

Professionalism

Introduction

The concept of professionalism is, of course, closely related to the concept of a profession, discussed in the previous section. However, 'professionalism' is less about the occupation as a social institution and more about what that the profession does and, more importantly, *should* do. It is about professional standards and appropriate attitudes and behaviour suitable to the profession.

This overview looks at some of the key issues and ideas within the concept of professionalism, namely:

- What Is Professionalism?
- Professional Expertise: Education and Training
- Professional Ethics and Codes of Conduct
- Enforcement: Complaints, Investigation, Disciplinary Sanctions and Exclusion
- Professional Associations
- Emerging Professions and Professionalisation.

What Is Professionalism?

The concept of professionalism is a characteristic of a properly functioning profession. Professionalism is characterised by professional standards and norms and, vitally, the adherence to those standards and norms. Professionalism can be observed and measured in myriad ways, from personal conscience and integrity, a collegial, civil outlook among peers, securing others' rights and benefits, through to, and supporting, the public interest and wider social advancement. This is because professionalism has several beneficiaries, including not only the client and important social institutions, but also government, professional associations, legal practices, and individual professionals. Hugh Breakey depicts a view of multiple stakeholders comprising the 'demanders' and 'suppliers' of professional services; the demanders being the consumers of the professional services, the public and government, and the suppliers of those services being the professionals and the professional associations.¹

Where breaches of professional standards become more than aberrations, the legitimacy of the profession can be rightly called into question. Indeed, over the past few decades, the assumption that the professions inherently enact professionalism has been increasingly challenged. Writers see the traditional ideals of professionalism such as autonomy, collegiality and ethical fidelity as having been 'contaminated' by alternative logics of entrepreneurship, consumerism and managerialism.² On the other hand, the introduction of competition ideology and consumerist client care have been central rubrics in the states' challenges to, and reinvigoration of, professionalism. Further, while critics have argued that these new professional logics ultimately serve the most powerful, commercial sectors, they have also offered real protections and advantages to the users of professional services. These tensions surround what professionalism means in the modern era.

¹ Hugh Breakey Supply and Demand in the Development of Professional Ethics (Working Paper, Griffith University, July 2015).

² John Flood and Avis Whyte, 'Straight There, No Detours: Direct Access to Barristers' (2009) 16 *International Journal of the Legal Profession* 131.

There are two main features of professionalism: professional expertise and professional ethics, and these are discussed in the next two parts below.

Professional Expertise: Education and Training

The primary reason a client sees a professional is to gain access to expertise and it is this expertise that makes up the central identity and characterisation of an occupation as a profession. As Halliday describes knowledge is the professions' 'core generating trait', granting and justifying their special status.³ Professional expertise is normally a blend of both academic knowledge and practical skill that relate to centrally important social problems. As Macdonald describes it, professions are occupations based on advanced, complex, abstract and rational knowledge with a utilitarian or applicable quality valued by society.⁴ Jamous and Peloille point out that there is something extra in the distinctive professional offering: it is abstract knowledge that can be applied to cases by way of experienced judgment as opposed to bare knowledge or bare technique.⁵ These two aspects correspond to the requirements of education and training that are necessary to attain an appropriate level of professionalism and to begin to develop that capacity for professional judgment.

Education is usually required at the university level for professions, as compared with the requirements usually associated with the general occupations and trades. A bachelor's degree allows sufficient years of accumulating knowledge to eventually grasp the basics of a profession. However, as noted above, education alone is usually not enough, especially given that the professions are typically practical endeavours. Thus, there is usually a further period of practical training required before a person is admitted into a profession. This is then often followed by a period of further, post-admission supervised practice before an individual is admitted as a full member of the profession. Further, some form of continuing education requirement will typically be required to ensure individuals keep their knowledge up-to-date. This may be a specified number of hours per year, for example, covering a range of knowledge areas, which will ideally include an ethics component.

In this way, though they overlap, education provides the core knowledge base, and training then provides the necessary skills to ensure that core knowledge can be applied in day-to-day practice. This combination of education and training, and the often-hidden values they impart, is also essential for instilling the ethical norms and conduct that are also required for true professionalism and acting with integrity, as is now discussed.

³ Terence Halliday, *Beyond Monopoly* (University of Chicago, 1987) 29.

⁴ Keith Macdonald, *The Sociology of the Professions* (Sage, 1995) 1.

⁵ Haroun Jamous and Bernard Peloille, 'Changes in the French University-Hospital Systems' in JA Jackson (ed), *Professions and Professionalization* (Cambridge University Press, 1970) 109.

Professional Ethics and Codes of Conduct

Ethics is another core component of professionalism. Without well-developed ethical norms and requirements, an occupation is not considered a profession, but will instead be only a skilled, even if highly skilled, occupation or trade. Professions are often referred to as a calling and have at their core a sense of acting in the public interest. The leading American legal scholar, Roscoe Pound, described professions as ‘a group pursuing a learned art as a common calling in the spirit of public service – no less a public service because it may incidentally be a means of livelihood’.⁶ It is this sense of responsibility for advancing the public good that sets the professions apart and it is the adherence to some form of ethical code that embeds this lofty ideal into daily practice. As Justice Allsop elaborates, ‘This notion of service, stressed by Pound, beyond the narrow confines of private interest and gain, necessarily carries with it the existence of a body of rules to identify and regulate the demands of that service – professional ethics’.⁷

Ethical standards will, indeed, usually be formally codified by a professional association in a Code of Conduct. However, many ethical requirements may also be found within the legislative provisions of the relevant government regime, which deal with issues such as misleading and deceptive conduct. As well as the written requirements in codes or legislation, ethics can also be found in the unwritten ethical norms instilled by professional modelling, mentoring and conversations within the profession. In fact, these are usually as powerful sources of ethically-appropriate attitudes and behaviour as the formal rules, if not more powerful. Therefore, commentators have called for, and certain regulators have experimented with, management-based professionalism, in which organisations establish their own policies and structures to cultivate ethical culture.

A developing view in conjunction with this is the concept that personal wellbeing and fulfilment among professionals, including as employees, is a major factor in ensuring continuing levels of professionalism. Krieger, for example, argues that mental wellbeing and personal maturity, along with initiatives to promote autonomy and meaning in people’s working lives, are essential here.⁸

Enforcement: Complaints, Investigation, Disciplinary Sanctions and Exclusion

Another necessary part of maintaining professionalism is, of course, the enforcement of conduct and competence standards. Depending on the profession, this is done by either the professional association or a government regulator, or a combination of both. The enforcement process will usually start with a complaint from either a client or the public, and the professional association will have some type of formal complaints handling system. If the matter involves serious breaches of professional standards, then a more significant enforcement process can be invoked. Enforcement in the first instance usually involves an investigation process, followed by a hearing and sanctions where warranted. These sanctions include a range of

⁶ Roscoe Pound, *The Lawyer from Antiquity to Modern Times* (West Publishing, 1953) 5.

⁷ James Allsop, ‘Professionalism and Commercialism: Conflict or Harmony in Modern Legal Practice?’ (2010) 84 *Australian Law Journal* 765.

⁸ Lawrence Krieger, ‘The Most Ethical of People, the Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation’ (2010) 8 *University of St Thomas Law Journal* 168.

responses: anything from a simple warning or admonition, to remedial action, through to fines or even criminal penalties. For such more serious cases, there is also the possibility of temporary or permanent expulsion from the profession. This is an important aspect of professionalism, which in Larson's terms, is about maintaining control over the 'production of producers', that is, who can practise, how one qualifies and who is ejected.⁹

Professional Associations

An integral part of maintaining an appropriate level of professionalism is the role of the professional association. Professional associations have played a pivotal role in developing rules of practice and conduct. This concept of a profession regulating itself and setting its own professional standards is referred to as 'self-regulation', a core component of professional groups achieving and maintaining 'institutional autonomy'.¹⁰ Other features of this activity and authority explored here include: representing members' interests; providing technical and ethical guidance on latest knowledge and best practice; and providing a sense of identity and community for the profession.

Traditionally, these bodies have operated 'independently of, and parallel to, government regulation'.¹¹ More recently, however, many professional associations have come under pressure from governments who no longer trust that they can keep their affairs in order. In response, some have 'promulgated a myriad of regulations, standards, requirements, checklists and monitoring procedures'.¹² While this can assist in maintaining levels of professionalism, external requirements and audiences can also diminish the traditional, central role of professional associations and create resistance among members. Indeed, Cotterrell has argued that one of the deficiencies of modern government regulation is that it is often perceived as being external and thus lacking legitimacy, as well as potentially being disconnected from the norms of the regulated group.¹³ As enforcement is, in practice, 'spread around thinly and weakly',¹⁴ regulators must then depend on the internalisation of regulatory purposes by the regulated population for compliance and the practical realisation of their authority. They must rely on the professional associations and the practice organisations within the professions to promote this internalisation.

Another essential role of professional associations is that of advocacy for their members and the social institutions that they are entrusted to serve. A profession's perceived professionalism and its legitimacy among government and public audiences is largely informed by the professional association's public profile and its representative activities. Professional associations also provide guidance to their members on latest

⁹ John Flood, 'The Re-Landscaping of the Legal Profession: Large Law Firms and Professional Re-Regulation' (2011) 59 *Current Sociology* 507.

¹⁰ Julia Evetts, 'New Directions in State and International Professional Occupations: Discretionary Decision-Making and Acquired Regulation' (2002) 16 *Work, Employment and Society* 341.

¹¹ Cary Coglianese and Evan Mendelson, 'Meta-Regulation and Self-Regulation' in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press, 2010) 146, 147.

¹² Fernanda Pirie and Justine Rogers, 'Pupillage: The Shaping of a Professional Elite' in Jon Abbink and Tijo Salverda (eds), *The Anthropology of Elites: Power, Culture, and the Complexities of Distinction* (Palgrave MacMillan, 2013) 139, 158.

¹³ Roger Cotterrell, *The Sociology of Law: An Introduction* (Oxford University Press, 2nd ed, 1992) 180ff.

¹⁴ John Braithwaite, *Regulatory Capitalism: How It Works and Ideas for Making It Work Better* (Edward Elgar, 2008) 9.

international practice approaches, the latest technical developments in their field, and support in navigating ethics issues. The need for this educative role seems to be growing as their members (and the professional bodies themselves) face more complicated practice environments.

Finally, as a physical and increasingly virtual place in which norms can be articulated, reinforced and internalised, the professional association provides a focal point for professional identity for its members and beyond. Taken together, the professional association's role is central to professionalism, to its collective identity and common function and its recognition, then, by government and members of society as such.¹⁵

Emerging Professions and Professionalisation

Occupations may want to advance to professional status for several reasons, including to better commit to certain public functions and institutions, to increase access to financial rewards, and to gain prestige. Though the precise charting of this process of professionalisation is problematic, to become professions, aspiring groups must develop their levels of professionalism to the point where they are generally considered by the public to be, or deemed by government as, a 'genuine' profession.

Larson refers to this process of gaining, and then maintaining, professional status as the 'professional project' or a systematic attempt to translate a scarce set of cultural technical resources into a secure and institutionalised system of social and financial rewards.¹⁶ This is done through a variety of measures including improving qualification requirements, ethical standards and enforcement procedures, and often along with some form of governmental acknowledgment of superior competency usually in the form of governmental registration or licence. These then result in what Larson describes as the establishment of a 'sheltered market' or a monopoly or quasi-monopoly, which allows for greater fees and privileges.¹⁷

This project is an ongoing one. Indeed, most established professions are currently renewing their efforts here, due to identity crises¹⁸ sparked by 'fundamental reworking' of their relationships with the state and wider society.¹⁹ In several contexts, including in this activity, the traditional jurisdictional division between professions and non-professions seems to be becoming 'increasingly fragile'.²⁰ There are of course limits, however, to this phenomenon of occupations transforming into professions, as there will always be the need for an occupation to have ownership of some form of esoteric or exclusive knowledge and social underpinning before it can hope to attain professional status, which relies in turn on the support of other institutions, such as the universities, and other social factors.

¹⁵ Macdonald, above n 4, 43.

¹⁶ Magali Larson, *The Rise of Professionalism: Monopolies of Competence and Sheltered Markets* (Transaction Publishers, 2013) 145ff.

¹⁷ Magali Larson, *The Rise of Professionalism*, 208 ff.

¹⁸ Justine Rogers, 'Representing the Bar: How the Barristers' Profession Sells Itself to Prospective Members' (2012) 32 *Legal Studies* 202.

¹⁹ David Brock, Hüseyin Leblebici and Daniel Muzio, 'Understanding Professionals and Their Workplaces: The Mission of the Journal of Professions and Organization' (2014) 1 *Journal of Professions and Organization* 1.

²⁰ John Flood and Avis Whyte, 'Straight There, No Detours: Direct Access to Barristers' (2009) 16 *International Journal of the Legal Profession* 131.

Summary

In summary then, professionalism is a concept that underpins all professions and when that professionalism is called into question, so too is the status of the profession. What professionalism means for each profession will, of course, vary. However, each profession will have its own professional knowledge base and skills and its own ethical norms and codes of conduct. These contribute to its sense of professionalism. Enforcing standards of expertise and ethics is central to maintaining professionalism and professions will typically have formal compliance processes required by their professional association and/or the relevant government regime. As such, professional associations often play an essential function in upholding the professionalism of their members.

Along with this enforcement role, they also have an essential advocacy and representative role for members, as well as a best practice guidance role. Equally, professional associations are essential for ensuring the internal identity of a profession and the ethical standards associated with that, and more generally for providing a sense of professional identity and community. Finally, the growth in emerging professions is an increasingly important phenomenon. The professionalisation process that this requires involves improving the professionalism of the occupation or industry to the point where it becomes recognised as a genuine profession. Professionalism goes to the heart of becoming and remaining a recognised profession.

Written by: John Chellew, Justine Rogers and Dimity Kingsford Smith
This subject overview has been written with the support of the following partners:

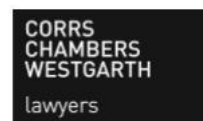


Australian Government
Australian Research Council



UNSW
SYDNEY

CLMR
Centre for Law, Markets and Regulation



Allens > < Linklaters