depth interviews with relevant professional societies and associations in the two countries; on strategy documents and statistical material produced by them; on government reports and other investigations of consumer satisfaction with professional services; and on the large secondary literature on aspects of professional organization and practice. The focus of the paper is predominantly on professions as collective bodies, rather than dealing with the situation of individual professionals. The paper is structured as follows: section 2 provides a brief descriptive account of the professions we have studied, their differing composition and structure in Britain and Germany; section 3, the main part of the paper, shows how the different societal institutional frameworks influence the professions' current transformations, paying attention to both processes of convergence and to continuing diversity both within and between societies. The professions are, however, not solely viewed as passively exposed to institutional constraints but are also portrayed as collectivities, resisting the encroachment of state and market and as more or less actively shaping their institutional environment in their own interests. The Conclusion highlights and explains both processes of convergence and divergence in professional transformation and persistence.

2. The Professions Studied: Solicitors/Advocates and Pharmacists

2.1 Solicitors/Advocates

Whereas the British legal profession is split along functional lines into solicitors and barristers (the split is now beginning to erode), in Germany advocates combine the functions of solicitor and barrister. (In both countries, advocates/solicitors may also be notaries, but the two specialisms are not strictly comparable in the status they hold). Our comparison will be between British (English and Welsh) solicitors and German advocates/lawyers (in each case, working both as partners in private practice and in various types of dependent employment). For those not in private practice, the term 'lawyer' will be used, and it will also serve as the collective noun when referring to the whole group in the two countries.

The German legal profession is said to be dominated by those employed in the judiciary, and advocates, until fairly recently, have been only a relatively small part of the profession (Blankenburg and Schultz 1995: 117). For a long time, the larger part of the legal profession has been employed in large private commercial firms and state organizations. Employment in the state service, with the status of civil servant, has been a more defining feature of the profession than private practice (ibid) and still dominates the syllabus of the law degree. As influential state servants, such lawyers hold both a pivotal position in German political culture and a position of high social status and economic security. Due to the strong juridification of German business and finance, lawyers in corporate and bank employment have been (are) an important group within the legal profession and within corporations (Hartmann 1995). In more recent decades, however, advocates in private practice have experienced a phenomenal growth, both in absolute and proportional terms, partly due to a reduction of employment in the public service. They now constitute around 50 per cent of the legal profession (Bundesanstalt f. Arbeit 1999: 6), and, with the reduction of employment opportunities in the public service, are likely to increase their proportional share further in years to come.

In Britain, the largest proportion of lawyers have always worked in private practice, and currently over 80 per cent do so (Law Society 1998a). The proportions working within corporations, banks and state agencies have been comparatively small. The ethos of independent practice is thus much stronger in Britain, and the direct association with the state astonishingly small. In both countries, a once solidly male profession now contains a large minority of women.

2.2 Pharmacists

Pharmacists in both countries are health care professionals, predominantly engaged in supplying, advising on and managing medicines. They are divided between community and hospital pharmacists, and the latter group is much smaller than the former (ABDA 1999: 30; Interview with RPSGB, 2000). Three further groups of pharmacists - research scientists in large corporations, university teachers and researchers, and employees in regulatory agencies and administration - each form only a small group in both countries, hence this paper does not focus on them. Among community pharmacists, one needs to distinguish between the self-employed and employed. Whereas in Germany employed pharmacists are complemented by a hierarchy of non-graduate employees with obligatory systematic training in pharmacy (ABDA 1999: 30), in Britain such systematic training is not obligatory and hence taken up in a more patchy manner. Community pharmacists provide 'over-the-counter' or 'general sales list' drugs, 'pharmacy' medicines (those only to be sold by pharmacists) and prescription only medicines. Hospital pharmacists work both in central dedicated drugs preparation units and, increasingly, as part of the health care team on the wards (Interview, 19.6.2000). In both countries the profession is heavily feminised.

3. The Professions in their National Institutional Environment

The professions, it has been argued, have experienced a somewhat differing evolution in the two societies, due to their embeddedness in differing institutional frameworks. They are differently situated at the

intersection of influences flowing from the state, professional associations and the market (shaped, amongst other factors, by clients and by technology). Lines of influence run not only from these institutions to the professions, but also in the opposite direction, as the organized professions try to defend their market shelters and shape the markets for their services, as well as maintain their societal standing.

3.1 Profession-State Relations

The state may shape the activities and rewards of professions directly, through laws and statutes, as well as through being the paymaster for some professional services. Additionally, there is an indirect effect through the state's control over the system of education and, to a lesser degree, training. In both countries, professions and the state have developed in a highly inter-dependent manner (Johnson 1972 and 1982). The historical development is already well covered in the literature (Abbott 1988; Jarausch 1990; Kocka 1990; Siegrist 1990; McClelland 1991; Sugarman 1995a; Johnson 1992; Burrage 1996) and will be summarised here only briefly to illuminate enduring legacies.

In Britain, the classical professions of law and medicine claimed their autonomy from the state already in the early 17th century, during the Glorious Revolution, and thereby defined and circumscribed the role of the liberal state (Sugarman 1995a; Burrage 1996). In Germany autocratic rulers, both before and after national unification in 1871, incorporated the equivalent occupations into the state and defined professional service as state service. Professional bureaucracy was held to be an alternative to the notion of independent professions. (Private practice for advocates has been possible only from 1879 onwards). Even when the classical professions gained independence from the German state in the late 19th century, the reciprocal interdependence of state and professions remained more pronounced than in Britain. Whereas in Britain, the professions **claimed** their independence from the state, in Germany, they were **awarded** greater self-regulation by the state. The destruction in Germany of professional independence during the Hitler period and the subjection of the professions to the needs of

the state further undermined their relatively young and fragile autonomy.

Whereas in Germany the state has regulated professional activity mainly through law, in Britain regulation has issued mainly from Parliament, and self-regulation through professional societies was more extensive than in Germany. But German legal regulation has secured monopolies of occupational knowledge and practice, whereas the British Parliament has protected only the occupational title and usually has not granted a monopoly over an occupational field. In both countries, however, rights were granted in return for a guarantee that professional knowledge would be implemented in the public interest. In short, self-regulation of professional practice, through the development of a code of ethics and a disciplinary system to monitor its implementation, occurred in both countries. Finally, it is worth noting that the state-profession relationship in Germany (except during the Nazi period) has not been one of one-sided domination by a hostile state. A state which is highly penetrated by professional employees (lawyers are very prominent in both the executive and the legislature, and representatives of both professions routinely negotiate with relevant ministerial bodies) is perhaps more likely to respond to professional concerns than a state which has maintained a relatively aloof position.

The much more comprehensive self-regulation of the British professions as compared with their German counterparts was a product of special historical circumstances. It was contingent on an amalgam of economic, social and political conditions. These shaped the state's response in balancing the traditional rights and status of the professions against the state's own requirements and the demands of other political claimants. These circumstances have changed significantly in both countries from the 1970s onwards and have prepared the soil for a significant reshaping of the state-professions relationship. Actual transformations in this relationship have been more radical in Britain than in Germany. They have served to eliminate some of the self-regulatory advantage the British professions previously enjoyed over their German counterparts. Hence the old contrast of

‘professionalization from below’ in Britain and ‘from above’ in Germany has lost some of its validity.

In Britain, since the 1980s, the principle of uncontrolled professional self-government increasingly has been questioned. In the case of solicitors, a ‘continuing encroachment on self-regulation by government bodies’ (Law Society 1990) has occurred. Governments have come to doubt that self-governing professions will act in the public interest (Burrage 1996). Hence a succession of Acts from 1984 onwards have introduced the dual mechanisms of increasing market competition and more external supervision. The Lord Chancellor may be seen to favour continued Law Society responsibility for regulation and discipline, but with state powers to enforce specified levels of service (Smith 1999: 9). Some monitoring and supervisory functions are now exercised also by the Ombudsman for Legal Services, by the Securities and Investments Board, the Legal Aid Board and the Office for Fair Trading (OFT).

Additionally, the growing state concern to curb the costs of state-financed services has prompted state intervention. Government efforts to secure cost containment have put limits on professionals’ endeavour to determine their own levels of reward. In the case of British solicitors, this has expressed itself in the radical reorganisation of the provision of legal aid, expected to result in a significant loss of earnings for those engaged in this field (Law Society 1998e and f). It has called forth vocal large-scale protests against the new arrangement and has set significant sections of the profession on a collision course with the Lord Chancellor (*The Times*, 6 November 2000: 8). While these measures of increased external supervision and direct intervention began under Mrs. Thatcher’s Conservative governments, the Labour government has continued this interventionist stance.

In the case of British pharmacists, government intervention to date has been less extensive and, by and large, more benign. In the interest of better management of the drugs budget, support for role expansion towards greater emphasis on the advisory function has been extended to the profession (Harding and Taylor 1997). So far there has occurred

no increase in external supervision comparable to that experienced by British solicitors. But the scrutiny by the Office of Fair Trading on price maintenance, currently before the Court, is in the same vein as deregulatory measures faced by solicitors.

As the main paymaster for the drugs budget, the state is a very important third-party client. Dispensing under the NHS is carried out under a contract between the owner of a pharmacy and the Department of Health which pays both a practice allowance and dispensing fees. Government intent on cutting the costs of the health budget has had a very negative effect on pharmacists whose dispensing fees have come under pressure. This has further accentuated the already precarious financial position of many single proprietor or licencee pharmacists.

These moves to state-circumscribed self-government in one case, and attempted marketization and cost-cutting of state-financed services in both British professions, have done much to eliminate any older differences in professional autonomy between the British and German professions. In Germany, the many regulations in restraint of competition regarding the activities of both German advocates and pharmacists (see section 3.2), are not currently under threat of being revoked (ABDA 1999: 9; Bundesrechtsanwaltskammer 2000). In the case of pharmacists, however, state intervention to cut costs has had the same deleterious effects as in Britain (Interviews, 3.6. 2000 and 19.6. 2000 with Chambers and Associations). Although the drugs' budget is not financed by the state, but by the Insurance Funds, state concern about the rising expenditure on drugs recently has resulted in massive state intervention to control health budgets (ABDA 1999: 27f.). This manifests itself in setting legally fixed limits on both doctors' drugs budgets and on dispensing fees. For smaller pharmacists this has resulted in severe pressure on their already low margins. In the case of advocates, the German state has always been directly involved in determining rates of pay which are still set by a state commission. But there have been no recent changes, and no adverse reaction from the profession is reported in the literature.

3.1.2 The System of Education and Training

Control over professional education and training is widely considered an integral part of the professional project, and it is in this area where the differences between the British and the German professions historically have been most pronounced. Pre-entry professional education and training serve as important filters for admission and the containment of internal competition.

In the two societies, the different times at which the professions gained independence from the state has had a decisive influence on the degree of control they have been able to command over pre-entry professional education and training. In the British case, where the formation of independent professions preceded the secure establishment of tertiary education, professional autonomy from the beginning has meant also control over professional education and training, accreditation and admission to the profession. This partly explains the very late academicization of the professions in Britain which occurred only in the second half of the twentieth century (Sugarman 1995a: 12; Burrage 1996: 52-53). The two British professions enjoy superior control not only over access but also over the content of professional education. In the case of solicitors, control over legal education is particularly pronounced for the more vocational part of legal education, during the year leading to the Common Professional Examination.

In Germany, in contrast, independent professions arose only when the university system was well established. Hence, for the classical professions, professional education and accreditation remained firmly in the hands of the state-regulated university system. This is particularly true for lawyers, who are regarded as potential state servants, whereas the Chamber of Pharmacists has marginal influence over the content of the pharmacy degree and considerable influence over practical training. But the two German professions have some indirect influence over the content of education and are represented in ministerial commissions dealing with it (ABDA 1999: 23, for pharmacists). Neither profession has a direct influence over accreditation and over the number of new entrants to the profession.

Both British professions have full control over training. Solicitors' training is regulated by a Training Contract (formerly Articles) although, since 1990, all training rules of solicitors need to be approved by the Lord Chancellor who can and does involve the Office of Fair Trading. For pharmacists, the Royal Pharmaceutical Society (RPS) has responsibility for and control over the pre-registration year. This provides a further filter in the admission process, as well as a valuable opportunity for professional socialization. Control over training and hence influence over socialization also exist in the case of German pharmacists. But control over training is too marginal in the case of advocates to provide either effective control or socialization. (The German legal profession currently is discussing the introduction of such practice-oriented professional training).

This marked historical difference in control over the qualifying process in the two national professional systems is becoming less stark than it has been in the past, due to changes mainly in the British system. These are first, the introduction of more external monitoring of the content of professional education and, second, the loss of control by the professions over access to university.

In the case of British solicitors, self-regulation has been slightly eroded by supervision from the Lord Chancellor's Department, advised first by ACLEC and, since 1998, by the Legal Services Consultative Panel. The latter no longer has representation by the Law Society and the Bar Council and thus gives the Lord Chancellor greater discretionary power to override the professional societies (Lord Chancellor's Department 1998).

In Britain, as in Germany, control over access to a university first degree course is not in the hands of the professions either. Indeed, the phenomenal increase of solicitors bears witness to such a trend of loss of control. The number with Practising Certificates trebled between 1968 and 1999 (Law Society 1998a), and during the decade between 1988 and 1999, the number of solicitors on the roll rose by just under 50 per cent (Smith 1999: 2). The much increased difficulty experienced by newly qualified lawyers, as compared with older age cohorts, in

getting a traineeship (Punt and Cole 1999: 8) indicates a much tighter labour market. Hence market pressure from constantly rising numbers of new graduates exists, but the expansion in markets for legal services has prevented the development of any perception of crisis, as is the case in Germany. Neither unemployment nor underemployment seem to be problems in British labour markets for lawyers (Interview with Law Society, 27 October 2000).

In Germany the increase in the number of advocates has been more pronounced - it nearly doubled between 1987 and 1999 (*Handelsblatt* 1999a: K2). This has given rise to a panic about 'market flooding' (*Juristenschwemme*) (Walentowski 1999; *Handelsblatt* 1999a: K2). The increase is perceived as more threatening than in Britain because there exists a degree of unemployment and underemployment among qualified lawyers.

In pharmacy, there has been no control over access to University in either country, and the influx of new graduates has not represented a severe problem either. Access to the profession of pharmacist is controlled by an additional mechanism in Britain where the opening of new pharmacies is restricted by geographical quotas. The German profession has no control over the opening of new pharmacies, and openings slightly outstrip closures in any given year (ABDA 1999).

In both countries basic professional education and training traditionally has been generalist. But the growing customer/client demand for specialist expertise has increased pressure for provision of post-entry further education and some specialization. The provision of specialist education in both professions and its formal accreditation have been tackled much more decisively and systematically in Germany than in Britain (Law Society 1998f; Roach-Anleu 2000). Specialist training is offered by both the Chambers and the associations, and accreditation occurs through the Chambers (Walentowski 1999: 62; ABDA 1999: 24f.). This development has provided the professions with a new mechanism to seize the initiative in shaping markets by moderating intra-professional competition. The new *Fachanwalt* and *Fachapotheker* are set to become a widespread phenomenon which not

only moderates competition but also answers clients' calls for 'diversified quality' services (Interviews with Associations and Chambers, 2000).

In Britain, special panels under the Law Society, whose membership is voluntary, give a voluntary accreditation (Law Society 2000). With a few exceptions, such as investment business, insolvency, and advocacy in higher courts, specialization relies mainly on experience (Punt and Cole 1999: 22), rather than on systematic theoretical education and obligatory certification. Among pharmacists, this movement to specialization seems to be absent.

Thus, the position of the professions vis-a-vis education and accreditation, despite enduring differences and greater autonomy by the two British professions, also shows a process of moderate convergence.

3.2 Professional Organizations

In both countries the professions are organised in guild-type collective organizations, as well as in interest associations. Professional associations (Societies and Chambers) are partly regulated by law and partly by their own professional code, devised in a democratic process. In Germany the balance is tilted more strongly to law. In Britain, Royal Charters, hallowed by tradition, play an important additional role. Hence in Britain there is greater variety between professional societies in the range of regulatory functions assumed and in the manner in which they are exercised.

The two main British professional societies, established under Royal Charter in the first half of the 19th century, are independent self-regulating bodies. They are separate from, but nevertheless licensed by, the state and have had statutory powers invested in them by Parliament. Despite their independent status, both British Societies maintain registers/rolls where those practising the profession are compelled to be registered. The RPSGB additionally maintains a body of inspectors who regularly inspect pharmacy premises.

In Germany, in contrast, the professional Chambers are public law bodies, exercising state-delegated legislative functions, and membership is always compulsory. Their status as quasi-state organizations is indicated by the fact that they are subject to state supervision and to auditing by the state Court of Audit (*Rechnungshof*). If the Chambers are found to malperform they can, in theory, lose their right of self-government. But the professions of advocates and pharmacists nevertheless are considered to be ‘free occupations’ (*freie Berufe*). Advocates are said to practise their profession ‘freely, self-determinedly and unregimented, as far the law and their own occupational code do not obligate them specifically’ (Bundesrechtsanwaltskammer 1999: 3, authors’ translation).

Corresponding to their different relationship to the state, the German and British professional associations also exercise somewhat differing functions. The Societies/Chambers set standards of technical competence and ethical probity and hold practitioners accountable for the provision of effective and efficient services. In some cases the Societies/Chambers also have an enforcement function. The regulatory functions, established both by law and by internal decision-making, entail control over various aspects of market behaviour, and are oriented towards preservation of control over a body of expertise and of status privileges. In Britain only, the Societies also engage in more political interest representation vis-a-vis the state, as well as exerting control over professional education and training. Although both German Chambers are now charged with overseeing admission to the profession (for advocates only since 1998), they cannot regulate it in any way, nor can they determine the content of professional qualifying education. (See section 3.1 for a more extended discussion of education and training). The Federal Chamber of Advocates also has responsibility for formulating guidelines concerning the provision of members’ welfare (Manz and McGregor 1993: 146-47).

In addition to these core regulatory bodies, there exist separate associations (*Verbände and Vereine*) engaging mainly in the representation of politico-economic interests. Such division of functions is more pronounced in Germany where one can speak of a

dual structure, as Chambers cannot assume the function of political lobbying. (In Britain, only self-employed pharmacists have such a trade association, and it seems less influential and active than its German counterpart).

The German associations appear to be very active. There seems to be little rivalry and much cooperation between Chambers and Associations, expressed in common premises, rotation of officers between them and some joint action (Interviews with both bodies in both professions, 2000). In the case of pharmacists, cooperation is even formalised in a joint body at the federal level, the ABDA.

The professional societies/Chambers also have different organizational patterns, reflecting partly the differing political structures of the two countries. In Britain, the power of professional associations is now centralized, and local branches have mainly social functions, as well as acting as conveyor belts of information in both directions. In Germany, in contrast, there is a decentralized but pyramidically organized system of Chambers. The regional (at the level of the *Land*) Chambers receive membership fees and have a wide range of rights and duties. The Chambers at federal level are statutory umbrella organisations, with local Chambers as their members. They receive a sizeable proportion of local Chambers' membership income, and mainly aggregate decisions made at regional level to aid homogenous representation vis-a-vis the federal state and other relevant bodies/organizations. The associations (*Verbände*) are organised on the same basic principle.

In both countries, these professional bodies historically have been fairly successful in resisting government encroachments on their internal affairs, as well as in defending their members against competition from other professions/occupations. This influence, however, has begun to wane from the early 1980s onwards, particularly in the case of the British professions.

In Britain, the market-organizing activities of professional societies have been coming into frequent conflict with the highly individualistic 'free market' orientation of recent governments and, increasingly, of

clients. External supervision by governmental and quasi-governmental bodies has been gradually stepped up. In Germany, in contrast, their guild-like status claims have been challenged to a much lesser degree by either governments or clients (Bundesrechtsanwaltskammer 2000, on advocates; ABDA 1999, on preservation of restrictive practices). Any encroachments by adjacent professions in contravention of the existing legal position are promptly taken to court by the relevant Chambers. To some degree, the increased supervision in Britain reflects the higher degree to which an ideology of free markets has been embraced. But it is indicative also of the greater power, and hence opportunity for its misuse, traditionally enjoyed by the professions in Britain. (For a more extended discussion, see section 3.3 on markets).

Concerning the relations of the Societies/associations with their members, we have only very scanty evidence. The compulsory membership/registration of Societies/Chambers makes it difficult to gauge their members' loyalty and support. There is mounting evidence from both societies that members are dissatisfied. They resent the large compulsory contributions they have to make and feel that they do not get the commensurate returns (Interview information and web site discussions from both countries, June-July 2000). In at least one case, there has been publicly voiced concern and media coverage of the internal dissension and poor professional organisation, seen to be damaging for the public image of the profession in question.

Another problem facing the professional bodies is the growing heterogeneity of members, and their ensuing inability to 'speak with one voice', a problem which is particularly pronounced in the British professional societies. The issue of professional coherence and common identity is seen as a key issue by the English Law Society (Smith 1999: 17), whereas the German umbrella organisation of pharmacists prides itself on 'still speaking with one voice' (Interview with regional Chamber, 19.07.00).

Too little is known about the political influence which the professional societies/associations currently exert over the state. Professional bodies in both societies appear to act more often defensively, rather than

offensively, but the clear split in Germany between interest representation and performance of professional functions seems to be more conducive to associational activism and initiative. But there is not sufficient evidence to decide whether the lesser degree of government action against restraint of competition in Germany is a reflection of the greater power of German associations to resist state encroachment. It is not clear whether it reflects the higher political activism of associations, or whether it is a consequence of other factors, such as the greater juridification of regulation or the lesser government emphasis on a 'free market' approach. It thus remains to be seen whether one national type of professional association is better suited than the other to withstand mounting pressures from both state and markets.

3.3 Markets, Clients and Technology

The traditional image of professionals, offering their services as sole practitioners to deferential clients in sheltered home markets, protected by state guarantees and immune from the impact of technology, is now only very partially applicable. During the last few decades professions have been faced with a rapidly and radically changing market environment: markets have been partially deregulated by the state and, to some extent, by the professions themselves; they have become more international and competitive; clients (customers) have become increasingly knowledgeable, demanding and, in some cases, powerful; and technology is beginning to transform markets. This section examines changes in all these areas of market organisation.

3.3.1 Markets for Professional Services

Markets for professional services, by definition, have traditionally been highly protected, providing professions with either a market shelter or a cartel-like arrangement and more rarely with a genuine monopoly. Measures in restraint of competition have been introduced by both the state and by professional associations, and they have taken a range of forms. Such measures have been designed to lessen or suspend competition within and between professions, as well as from potential alternative service providers not enjoying professional status. While

restraint of competition has been deemed necessary to safeguard public interest, particularly the quality of professional service, in recent decades such a claim has received much greater scrutiny, particularly in Britain.

Attitudes towards market regulation and what is deemed a legitimate suspension of competition have differed greatly between the British and German political economies, and this difference is also apparent in the organization of markets in professional services. By and large, suspension of competition has been much more prevalent, effectively enforced and legitimate in Germany than in Britain, where action towards 'freeing markets' also started significantly earlier.

Although the British professions have been exempted from some aspects of the Competition Act, they have nevertheless been exposed to competition in important respects. In Germany professional undertakings, until recently, have been sheltered almost completely from competition by various legal arrangements, and only changes in law can revoke the privileges they enjoy. In both countries, professional associations themselves have enforced binding rules which mute internal and external competition, but only in Britain have they been able to reduce competition by controlling education, training and accreditation.

Advocates/Solicitors

The German profession of advocates has been heavily regulated until very recently. Advocates still enjoy a legally enshrined virtual monopoly in all legal matters, laid down in the Law on Legal Advice and Legal Activity. The government is committed to maintaining the principles of this law (Rechtsanwaltskammer 2000), and the monopoly on giving legal advice is being vigorously protected by the profession (ibid; *Frankfurter Rundschau*, 28.08.2000: 1). But some limited openings to adjacent professions, whose professional work includes an indispensable legal dimension, have been permitted. Hence some legal and illegal encroachment is now occurring (Bundesrechtsanwaltskammer 2000; Manz and McGregor 1993: 144).

Until 1989 legal practices were not permitted to have branches in other localities, which restricted both internal growth of firms and ruled out mergers. Additional rigidity resulted from a legal regulation whereby, until January 2000, an advocate could only appear in the local court at which he/she was registered. The lifting of these restrictions has resulted in a significant degree of restructuring in the direction of supra-local partnerships, often achieved through mergers. Methods to calculate fees for litigation are still regulated by law (Manz and McGregor 1993: 161-62) and hence have been taken out of the competitive process. (This occurs by negotiation between the Association of Advocates and the Parliamentary Commission on Legal Affairs, which is highly penetrated by lawyers).

The above cited restrictions on German advocates' activities have been unknown in Britain in the recent past, if ever. British solicitors do not enjoy a legal monopoly over giving legal advice but have to share this function with other professions and non-professional bodies, such as the Citizens' Advice Bureau. Until recently, however, they have nevertheless had de-facto monopolies in several fields of legal activity, where restrictions on competition were lifted only in the 1980s and 1990s (Law Society 1998h). Thus they lost their monopoly over conveyancing and over 'wills and probate' work, and litigation now has to be shared with barristers.

In both Britain and Germany, further recent changes in regulation have been designed to equalize the status of professional and commercial firms. They will impact on law firms' size and structure and will strengthen large firms in both national and international market competition. Thus, law firms recently have been permitted to adopt the status of limited liability partnerships in order to facilitate mergers. But this new legal form has not proved very popular in either country (Rechtsanwaltskammer 2000a: 2). British law firms cannot yet enter into multi-disciplinary practices (MDP) (although the Law Society is now ready to agree to MDPs: Law Society 2000b). In Germany, in contrast, MDPs with other professions operating as a partnership (*Sozietät*) are permitted, provided certain limitations are observed (Rechtsanwaltskammer 1999: 15).

In both countries the ban on advertising has been relaxed only in the 1990s, and even now there remain some restrictions on it, particularly in Germany (Law Society 1999: 22; Bundesrechtsanwaltskammer 1999). Whereas in Britain advertising has become both more widespread and more aggressive (Susskind 1996: 28), in Germany it still cannot equal that of commercial undertakings. German law firms, for example, may not use any figures indicating turnover, profit or other indicators of success (Bundesrechtsanwaltskammer 2000: 15). There still is a feeling that quality of service speaks for itself and does not require advertising (Interview with regional Association, 24.05.00). In both countries, ethical norms, such as those of strict confidentiality of all client information, independent representation of clients and proscription of interest collusion, hamper the profession in the competition with other professions and occupations not encumbered with such ethical precepts.

These nationally divergent legal rules and professional regulations to limit/facilitate market competition have translated themselves into differing degrees and forms of inter- and intra-professional competition, as well as influencing international competitiveness.

British solicitors have experienced a ‘dramatic increase in potential and actual competition from [other] professions...’ (Allaker and Shapland 1995a: 102). Susskind (1996: 29) speaks of ‘an avalanche of competition from suppliers of other professional services’. Accountants have long been solicitors’ most formidable competitors and are seen by solicitors themselves as their biggest threat, particularly in international work (Smith 1999: 15). The encroachment by accountants has been possible because no clearly demarcated boundaries between the jurisdictions of two professions have existed in this area. Accountants have gradually ousted solicitors by simply grabbing opportunities more swiftly, as well as being more skilful in speaking the ‘same language’ as business managers (Skordaki 1997). The Law Society’s reluctance (until 1999) to permit MDPs is mainly based on the fear of being overwhelmed by their more business-like and much larger (in terms of

employees and international branch offices) competitors (Law Society 2000b).

More recently, deregulation in Britain has brought new competition from conveyancers, tax and management consultants, and bankers (in the area of wills and probate). Business volume in the area of conveyancing, for example, almost halved between 1989 and 1994 (*The Times*, 9.10. 1999). Solicitors, in turn, have entered into competition with estate agents over property-selling services. Litigation is now almost the only area in which solicitors enjoy something approaching a monopoly, and even here they have to share work with claims consultants, project managers and litigation support specialists (Susskind 1996: 29). Susskind (*ibid*) goes as far as claiming that the traditional boundaries between various professional services organizations are crumbling and will completely disappear after information technology has become more prevalent in professional firms. (For a more extended discussion of the latter, see section 3.3.3)

Further inter-professional competition has been introduced by the Access to Justice Act 1990, which gives solicitors right of audience in higher courts and grants barristers the opportunity to prepare litigation. This legislation was introduced to give clients, particularly foreign clients, access to one-stop and more flexible and cheaper services (Lord Chancellor's Department 1998: 5, 8). But this abolition of old lines of demarcation had led to remarkably little change a decade later.

In Germany, despite their legal monopoly, advocates nevertheless experience competition from accountants, tax advisors, business consultants, banks and insurance companies (Walentowski 1999: 60; Rechtsanwaltskammer 2000). Competition from accountants seems to be less pronounced than in Britain. Due to the different historical evolution of German accountants (Buxbaum and Hopt 1988) they have not established the same degree of importance and legitimacy in business, as in Britain. But even in Germany, foreign accountancy firms are becoming a competitive threat. In dealing with these competitors, German law firms try to avoid offensive competition

(Walentowski 1999). Generally, their market behaviour is still more that of a status group than of a commercially oriented business.

On balance, the greater extent of deregulation in Britain has meant that solicitors have lost more market share to adjacent professions and non-professional legal advisors than their German counterparts. But for British solicitors, market contraction in some areas has thus gone hand-in-hand with expansion in others. Earnings per principal increased by £160,000 between 1988 and 1999 (Smith 1999: 2). The most important expansion in market opportunities has come from the strong internationalization of the demand for legal services in the last two decades. British partnerships internationalised early, from the late 1980s onwards, and are, together with American firms, the largest and have the greatest international presence in terms of number and geographical dispersion of foreign offices (Beaverstock et al. 1999; Lace 1999; Roach-Anleu 2000).

The much greater presence and power in such markets of British as compared with German law firms has been strongly, though not exclusively, influenced by their lesser degree of regulation in domestic markets and their greater willingness to embrace more commercial, rather than professional practices and cultures (Lace 1999:281). Additional factors favouring early internationalization were the high degree of inward and outward foreign direct investment by commercial firms; wide recognition of English law as international law; and the development of London as a strong financial centre.

In Germany, internationalization started much later (from the mid-1990s) than in Britain and is not as advanced nor as geographically dispersed (Beaverstock et al. 1999: 1862; Lace 1999: 167f.). It has been estimated that less than three percent of registered advocates are currently working in the market for multinational lawyering (Heussen 2000: 9). Internationalization has introduced severe competitive pressure for the larger law firms, as well as foreign-initiated mergers (*Wirtschaftswoche*, 1999a: 102; *Wirtschaftswoche* 1999b: 105). These mergers with mainly American and English law firms amount to friendly ‘takeovers’, as the German partners are usually significantly

smaller and less experienced in international work. Hence they are bound to play a subordinate role in the merged firm, particularly in international work. This has given rise to some anxiety about the loss of national identity in both German professional practice and German law itself and a loss of status-type traditional features in organisation and social standing (ibid).

But this merger activity needs to be put into perspective. There has occurred only a small number of such mergers, and German law firms have been displaced by American and English firms mainly in international work and particularly in financial areas (Lace 1999: 273). Foreign firms have found it difficult, however, to gain business in areas where knowledge of German law and language are essential (ibid: 268f.; Heussen 2000: 10), and the German domestic market for legal services is said to be large and lucrative (Wirtschaftswoche, 1999a: 102).

Intra-professional competition has been a constant feature in both countries, but the combined effect of de-regulation, internationalization and a steep increase in the production of new graduates with relevant qualifications have further sharpened this competition. This development now threatens the economic viability of a significant proportion of smaller practices, as well as producing problems of professional governance (Hanlon 1995). Such competition in Britain is due to greater market deregulation, whereas in Germany competition results mainly from an unregulated supply of new entrants into the professions.

The structure of British law firms polarized significantly between 1987 and 1997, with a notable increase in both sole practices (Law Society 1998b) and large firms (with more than 26 partners), and a decrease of 10 per cent of medium-sized firms (5-25 partners) through mergers and splits (Law Society 1998c). In 1998, 42.4 per cent of firms were still sole practices, but they earned only 6.3 per cent of gross fees. Although the large firms constitute only one per cent of all firms their dominance of the profession is illustrated by the following figures: in 1998, they accounted for 45.2 per cent of gross fees and 31.5 per cent of solicitors

(Law Society 1998a), and they employed 44 per cent of assistant solicitors (Smith 1999: 3) and 65 per cent of trainees (Law Society 1998e). It is expected that the recent government reform of legal aid work, mainly done by smaller firms, will depress levels of earnings in this field and hence further weaken small firms and increase polarization (Law Society 1998e and f). The stark polarization in income between both employees and partners in large corporate and small high street firms was noted by *The Times* (6. 1. 2000: 8).

The unity of German advocates is not yet threatened by British-style size polarization between firms. The sole practitioner or small firm still is predominant, and very large firms are rare (Walentowski 1999: 60). Only around 10 per cent of advocates work in larger firms with more than ten partners, and the largest of these are much smaller than large British law firms (Lace 1999: 165). Small practices can still earn a decent living. Neither 'mega lawyering', nor 'street corner lawyers' were prevalent in the mid-1990s (Blankenburg and Schultz 1995: 109). This lack of marked polarization is also evident in income declarations for tax purposes which show the majority of self-employed advocates bunched in the middle income range (Deutsches Institut f. Wirtschaftsforschung 1999: 54, table 2). But the difficulty of finding employment is forcing increasing numbers of young law graduates into self-employment (ibid: 52; Interviews with Advocates' Chambers and Associations, 2000) which, in the face of stagnant demand for legal services (*Handelsblatt* 1999b: K12) and the rising number of qualified young lawyers, must lead to an increasingly precarious situation.

In Germany, intra-professional competition is most severe in the labour market. Steadily rising numbers of law graduates have led to perceptions, in some of the literature, of a crisis point having been reached (Blankenburg and Schultz 1995; Walentowski 1999). But the figures available suggest that, although there are problems, it would be an exaggeration to speak of a major crisis in the late 1990s. Data on unemployment among lawyers show annual increases of the overall number of unemployed in most years between 1987 and 1997, but the proportion has been declining since 1996 (Bundesanstalt f. Arbeit 1999: table 6a). Among new graduates, the decline in unemployment

has been even more marked than among lawyers in general, and the absolute figures of unemployed have been low (ibid). Women, however, have been disproportionately affected by unemployment (ibid: 9).

Despite the recent improvement in the unemployment situation, competition for advertised jobs remains strong (Bundesanstalt f.Arbeit 1999: 7). Fixed term employment has been growing significantly (ibid: 1, 9). Additionally, there is said to exist significant underemployment, with many young lawyers working in positions where their legal skills remain underused. The degree of underemployment and hidden unemployment among women is particularly marked (Bundesanstalt f. Arbeit 1999: table 6a). The significant proportion of younger advocates (around 25 per cent) carrying out a secondary occupation (Interview in regional association, 2000) confirms the marginal status in income terms of a significant group of advocates. In view of the very high and stable earnings of well established advocates in larger firms there is income polarization (Interview with a regional Association, 24. 5. 2000).

Another development is growing internal differentiation and specialization, within and between practices, in specific branches of law. This process of specialization, the development of the *Fachanwalt*, seems to be much more marked than in Britain. This trend towards greater specialization heralds the emergence of a much greater internal differentiation of the profession between those employed in larger firms, dealing with so-called 'popular law' (e.g. road traffic law) on a large scale and in a highly routinised and standardised fashion, and those becoming highly specialised in a particular area of law (*Fachanwalt*) which will retain all features of professional work (Walentowski 1999: 61).

In sum, with a few exceptions, competition for legal services is still much more restricted in Germany than in England and Wales, and British solicitors face much stronger competition from both adjacent professions and non-professional organizations. But any loss of business resulting from this in the British profession has been

compensated by the expansion of opportunities in international markets which have, however, benefitted only the large firms. Hence intra-professional polarization between firms has greatly increased in Britain. In Germany, polarization is also an issue, but it occurs mainly in the labour market, rather than in the market for clients. In both countries, partly through the opening of international markets, there have occurred some relaxations of restrictions, putting law firms on a more equal footing with other professional practices and with commercial firms. It is, however, significant that there has been only a hesitant take-up of these commercial structures and practices, still held to be incompatible with professional ethos and practice. Hesitancy in this respect has been more pronounced in the German legal profession.

Pharmacists

Among pharmacists, intra-professional competition and competition from non-professional undertakings has been much more severe than inter-professional rivalry. Hence the latter will receive only very brief consideration.

German pharmacists have been much more sheltered from competition than their British counterparts. German law prohibits both the establishment of chains of pharmacies and the establishment of pharmacies in supermarkets. According to ABDA (1999: 9), the legal rule proscribing the formation of multiples is not being challenged by any of the political parties at the current time. The ideal of the 'one-pharmacist' business is still strong, and the legal form of the limited company is still prohibited (Telephone interview, 19.6.2000). Additionally, pharmacies are bound to sell, in addition to medicines, only additional merchandise declared officially appropriate to be sold in pharmacies (*Apothekenübliche Waren*). None of these restrictive rules are currently under threat (ABDA 1999:10). Equally, abolition of retail price maintenance is not an issue. In only one respect are German pharmacies more exposed to competition than their British counterparts. Establishment of new pharmacies is not subject to quotas in Germany (Telephone interview, 3.6.2000), and there has occurred a gradual increase in the number of pharmacies almost every year.

Competition with non-professional commercial outlets, such as chemists and health shops (*Reformhaus*) exists but is less extensive than in Britain. German pharmacists are more restricted in the type of products they may offer to start with, and sales of these goods constitute only a very small proportion of their turnover. Significant competition with supermarkets exists both on health-related products and on over-the-counter medicines, but, in contrast to the situation in Britain, German supermarkets cannot have pharmacies attached.

The structure of the German profession - sole proprietors only - obviates the strong intra-professional competition and polarization experienced by the British profession. But there is nevertheless some income polarization between German pharmacies of different size (in terms of number of employees). While around 30 per cent of pharmacies enjoyed a turnover of between DM 2 and 3 million (£666,000 - 1 million), the turnover of around 10 per cent of pharmacies was below the DM 1 million mark (around £330,000) (ABDA 1999: 36).

The majority of German pharmacies are very small, and ABDA (1999) claims that as many as 30-40 per cent are said to be endangered in their economic viability. This economic hardship is connected with recent government legislation, capping expenditure on health services. More particularly, new legislative measures lowering margins on expensive drugs have significantly reduced pharmacies' profits (ABDA 1999: 28-29; Interview with regional Chamber 19.07.00). Additional reasons cited are the slowly but steadily increasing number of pharmacies and the concomitant decline in the number of inhabitants per pharmacy, as well as the reduction by wholesalers of rebates offered (*ibid*).

In Britain, in contrast, pharmacies are viewed as much as businesses as professional undertakings, and there is no prescription of what goods they may legitimately sell. More important, the absence of regulation bestowing market shelters on single proprietor pharmacies has exposed the latter to very severe competition from both pharmacy chains and supermarkets. In 2000, around 79 per cent of owners were sole proprietors who between them owned around 4,096 pharmacies or

37.65 per cent of all pharmacies. The remaining 6,783 pharmacies were parts of chains, including supermarkets, varying greatly in the number of outlets owned (National Pharmaceutical Association 2000). The largest two owners held 1,276 and 1,350 outlets respectively (*ibid*). (With the exception of the last two figures, the data are based on the NPA membership only).

The combined turnover in 1996 of the 6,139 sole proprietors of £2,963 million was only slightly higher than that of the five largest chains - £2,117 million (Office for National Statistics 1996). This not only serves as an indicator of the extreme income polarization in the profession but also shows an astonishingly low turnover per single proprietor. There consequently has occurred a steady attrition of self-employed pharmacists who, in the mid-1990s, constituted only a minority - 40 per cent - of pharmacists (Harding and Taylor 1997). Additional pressure on pharmacies' incomes has grown from the state's cost cutting efforts which have entailed a reduction in pharmacists' dispensing rates.

British pharmacists also experience severe competition from non-professional commercial undertakings such as supermarkets, both for over-the-counter drugs (own-brand drugs) and for other health and beauty products they sell. These competitors gain market share through lower prices, superior range of goods on offer and greater convenience for shoppers. So far competition has been somewhat muted by the Resale Prices Act 1964 which protects price levels of proprietary drugs. It is currently being challenged in the courts by the Office of Fair Trading. If the OFT were to be successful in its challenge, this would surely lead to a catastrophic further reduction of independent community pharmacies. But competition is still being contained by strict regulation of the establishment of new pharmacies which, in general, can only be set up to replace ones which have ceased trading.

Abolition of pharmacies' market shelters has mainly benefited non-professional commercial providers of drugs. This *may* have kept down the level of overall costs, but it is having adverse social effects. There

no longer exists in Britain an even geographical coverage of community pharmacies, depriving citizens of an important amenity.

The available data do not permit reliable comparisons between the economic situation of German pharmacies and their British single proprietor counterparts, but there nevertheless emerges an overall impression of German pharmacies' greater economic health and viability. Pharmacies have, on average, six employees, of which one to two are fully qualified pharmacists and the rest have some lower-level pharmaceutical training (ABDA 1999: 30). Average turnover has risen almost every year since 1993 (ibid: 32). But ABDA claims that the profit component of turnover is very low for a large proportion of pharmacies (ibid: 36).

In both countries, pharmacists' legal monopoly over dispensing prescribed medicines has kept inter-professional competition much lower than among lawyers. Doctors are seen to be the main competitors, both in the community and in hospitals. Professional rivalry appears endemic in both countries, with each profession anxious to preserve both its monopoly and its economic rewards. This has intensified in recent decades, as pharmacists have attempted to expand their role into giving advice and providing some very basic medical services (ABDA 1999: 10; RPSGB 1992 and 1996; Harding and Taylor 1997: 349; Goodburn et al. 1991: 440-443; Spencer and Edwards 1992:1670; Interview with regional Chamber, 19.07.00). In neither country, however, is this competition a serious cause of concern for pharmacists.

3.3.2 Clients of Professional Services

A very striking development in both countries is the transformation in recent decades of clients into consumers of professional services and into significant market participants. Clients have become better informed, more discerning and assertive, and are no longer in the thrall of professional mystique. The assertion of their rights to reliable, high quality and reasonably priced services and their insistence on greater accountability have been championed by the state, seeking to legitimise market deregulation policies and to contain costs. Hence changes in

relations between professionals and clients are evident in both societies and professions, and the traditional professional-client relation is becoming diluted by 'market' elements. Professionals are aware of this development and, with varying degrees of zeal and success, have been striving to develop more of a client orientation.

The stronger move to free markets in Britain, together with a more pronounced development of an ideology of 'citizens' entitlements' and of an 'audit' culture, have rendered this shift to a consumer orientation much more notable. In Germany, the traditionally closer ties between lawyers and the state have been an additional influence on the delayed move to a market relationship. This greater progress in Britain towards championing the consumer is indicated by both the prevalence of state-nominated market watchdogs and by searching enquiries on the part of a variety of consumer bodies.

Advocates/Solicitors

The reverse side of the characterisation of German lawyers as a state-centred profession (Rogowski 1995) are their less client-centred experience, working practices and attitudes. Even corporate lawyers are said to lack a service mentality, in the sense of being constantly available for clients and responsive to their needs (Lace 1999: 278). Furthermore, the state has not introduced market watchdogs to monitor the quality and price of services rendered.

Clients, in turn, have not developed the same consumer stance as their British counterparts who now are much more 'willing to shop around' (Susskind 1996: 29). This difference in clients' attitudes is well illustrated by an examination of client complaints procedure and levels of complaints in the two countries. It is not compulsory for German practices to have a complaints-handling procedure, nor is there a body equivalent to the British Office for Supervision of Solicitors. Dissatisfied clients either have to sue, or can complain to the local Advocates' Chamber (Manz and McGregor 1993: 161). Clients' complaints about service are said to be rare (Blankenburg and Schultz 1995: 108).

Even German corporate clients have been described as not very assertive and still deferential (Lace 1999: 281). In Britain, in contrast, corporate clients have become very demanding often treating law firms just as any other supplier. Law firms often have to participate in so-called 'beauty parades', i.e. they have to compete with other suppliers of legal services in the presentation of proposals for handling a particular legal assignment (Susskind 1996: 28).

The highly discrepant levels of clients' complaints in the two societies partly reflects the difference in complaints-handling procedure, as well as differences in fee setting. But the very high and still rising level of complaints to the British Office for Supervision of Solicitors (formerly Solicitors' Complaints' Bureau) (Law Society 1998g), as compared with the very low level of complaints dealt with by the Chambers of Advocates, must have an additional reason. It also may be an expression of the different degrees of advocacy of the market in professional service provision and of the political culture vis-a-vis clients for professional services.

Despite this difference in culture, in both countries lawyers themselves are working hard on becoming perceived as more client-oriented (Law Society 1999; Bundesrechtsanwaltskammer 1999). A recent British study (Morris and Pinnington 1999) found that a greater focus on client care was among the biggest changes experienced by the British profession. German advocates are trying to transform themselves from remote status-type groups into modern service providers. The Association of Advocates has even recommended that lawyers set up stalls in department stores to offer routine legal advice (Walentowski 1999: 61).

Pharmacists

In both Britain and Germany, pharmacists are conscious of the fact that cultivation of the advisory function may be their main competitive advantage, and hence are becoming more strongly customer-oriented. But the impact of a consumer orientation is felt most strongly by British pharmacists. Although British pharmacists have not experienced the same high level of customer dissatisfaction as solicitors, nor the

resultant increase in state supervision, their services have nevertheless come under close scrutiny by both the National Consumers' Council and by various committees of enquiry (e.g. RPSGB 1992; Review 1999).

A series of reports by the Consumers' Council severely reprimanded pharmacists for underperformance in their advisory role when selling over-the-counter medicines, and noted that many pharmacists' premises were not suitable for doing health checks or even giving advice (National Consumers' Council 1985, 1991 and 1999). In general, purchasers of over-the-counter drugs behave as confident consumers, rather than as advice-seeking deferential patients (Hassell et al. 1996: 6; School of Pharmacy. 1998:18).

In Germany, dissatisfied patients/customers may complain to their Chamber, but the level of complaints is said to be low, and clients' dissatisfaction about service is said to be expressed mainly by changing their pharmacy (Interview with regional Chamber, 19.07.2000). There is no mention in the German literature of enquiries by consumer organizations. It is not clear whether this is indicative of a high level of consumer satisfaction or an absence of a consumer culture. But it is evident from the literature that German pharmacists have been more successful in preserving their image as health care professionals and hence their professional mystique.

In sum, purchasers of professional services in both British professions are more liable to behave like market-oriented consumers rather than deferential clients, whereas in Germany deference to professionals still moderates market behaviour to a greater extent.

3.4 The Impact of Technology on Markets

Information technology (IT) can be used to both automate, - streamline and improve - existing work processes, and it can be applied more innovatively to create entirely new processes and products. Accordingly, IT may affect professionals and the markets for their services in various ways and with differing results. Impact further

depends on the prior status and power of the profession concerned and particularly on the nature of professional knowledge provided. The more indeterminate - it cannot be reduced to its constituent parts - the knowledge, the less are the chances of codification and hence the greater the resistance to routinization and standardization of knowledge by new technology. Legal knowledge and expertise is varied in nature. While some of it is very procedural and fairly standardised, much remains indeterminate and complex. While the latter is inherently resistant to automation, the former is in principle amenable to automation. With a few exceptions of very standardised and/or high volume legal services (Smith 1999: 5; Walentowski 1999:61), however, even these legal services so far have remained exempt from routinization. Lawyers, consequently, have managed to retain much more control over their professional knowledge than have pharmacists. This has been the case despite the fact that lawyering is a much more information-intensive profession, with a lot of scope for the application of IT. In the case of pharmacy, in contrast, most knowledge is now so highly codified that it can be provided in a very routinised manner, but professional control over the safety of prescribed medicines is still required.

Through its capacity to change both the character of knowledge and the way it is offered to clients/customers, technology has a large potential impact on markets for professional services. It may increase competition in markets for professional services by creating new possibilities of service delivery and simultaneously making it very difficult to maintain 'social closure' (Weber 1978) against new market entrants. Provision of professional services via the net will serve to further reduce boundaries between different professional and non-professional providers. IT delivery of information to clients also will change the nature of charging - from hourly charging to charging for the overall market value to the user of the information provided (Susskind 1996). But equally technology may also expand or create totally new markets and thus should not merely be seen as reducing the professions' market opportunities.

Additionally, the new information technology has changed the whole culture of service delivery. Clients expect speedier service delivery (Smith 1999: 5; Interview with regional Advocates' Association, 24.05.2000). Easier access to what is now regarded as professional knowledge will have important consequences: it will make clients better informed and more demanding, partly explaining the movement towards the more developed client orientation discussed above. The net also calls for greater professional self-representation. This has resulted in increased transparency of products/services for clients and a reduction of professional mystique. All these developments may force the professions to change their role from one of information depositories to one of information interpreters.

What then has been the actual use of IT by the two professions, and what are the prognoses for the near future? Pharmacists have been much more exposed to information technology than lawyers. Computerised patient medication records are now very widely used in British pharmacies and hospitals (ABDA 1999; Royal Pharmaceutical Society 1992: 4; Harding and Taylor 1997: 548). This permits identification of potential adverse drug interactions and inappropriately prescribed doses and produces medicine labels with appropriate directions. Such a system facilitates the codification of patient information and its interpretation and use in a highly routinised manner, diminishing some of pharmacists' expert roles. In the eyes of some commentators, it destroys professional judgment (Harding and Taylor 1997: 550-51). In Germany, the illegality of keeping personal data in computerised form does not permit the capture of patient data, but computers are used to check the compatibility of various drugs taken. In both countries, the incessant process of innovation in drug creation counteracts this process of routinisation to some extent, and demands continual professional learning and updating of knowledge (ABDA 1999).

In both countries, it is becoming more common that alternative providers use the internet to offer competing pharmaceutical goods/services. Such providers now appeal directly to potential customers. In Britain, some drugs which are available by prescription

only, now can be ordered freely and more cheaply from other countries. Additionally, there is now a British on-line pharmacy which aims to combine the sale of cut-price 'over-the-counter' medicines with advice to purchasers. In Germany, however, a 1998 revision of the Medicines Law has included a proscription of selling drugs, designated as pharmacy-sold only, by mail order. This is deemed to have afforded pharmacies some protection also against internet selling (ABDA 1999: 7). Hence the use of technology not only shapes markets but also is influenced by market regulation.

In the case of solicitors/advocates, the impact of new technology has been both more recent and less severe but is set to accelerate greatly in the coming decade (Smith 1999: 50). So far IT mainly has been used for 'automating the law office, rather than the lawyer' (Susskind 1996: 72).

In Britain, there primarily occurred automation of the back office and, somewhat later, of the front office, and technology so far has had only limited impact on relations with clients. In the back office it has involved especially word processing and billing and accounting systems for greater efficiency and cost reduction. From the 1990s, back office systems became more sophisticated, using practice management systems, with data bases for marketing and personnel. IT entered the front office when, from around 1990, more sophisticated computers became used by lawyers themselves for word-processing. Additionally they became used for more effective handling of document loads and for reading legal texts electronically and generally accessing information for their daily practice. In many cases, lawyers also started programs to capture and store their 'institutional memory'. In sum, they tried to automate *lawyering* activities through the application of know-how systems, in order to achieve both cost savings and enhanced performance. Since 1995 a third stage of application, which brings IT into the client office and makes strategic changes, has started in a very few go-ahead firms (Susskind 1996: 73-76). Thus some of the big corporate law firms have developed information systems on specific aspects of corporate and financial law (Interview, Law Society, October 2000). At the other end of the spectrum, conveyancing is now

being done in a highly routinised manner by some firms (Smith 1999: 5). The most innovative use of IT, so far, has hardly begun to be tackled (Susskind, op.cit).

For German advocates, such a systematic account of the various stages of IT use is not available, but scattered information suggests that German law offices have not advanced any further than their British counterparts, and may well be more backward in their use of IT. Certain highly codified aspects of legal knowledge and routinised expertise, particularly bulk operations, have been automated. Communication with clients by e-mail and provision of advice over the internet, however, are not yet very developed (Interview in a regional Chamber, 2000), although they are increasing in importance (Walentowski 1999: 61; Hellwig 2000: 30). Simple and brief legal advice on everyday matters is now provided over a telephone hotline in a highly routinised manner, where the client pays per minute of advice, but is still protected by a contract against malpractice (*Süddeutsche Zeitung*, 29/30 May 1999:V1.; Anwaltskammer 2000).

According to Susskind (1996), there now exists tremendous opportunity for the wider deployment of IT also in the provision of legal services. Particularly, it can be used to provide on-line legal guidance systems for relatively straightforward legal problems. Such legal guidance systems, ranging from electronic check lists to diagnostic expert systems are, in principle, available on the web. Furthermore, the growing sophistication of IT, particularly its interactive nature, makes its application to even quite complex issues more feasible.

If these more innovative uses of IT were to become morewide-spread they could lead to very dramatic changes in the legal profession. They would bring about internal differentiation into three groups, with very different task profiles and opportunities in the market. While lawyers at the high-value end of the profession, doing specialised, socially significant and complex work, will continue to provide legal services in the traditional way, this will not be the case for solicitors doing standard and repetitive work. Such commoditised legal services can be

automated and done by paralegals. Hence far fewer general legal practitioners will be needed. On the other hand, some solicitors can become involved in the creation of such new information systems. Furthermore, the use of these systems will tap a large latent legal market and will bring new clients. 'The hitherto latent legal market will create a range of opportunities for lawyers to package and sell their expertise in innovative ways' (Susskind 1996: 270).

Technology has begun to change both professional products/services and ways of delivery. Furthermore, it has both undermined market shelters and opened up new markets. Whereas lawyers have not yet witnessed dramatic changes in any of these fields and, according to Susskind (1996), will on balance profit from future more innovative deployment of IT in relations with clients, pharmacists have fared much less well. Use of IT promises them no new market opportunities, but has had a largely destructive impact on pharmaceutical expertise.

4. Conclusions

During recent decades the professions have faced tremendous challenges. We have explored how changes in government policy, markets, clients and technology have impacted on the two professions of solicitors/advocates and pharmacists in Britain and Germany. Additionally, we have studied how the resulting challenges have been handled by professional societies/associations. More particularly, we have investigated whether and how the differing national historical developments and current institutional environments - particularly states, associations, markets and technology - mediate the impact of environmental factors in significant ways.

Contrary to arguments from globalization and Europeanization in favour of homogenization, we have demonstrated significant continuing diversity, both between the two societal professional systems and within each society. It has been shown that the two German professions, due to greater market regulation, have retained their 'guild-like' status and relatively high social prestige more effectively and much longer than their British counterparts. While the

former have remained individualist traditionalists, the latter have had to modernise themselves more comprehensively into expert providers of professional services under pressure from both state and consumers. These divergent developments have expressed themselves in both more pronounced inter-professional competition, particularly in the case of solicitors, and in more developed intra-professional competition. While the latter is not negligible in the German professions, it has much lower intensity.

It is difficult to decide from the existing evidence whether the longer retention by the German professions of their guild-like status and more traditional attributes is due only to the divergent manner in which their relation to the state has been defined, or whether additionally their Chambers and associations have been better able to preserve their protected status.

State, market and technology have also impacted in different ways on the two professions within each society. Community pharmacists - the bulk of the profession - face a much greater threat to their professional autonomy and to their market shelters from technology than do lawyers. Moreover, their relatively stagnant home markets offer only limited chances for expansion of income opportunities. This more precarious position results from, and is enhanced by, their greater vulnerability to direct or indirect government reduction of their opportunities for income. These factors render their prospects for economic and status rewards much less promising than for the legal profession.

Lawyers have been, and will continue to be, less liable to a reduction or loss of their markets through the greater use of new technology in service provision. Although lawyers have faced more inter-professional competition than pharmacists, they, particularly British solicitors, have been able to compensate for any loss of domestic market opportunities by expansion in international markets. These opportunities have been open mainly to large law firms. Smaller high street solicitors/advocates face a more uncertain future in both societies, albeit for different reasons.

Convergent developments are, however, not discounted. The two societal professional systems are currently less diverse than they have been in the past. The impetus for convergence seem to have come mainly from similar national pressures from states and clients and, in the case of lawyers, from international competition. Internationalization and cross-national mergers between legal partnerships may bring about significant homogenization in both legal practice and organisation of the profession in coming decades, but at the current time such a process is still in its infancy. Impact from the European Union, in contrast, is hardly discernable, except for some harmonization in the length of professional education. The German professions are no longer as state-centred as they have been in the past, and the British professions have lost some of the autonomy and independence from the state they previously enjoyed. In both countries there has occurred a trend towards some market deregulation (albeit to differing degrees), and the state, both as paymaster and as advocate of a more cost-effective and accountable client-centred service provision, has become more intrusive and thus undermined professional autonomy. In both societies, the two professions have been reconstituted in a new way.

Such a process of reconstitution is evident in the following developments, which temper self-regulation with greater external scrutiny. Professions no longer possess or are able to protect monopolies, and are becoming reconciled to the fact that only proven performance secures a market share. They can no longer take for granted the authority professional expertise has automatically bestowed on them in the past. Under simultaneous pressure from state and more knowledgeable clients, professions, through their associations, have had to invest much greater effort into the delivery of high quality, timely and affordable services. They are having to strive much harder to satisfy both the public interest and their own material and ideal interests. Political and client scrutiny mean that a professional jurisdiction has to be continually justified by both ethical conduct and efficient service delivery. Professional autonomy and privilege have not been destroyed, but they now have to be earned, rather than simply being claimed on the basis of expertise. In the words of Light (1995:

31), there has occurred a shift from 'protected professionalism to contracted professionalism'.

This shift is discernable in both societies, but it has progressed significantly further in Britain than in Germany. More research is needed to establish the consequences of all these developments for the balance of cost/quality/efficiency of services for customers/clients, as well as on even access to services right across the community.

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