

BECOMING A SOLICITOR:

An examination of the process by  
which trainee solicitors develop  
the appropriate skills and  
identity that enable them to become  
recognised as fully qualified  
members of the solicitors'

profession  
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# **Becoming a solicitor:**

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develop the appropriate skills and identity that enable them to  
become recognised as fully qualified members of  
the solicitors' profession**

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***For Mummy & Daddy***

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## Synopsis

The study examines the process by which trainee solicitors becomes fully qualified solicitors. It involves more than simply an examination of the process of training that leads to qualification. Included is a sense of the transformation from learning student to working professional. Very little work has been done in this area and two fundamental questions remained unanswered - what is it that trainee solicitors actually do and what is it that they are becoming, in other words, what is the solicitors' profession? The study focuses on the two year training contract and covers the trainees' experience of training from entry into a solicitors' firm to admission to the rolls. The method of investigation included preliminary interviews and a national questionnaire survey.

There is an enormous degree of variation in the form and quality of training received in different firms. Law Society regulations imply a particular form of training, however, in actuality, what trainees experienced tended to be very different. The role of the supervisor was held to be central to the process of training and yet there was no consistent pattern to supervision. This reflected the often arbitrary nature of training as experienced by trainees. The quality of feedback that they received was often less than adequate. In view of this it is hardly surprising that in many firms there was little structured development through the two years of the Training Contract.

Much of this variation, inconsistency and inadequacy may be as a result of apparent ambiguities as to the fundamental purpose of the Training Contract. The Law Society regulations expound a general form of training as a foundation for all areas of practice whilst the majority of trainees and many firms tended to prefer a degree of specialism. Furthermore, it seems as if the Law Society's intentions are not, and cannot be, fully translated across all Training Establishments. Whatever the training policy the experience of trainees is generally mediated by supervisors who may lack adequately training or appropriate resources. Ultimately, for trainees the training appears to have less to do with the development of skills through situated learning and more to do with the doing, coping and fitting in of everyday practice. This represents the broader function of the Training Contract as an essential mechanism for inculcating the trainee into the particular firm and into the wider profession. After all what they are training for is a job.

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# 1. Introduction

Solicitors are consistently treated as a coherent and unified profession, access to which is gained through formal education and legal training. I suggest that this overly simplified reading can be misleading. The solicitors' profession, if it can be called that, is far from unified. The Law Society seeks to represent all practising solicitors, be they a sole practitioner subsisting on a mixture of wills, probate and conveyancing and operating out of small high street premises in a rural village, or the senior partner of a multi-national commercial firm with central premises in the City of London and branch offices in Hong Kong, Brussels and New York. What then is *the* solicitors' profession? University graduates seeking to join the solicitors' profession must satisfy a number of formal criteria. These include gaining legal exemption subjects obtained through their undergraduate studies or a conversion course and passing a one year vocational course, the structure and content of which has significantly altered in recent years. The would-be solicitor (now called trainee solicitors but previously termed articled clerks) must then complete a two year apprenticeship or Training Contract in a solicitors' firm before admittance to the profession. It is this final stage that plays a crucial part, both in making the trainee into a solicitor and in maintaining the solicitors' profession as a whole. Curiously, it is not until recently that any form of enquiry has been made into the form or purpose of this professional stage of legal education.

The legal profession, legal training and legal skills are all areas of research that, due to historical reasons, are only really developing now. A shift of focus towards a more systematic form of legal education and training has occurred within both branches of the profession, barristers and solicitors, and at each stage of the educational or training 'ladder'. This, along with a growing dynamism, partly induced by the opening of the European Market in 1992, has created a need for empirical research upon which changes can be based. There has as yet been no in-depth study of trainee solicitors (or articled clerks) and their experiences of training.

This research presents a unique opportunity to do original work in an area as yet virtually untouched. The whole area of training and organisation within the legal

profession is topical and any work would have immediate relevance and applicability to training practice. With the introduction of a points system for all practising solicitors who wish to retain their certificate of practice there will be renewed interest in training generally and continuing education specifically (ACLEC, 1996). There is also interest in the role of, or for, psychologists in legal training, given the general view that much of a solicitor's time is spent dealing with clients (Ingleby, 1992) and managing a practice (Abbey, 1993) rather than in dealing with legal theory or practice. This study aims at contributing to each of these areas. It is also my sincere hope that this research will further contribute to a rapprochement between the academic establishment and the commercial world, to share their resources whilst offering an inter-disciplinary approach, and possibly to some extent, a solution.

The intention of this study is to shed some light on the process by which trainee solicitors become professionals, and hence how legal students in the final stage of their education and training make the transition into fully fledged solicitors. At the very outset it is necessary to clarify the context of this study and to situate the process of 'becoming' in a number of ways. The study focuses on the process of becoming that takes place within a legal environment provided by solicitors' firms and represented by the final stage of a period of legal education and training that, for the vast majority of individuals, began in establishments of higher education, with the study of a law degree, and will end with their formal acceptance as a practising solicitor. It therefore encompasses an understanding of the legal educational environment, the legal training environment, the professional environment and the firm environment. The study intends to explore a variety of dynamics operating within these environments as experienced by trainees. These include the transition from education to training; from learning to working; from law student to practitioner, to employee and to professional; and from individual to part of a collective, a team or a firm. The intention is to seek an understanding of these complex processes of change and development, and professional socialisation within the experiences of individual trainees.

The focus of the study on trainee solicitors at the point of entry into the solicitors' profession examines aspects of their training and skills development with particular

emphasis on the process of socialisation into a distinctive occupational culture, the development of 'lawyering skills' and the acquisition of an appropriate professional identity. This leads to a natural four-fold theoretical division, whose central questions include:

What is the formal structure of *legal education and training*? How is this reflected in the actual form of legal education and training as experienced by trainee solicitors? Which features of professional legal training are of central concern and importance to this period of training?

What constitutes *legal skills*? How do these skills relate to *legal knowledge*? How do individual trainees develop a appropriate skilled repertoire? Is it possible to talk of a core of skills defining all solicitors?

What does *professionalism* mean to individual trainees? What is the process of entry into a *profession*? What is the present role played by professional status?

Can one characterise a specific legal occupational *culture* or 'firm' culture? What impact does this have on recruitment and selection procedures? How does this inform an examination of the process of *socialisation*, attitude change and identity formation among trainees?

The overall aim was to combine the answers to these and other research questions within a conceptualisation of the process of entry as situated within the wider picture of a changing profession. The immediate question here has to be why situate the entire study in this way, and also, why adopt this four-fold approach in addressing both the theoretical contributions and the present enquiry.

The nexus of this study is the becoming of solicitors. This could be taken to mean simply the training of solicitors and, whilst this occupies a central role, it is far from the whole story. In one way, the entire future of the solicitors' profession and all the aspects connected with it are dependent upon, and are created by the new entrants to the profession. Just as our children are often evoked as symbols of our future so trainees represent the actuality of the solicitors' profession in decades to come. They

are more than simply individuals seeking a career, they are also responsible for producing and reproducing the professional endeavour into the 21st Century. It is for this reason that I chose to study the becoming of trainee solicitors and it is for this reason that I have situated the study in such a broad context.

The context of this study must necessarily address the formal basis for entry into the solicitors' profession. This includes the educational requirements which are generally provided by the study of law as an undergraduate in a university 'law school', and the completion of vocational requirements which are now also generally undertaken in 'law schools', although with a significant difference in method, curriculum and emphasis. The final barrier to entry, and the stage that represents the central focus of this study, is the Training Contract. This is central to the becoming of trainee solicitors, for the straightforward reason that it lies at the juncture of the educational world and the world of work. It mediates between the input of non-solicitors and the activities of practising solicitors, "when they finally get their hands on the goods", and represents the final transition from knowledge to skills, from student to professional and is the final stage of formal qualification - it is the gateway to the profession (Burrage, 1992). Control of the professional endeavour relies upon control of the production of production, of legal services, and the production of producers (Abel, 1982). Following significant changes in the market for legal services, increased state interest in the provision of such services and the growth in the power of consumers, professional autonomy is under increasing threat. Similarly, the profession has increasingly relinquished control of the production of producers to public and private course providers. However, the two year Training Contract remains, and looks to remain (ACLEC, 1996), almost entirely within the preserve of the profession. As such, it represents the main mechanism for bolstering the professional ethos, maintaining the professional endeavour and inculcating trainees into the ways of professional being.

Taken in their broadest sense, these processes can be re-interpreted in terms of the socialisation of the individual trainee within the reproduction of legal culture on a variety of levels. Pragmatically, in order to be of use to both firm and profession, trainees must be socialised into the particular firm. More generally, they must also

begin to think of themselves, and act, as a solicitor. This goes beyond the acquisition of legal knowledge or skills, and beyond the development of appropriate behaviour patterns, it smacks of the integration and internalisation of attitudes and the reconstruction of self. This process of reconstruction occurs within, and is likely to be strongly influenced by, the professional and legal environment initially, of the firm and its approach to training, but later of the wider profession. An individual trainee may associate themselves with the kind of work that they do, "I'm a criminal litigator", or with their firm, as in the Japanization thesis - "I'm a Toyota man". Finally, they may also construct a professional persona, whether that be in line with the official Law Society image, however that may be perceived, or merely from popular cultural ideology, and whether it remains only skin deep, like a suit, or becomes a deeply held conviction.

An initial investigation of the literature relating to these issues uncovered a variety of established debates. However, none of these debates by itself encapsulated the entire study, the variety of perspectives required or directly informed every aspect of the study. The major debates surround what constitutes a profession and how professions operate to maintain themselves, the form of legal education and the socialisation of students. These drew on the literature from the sociology of professions, the writings of legal educationalists, various official reports such as the Ormrod Report (1971), and the 'classic' studies of students particularly in the field of health and related occupations (e.g. Becker et al, 1961; Merton et al, 1957). More recently, there have been vigorous debates developing around legal skills and competences but particularly, how they might best be taught (Jones, 1994). There has also been some interesting work relating to changes in vocational legal education for both solicitors (Economides and Smallcombe, 1991) and barristers (Shapland, Johnston and Wild, 1993; Shapland, Wild and Johnston, 1995). These surveys were preceded by brief examinations of what it is that these practitioners actually do (Sherr, 1991a; Johnson and Shapland, 1990 respectively). This brief portrait of existing work fails to do justice to the full breadth of relevant scholarly endeavour. The focus of this study has roots in a number of different fundamental areas of academic concern. These include the purpose and basis of liberal education and its relation to a shift towards skills training, the form of knowledge and its relation to

skilled action, and the sociology of human identity (Babad, 1985; Breakwell, 1992) and learning. It is neither possible nor appropriate to attempt to do justice to these extensive fields of lore or to make reference here to each and every contribution with relevance to this study. However, these factors have led to the structure adopted in relation to the theoretical underpinnings of the current study.

The three topic headings of professions, skills and identity were initially selected to order literature searches and facilitate the construction and collation of theory (Cashmore and Mullan, 1983). Gradually, these headings transmogrified as the initial view of the literature became less coherent and more diverse, and as a pattern began to emerge from the theoretical construction. The final four headings each represent a differing perspective on the overall focus of the study and each began by drawing on different literature. Inevitably, the boundary between sections blurred and the issues inter-related as the study progressed. Each section, however, maintains internal coherence in two distinct ways. Each section has distinct themes, a particular perspective and construction in relation to the becoming of trainee solicitors. The sections also act as parts to a unified whole both substantively, in terms of the complimentary subject matter, and meta-theoretically. Each section, and the title for each section, represents a shift from a static form to a dynamic form, from an older interpretation to a newer one. This is a point that is further developed towards the end of the following section on the theoretical background of the study.

I should also like to sound a note of caution. Many questions are left hanging at the end of each of the theory section. Some are picked up in later theory sections and some are developed into research questions which are summarised at the end of each of the sections. The theoretical and research questions are grouped within what is intended as a coherent framework that leads the reader towards the empirical focus of the study where these questions are addressed. Essentially, the four sections that form the theoretical basis of this study constitute a narrative relating a series of issues and ideas arising from existing schools of thought, bodies of literature, and academic, professional and political debates. Whilst each section is thematically distinct, they all interrelate around the central theme of trainees' becoming. Because this is potentially

a rather heterogeneous and confusing endeavour, I give below a fairly full summary of these theoretical sections to act as a guide to the reader.

### **The theoretical background of the study**

The theory chapter divides into four sections entitled *education and training*, *knowledge and skills*, *professions and professionalism* and *socialisation and culture*. The first of these sections on *legal education and training* describes the formal structure of legal training nationally, the specific structure of the professional stage of training or Training Contract as envisaged by the professional body (Law Society) and addresses the reality of training in individual legal firms and for individual trainees. This continues with a brief outline of each of the stages of legal training to become a solicitor which covers the initial academic stage and indicates the form and requirements of the undergraduate degree in law including the exemption subjects. This is followed by the vocational stage of training which looks specifically at the change from the old Law Society Finals course to the current Legal Practice Course which represents a shift of emphasis from substantive theory and book based training to skills based, modelling (Neuro-Linguistic Programming; O'Connor and Seymour, 1990; Bandler and Grindler, 1979), role play (Goffman, 1961, 1963, 1967) and simulated reality techniques. There are also numerous implications for the profession in terms of relinquishing control over their knowledge base to non-practising solicitors, and in many instances non-solicitors, the simplification of legal language and phraseology and the reification of legal know-how which could serve to demystify professional practice. An example of such reification, or in this case, commodification is the franchising of legal services provision in America (Van Hoy, 1995). The dynamic for such change operates in unison with the current government's attempts to clarify and standardise training systems through, for example, the wide-spread introduction of National Vocational Qualifications (Jones, 1994).

The professional stage of training has also changed both its terminology and, subtly, its practices, in changing from 'the articles of training' to 'the Training Contract'. I would argue that this is a further reflection of the drive towards standardisation, and explore this in relation to the professional stage. It also points to the apparently

greater regulation of training by the profession through the Law Society (Shapland and Allaker, 1994). One has to ask, however, whether these changes are reflected in the reality on the ground (i.e. in individual solicitor's firms) and how these impact on the training of individual trainees.

It is necessary to make brief mention of the further training provided by the increasingly compulsory Continuing Professional Education, which continues many of the trends indicated in relation to the previous stages of legal training, namely a tendency towards greater regulation by the professional body through Continuing Professional Education and the points required in order to gain a practising licence. How do the apparent reasons given in support of these changes match the reality or the perceived reasons for the Law Society, the profession (or elements thereof) or the government? Information for this section was gathered from Law Society publications, various legal practice course publications and some of the extensive literature on National Vocational Qualifications.

The second theoretical section on *legal knowledge and skills* addresses two separate debates on the nature of knowledge and on the nature of skills, and the relationship between them. The debate about knowledge is an age old debate that has continued since time immemorial, whilst the latter is a relatively new debate that is having substantial impact on the training of solicitors throughout the Commonwealth. A debate about knowledge is fundamentally a debate about existence - what can and cannot be known, to what extent we are able to believe our senses or understand reality. In relation to legal knowledge the questions relate more specifically to the various forms of legal knowledge in terms of statutes, case law and precedence. How are these taught and how are these internalised? There is a similar emphasis with skills on how they can be identified, isolated and taught. Recently, in a climate of change, from traditional "chalk and talk" to activity and student centred forms of teaching, skills have re-emerged as the focus of educational theory and practice. Legal skills in particular, have moved centre stage with the introduction of new vocational courses for both barristers and solicitors. With regard to the debate surrounding knowledge, it would have been possible, for example, to extend an examination of the philosophical and epistemological nature of formal knowledge

back to Socrates and Aristotle. Whilst this would undoubtedly have been fascinating and possibly illuminating with regard to that specific line of argument, it would not have added much to our understanding of the relationship between the form of legal knowledge and the experiences of trainee solicitors. This section also asks fundamental questions about the nature of skills. What is a skill or rather what constitutes skilled activity, how can skills be identified, isolated and taught and to what extent is this possible or desirable? The answer to some of these questions was sought for in the literature relating to the legal skills debate. This included the reports of a limited amount of officially funded work on the legal skills for solicitors (Sherr, 1991a; Economides and Smallcombe, 1991, for the Law Society RPPU) and would-be barristers (Johnston and Shapland, 1990; Shapland, Johnston and Wild, 1993; Shapland, Wild and Johnston, 1995; Shapland and Sorsby, 1995, for the Council of Legal Education), the writings of legal educationalists (Gold, Mackie and Twining, 1989), the literature on skills in relation to other disciplines and other professions (Coombes, 1978; Fielding, 1988) and psychological work on the acquisition of skills (Harvey, 1991).

We shall find that there is a growing trend towards a reductionist, mechanistic and cognitive modelling approach to skills learning, the holistic approach having fallen into disrepute through its long association with the apprenticeship method. A growing need to specify with increasing accuracy exactly what it is that practitioners actually do has become apparent through the increasing use of skills and task analysis and general talk of professional "competence". The political climate encouraging efficiency and competition, the market economy and also the influence of professional consultants (computing consultants, psychologists and educationalists) have all contributed to this trend.

A summary of the topics addressed includes the form of legal knowledge and the impact that this has on the structure of legal education, which includes an examination of the transition from knowledge-based to skills-based teaching. This covers different conceptualisations of learning, knowledge, skill, competence, expertise and training. Epistemology or the theory or science that investigates the origin, nature, methods, and limitations of knowledge is touched on when questioning the interplay between

knowledge and discourse, the control of information and the role of power. Constant reference is made to the underlying relationship between knowledge, ability and action and the differences between active and passive knowledge or knowledge, know-how and attitude.

Themes from this section link in to professions and power, including an examination of the academic professional enterprise, credentialism, the restrictive use of language (note also the language translation argument of Cain, 1979), the role of information and the control of such information in the management of legal institutions and organisations or firms (Abbey, 1993), theory in practice (Schön, 1983) and the translation and realisation of these formal knowledge structures through individual practice and the management of uncertainty (Fox, 1957, Flood, 1991). There are further links into the role of the state vis-à-vis the drive towards modularisation, skills-based, rationalisation, regulatory approaches towards training and management as reflected in National Vocational Qualifications for example and the implications these policies have for the scholarly endeavour, liberal education and the professional project. Some of the literature referred to includes the ideas of Neuro-Linguistic Programming on the three elements of action, Van Hoy (1995) on franchised legal services, Abbey (1993) on the control of information, MacDonald (1995) on knowledge, Freidson (1986, 1992) on knowledge and power, credentialism etc. Reference is also made to the work of Flood (1991) on the management of uncertainty, Fox (1957) on the management of uncertainty, and McMurtry (1991) on education and the market model.

The theory chapter continues with the third section on *professions and professionalization* which addresses the substantial literature on the sociology of professions and works towards a concept of "Professionalisation". This provides a synthesis approach which owes a great deal to Larson's vision of the professional project - a conception which informs the remaining study. The literature surveyed included the profession's own literature (e.g. brochures) and that of the Law Society (e.g. RPPU reports and The Gazette), careers literature (e.g. AGCAS reports), Government literature (e.g. the Marre Committee Report, 1988), the traditional (e.g. Carr-Saunders and Wilson, 1933) and contemporary (e.g. work from Larson, 1977 to

Abel, 1995) literature on the sociology of professions, media reports, grey literature and conference papers.

It is argued that many of the assumptions and concepts developed within the traditional literature on the professions hold diminishing relevance for the majority of today's practitioners. Their value system is altering in response to wide-spread social and political change. Abel (1982) maps these changes in economic terms but it is important to question the relevance and impact of these changes for the individual trainee. Inferences can be drawn from senior practitioners (Glasser, 1992 Law Society Annual Conference) that highlight the growing divisions between various sectors of the profession - between the commercially oriented providers of a legal service for business and the smaller operators serving the general public. This has implications for street level quality and access to legal services as well as the training of trainee solicitors.

This section provides an outline of the structure of the English legal profession and then addresses the macro-theoretical issues arising from the literature on professions. A contrast is made between what I refer to as *the altruism approach* as opposed to *the power approach*. The former includes much of the early work frequently accused of buying into the professions own interpretation of their endeavour (MacDonald, 1995) - namely the functionalists view of public servants justly rewarded for a valuable service that requires long and formal training (or investment). This has elsewhere been referred to as a trait approach. It is founded within the Durkheimian tradition in which professions serve a role as exemplars of social order and includes pioneering work by Carr-Saunders and Wilson (1933), Millerson (1964) and Hall (1968) among others. A similar position was presented by Talcott Parsons (1954a) in adopting a classical structural-functionalist position. Together these approaches tend to stress the fundamentally altruistic orientation of the professions and their unique position of responsibility and trust within western societies. The power approach arose in the 1970s partly as a reaction to both the theoretical stance and the methodological approach of the trait/altruism approach. They include a disparate group of writers (Johnson, 1972; Freidson, 1970) who can be characterised by their tendency to present an overly negative interpretation of professions as self-seeking,

status searchers leeching on society. Professionals can be seen to be in a position of power and trust vis-à-vis their clients and able to extract money from this advantage. This is a characterisation of the more extreme power approach often associated with a Marxian analysis. However, the more modern transactional analysis was developed from a less extreme variant of the power approach.

This third approach views the individuals in professions as embarked on a professional project (Larson, 1977). This is not necessarily an entirely coherent endeavour nor is it a fully collective or essentially conscious strategy. The professional project emerges as a result of the activity of groups and individuals operating as economic (neo-Weberian) agents in seeking market control, monopoly, autonomy, social closure and collective social mobility (Abel, 1988, 1995).

I adopt a median approach that has most in common with this third approach. It draws primarily on Larson's neo-Weberian analysis of the professional project (1977) whilst accepting both aspects of power and dominance (Freidson, 1986) and a degree of altruism (and aspects of the traits school), particularly in reference to the attitude and activities of individual agents. This will be combined with ideas of jurisdiction (Sugarman, 1994) and the interplay of different professional groups, seen in relation to the state's role in defining professional boundaries (Flood, 1993). Such a macro conception will be grounded (or embedded - see Granovetter, 1985; and Hanlon, 1996) in the experiences of individual agents by utilising the conceptual figure of Asplund (see Alvesson, 1994), the habitus of Bourdieu (1979) and the discourses of Foucault (1980).

The final theory section on *legal socialisation and culture* describes the socialisation of the individual from the perspective of symbolic interactionism (Mead, 1934; Rock, 1979), existentialism (Sartre, 1943) and dramaturgical analysis (Goffman, 1972), and draws on aspects of ethnology, ethnography (Agar, 1986; Gellhorn et al, 1993), ethnomethodology and the traditions of discourse analysis (Travers, 1994) to situate the learner. This general theoretical position is unpacked and further clarified in the introduction to the theory chapter as a whole. Central to the analysis is an understanding of aspects of role management (Schein, 1968a), the management of uncertainty (Flood, 1991), crisis management and coping strategies for trainees

(Greenebaum, 1991) as they make the transition from a predominantly educational environment to a work environment and all the concomitant pressures that this can entail. The individual trainee is embedded in the organisation (the firm) which is also embedded in the local social structure and the wider professional structure through the actions of the professional bodies, associations etc. The profession, in an inclusive sense, operates in relation to society and the state (cf. markets below) which impacts on the lives of trainees. The cultural aspects at each of these levels of analysis are explored. The professional culture, the firm culture and the training culture - these are each mediated through the experiences of individual trainees on their journey from trainee to solicitor, from cultural outsider to cultural initiate, from novice to expert. These cultural activities can be reflected in discriminatory practices (educational, ethnic etc.), patriarchal structures and institutions (Sommerlad, 1994; Witz, 1992; Skordaki, 1992), and the reproduction of internal class structure (Moorhead, 1995).

In effect, this section attempts to map the process of socialisation into the work culture of solicitors, examining how trainees develop an appropriate mental set. This serves to tie education, training, professionalism, knowledge and skills together at the level of the individual and sheds light on how the individual trainee manages contradictions and pressures, and the responses and changes that enables them to cope with the day to day existence as a newly practising solicitor. This links in with the professional ethos, self conceptions and social orientation as well as the debate surrounding deprofessionalisation (market model) or proletarianization (Marxian model). The organisational culture (Geertz, 1973) and management structures (e.g. power-web-centralised, role-temple-bureaucracy, task-network-flexible or person-cluster-chambers - Handy, 1985) dealt with in other sections.

Before giving a similar outline of the results under each of these four headings, I should like to make a brief statement about more general aspects of the theoretical approach that lie behind much of the detailed discussion to follow but which it would not be appropriate to expand within the limits of this study.

The general theoretical underpinnings are represented in each of the theoretical sections as a transition from structure to process - as implied by the choice of title for

each of the section. For example, in the section on professions and professionalisation this is represented in a theoretical shift or rather a theoretical translation from a neo-Weberian macro-organisational study approach to the activity of firms and the professional project via the operation of lived meanings, scripts, discourses and role-play to an understanding of, and from, the perspective of an individual actor or group of actors - in this particular case the training of trainee solicitors. Broadly speaking this draws on the traditions of existential phenomenology as developed by Husserl (1960), Heidegger (1962), or rather Heideggerian phenomenology, and more recent developments such as interpretative phenomenology (Dreyfus, 1979, 1991, 1994) which was flavoured by the existential writings of Kierkegaard (1955), Heidegger (1962) and to some extent Sartre (1978). A second strand draws on G. H. Mead's symbolic interactionism (Blumer, 1966) and later social interactionism (e.g. Goffman, 1969). The methodological slant, whilst dominated by a large quantitative instrument, was strongly influenced by the ethnographic approach (Travers, 1994), ethnomethodology (Garfinkel, 1967) and cultural anthropology more generally (Firth, 1971).

Each theoretical section mirrors this transition from a structural or macro theoretical conceptualisation of legal education or legal training or legal knowledge or legal skills or firm culture or professional culture to the lived meaning that trainees achieve as they pass through these structures or rather experience these processes, i.e. as they *become* solicitors. This can be subsumed within a particular conceptualisation of professional socialisation that utilises the internalised conceptual figure, the adoption of scripts, the dramaturgical interplay of roles and levels of discourse within the situated everyday experiences of trainee solicitors.

The method chapter explains the sources, methods and fieldwork employed in the initial study and the main study. The literature relevant to the four theoretical sections was reviewed and a pilot study undertaken with the co-operation of four local solicitors' firms. This provided the opportunity for an observation of the types of work undertaken by trainee solicitors and led to numerous informal discussions with them. Informal interviews and discussions were also carried out with some senior practitioners and others involved with training. A questionnaire schedule was

developed and modified through a process of consultation. The purpose of these exploratory interviews was to develop a general appreciation of solicitors' work environment, to re-examine my theoretical assumptions, and to enable the refinement of the research instrument to be used in the main study.

The main study involved a large scale survey by postal questionnaire. The sample was structured according to trainee's stage of articles, age, sex and ethnic origin. 287 questionnaires were sent to trainees across the country in firms selected as representative (according to the Law Society Annual Statistical Report, 1992). 180 were returned giving an average return rate of 63%. The results were analysed using SPSS for Windows.

The results chapter starts with an introduction to the general form and structure of the results. There are also a number of comments regarding the interpretation of results and confusions or limitations that must be borne in mind. These include, for example, notes on variations in the structure of training leading to possible confusion between seat and department, the role of principal or supervisor and the length of time spent in training. The remainder of the results chapter is divided into five sections. The first refers to the results of the initial interview study and the remainder to the results of the main questionnaire study. The latter four sections correspond to the theoretical sections; education and training, knowledge and skills, professions and professionalisation, and socialisation and culture.

The results of the initial study stems from observations of, and informal discussions and interviews with, trainees solicitors and those responsible for their training in four local firms and extends their implications to the experience of training more generally. These results provide an insight into the lives of trainee solicitors and their view of the current system of training (Agar, 1980). The overall observations offer a flavour of the whole study and set up themes which are picked up in the main study.

The main study consisted of a postal questionnaire survey of trainee solicitors across England and Wales. This seemed to be the most appropriate methodology for obtaining a mixture of qualitative and quantitative data on the form and experience of training from a large and diffuse sample of trainee solicitors. The research questions

derived from the four theoretical areas relating to education and training, knowledge and skills, professions and professionalism, and socialisation and culture. The preliminary results from the initial study played a large part in the form and structure of the final questionnaire. The crucial questions to be answered are similar to those stated earlier in this introduction in relation to each of the theoretical sections and include: Who are trainee solicitors? What is it that they actually do? How do they generally perform these activities? What is the form and structure of training? What does being a professional mean for trainees? What understanding do trainees have of organisational culture? How do the answers to these questions vary across different types of firm, different types of department and at different stages of training? (see Appendix 6.8 - : Interview Schedule)

Looking at these questions two things are immediately apparent. Firstly, whilst these questions may derive from different theoretical debates none are separate. They each inform the overall debate around the 'becoming' of trainee solicitors. Secondly, many of the questions ask for factual information about the form of training and about trainees' experience of that training. As has been stated there has, as yet, been no research on the training of trainees solicitors in this country. As such, it is essential to identify the exact nature of their training experience before asking more theoretically driven questions about their interpretation of that experience. This is a limitation of this study that future research will have to remedy. It is hoped that these questions at least provide the basis from which further investigations may be conducted.

The remainder of the study is set out in the following way. This introduction (Chapter 1) is followed by the method chapter (Chapter 2) which provides a more detailed explanation of the structure and method that has been adopted. This includes a brief discussion of the reasoning behind the form of the study and a justification and explanation of the methods employed. The theory chapter (Chapter 3) comes next. It is divided into separate sections. In order to approach the study it was necessary to provide an outline of the general structure of legal education for solicitors intending to practice in England and Wales. This is covered in the section on legal education and training (Section 3.1) which forms the first part of a description of the theoretical underpinnings of the study that continues with sections on legal skills and knowledge

(Section 3.2), the legal profession and professionalisation (Section 3.3) and finally legal socialisation and culture (Section 3.4). These four sections together comprise the theory chapter. There then follows the results chapter (Chapter 4) which is separated into the results of an initial study (Section 4.1) and those from the main study (Sections 4.2 - 4.5). The section which constitutes the results of the main study is again divided into four sections which relate to the questions raised in the various theoretical sections. The main points are further discussed and integrated in the discussion chapter (Chapter 5) before final conclusions are drawn. This represents the structure of the thesis chapter by chapter.

## 2. Method Chapter

This was a study of the socialisation of trainee solicitors. I brought to it a set of clearly defined aims and objectives that will be explicitly stated and supported here. Initially however, it is important to draw a distinction between aims (to plan, to design, to direct - *the means* (Little et al., 1987a)) and objectives (the object of an action, the point aimed at - *the end* (Little et al., 1987b)). It would seem most appropriate to identify the intended end result before exploring the means of achieving it. I shall initially therefore express my objectives in studying trainee solicitors. My central objective was to be able to say something about the "becoming" of trainee solicitors. This would involve an examination of the transition from law student to fully recognised member of the solicitor's profession. It would further require an evaluation and understanding of the processes involved.

Ideally, in order to achieve this objective it would be necessary to obtain information from all trainee solicitors about their experience of training and their journey from student to professional. However, it is not always possible to survey a total population and a representative sample of the whole population must do. This became my aim, to gain information from a sub-sample of all trainee solicitors. There is little existing information on trainee solicitors and specifically who they are (Marks, 1988). An exception is the section of the Law Society Annual Report that provides some broad characteristics of the present cohort of trainee solicitors during their two year Training Contract (Harwood-Richardson, 1991; Jenkins, 1992). This provides a breakdown of articles (the term previously used for Training Contract) by region, sex and type of employment of principal (the senior solicitor officially responsible for each trainee) only. Hence this could provide the basis from which to draw a stratified sample.

The "process of becoming" involves more than just a description of training or even an account of trainees' experiences of articles (Becker et al, 1961). It involves a greater degree of introspection, on where one has been and where one is going, on how our experiences are impacting upon us and changing us (Danziger, 1971), in

other words on the values, attitudes and self identity held by trainees in relation to the solicitors' profession.

It is for this reason that, at the outset, I was keen to obtain both quantitative and qualitative data as socialisation is a complex human process (see What is socialisation? page 172 also Fielding, 1988), which might best be understood by using a number of different approaches (Denzin, 1970). It would be necessary to obtain a large amount of descriptive data about trainees and firms. Some could be obtained using secondary sources and firms' own published material (e.g. brochures, advertisements and recruitment leaflets). However, in order to explore the socialisation process in any great detail it would also require the use of more extensive and probing information gathering techniques. This would provide both the quantitative and more qualitative data required.

Having arrived at this decision I was immediately aware of my resource limitations and, therefore, the need to obtain usable data in as efficient and effective a manner as possible. There are a wide variety of differing methodologies commonly in use in social research (Bunker, 1975; Belson, 1981; Blalock and Blalock, 1984; Bulmer, 1984; Bell, 1987; Langley, 1987). Of these the only appropriate methods could be grouped under two headings - namely *observation*, be it participant (Festinger et al, 1964, Humphreys, 1970, Fielding, 1981), or non-participant (Hammersley and Atkinson, 1983), and *questioning* of some kind. Observation is a time consuming exercise (McCall and Simmons, 1969) and in view of this fact and my stated objective to work with qualitative and quantitative data I felt I lacked the resources, particularly the time, to undertake a substantial observational study (Vidich and Shapiro, 1955). However, I hoped to include some informal observation in my study (Fielding, 1993b).

### **The entire population**

At this point it would be appropriate to delineate the entire population, as it will be the focus of discussion in later sections (see An outline of the current structure of legal education and training for solicitors page 58 for further details). Trainee Solicitors (formerly known as Articled Clerks) form the bulk of the population under

study. Trainees are required by the Law Society to register for their Training Contract (formerly known as articles) and the majority do so at the beginning of their Training Contract. The Law Society Annual Statistical Report (Harwood-Richardson, 1991) gives figures for those registering for Training Contract each year (1<sup>st</sup> August to 31<sup>st</sup> July). Some 3,254 individuals registered for Training Contract in 1989 - 90 and 3,842 in the following year (1990 - 91). This provides an estimate of the total population of trainee solicitors undertaking their two year Training Contract (Deed of Articles) at the beginning of 1991 - 7,096 (plus or minus those delaying their articles for whatever reason and those dropping out).

This potential population to be researched needs further to be supplemented by any individual directly or indirectly involved in the training of solicitors. This can vary according to the firm type and size. Most firms have a Training Partner who is ultimately responsible for all training matters in that firm (Training Contracts, continuing education, in-house training, external training and seminars etc.). It is becoming increasingly common among the larger firms to appoint a director of training to oversee this function. Next there is the principal allocated to each trainee. It is this individual who is registered with the Law Society and formally responsible for a trainee's training. However, the principal may not be directly in charge of trainees or they may share responsibility for trainees' day to day training with others (department heads, other solicitors, assistant solicitors, etc.). The individual who oversees trainees daily activities and immediate training needs is generally referred to as their supervisor. It is this individual, who may or may not also be the trainee's principal, that has the greatest formal training contact with trainees during their Training Contract. As such they would also be a focus of study. The aim of the study was to gain information from trainees, their supervisors and also from those others involved with their training.

### **Sample selection**

I first approached the question of sample selection by listing all the different areas of practice within the solicitors' profession and practice settings. This provided the full breadth of possibilities from which a sample might be selected and produced. A somewhat caricatured sketch includes: huge multi-nationals; large commercial city

firms; medium to large provincial or trans-regional (these I have later termed "expansionist") firms or conglomerates; small highly specialised niche firms; small rural general practice firms; sole private practices and also solicitors employed in commerce and industry, local government, the Crown Prosecution Service, Law Centres, and Citizens Advice Bureaux. These distinctions, however, involve a considerable number of different dimensions which need to be teased out further.

Early on it was necessary to take a decision whether or not to include employed solicitors (Woolfson et al, 1994). Figures provided by the Law Society Annual Statistical Report 1991 indicated that employed solicitors represented less than 15% of all solicitors and that 84% of solicitors holding a current practice certificate were in private practice (Harwood-Richardson, 1991, pg. 6). It therefore seemed most appropriate to attempt to cover all those in private practice and omit employed solicitors, particularly given their more minor role in terms of the overall training of solicitors entering the profession (Woolfson et al, 1994). The next step was to identify the major variables within this group. A natural candidate was geographical location. A distinction is often drawn between firms practising in London and those in the provinces (Field and Fleetwood, 1991a & b). Alternatively, one might draw a distinction between urban firms and rural firms (Blacksell et al, 1991). Another crucial variable was size, whether measured by number of partners, number of fee-earners or gross turnover (The Lawyer, 1993). Finally the kind of work a firm accepted or its speciality had to be taken into consideration (Jenkins, 1992). These are not the only possible characteristics - they are, however, those most frequently used to characterise practice setting, whether by the Law Society (Chambers and Harwood-Richardson, 1991) or by academic commentators (e.g. Abel, 1988). They are also the terms used by solicitors themselves in their professional journals (The Lawyer, Law Society Gazette, etc.) - high turnover may be used in preference to size. It was important that the sample adequately characterise these aspects - others could be discerned from the results.

It was necessary that the final sample also meet certain requirements. It would have to be logistically manageable in terms of the resources available. It was preferable to select a sample that was at least broadly representative of all solicitors in private

practice (Harwood-Richardson, 1991, Jenkins, 1992) if at all possible. Finally, the very nature of the study demanded that any firm selected must have a tradition of taking a number of trainees each year. Apart from the obvious reason that trainees represented the subject of my study and must therefore be present in the firms sampled, I also required the firms to take, or have recently taken, more than one trainee so as to enable some intra as well as inter-firm comparisons.

Of the various methods involving questioning subjects, interviewing seemed the best suited as it would enable the researcher to obtain discrete (quantitative) data and more discursive (qualitative) data from respondents at one sitting. However, the use of the interview method had certain resource implications. It would be unrealistic to attempt more than 100 interviews, given their necessary length, and even this would be a substantial undertaking (Becker, 1956). Interviews can vary from a focused (Merton and Kendall, 1946) or in-depth interview (Langley, 1987) to what amounts to a verbal questionnaire (Cicourel, 1964) allowing only fixed choice responses.

When one is talking about a large number of interviews there is a danger that they will tend towards the latter type, becoming increasingly rigid and prescribed. Such interviews would not provide the breadth or depth of data needed to shed light upon the socialisation processes operating in different firms across the country. Any attempt at a broad sweep of interviews in this way would require careful sample structuring and selection and an enormous amount of time. It is for these reasons that a combined approach was decided upon. This would entail a restricted number of semi-structured, exploratory interviews with trainee solicitors as an initial, pilot phase. This would allow the interview method to be tested and also provide the opportunity to undertake some informal observation. This would then be followed up with a national questionnaire study based upon the original interview schedule, which would represent the main study and provide the bulk of my quantitative data. There was also the further precaution of a set of informal follow-up interviews that would allow me either to resolve remaining ambiguities or probe certain areas further if necessary. Each stage of the research method will now be dealt with in more detail.

## 2.2 The Initial Study

For the initial study there was no need either to sample the entire trainee solicitor population or to draw a statistically representative sample or probability sample (Arber, 1993b). A twofold approach lent itself most readily to the field situation and the form of data required (Burgess, 1984). The substantial part of the method entailed semi-structured interviews (Hyman, 1954) with trainees and also with some of those responsible for their training (Training Partner, Supervisor, Department Head, etc.). Interviews can vary from a strictly worded instrument delivered in a carefully controlled manner to an informal discussion (Douglas, 1985). In this instance, for a initial study where by definition the researcher is in the initial stages of data exploration, it would be necessary to allow a degree of flexibility (Gordon, 1980). This would be "the kind of interview which is more like a guided conversation" (Gilbert, 1993, pxii) and would enable an exploration of the numerous theoretical ideas and practical issues around the socialisation of trainee solicitors. My presence in solicitors' firms would also allow for a period of informal observation. This would be invaluable in gaining an appreciation of trainees' general work environment and would enable me to gain a flavour of the firm's culture (Lofland and Lofland, 1984). An initial study constructed in this way would facilitate the grounding of theory (Glaser and Strauss, 1967), the refinement of later methodology and the familiarisation of the researcher with the environment under study, the subjects of study and the interview procedure.

### Interview schedule design

The choice of method implied certain logistic necessities. In order to limit interviews to an hour or so it seemed unreasonable to ask more than 30 questions. It was preferable to attempt to cover all the areas of interest in order to test comprehension and the validity of the issues (Spector, 1981). This meant that no one topic could be explored in any great depth. This went some way to dictating the form and scope of the questions. Questions fell into one of two categories; brief factually-based, closed questions about personal details, academic background or firm structure, training and

specialism; and open-ended, exploratory or opinion-seeking questions centred on topics that arose from conceptual and theoretical explorations.

The actual questions (see appendix 6.8) were derived from the main concept headings; professions and professionalism; legal skills and training; and the firm or legal culture, socialisation and individual change. Issues were distilled into not more than four or five questions under each heading. The intention was to encourage answers that fell broadly into one or another of the concept categories. The final questions were operationalised by attempting to word questions (Bradburn and Sudman, 1979) in such a way as to draw usable data.

These demands translated into a decision to select a restricted initial sample (Glesne, 1992). I decided that 30 interviews would be sufficient to provide representation of the sub-groups I wished to include in the main study. This manageable number of interviews would also allow me to identify and resolve methodological difficulties and clarify my theoretical and conceptual debates. I settled on four or so trainees per firm plus trainers. All were selected from local firms for convenience. These firms had to have taken more than one trainee, which necessarily excluded the smaller practices and the larger non-provincial firms.

The primary reason for selecting local firms was convenience, however, it was essential that this not be allowed to override methodological considerations. In order for the initial study to provide valuable data upon which to base the main national study one of two approaches could be adopted. The initial study could select respondents from a variety of location within England and Wales or from one location. Given the limited number of interviews, the requirement to have a number of interviews within each type of firms, and the desirability to allow for cross-comparison between the types of firm it seemed an obvious choice to hold all interviews in one location. Coincidentally, Sheffield represents a near ideal location in that it is a typical middle England industrial city similar to a vast swathe of urban conurbations from Liverpool to Newcastle. The north also takes the highest proportion of trainees undertaking their Training Contracts outside of London (17% - Harwood-Richardson, 1991). It may have significantly biased the sample to hold all

interviews in the capital as there are a large number of firms that are entirely unrepresentative of solicitors' firms nationally.

A provisional categorisation of local firms by the different characteristics was made which was felt, by other individuals with a knowledge of local solicitors' firms and myself, to represent a reasonable compromise. These are the types or categories that were chosen:

One large commercial firm

One medium general practice firm

Two small specialist firms

Four local firms were selected that best fitted the sample categorisation. The appropriateness of this selection was later confirmed through research in careers libraries and consultation with careers officers, legal academics and a legal trainer. The original thumb-nail profile was thereby transformed into a list of four actual firms. A set of pseudonyms were devised for the four firms to be visited:

*Barker Nathan Davis*

*Newton Leech*

*Norman Lovelace & Co.*

*Nelson Neap & Partners*

### **Gaining access**

There proved to be no obstacle in making introductions and gaining access (Hornsby-Smith, 1993). All the firms selected responded most favourably. However their responses were, I suspect, coloured by certain factors. The most positive response was received from a firm that had co-operative ventures with the University, whilst the next most helpful may have been due to a personal contact. My initial contact was always with whoever was responsible for training (Bell, 1987). Interestingly each contact had a very different style in terms of passing my request on.

In each case the first introduction was made by letter (see appendix 6.6). The two page letter began by explaining who I was, what the study involved and why it was important. It went on to outline the form of the study as a whole, the need for a

initial study and what this would entail. Care was taken to highlight particular points of interest to the firm, to assure each firm of confidentiality and to reiterate the value of the study (Arber, 1993a). There generally followed a number of telephone conversations to arrange the finer details. In all four cases the partner responsible for training was interviewed first. At the end of the interview we discussed and arranged my subsequent visits. This would usually include selecting the trainees to be interviewed, as well as setting the time and date.

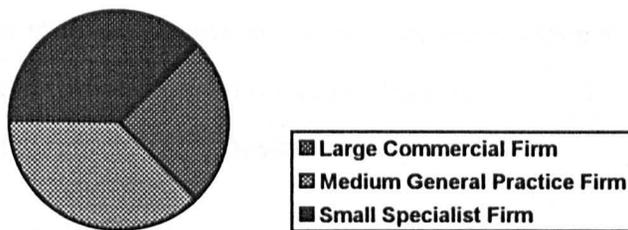
### Data collection

I carried out all the interviews personally. Each interview generally lasted for about an hour, although the length of time available was often not pre specified or restricted. Indeed, a number of interviews, particularly those with Training Partners, tended to last well over an hour. Permission was sought from each individual interviewee to record their interview, and without exception given. Extensive notes were also taken of each response (Fielding, 1993a).

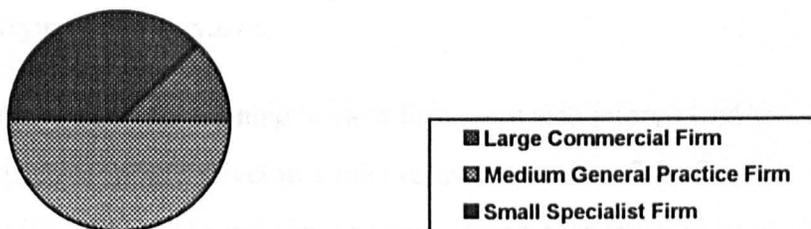
**Table 1: Interviews by firm**

	Trainees	Trainers*
Barker Nathan Davis	4	1
Newton Leech	6	4
Norman Lovelace & Co.	3	1
Nelson Neap & Partners	3	2
Total	16	8

\* 'Trainers' include Managing Partners, Training Partners and Training Managers



**Figure 1: Number of trainees interviewed**



**Figure 2: Number of trainers interviewed**

Despite the fact that trainees were generally selected for interview by the Training Partner in each firm according to unknown criteria (most likely a combination of availability and self selection) the researcher was careful to balance some of the most obvious factors. Wherever possible attempts were made to interview equal numbers of trainees at different stages of training (i.e. trainees in their 1<sup>st</sup> and 2<sup>nd</sup> year of the Training Contract, see Table 5), of each sex and according to the department trainees were currently in. However, with such small numbers from each firm (see Table 1) this effectively meant that no more than one trainee from any one department was interviewed. Trainees that were about to complete their Training Contract were also asked about their future employment plans. This was a further attempt to check the selection procedure - in this case, whether trainees that had not been offered employment at their present firm might have been excluded from the interview sample. There was no evidence to support such a supposition. Indeed, the overall selection of trainees for interview was felt to be reasonably representative of the general pattern of trainees within each firm.

The response rate was excellent, with none of the selected trainees refusing to cooperate. However, for reasons of timing (e.g. holiday) four trainees were unable to be interviewed. Among those about to conclude articles, interviews were held both with those offered places within the firm and those who had not been kept on. A reasonably fair cross-section of opinions were thus sought.

The reality of interview selection depended on the house style in each firm. In Barker Nathan Davis I was required to arrange each interview personally, which meant "cold canvassing" trainees over the telephone to arrange the interviews. All the interviews were pre-arranged for a single day in both Norman Lovelace & Co. and Nelson Neap & Partners by the Training Partners. A week was spent in the offices of Newton Leech arranging and carrying out interviews.

The person or persons responsible for training in each firm were also interviewed to offer an alternative perspective to help develop a fully rounded picture of the firm's environment and culture (Geertz, 1973) and also to avoid asking each trainee background detail about firm structure and the like. An attempt was made to arrive at a composite picture of life within each firm through interviewing trainees, interviewing various Training Partners, supervisors and Senior Partners in firms, and by speaking informally with members of each firm going about their business (e.g. in the canteen). However, observation played a crucial part in developing a better understanding of each firm as a "real environment" (Fielding, 1988).

Although no more than a week was spent observing in any one firm this proved sufficient time to gain first-hand experience of very different firm cultures (Patton, 1987). Interestingly the introduction alone provided an insight into the way each firm presented itself to outsiders, in this case a researcher. Another aspect of immediate impact was the firm's use of physical space particularly their entrance hall or lobby, the arrangement of offices and their reflection of hierarchy and power (Tuan, 1979). Other aspects ranged from the apparently superficial decor or use of plants to the more profound treatment of support staff, the provision of information technology or the way in which meetings were arranged and executed.

Informal observation took place each time I entered a firm and continued throughout the duration of the interview study. However, the period of particular value in terms of time spent observing, concentration and variety, was undoubtedly at Newton Leech where I was provided with an office and given freedom to roam.

### Data analysis

The intention had been to begin analysis before the interviews had been completed. In the event this was not possible, resulting in an unanalysed mass of annotated interview notes and about thirty taped interviews. The initial impulse was to build from the taped recordings and notes, a true and complete record of events by way of a script (Fielding, 1993a). This very soon proved to be an extremely time-consuming and not altogether valuable exercise. Various alternative means of analysis were then experimented with, in an attempt to circumvent the need to transcribe all 24 interviews verbatim.

Each interview recording was listened to a number of times, and the original notes annotated. Answers were further expanded and clarified in order to enable common themes to be drawn out. It was at this point that an attempt was made to use *Paradox*, a powerful database, to facilitate the collation process. Keywords and phrases from each interviewee's answer were entered into cells designated for each question. The intention was to extract each question, break it down, sort it, and run searches, listings and such like to identify repetitions and commonalties among the answers (Tesch, 1990).

It is doubtful if this method would have demonstrated any success, indeed it might possibly have eroded the very themes sought, e.g. meanings, statements and opinions (Dennis, 1984). In reality people tend to use a vast array of different words to convey similar meanings. Ultimately, this particular database was not designed to handle such data. Any attempt to utilise it was hence abandoned. However, certain computer software packages are now available on the market (e.g. *Qualpro*, *TAP*, *Hyperqual*, *Textbase Alpha* or *The Ethnograph*) which are specifically designed to handle contextual analysis and will be explored later (Fielding and Lee, 1991). Again, however, it is doubtful if the time and effort required to modify and input data would

have made its use worthwhile in this particular instance; an exploratory survey using open ended questions and consisting of only 26 interviews in total (two additional interviews were conducted with ex-employees - an assistant solicitor and the previous Training Partner of one of the firms who had also been the supervisor of one of the trainees interviewed).

Eventually, therefore the transcripts of each interview were broken down by question (literally torn into strips) and grouped together with the answers given by the other interviewees. In this way a complete but composite set of answers to every question was generated. These were then examined and reduced to key points or ideas. This provided a conglomerate précis answer to each question which formed the initial source of results. Quotations, points of particular interest and illustrative excerpts were highlighted and set aside (Bell, 1987). Trends were drawn out, themes identified and implications assessed (for an examination of the finding see Initial results page 227).

### **Sample characteristics**

Before embarking upon this sample description it would seem appropriate to provide a brief characterisation of the firms selected in order to place the following details in context. Nelson Neap & Partners is a specialist trade union firm primarily dealing in personal injury litigation. Norman Lovelace & Co. is a legal aid firm taking the majority of its work straight off the street. Barker Nathan Davis is a large commercial firm catering to the local business community as well as drawing clients from further afield. Newton Leech represents the mid-sized generalist who take work from the whole gamut of clientele including some legal aid and strictly commercial work. A more detailed profile is developed in the results chapter under initial study. The intention here is to provide a brief evaluation of the major characteristics of respondents. Written accounts are interspersed with tabulations and figures where necessary. The age, sex, stage of training, academic route, and previous employment details of respondents are each examined in turn.

**Table 2: Age of trainee by firm**

	>25	25-30	<30
Nelson Neap & Partners	0	2	1
Norman Lovelace & Co.	0	2	1
Barker Nathan Davis	2	1	1
Newton Leech	1	3	2
<b>Total</b>	<b>3</b>	<b>8</b>	<b>5</b>

**Table 3: Academic qualifications held and/or work experience**

	LLB	CPE	MA/LLM	Prev.Empld
Nelson Neap & Partners	2*	1	0	1
Norman Lovelace & Co.	1	2	1	3
Barker Nathan Davis	3	1	0	1
Newton Leech	5	1	1	2
<b>Total</b>	<b>11</b>	<b>5</b>	<b>2</b>	<b>7</b>

\* law and sociology degree

In terms of age and experience a feasible recruitment profile might seem to suggest that the smaller more specialised firms e.g. a medical negligence firm, place greater emphasis on, are better able to accommodate and/or attract candidates that have greater previous experience. This is a compound factor of the smaller firm's more precisely defined identity, in terms of specialism, and socio-political orientation which allows for a greater flexibility to accommodate the more unusual candidates.

Younger candidates and those that completed the LLB(2:1)/Law Society Finals(full-time), as opposed to Common Professional Examination/part-time route, and candidates with previous employment experience, were over-represented among the larger firms offering a wider training with a commercial emphasis

**Table 4: Sex of trainee by firm**

	Male	Female
Nelson Neap & Partners	2	1
Norman Lovelace & Co.	0	3
Barker Nathan Davis	1	3
Newton Leech	3	3
Total	6	10

Trainee gender balance appeared reasonably equal in all but one firm, Norman Lovelace & Co., who articulated a proportionately greater number of female trainees. The view held within the firm suggested this was because of the type of work which attracted greater number of female applicants for traineeships. Perhaps their specialism in welfare (family) and legal aid work might go some way to supporting this gender stereotypic idea of the marginalisation of expert female labour (Skordaki, 1995). It should be noted however, that there are strong arguments in support of the opposing view against the myth of feminisation (Sommerlad, 1993).

Ethnicity: White/British (15), Pakistani (1). It would be inappropriate with these figures to draw any conclusions (but see the later section on possible discrimination).

**Table 5: Stage of training by firm**

	1 <sup>st</sup> Year	2 <sup>nd</sup> Year
Nelson Neap & Partners	2	1
Norman Lovelace & Co.	2	1
Barker Nathan Davis	2	2
Newton Leech	3	3
Total	9	7

The balance of interviewees by stage of training was a central factor when selecting the sample and this point was impressed upon Training Partners before they made the actual selection. To this extent these figures show remarkable success in achieving a near perfect balance.

## Methodological shortcomings

Mistakes happened and lessons were learnt but in practice this is the purpose of an initial study. The majority of these errors could either be accommodated within this phase of the study or served to benefit the later stages and as such represented an ongoing part of the total methodology. Examples include the practicalities of research; care in preparing for interviews, consistency in asking questions and a banker's eye for detail when organising the material and collating figures. However, beyond these rather general observations lie three important corollaries resulting from the logistic necessity to restrict my initial sample to Sheffield - these need particular mention.

A sample categorisation that at first appeared to have surface validity (May, 1993), in reality, divided more readily into two classes, larger and smaller firms. Barker Nathan Davis and Newton Leech are both medium to large provincial firms. The latter holds a long-term commitment to maintaining a wide client base, while the former is attempting to move from a mid-sized, wide client-based firm to one with larger commercial interests. The two smaller firms fall squarely into the niche firm category. Nelson Neap specialises in Trade Union clients and has a strong representation in personal injury, litigation and labour law. Norman Lovelace take only individual private clients and deals almost exclusively in the area of welfare and matrimonial law. They are both substantially dependent on legal aid.

A very different picture may have been gained had small firms with different specialisms (e.g. maritime law or criminal law) been selected rather than visiting what turned out to be two firms that principally served deprived sections of society. However, Heinz and Lauman identify "one fundamental distinction" in the legal profession, "the distinction between lawyers who represent large organisation (corporations, labour unions, or government) and those who represent individuals. The two kinds of law practice are the two hemispheres of the profession" (Heinz and Laumann, 1982: pp 319).

In excluding London-based practices from the initial study, not only did it fail to represent the largest firms but it also effectively omitted 43% of all trainees (Harwood-Richardson, 1991) as they are articulated in Greater London.

By way of a final reservation it must be reiterated that the very limited sample size can be seen as representative in only the vaguest way, and as such any indications must be read bearing this in mind.

## 2.3 The Main Study

### Redefining the population

In view of the general definitions relating to the study population made in the introduction to the thesis (Chapter 1) and the introduction of this chapter (p19) as well as the further refinement required in selecting the initial interview sample only a few additional comment are necessary. The initial questions were identical: Which firms take trainee solicitors? Where are these firm located? What is the size of these firms? What kind of work do they do? Answers to these questions were sought using various firm surveys (Harwood-Richardson, 1991; Jenkins, 1992; Central Statistical Unit, 1991; Central Statistical Unit, 1992; National Careers Service (AGCAS), 1992; Legal Aid Practitioner Group, 1993). These provided a sketchy picture of the national distribution of trainees (Table 9) and some broad characteristics of the firms they are articulated to.

The following tables have been calculated from Law Society figures supplemented with reference to the above publications. They refer to new articles entered into between 1<sup>st</sup> August 1989 and 31<sup>st</sup> July 1991, which serve as an approximation for the total population of trainee solicitors (p19).

**Table 6: New Training Contracts by sex of trainee 1989-91**

	Number	Percentage
Male	3329	46.91
Female	3764	53.04
Unknown*	3	0.05
Total	7096	100

Source: Law Society Annual Statistical Report 1991, p44.

\* Sex of trainee was not identified in 3 cases

**Table 7: New Training Contracts by location of firm 1989-91**

	Number	Percentage
North	1218	17.17
Midlands	758	10.68
Wales	269	3.79
South West	367	5.17
South East	856	12.06
Outer London	559	7.88
Central London	3025	42.63
Not Known**	44	0.62
Total	7096	100

Source: Law Society Annual Statistical Report 1991, p44.

\*\* Location of articles was omitted in 44 cases (nb. Original Report miscalculates 43)

**Table 8: New Training Contracts by type of employment 1990-91**

	Number	Percentage
Private Practice	3164*	82.35
Local Government	71	1.85
Crown Prosecution Service	18	0.47
Commerce/Industry	16	0.42
Clerks to the Justices	27	0.7
Others	19	0.49
Missing	527	13.72
Total	3842	100

Source: Law Society Annual Statistical Report 1991, p48.

\* Location of articles was omitted in 44 cases (nb. Original Report miscalculates 43)

**Table 9: New Training Contracts by location of firm and sex of trainee 1989-91**

	Men (%)	Women (%)	Not Known*	Total (%)
North	584 (17.54)	633 (16.81)	1	1218 (17.16)
Midlands	338 (10.15)	419 (11.13)	1	758 (10.68)
Wales	118 (3.54)	151 (4.01)	0	269 (3.79)
South West	164 (4.92)	203 (5.39)	0	367 (5.17)
South East	337 (10.12)	518 (13.76)	1	856 (12.06)
Outer London	251 (7.53)	308 (8.18)	0	559 (7.87)
Central London	1517 (45.56)	1508 (40.06)	0	3025 (42.62)
Not Known**	20 (0.60)	24 (0.63)	0	44 (0.62)
Total	3329 (100)	3764 (100)	3	7096 (100)

Source: Law Society Annual Statistical Report 1991, p44.

\* Sex of trainee was not identified in 3 cases

\*\* Location of articles was omitted in 44 cases (nb. Original Report miscalculates 43)

**Table 10: New Training Contracts by type of employment and sex of trainee**

	Men (%)	Women (%)	Total (%)
Private Practice	1,439 (81.3)	1,722 (83.2)	3,164 (82.4)
Local Government	26 (1.5)	45 (2.2)	71 (1.8)
Crown Prosecution Service	7 (0.4)	11 (0.5)	18 (0.5)
Commerce/Industry	8 (0.5)	8 (0.4)	16 (0.4)
Clerks to the Justices	9 (0.5)	18 (0.9)	27 (0.7)
Others	9 (0.5)	10 (0.5)	19 (0.5)
Missing	272 (15.4)	255 (12.3)	527 (13.7)
Total	1,770 (100)	2,069 (100)	3,842 (100)

Source: Law Society Annual Statistical Report 1991, p48.

### Method selection

The main study demanded the collection of a large amount of fairly well structured information from a wide spread, potentially national, sample. The postal questionnaire presented itself as the most appropriate instrument for this purpose. It would allow respondents to be asked precise questions supplemented where

necessary with more detailed open-ended questions. In this way it would be possible to gain the quality of data required in an efficient and effective manner. A postal questionnaire would forgo some of the flexibility and depth of earlier semi-structured interviews however, the added structure and quantity of response would enable far greater quantitative analysis. This, coupled with a follow up sub-sample of interviews would provide data of sufficient quality, in terms of reliability and validity (Spector, 1981), to answer many of the questions asked. The disadvantages of such a method include the inflexibility of the instrument and the interpretative emphasis placed upon the respondent. It is also essential to obtain a good response rate - a return rate of half is generally considered adequate - of which more is said later.

### **Questionnaire design**

In effect the initial study represented the initial stage of exploration into the whole area of study. It enabled the researcher to gain a superficial overview of both subjects and material as well as allowing for some experimentation with different questioning styles and interview structures (Foddy, 1993). As such it provided the opportunity to test both content and method. The restructuring of questions and the development of the main study was facilitated by feedback provided in debriefing sessions held with many of the trainees interviewed for the initial study. These debriefing sessions were enormously valuable and whilst the shorter semi-formal (i.e. those that took place either within the firms or in office time) sessions ended soon after the initial study had been concluded, other such sessions continued with trainees, trainers and other solicitors on an ad hoc basis. Valuable assistance was also provided by colleagues and other interested parties through informal discussion. The main study by questionnaire represented the bulk of the field data and as such the questionnaire structure was vital (Newell, 1993). Numerous drafts were compiled and tested with aid of two local trainee solicitors and three newly qualified solicitors I knew personally. The final draft also benefited from the expert eye of academic colleagues, both recently practising solicitors and non solicitor researchers. The final product was again tested informally (Oppenheim, 1966) with a group of such practitioners before publication and distribution. The working and reworking of the questionnaire allowed for the introduction of the vast majority of the selected themes in as unambiguous a way as possible. In retrospect some of the questions may have been a

little ambitious in scope such that the mode of questioning failed to express my full intention (see Methodological shortcomings, page 53). However this is to a degree inevitable (Sudman and Bradburn, 1983) and the third stage of the study involving follow up interviews was intended to correct any such deficits.

### **Sample selection (firms)**

The initial study had allowed for the refinement of the structure and form of questions for the main study but it had also enabled the researcher to gain a crude idea as to which characteristics it would be crucial to represent in the main sample. As mentioned, the broad sample characteristics that it would be important to take into consideration included firm size, firm specialism or type of work generally undertaken and geographical location. The most obvious individual characteristics which one would need to take account of within the sample are stage of training and gender of trainee. I was aware that there were likely to be others.

There were a number of logistic decisions that had to be taken early on. These included the maximum number of questionnaires that could be sent out as part of the main study. It was felt that 300 questionnaires would not be unreasonable within the limit of both time and funds. This would be manageable and by counting on a minimum 30% return rate, judging by comparable studies (Sherr, 1991a, Economides and Smallcombe, 1991), would still leave sufficient responses to work with (approx. 100). In order to send these questionnaires out it would be necessary to obtain names and addresses for each of these trainees. It was for fear of a high failure rate at this stage that the target number of trainees was doubled making a final sample range of 50 firms from each of 3 categories taking 4 trainees from each firm ( $n=600$ ).

Another early decision was that the sample need not be fully randomly representative of trainee solicitors nationally. Using the Law Society Annual Statistics (Harwood-Richardson, 1991) as the starting point it would seem that to be representative, at least half of the sample would come from one group of firms, namely the large London-based commercial firms that take a dozen or more trainees a year and this seemed far too high a representation of these firms. There were certain groups which it was imperative to include in order to be in a position to say something about them.

These were often groups that constituted some of the major divisions within the profession and have very different firm structures, management styles and training patterns. It would be essential to guarantee their representation within the sample. The three major divisions might be partially envisioned in terms of size, as measured by the number of fee earners, but also by the type of work that they generally undertake - the "bread and butter" work. Drawing these distinctions gave me my three groups:

<i>Size/Description</i>	<i>No. of Partners</i>
Large commercial	>40 Partners
Mid-sized general practice	10-40 Partners
Small legal aid	<10 Partners

In order to look at any differences between London and provincial firms it would be necessary to cater for these two groups in the sampling method. One important prerequisite for the firms sampled was that they must regularly take and indeed presently have at least one trainee solicitor. Whilst this may seem a rather obvious requirement, it did rule out a large number of firms that complied with all other criteria.

The firms to be sampled were all selected from publicly available directories and listings. The large commercial firms (LC) were taken directly from a listing of the Top 100 firms according to the number of fee-earners (The Lawyer, 1993). The selection of the first fifty firms was checked against several other published directories (Chambers & Partners' Directory, 1992/3; Law Society, 1991a; O'Connor, 1991). The mid-sized general practice firms (MGP) were more tricky to select. A number of different approaches were considered. It was decided however, that the most appropriate method by which to arrive at an initial list would be to select those firms from a user's guide to the top 1000 law firms with 5-20 partners that regularly take criminal and family matters (Chambers & Partners' Directory 1992/93). This list was then compared with the Waterlow (O'Connor, 1991) and Law Society directories to arrive at a final listing of firms complying with the criteria for this category. The final 50 firms were selected from this initial list by dividing the number required from the number available (n) and counting down the list from a randomly selected starting

point selecting the  $n$ th one each time. The small legal aid firms (SLA) were drawn from a Legal Aid Practitioners Group (LAPG, 1993) listing of member firms taking trainees compiled by and providing the basis for the National Careers Service (AGCAS) publication *Firms with a Strong Interest in Legal Aid Work* (3<sup>rd</sup> Edition, October 1992). A conglomeration of these two publications provided the basis for selecting the final 50 small legal aid firms. The total number of potential firms was divided by the number required ( $n$ ) with the result that every  $n$ th firm was selected.

All firm details, addresses and, as later discovered, whether or not they take trainees, was checked using Roget Legal sixth and seventh Editions (CSU, 1991, CSU, 1992) and *Roset - A Students' Guide to Articles* (Law Society, 1991b, Law Society, 1992).

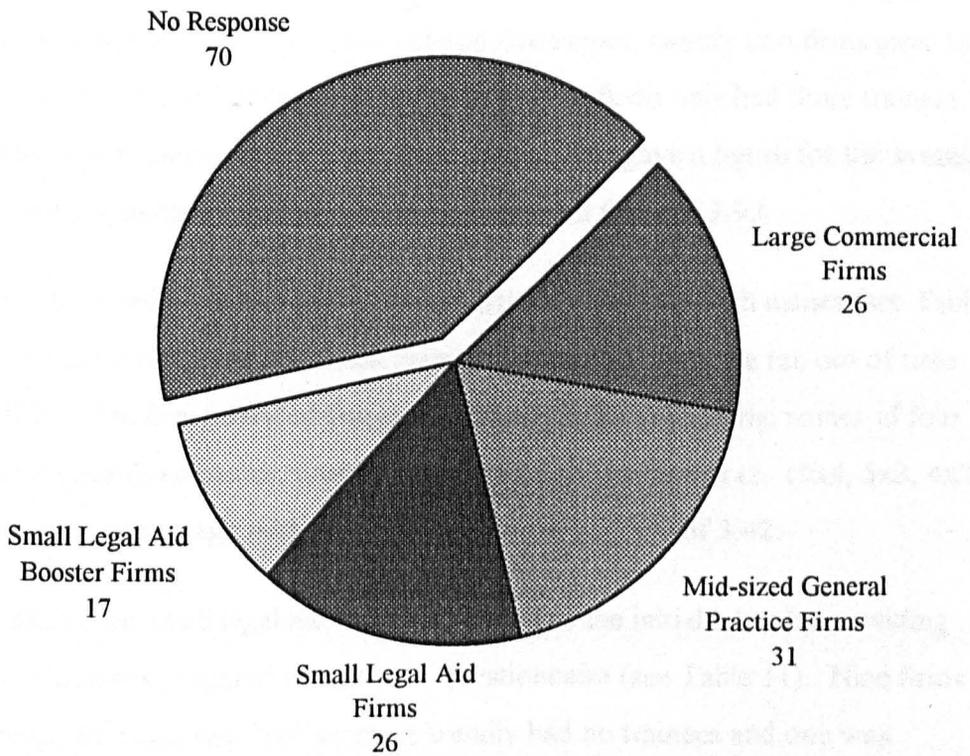
### Gaining access

Once a final list of fifty firms in each category (LC, MGP and SLA) had been selected it was necessary to approach individual firms in order to build up a list of trainee solicitors as potential respondents. An introductory letter was sent to the Training Partner at each firm explaining the form and purpose of the study (see appendix 6.9). The letter requested the names of up to four trainees in the firm that might be willing to complete a questionnaire. A good initial response was obtained from the 150 firms sampled (see Table 11). However, as had been mentioned in the introductory letter, firms were followed up with a telephone call to the Training Partner asking him or her to 'select' a sample and/or give permission for the researcher to approach some of their trainees directly.

**Table 11: The response rate of firms to the initial letter**

	Response Rate	
Large Commercial	52 %	
Mid-Sized General Practice	62 %	
Small Legal Aid	52 %	85 %*
Overall	59 %	

\*figure represents the response rate for the booster sample of 20 firms



**Figure 3: Number of responses by category**

### Sample selection (trainees)

Training partners were asked to select four trainees that were as representative of the trainees taken by that firm as possible particularly in terms of gender and stage of training. The intention was to draw a sample of 50 firms in each category with four trainees from each firm giving a potential sample for the distribution of questionnaires of 600 (assuming a 100% response rate from firms). The decision was taken to have a cut-off at half this number i.e. when replies had been received from at least 25 of the firms from each category providing the names of enough trainees to compile a list of 300 potential respondents (trainees).

The initial response from firms at this stage was excellent. Of the original fifty large commercial firms twenty six provided the names of trainees (see Table 11). No

further contact was had from ten firms, five said "no" or otherwise refused to take part in the research and nine remained in a state of "negotiation" beyond the point where sufficient numbers had already been obtained and so were not followed up or included unless they initiated contact (which happened in two cases, both with mid-sized general practice firms). One firm offered five names, twenty two firms gave the names of four trainees as had been requested and three firms only had three trainees willing to be sent a questionnaire (1x5, 22x4, 3x3). This gave a figure for the average number of trainee names provided by large commercial firms of 3.92.

Of the fifty mid-sized general practice firms thirty one came up with names (see Table 11). There was no reply from fourteen firms, four said "no" and we ran out of time with one firm. One firm provided five names, nineteen firms gave the names of four trainees, five gave three names, four provided two and two one (1x5, 19x4, 5x3, 4x2, 2x1). This gave an average number of trainee names per firm of 3.42.

Just over half of the small legal aid firms responded to the initial letter by providing the names of trainees prepared to receive a questionnaire (see Table 11). Nine firms failed to reply, fourteen said "no" or more usually had no trainees and one was undecided beyond the cut off point. One firm gave seven names, one four, three three, seven two and fourteen firms were only able to provide the name of one trainee (1x7, 1x4, 3x3, 7x2, 14x1). The average number of trainees names provided by firms in this category was only 1.85.

This apparently poor response rate in terms of the number of trainees was at least partly due to the fact that no attempt had been made to select out firms that did not take trainees. It is also probable that the discrepancy between the low response rate for small legal aid firms as compared to the other two categories is due to the far smaller numbers of trainees these firms typically take. Therefore, due to the small numbers of trainees taken by the original sample of small legal aid firms, it was decided to select a further booster sample of twenty small legal aid firms, drawn in a similar manner to the original sample, of which seventeen gave named respondents and three had no trainees. One firm gave the names of four trainees, three gave three names, six gave two names and seven could only provide the one name (1x4, 3x3, 6x2, 7x1). This gave an average number of names provided by each firm, that

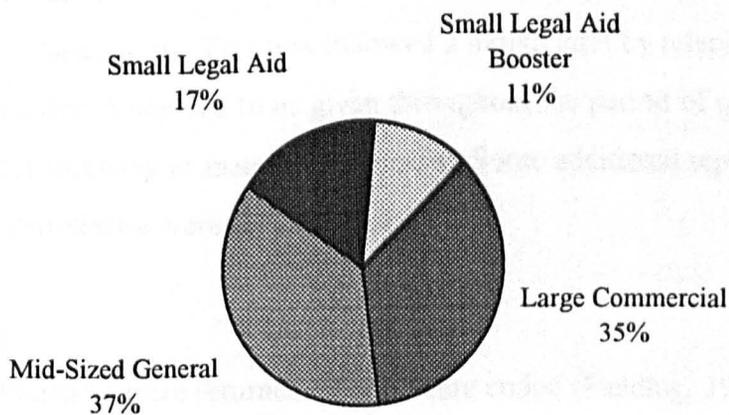
responded from the booster sample, of 1.88. This figure was comparable to the original sample of small legal aid firms, re-emphasising the point that they take significantly fewer trainees and that this must be accounted for within the sampling procedure. Other Legal Aid Providers Group publications (i.e. past listings to identify consistent employers) had been used to filter out some of those firms not taking trainees more effectively for the booster sample.

**Table 12: The final number of trainee names provided by firms**

	Number of questionnaires sent out	
Large Commercial	102	
Mid-Sized General Practice	106	
Small Legal Aid	48	32**
Overall	288*	

\*two additional questionnaires were introduced bringing the potential adjusted sample to 290

\*\*figure represents the returned names for the booster sample only



**Figure 4: Number of questionnaires sent out**

This exercise generated a potential questionnaire sample of 288 trainees (see Table 12). Questionnaires and explanatory letters were sent to all these named respondents

(except a dozen or so questionnaires that were, upon their insistence, sent via the Training Partner). The response was far higher than the anticipated 30%. For each group respectively their response rates (number of returned questionnaires) were as follows; large commercial firms 81% (n=83), mid-sized general practice firms 61% (n=65), small legal aid firms 33% (n=16) and small legal aid firms booster 48% (n=16). Two trainees in different firms passed copies of their questionnaire to another trainee at the same firm. There seemed to be no good reason why these two questionnaires should be excluded. They were both accepted and the overall response rate was adjusted accordingly. Nine questionnaires were returned but for various reasons (e.g. illegibility or improperly completed) could not be included although every attempt had been made to enable their inclusion. Indeed some questionnaires that were returned under similar conditions had been followed up and ultimately included. The overall adjusted response rate was therefore 62% (180 out of 290).

The first batch of questionnaires was sent out on 3 September 1993 and the second on 21 September 1993. These were followed a month later by smaller batches of "stragglers" on 29 October 1993 and the final few were sent off on 11 November 1993. All 288 questionnaires were sent out in just over two months. Reminder letters were dispatched on 5 November 1993 and 18 November 1993 for the earlier and later groups respectively. This was followed a month later by telephone reminders. Reminders continued to be given throughout the period of return with some respondents receiving as many as three calls. Some additional replacement copies of the questionnaire were also sent out.

### **Data analysis**

180 valid questionnaires were returned. These were coded (Fielding, 1993) and the resulting figures typed into a text editor. The data file was subsequently transferred to *SPSS for Windows* for analysis (Cramer, 1994). This proved to be a time consuming method requiring a substantial amount of 'tinkering' and fine adjustment. It also proved necessary to go back through the questionnaires a number of times initially to verify the initial coding and subsequently to add labels, recode variables

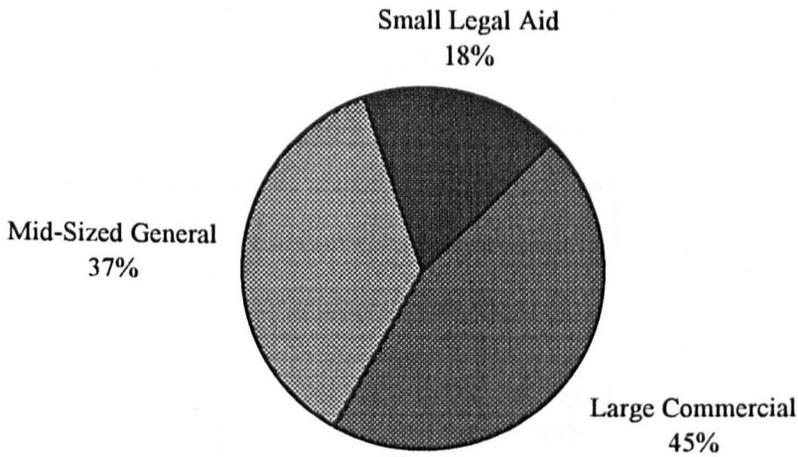
and restructure the data set (Frude, 1993). Ultimately however, *SPSS for Windows* was an invaluable asset (Procter, 1993).

### Sample characteristics

**Table 13: Type of firm**

	Frequency	Percentage
Large Commercial	82	45.5
Mid-Sized General Practice	66	36.7
Small Legal Aid	32	17.8
Total	180	100

Attempts were made to control the proportion of respondents from each type of firm such that roughly equal numbers of respondents from large commercial, mid-sized general practice and small legal aid firms would enable direct comparisons. However, as mentioned above the original sampling methodology failed to take account of the rather obvious fact that the smaller the firm the less likely it will be that they can supply responses from four trainees. In effect this biases the proportion of respondents in favour of the larger firms and against the smaller ones to such an extent that a booster sample had to be drawn simply to generate sufficient numbers of small legal aid representation as to enable comparisons. Having said this the amount in each category is sufficient to allow for some interesting analyses.

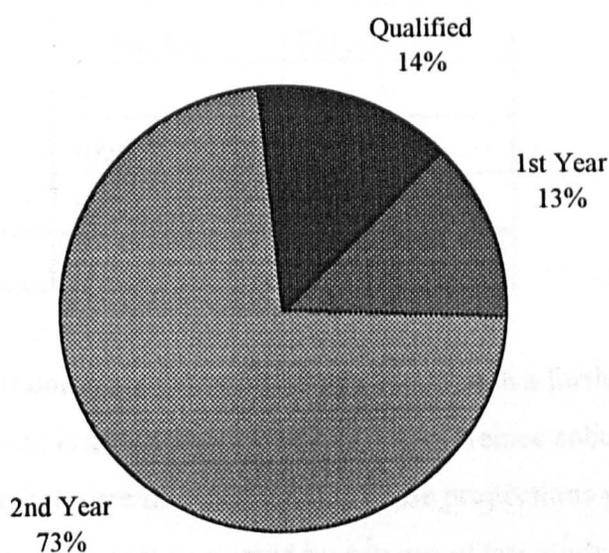


**Figure 5: Proportion of responses by type of firm**

In fact an argument can be made in defence of these proportions as representative of the overall distribution of Training Contracts served in small, medium sized and large firms. For although no direct evidence exists as to the distribution of trainees by firm size one can make a crude estimate by taking account of the existing data. We know that a very high proportion of articles are served in London (43%). Couple with this the geographical distribution of firms according to size (Harwood-Richardson, 1991) and one can draw certain conclusions. The large number of sole practitioners (estimated at 36% in 1991 - Harwood-Richardson, 1991) can effectively be excluded from the equation as they are not permitted under Law Society regulations to take trainees. This would seem to indicate that the overall number of trainees is roughly proportionate to the size of the firm which might represent a similar 1/6 small legal aid firms, 2/6 mid-sized general practice firms and 3/6 large commercial firms as are here represented.

**Table 14: Stage of Training Contract**

	Frequency	Percentage
1 <sup>st</sup> Year	24	13
2 <sup>nd</sup> Year	130	72
Qualified	26	14
Total	180	100

**Figure 6: Proportion of responses by stage of training**

There is a substantial over-representation of trainee solicitors in their second year of articles in the main sample. This is partly due to the fact that the vast majority were selected by the Training Partner with guidance from me and it was felt essential that trainees were in a position to say something about their training and the firm in which they were undertaking their articles. This had the effect of excluding trainees of less than six months experience, resulting in a shift up the training ladder with the potential sample being drawn from the remaining six months of the first year, the whole of the second year and up to six month into practice. This goes some way to explaining the 1/7, 1/7, 5/7 split.

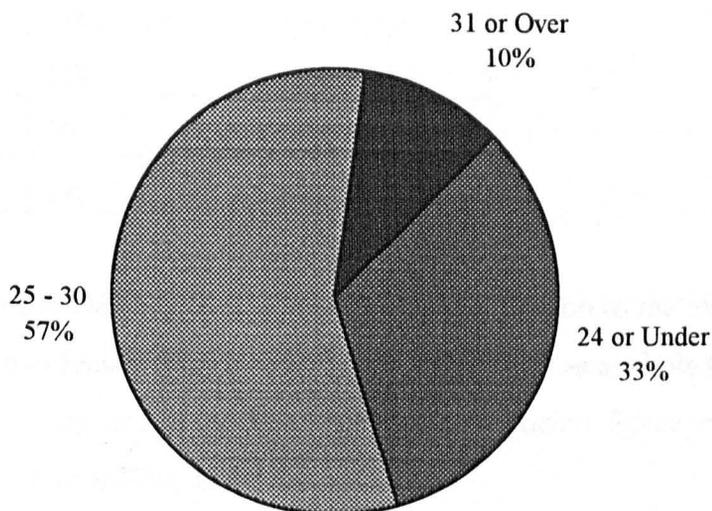
**Table 15: Type of firm by stage of training**

	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	Qualified
Large Commercial Firms	11	56	15
Mid-sized General Practice Firms	8	50	8
Small Legal Aid Firms	5	24	3
Total	24	130	26

**Table 16: Age of respondent**

	Frequency	Percentage
24 or Under	59	32
25 - 30	102	56
31 or Over	19	10
Total	180	100

A high proportion of trainees are in the 25-30 age group with a further third being younger than this. There is also a significant minority of trainee solicitors undertaking their Training Contract who are thirty or above. These proportions would seem to fit the pattern of career development suggested by surveys of law students (Smith and Halpern, 1992) and earlier career structure surveys (Marks, 1988), namely that the majority of trainees pursue an undergraduate law degree followed immediately by the one year postgraduate qualification. Assuming they follow the average profile of school/university attendance, this would place them within the 25-30 band having completed their undergraduate course at the age of 21-23 with the additional year taking them to 22-24. A smaller number might pass through the education stage without taking any breaks such as before or after university and would therefore fall just inside the 24 and under band. Finally there is a noteworthy 10% of trainees above 30 years of age that may have taken a part-time law course, have some previous work experience or have transferred from another occupation. This makes them a very interesting sub-group.



**Figure 7: Proportion of responses by age group**

**Table 17: Type of firm by age of respondent**

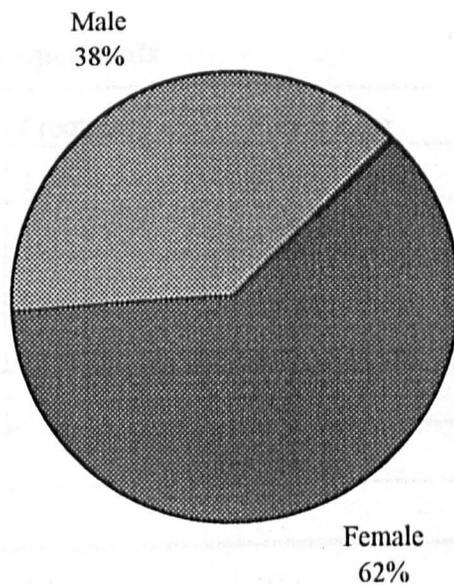
	24 or under	25 - 30	31 or over
Large Commercial Firms	11	56	15
Mid-sized General Practice Firms	8	50	8
Small Legal Aid Firms	5	24	3
Total	24	130	26

Trainees that are 24 or under are over-represented in the larger firms (38% as opposed to 34% in small legal aid firms and 26% in mid-sized general practice firms) while the older trainees were found in disproportionately higher numbers in the small legal aid firms (19% as opposed to 14% in mid-sized general practice firms and 5% large commercial firms). The mid-sized firms take up the slack in terms of the standard 25-30 year old entrant (61% as opposed to 57% in large commercial firms and 47% in small legal aid firms).

**Table 18: Sex of respondent**

	Frequency	Percentage
Female	110	61
Male	70	38
Total	180	100

Female respondents are slightly over represented in comparison to the overall proportion of male to female trainee solicitors in the country as a whole (see Table 6) with a 62/38 split as opposed to the 53/47 split the Law Society figure would seem to indicate (Harwood-Richardson, 1991).

**Figure 8: Proportion of responses by sex of trainee****Table 19: Type of firm by sex of respondent**

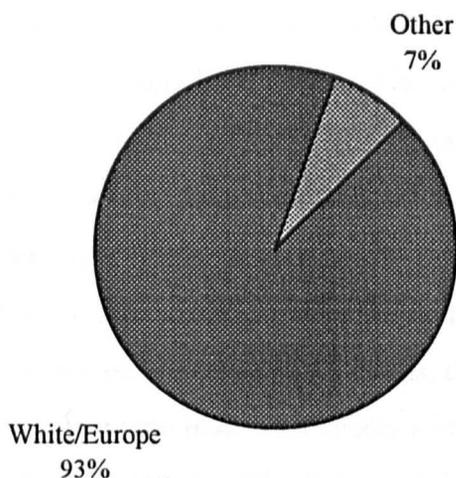
	Female	Male
Large Commercial Firms	45	37
Mid-sized General Practice Firms	41	25
Small Legal Aid Firms	24	8
Total	110	70

All three categories of firm share the general proportion of more female to male respondents, however, a comparison of the percentage of male to female trainees by firm type reveals that the proportion of male trainees increases with the size of the firm. Large commercial firms had 45% male and 55% female trainees. With mid-sized general practice firms the proportion dropped to 38% to 62% and with small legal aid firms the female trainees outnumbered the male trainees 3 to 1 (75% as compared to 25%). Similarly, a comparison of the proportions of male to female trainees in the different types of firms reinforces this point. Mid-sized general practice firms account for 36% and 37% of male and female trainees respectively. However, large commercial firms account for over half of the male trainees and female trainees are similarly disproportionately over-represented in small legal aid firms.

**Table 20: Ethnicity of respondents**

	Frequency	Percentage
White/European	167	92.8
Afro-Caribbean	1	0.6
Asian	6	3.3
Chinese	2	1.1
Jewish	1	0.6
African	1	0.6
Other	2	1.1
Total	180	100

Despite attempts to include representation of ethnic minorities in the sample very few responses were obtained for the simple reason that ethnic minorities are not proportionately represented in the total population of trainee solicitors (Chambers, 1992). It would be injudicious to make any further comments in relation to ethnicity as no significance can be attached to such a small figure.



**Figure 9: Proportion of respondents by ethnicity**

**Table 21: Type of firm by ethnicity of respondent**

	White/European	Non-White/Non-European
Large Commercial Firms	75	7
Mid-sized General Practice Firms	62	4
Small Legal Aid Firms	30	2
Total	167	13

### Methodological shortcomings

As is so often the case, in retrospect, it is all too easy to identify numerous methodological problems associated with every aspect of the research project. While none of these were sufficient to entirely derail or invalidate the results of the study, they certainly hampered their arrival. The various shortcomings will be addressed in relation to the initial study and the main study, although there are faults common to both.

The initial study constituted a path-finding exercise both methodologically and theoretically and for this reason a certain number of difficulties had been anticipated.

However, such problems as there were were generally in unexpected aspects of the initial study, such as instrument design, initial firm categorisation and the treatment of results. It had been assumed that the difficulties would arise in the field, in relation to the approach, access and execution of interviews. This was not the case. Approach and access proved to be entirely unproblematic and the response rate was near perfect. The shortcomings were as a result of poor preparation and unanticipated difficulties in the treatment of the data and results. The initial categorisation of firms into three categories proved to be an inaccurate representation of the local solicitors firms selected. As mentioned earlier in response to this, the literature supports a two-fold division into those dealing with individual clients and those firms offering legal services to the collective purchaser. Equally, there may have been problems operationalising this distinction which is not directly related to firm size in terms of turnover or the number of partners. A further shortcoming related to the research instrument or interview schedule. The questions had been developed from the theoretical categorisation and limited to thirty in number which was reasonable. Unfortunately this limited the scope of a number of questions making them sound contrived. Despite this, the depth and quality of data obtain was quite surprising. The firms visited were extremely hospitable allowing informal contact and observation. On a more general point, it was unfortunate that resource constraints made it impossible to include a far greater proportion of structured observation as the opportunity was there. Finally, in relation to the initial study, I harbour grave concerns about the continued anonymity of the four local firms visited. Although each has been scrupulously anonymized, the mere fact of their publication under pseudonyms may be insufficient to hide their identity due to their limited number and distinctive character. For this reason permission has been sought from the firms concerned to include them.

The size of the main questionnaire study meant that what frustrations there were were far greater in scope. The difficulties concerned sample selection, to some extent access, and the design of the research instrument. It was unfortunate that sample restriction necessitated the exclusion of employed solicitors. Alternative sampling procedures may have been used (e.g. stratified, quota, probability, representative or theoretical) but to no greater effect, this was an inevitable consequence of limited

resources. However, the need for a booster sample of small legal aid firms was far from inevitable. The partial problem with access was in fact more of a sampling problem. It would have been preferable to select a random sample of trainee respondents in each firm to receive the questionnaire rather than having to rely upon the discretion of Training Partners, although I am reasonably confident that this did not introduce a significant degree of bias to the end results. Finally, there were shortcomings with the questionnaire itself. As a research instrument it was slightly too long, at thirty pages, and yet restricted in the depth of each topic due to the breadth of topics. In retrospect, a number of the questions were poorly worded, some were too qualitative in nature (e.g. open ended and unspecified), and many were not sufficiently tightly worded. However, one must be as charitable as one is critical - the questionnaire was well received and the response rate was the highest I know of across comparable circumstances. This was partially due to the vigorous use of postal, fax and telephone reminders. Two areas where difficulties arose are common to both initial and main studies and relate to the processing and analysis of data. In both instances, there were unanticipated technological difficulties resulting in substantial delays. The analysis of interviews from the initial study should have continued contemporaneously with the interviews themselves but difficulties in transcribing made this impossible. Attempts to utilise computerised textual analysis packages were time-consuming and ultimately fruitless. The job was finally completed by hand. Similarly, any ideas of using scanning technology to automatically "read" questionnaires proved to be too complicated for a sample of 300. However, this did not mark the end of technological problems in relation to the analysis of the main study. Difficulties with the cross-compatibility of different software analysis, spreadsheet and graphing packages, and the need to familiarise myself with an entirely new Windows based analysis package proved to be a time consuming although, in this case, fruitful exercise. Finally, although a number of friends, and friends of friends, who are trainee solicitors or practising solicitors provided valuable informal feedback during the analysis and write up phases of this research, any hope to undertake a series of more formal interview sessions with a sub-sample of the trainees from the main study unfortunately, had to be abandoned due to time pressures. This was a case of poor planning and a source of regret.

### **3. Theory Chapter**

The theoretical discussion divides into four sections. These sections refer to education and training, knowledge and skills, professions and professionalisation, and socialisation and culture respectively. The introduction to the thesis has provided a general background to the theory, a brief introduction to the substance of each of the theory chapters and a rationale for the division that has been made. Each of the four sections ends with a summative statement of the research questions relating to that particular section. These questions and the justification in support of the theoretical divisions are returned to in the discussion chapter.

### **3.1 Education and Training**

Legal education and solicitor training lie at the heart of this study. All solicitors will have experienced legal education in one form or another. They will all have undergone a period of professional training either as articled clerks through the old apprenticeship system or as trainee solicitors under the present Training Contract. It is this two year Training Contract that forms the focus of the empirical research presented in the following chapters. For this reason it is essential clearly to delineate the current system of education and training for those wishing to join the solicitors' profession. However, there are additional reasons why the research net should be cast more widely. Legal education and training have been under almost constant review during the past three decades. Since the highly influential report of the Committee on Legal Education under the chairmanship of The Hon Mr Justice Ormrod (1971) there have been a further two reports, a joint announcement and an Act of Parliament that have had a significant effect on the legal education and training of solicitors in this country. The impact of these recent historical developments on the current system of training is assessed. This includes an evaluation of the shift in solicitors training from the Law Society Finals to the current Legal Practice Course and all that this entails, although much of the detail relating to skills training will be dealt with in the following section on legal knowledge and skills. Most recently a further report has been published which reviews legal education and training (ACLEC, 1996). The Lord Chancellor's Advisory Committee on Legal Education and Conduct speculate on "a new vision of legal education" into the 21st Century and present some alternative models to meet the changing needs of legal practice. These developments constitute ongoing debates concerning the future form and function of legal education and training and give rise to recurrent themes. These will be addressed in turn under the headings of funding, access and quality, and contradictions in the market model of education.

#### **An outline of the current structure of legal education and training for solicitors**

The Law Society of England and Wales is the professional body, governing among other things the admission and training of would-be solicitors (Shapland and Allaker,

1995). A new Training Scheme for the qualification of solicitors was introduced in September 1993 which “aims to equip *the individual* with the skills needed to perform as a successful solicitor” (Law Society, 1995c). In order to qualify as a solicitor under this Training Scheme an individual must normally complete:

The Academic Stage of Training or Legal Education

The Legal Practice Course

The Training Contract including the Professional Skills Course.

These stages are commonly referred to as the academic, the vocational and the professional stage of training.

### **The academic stage of training**

To satisfy the academic stage of training, or what ACLEC (1996) refer to as the “initial stage” of training, an individual must successfully complete a “qualifying law degree”. A degree can be considered to be a “qualifying law degree” if the Law Society (incidentally, the Council for Legal Education for those qualifying for the Bar - see reference to the joint announcement) is satisfied that the degree has been “awarded on the basis of the student having passed within the degree course the examinations and assessments set in the seven core subjects (renamed ‘Foundational Areas’ by ACLEC) of Constitutional & Administrative Law, Law of Contract, Law of Torts, Criminal Law, Land Law and Equity & Trusts and Law of the European Union. The award of the Law degree which complies with the above requirements entitles the candidate on enrolment as a student member of the Law Society to receive a Certificate of Completion of the Academic Stage of Legal Education” (Law Society, 1994). The Certificate of Completion must be applied for within five years of graduation from a qualifying law degree and is valid for seven years. European Law was only included in these core (or exemption) subjects in September 1995. An Exempting Law Degree combines these core (or exemption) subjects with the Legal Practice Course.

A non-law graduate who has been awarded their degree by any university in The British Isles may satisfy the requirements of the academic stage of legal training by completing a conversion course. Two such courses exist, the Common Professional

Examination and the Diploma in Law. Both courses prepare candidates for the Legal Practice Course (or the Bar Vocational Course) if they do not have a Qualifying Law Degree. They comprise six examinations in each of the core or exemption subjects (7 from 1995). A candidate may be eligible for partial exemption, on application to the Law Society, if they have taken a combined degree which has already covered three or more of the core, exemption or compulsory subjects. The difference between these two courses is that the former, the Common Professional Examination, is the older and the shorter of the two. It concentrates purely on satisfying the basic qualifying requirements through an intensive programme of study and takes one year full-time or two years part-time. The Diploma in Law has a wider syllabus covering other subjects such as the English Legal System and European Law and lasts approximately 36 weeks. The Common Professional Examination will be phased out or restructured as European Law becomes a requirement in September 1995. The University of Northumbria is the only institution to offer an integrated course, incorporating the study of the core, exemption, compulsory or foundation subjects with the Legal Practice Course. This integrated course has only recently been validated by the Law Society.

### **The vocational stage of training**

Once a candidate has successfully completed the academic stage of legal training, and gained a certificate of completion, they may embark upon the next stage to qualification as a solicitor, the vocational stage of training. Effectively, this means the completion of the Legal Practice Course. It should be noted, however, that in certain reports (ACLEC, 1996) there are only two stages of training, the vocational stage having subsumed the Training Contract and the Professional Skills Course. The latter two requirements will here be treated as the professional stage of training.

The Legal Practice Course replaced the Law Society Final Course in September 1993 and "provides the knowledge and skills required to enable *the student* to undertake tasks under supervision during the Training Contract". The Legal Practice Course runs for one academic year full-time or two or exceptionally three years part-time.

There are four compulsory areas:

Conveyancing  
 Wills, Probate and Administration  
 Business Law and Practice  
 Litigation and Advocacy

and two optional areas.

“Certain topics have been identified as being of such importance that they will be taught and assessed throughout the compulsory areas”. These are:

Professional Conduct  
 Investment Business under the Financial Services Act.

The Legal Practice Course also aims to develop the following essential skills:

Practical Legal Research  
 Drafting  
 Interviewing  
 Negotiating  
 Advocacy.

Students work is assessed by “a combination of written course work and assessment of skills. There are also written examinations in each of the four compulsory areas” (Law Society, 1995b).

The Legal Practice Course or, more properly, the Postgraduate Diploma in Legal Practice, aims “to provide a law or non law graduate with a rigorous post graduate programme of vocational legal education and training. Whilst the general aim of the course is to provide a preparation for legal practice, a successful candidate will also have acquired a sound foundation of legal knowledge and competencies as well as those more generic competencies which are required for the development of a career in business, social services and a variety of associated areas of activity where sound legal knowledge and relevant analytical skills are an asset”. The Legal Practice Course Board (6<sup>th</sup> April 1994) went on to expound a skills statement for the Legal Practice Course.

“Within the context of this general aim, a successful student will, by the end of the course, be able to demonstrate that they have the ability to:

1. Acquire knowledge and understanding of the skills and procedural approaches to a variety of legal tasks which arise in everyday affairs;
2. Analyse problems and provide a range of appropriate solutions to them;
3. Identify key objectives and to implement processes to achieve those objectives;
4. Perform appropriate skills and tasks with minimum supervision;
5. Transfer the knowledge and skills learned in one context to another;
6. Assess problems critically; and
7. Produce satisfactory outcomes to a range of problems.

A successful student will have acquired the following skills:

- i. Effective oral and written communication skills;
- ii. The ability to work alone and to work with others as a member of a team;
- iii. The ability to analyse and solve problems;
- iv. Flexibility and adaptability;
- v. Independent judgement;
- vi. The ability to listen and learn from others;
- vii. Enquiry and research skills;
- viii. Appropriate specialist knowledge
- ix. Good social skills; and
- x. Practical experience and an awareness of the world of work”

(Law Society, 1994).

This skills statement clearly illustrates the shift of emphasis from the old book-based Law Society Final Course which relied on traditional examinations to the new skills-based Legal Practice Course which shares similarities with the Law Society Final Course but attempts to blend in a far higher degree of practical and simulated experience through role-play, video feedback and simulated courtroom or client interactions. The Law Society Final Course was only offered at a very limited number of institutions (seven Polytechnics and The College of Law) with the vast bulk of numbers accounted for by a single establishment, the College of Law through its London, Chester, Guildford and York branches. The Legal Practice Course, although validated by the Law Society, is offered by a wider variety of Higher Education institutions across England and Wales.

#### **The professional stage of training**

Finally, having successfully completed the vocational stage of training, the Legal Practice Course, the student may commence the last stage of training before acceptance into the solicitors' profession, the professional stage of training. The student must apply for and gain a training position with a suitable employer. If successful, the student would sign a Training Contract and make the transition from student to trainee solicitor. The Training Contract lasts two years full-time or longer if arranged on a part-time basis. It has replaced the old deed of articles or "articles" which a trainee would previously have had to complete. Any firm now "wishing to take a trainee must be authorised by the Law Society. The firm will have to agree to train in accordance with a code and will have appointed a Training Principal who will have overall responsibility for training within the firm. However in practice *the trainee* will often be trained on a day to day basis by 'supervisors' who may be solicitors, Fellows of the Institute of Legal Executives (ILEX) or other suitably qualified people" (Law Society, 1994).

Students may obtain a Training Contract with any authorised firm or legal employer. The vast majority of trainee solicitors (extrapolating from the only figures available, the percentage of newly qualified solicitors employed in different sectors for 1993/4; 83% were in private practice, 7% in the public sector, and 5% respectively in

commerce and industry or other sectors - Law Society, 1995b) pursue a Training Contract in private practice. It is possible to undertake all or part of one's Training Contract with; the Civil Service, either with the Crown Prosecution Service prosecuting offenders on behalf of the police or the Government Legal Service giving legal advice to ministers and implementing government decisions, in local government with Local Authority Legal Departments, Magistrates' Courts Services or as an employed solicitor or 'in-house' legal advisor in commerce and industry. Other opportunities exist in law centres, with charities or even the armed services, but these are unlikely to be in a position to offer Training Contracts.

The Training Establishment is required by the Law Society to provide trainees with experience in at least 3 legal topics from the following:

Banking	Civil Litigation
Commercial	Company
Construction	Criminal Litigation
Employment	European Union
Family	Immigration
Insolvency	Intellectual Property
Local Government	Magisterial
Planning	Property (incl. Landlord & Tenant)
Shipping and Airways	Tax and Financial Planning
Trusts	Welfare
Wills and Probate	

These topics or areas are frequently referred by lawyers as heads or headers and generally correspond to separate departments or specialities. In practice, the variety of areas available to trainees will depend entirely on the type of firm or organisation that they join. The majority of Training Contracts are in large commercial firms (Law Society, 1995a) which offer greater experience in commercial work. Other firms offer trainees a more general experience in private client work, whilst some are far more specialised. It is not uncommon for firms to second trainees to their clients in-house legal departments, to offices abroad or to other firms or organisations for a portion of their training.

Typically, according to the Law Society, the structure of training will depend on the type of firm chosen. Experience will be gained “in at least three, but usually four or five different areas of the law over the two year period. Most firms are divided into departments, each dealing with a particular area of the law and you will spend up to six months working in each *chosen* department. Your work will be *closely* supervised and *regularly* reviewed but as the training progresses, the responsibility you are given will increase - training will usually be split into four seats” (Law Society, 1995c). These are points worth bearing in mind and they will be returned to later.

The training firm is also required to ensure the trainee acquires the following skills during their Training Contract:

- Communication
- Practice Support Skills
- Legal Research
- Drafting
- Interviewing and Advising
- Negotiation
- Advocacy and Oral Communication

Trainees are required to complete the relatively new Professional Skills Course. This may be taken any time after the Legal Practice Course but must be completed before a trainee may apply for admission. It comprises five modules:

- Personal Work Management
- Accounts (assessed)
- Advocacy and Oral Communication Skills
- Investment Business (assessed)
- Professional Conduct

and lasts for the equivalent of 20 days. There are a variety of course providers, including some of the larger private practice firms, commercial organisations, local law societies or teaching institutions. Trainees are not required to complete these

modules in any particular way. Under the conditions of the Training Contract, it is the employer's responsibility to arrange and cover the cost of attending these courses for their trainees. These costs may be offset against the minimum salary payable to a trainee solicitor as agreed by the Council of the Law Society.

"On the 10<sup>th</sup> June 1993 the council considered the arguments in favour of retention and abolition of the compulsory minimum salary for trainees. After lengthy debate the Council decided that... *it* should be retained at £10,850 per annum for the provinces and Outer London and £12,150 for Inner London" (Law Society, 1993). Interestingly, the trainee solicitor minimum salaries for 1995/6 for the provinces and Outer London, and for Inner London, have remained unchanged at £10,850 and £12,150 respectively (Law Society, 1995a).

The Law Society monitors training to "ensure that the training *the trainees* receive is of the required standard" (Law Society, 1994). It is for this reason that a new monitoring scheme has been introduced which has two elements. Firstly, as previously mentioned, legal employers wishing to accept trainees must be authorised to do so by the Law Society. This allows the Law Society to control and place conditions on those offering training. Secondly, monitoring also involves "a selection of trainees and Training Principals completing a standard questionnaire and then attending an interview with a monitoring panel. It is intended that every firm will be monitored in a three year cycle" (Law Society, 1994). This does mean that some trainees will not experience any monitoring during the period of their Training Contract.

Once an individual has successfully completed each of these three stages and obtained the appropriate certification they may apply for admission to the roll which entitles them to be called a solicitor and to apply for a practising certificate i.e. work as a solicitor. Finally the newly qualified solicitor will be invited to an admission ceremony at Chancery Lane where the President of the Law Society will present them with an admission certificate. The trainee solicitor has finally made the transition to fully qualified member of the solicitors' profession.

### **The general structure of a Training Contract**

The actual structure of Training Contracts varies greatly from firm to firm. This is hardly surprising given the variety of situations in which it is permissible for trainee solicitors to complete a Training Contract and the relatively informal requirements of, and regulation by, the Law Society. Even concentrating on those in private practice there are still enormous differences between the general form of a Training Contract in a small provincial firm when compared to the experiences of trainees in an international city-based firm. However, the Law Society stipulates certain basic requirements which must be adhered to regardless of the firm type, size or geographical position. One such requirement is that each trainee be attached to a principal. This must be a qualified solicitor of some seniority who is formally responsible, to the Law Society, for the training of that trainee. A further requirement is that all trainees must experience at least three different types of work or speciality. This is generally achieved by moving trainees between departments. In all but the smallest firms this means that, on an everyday basis, the trainee receives his or her work from someone other than their assigned principal. The person who oversees the daily activities of a particular trainee and generally 'feeds' them the majority of their work is called a supervisor. The standard method is to assign a separate supervisor who is responsible for overseeing the work of a trainee whilst they are in a particular department. This individual may be the head of that particular department, another senior solicitor, an assistant solicitor or, in some instances another, such as a legal executive. It is generally, therefore, the supervisor rather than the principal who plays the more central role in a trainee's everyday experience of training. It is they who regulate the work that trainees do and to a greater or lesser degree governs their training. There is also a third key player in the training process who, depending on the size and structure of the firm, will be the Training Partner, the partner with ultimate responsibility for all the training in a firm, or a director of training. The position of director of training is a relatively new one which has been created in a number of the larger firms to assume a variety of general management, planning, resourcing, research and recruitment responsibilities in relation to training, however, the ultimate policy decision-making still resides with a Training Partner or training committee. This results in a curious situation where, in the majority of cases,

the role of the named principal with whom a trainee signed their Training Contract and the person who is technically responsible for the trainee's training is eclipsed by both the immediate supervisor and the training director or partner. The firm-wide structure and management of training, including that of trainees, is determined by the latter whilst the daily work and experience of training is mediated by the former, the supervisor. In many instances, a trainee may only rarely see their nominal principal despite his or her formal position of responsibility. This situation has been recognised by the Law Society in their *Authorisation and Trainee Solicitors - A Practical Guide* (Law Society, 1994) issued to all firms taking trainees, wherein they place the responsibility on the Training Establishment as a whole, but through the person of the principal.

The Guide provides an outline of the new training scheme (see above) but separates the elements into the academic stage of training, the legal practice course, the professional skills course and authorisation. The substance is identical, merely the emphasis is different. The last element refers to the Training Contract reflecting the change from licensed firms to authorised firms. The authorised firm is required to abide by the terms of the training code and the responsibility for this is placed specifically with the named training principal. "The training code:

details the obligations placed on the Training Establishment;

lays down the criteria to determine the number of trainee solicitors for a Training Establishment;

requires the appointment of a training principal;

specifies the duties of the training principal;

specifies the duties of the Training Establishment owed to the law Society;

specifies the arrangements required for training."

(Law Society, 1994)

It is the intention of the Law Society that this code provide the framework for training and specifies the “broad requirements that are considered essential to the provision of adequate training” regardless of the size or structure of the Training Establishment. The guide also establishes the monitoring procedure to be carried out by local law societies. “The focus will be on the system of training provided by the Training Establishment rather than on the experience of an individual trainee solicitor”. The Law Society also define the roles of all those involved in the training process including the Training Establishment, the training principal, supervisor and trainee solicitor themselves. The Training Establishment is “any body, firm, company or individual authorised by the Law Society to take trainee solicitors”. The training principal must be a solicitor “who:

holds a current practising certificate;

has held immediately prior to the current practising certificate four consecutive practising certificates;

is nominated by the Training Establishment as the training principal;

is a partner or has equivalent status;

has undertaken any training prescribed by the Law Society”

and they “must;

establish a system of monitoring and appraisal of trainee solicitors;

establish a system to maintain appropriate training records;

ensure adequate training of those involved in the supervision of trainee solicitors;

liaise with the Law Society;

ensure that those involved in training are kept informed of the Law Society’s requirements;

advise the Law Society of any changes in the Training Establishment relevant to authorisation.”

(Law Society, 1994)

The use of the term “equivalent status” recognises the fact that in private practice the Law Society expects the training principal to also be a partner, however, in other organisations this is not always appropriate. “At the present time the Law Society does not prescribe any formal training which the training principal must complete” (Law Society, 1994).

The role of supervisor is rather ambiguous despite their centrality to the training process. In the words of the Law Society “the term has been introduced to reflect the reality that someone other than the ‘principal’ supervises trainee solicitors on a day to day basis”. However, the supervisor’s function is not fully defined in either the Law Society training regulations or code. The guide extends the role of the supervisor to include coaching, counselling, monitoring, delegation and appraisal. The position may be held by an assistant solicitor, an associate solicitor, a partner or an experienced legal executive. The guide then specifies the everyday elements of supervision. They include “to:

- give tasks and work that is well defined;
- give clear instructions and check that they have been understood;
- provide factual background;
- suggest available office or library reference materials;
- provide a realistic framework for the completion of the tasks and work;
- answer questions which arise;
- assign tasks and work with an increasing degree of difficulty;
- ensure that the trainee solicitor has enough but not too much work;

- provide a balance of work across substantive and procedural areas;
  - provide work that requires the utilisation of different skills;
  - create an environment where the trainee solicitor is not afraid to ask questions;
  - encourage the trainee solicitor to propose solutions, even though these may not be correct;
  - provide regular guidance and feedback on the trainee solicitor's performance;
  - ensure that achievements and improvements are recognised and praised;
  - ensure that aspects of performance which require improvement are thoroughly discussed;
  - encourage self development of trainee solicitors;
  - ensure the trainee solicitor maintains any record required by the Training Establishment or the Law Society, for example a training record or checklists"
- (Law Society, 1994).

The trainee solicitor is necessarily central to the entire training process and represents the focus of this study. They also assume certain "responsibilities and obligations" under the Law Society Guidelines when entering into the Training Contract. These state that a trainee solicitor "must:

- carry out the duties contained within the Training Contract,
- inform the supervisor or training principal if the Training Establishment fails to fulfil its obligations under the Training Contract, with particular reference to basic skills and legal topics;
- manage time, effort and resources to develop good working practices;
- achieve the objectives contained in the written standards,

seek clarification through questioning when:

tasks and work are ill defined or too open ended;

insufficient facts are provided;

inform the supervisor or training principal when:

there is too much or too little work;

tasks and work are too challenging or not challenging enough;

there is no variety in the type of work and tasks allocated;

be open and honest during feedback in appraisal of performance;

take responsibility for self development;

inform the supervisor when a mistake is made;

maintain any training record required by the Training Establishment or the Law Society, for example a training record or checklists;

prior to admission satisfactorily complete the professional skills course”

(Law Society, 1994).

The Law Society guide continues by outlining the “elements of training and development” as consisting of three elements; formal training, practical training and self development. The formal training itself consists of two elements, the professional skills course provided either in-house or by external course providers, and any additional training programme provided by the Training Establishment. Any such programme will vary according to the size and type of organisation to which the trainee solicitor is attached. The majority of Training Establishments will include an induction programme and some will, for example, also offer specialist or further training seminars. The Law Society guide provides an induction checklist both to the Training Establishment as a whole and to each seat rotation or separate department to

which a trainee is attached. This links in to familiarity with the office, with office procedure and policy.

The practical training element represents the “hands-on training provided by the supervisor including the supervision of the trainee solicitor. The form and experience of supervision is formative to trainee’s training, learning, experience and ultimately “becoming”, and represents a crucial portion of this study. As such, it is appropriate to outline the Law Society guidelines in some detail. Written standards (appendix 6.2) detail the seven skills which Training Establishments are under an obligation to provide. The general function of the supervisor is to provide regular advice, guidance and feedback to trainee solicitor on their performance. “Supervisors will be concerned to improve performance and deal with difficult issues, including a failure to perform effectively, errors and perhaps, occasionally, issues involving disciplinary or grievance procedures”. The guide then offers advice that supervisor may find “helpful”. These include the art of motivating people, identifying relevant issues and creating a conducive, “open, honest and friendly environment”. A “MENTOR” mnemonic is offered which represents: map the needs, evaluate the methods, next opportunity, talk it through, off they go and “try”, and review. These management type slogans aim at “improving performance” - it is questionable to what extent these are useful and to what extent they are practised. The guide continues by placing delegation within the “overall process of coaching”. Effective delegation involves setting parameters which delineate task boundaries such as time, responsibility and resource allocation. “Effective delegation will enable the supervisor to get a task done, by someone else, to a similar standard had the supervisor undertaken the task himself”. This is clearly a point of dispute given the pressures of a “real” firm environment and the lack of training or the trainers which will be addressed in this study. This is followed by advice on “handling difficult issues” generally relating to performance, grievance or disciplinary issues. Central to supervision is the provision of feedback both specifically, on individual tasks, and more generally.

The Law Society guide strongly recommends the implementation of an appraisal system to “establish a recognised procedure”. Effective appraisal should consist of two elements, frequent and regular reviews, and formal appraisals. The former may

be informal but “should be structured to review the performance against agreed objectives”. Reviews should also offer the opportunity “to discuss the future training needs of each individual trainee solicitor”. A formal appraisal should take place at least once a year and preferably, each time a trainee changes seat or department. The formal appraisal would review a trainee’s past record of performance and set new objectives. Again, a mnemonic (SMART) is offered which states that objectives should be: specific, measurable, agreed, realistic and timed. An overall aspect of the supervisory process involves establishing “the performance level” of a given skill and identifying areas in need of improvement. The idea of a “performance level” combined with the requirement that trainees be provided with work of a suitable level of difficulty again assumes that ostensibly untrained supervisors are able to gauge the appropriate level of work required by a particular trainee at a specific moment in their training process. It also tends to idealise the typical legal working environment. Work, in terms of files or tasks within files, do not come labelled as easy or very difficult and whilst it may be possible to select work of an appropriate level such work may not always be available. In reality, trainees subsist on the work that passes across their supervisor’s desk. The Law Society guidelines tend to blur the distinction between requirement, recommendation and advice. This serves to present an ideal type. It is one of the purposes of this study to hold this idealised model of the Training Establishment up against the reality of the training experience in actual solicitors firms. The final element of training and development is self development. This represents the trainee’s commitment to their own learning process and includes such things as, “trainees should be encouraged to:

Plan a programme of self development e.g. How can they achieve the required skills standards?

Read and research journals;

Review new statutes and regulations;

Build up a personal file of precedents and lessons learnt;

Use meetings with supervisors to discuss self development and set new targets if appropriate;

Conduct self appraisal e.g. encourage the trainee solicitor to address the question, "How are you getting on?";

Get the supervisor to develop strength and eradicate weaknesses;

Develop social and inter-personal skills;

Come up with solutions to problems even if they are wrong;

Admit to mistakes and face up to problems;

Enjoy their time as trainee solicitor."

(Law Society, 1994).

This presents a synopsis of the 'official' structure of the Training Contract. Additional information including copies of the written standards (appendix 6.2), example checklists (appendix 6.5), an example Training Contract (appendix 6.1) and the Law Society Training Regulations 1990 (appendix 6.3) as they currently apply to Training Contracts are provided in the appendices. There are also substantial additional requirements concerning among other things part time Training Contracts, extending Training Contracts and the cancellation of a Training Contract which we need not dwell upon. However, beyond any confusion over who is who in the training process, there is the question of what is what which was alluded to earlier under the formal Law Society requirements. Firms are required to offer at least three headers (prescribed legal topics) from a list of twenty one. These Law Society headers (or heads) generally correspond to departments, specialisms, topics, areas or seats. Each of these terms may have slightly different usage in differing contexts (see the introduction to chapter 4). In this study, and in this context, they shall be referred to exclusively as headers. This requirement is not normally a problem for all but the smallest firms taking solicitors. Most firms have an established series of periods in different departments that satisfy the Law Society requirements. This is often referred to as a rotation scheme and thus each individual period spent in a department may be termed a rotation. The more common term, and the term preferred for this study, is a seat. A trainee will experience at least three seats attached to three different heads or departments. The Law Society headers are further divided into

contentious and non-contentious although, in practice, firms offer a variety of headers and trainees are able to work a certain amount of flexibility. The Law Society requires trainees to maintain a record of their training. This can be done in one of two ways. The Law Society issues checklists for each header which lists a series of tasks relevant to that area of practice (appendix 6.5). The trainee would simply check off the tasks that they had experienced. Alternatively, trainees may keep a diary of the types of work that they have experienced. Either way, the Law Society requires the firm to ensure that a proper record is kept and a trainee may be required to submit their record of training as a requirement for completion of the Training Contract and therefore admission to the roll.

In the next few paragraphs I offer, by way of a summary, a reinterpretation of these often confusing qualifying procedures in terms of the various routes into the profession. This has the advantage of providing an insight into the numbers adopting various routes.

#### **A summary of the numbers adopting different routes into the solicitors' profession**

There are three routes of admission to the solicitors' profession although the Law Society recognise eight ways to qualify as a solicitor (Law Society, 1994). Route one, generally referred to as the law degree route, is by far the most common route taken to qualify as a solicitor. It is open to those students who have gained a "qualifying law degree". In the admissions year 1993/4 3,089 were introduced into the profession via this route (64%). Route two, or the non law degree route, is for those students coming from University with a degree other than law who wish to qualify as a solicitor i.e. for the non-law graduate. This route accounted for 932 individuals admitted to the profession in 1993/4 (20%). Route three is the non-graduate route and represents the least preferred of the three routes into the profession. 780 solicitors were admitted to the rolls via this route in 1993/4 (16%). Although this route is open to all non-graduates it is generally for those working as legal executives and as such is often referred to as the legal executive route.

Legal executives would enter legal employment and register with the Institute of Legal Executives and take ILEX Part I Examinations (approximately two years).

They would subsequently have to complete ILEX Part II Examinations (including 3 core subjects of the Common Professional Examination) and be admitted to membership of the Institute of Legal Executives. After a further two years legal experience and the completion of the remainder of the exemption subjects or Common Professional Examination core subjects they would be admitted to Fellowship of the Institute of Legal Executives (i.e. they must be over 25 years of age and have at least five years experience in legal employment). This would satisfy the Academic Stage of Legal Education. The Legal Executive seeking admission to the solicitors' profession would still then be required to complete both the Legal Practice Course and the Professional Skills Course although the Training Contract is normally waived.

The situation for other non-graduates has somewhat changed. Historically the solicitors' profession did not grow from an academic discipline and has traditionally sought to remain open to suitable individuals regardless of their academic qualifications (Abel, 1988). Up until 1994 it had been possible for people who had worked in a solicitors' office since leaving school to qualify without taking a law degree or the Common Professional Examination or the ILEX examinations. They would have to pass the Solicitors' First examination in addition to the Final examination and undertake four year articles. Mature students must now pass an eight (as opposed to six) subject Common Professional Examination which takes four years, the Legal Practice Course and two year traineeship.

The other ways of qualifying referred to earlier involve transfer from another branch of the legal profession either here (barristers) or abroad. The Law Society specifies the four possibilities as transfer for an overseas lawyer, a barrister, a Scots or Northern Irish lawyer, or a justices' clerk. The overall numbers of solicitors admitted via these routes are relatively few. However, in recent years there has been a steep increase in numbers of those transferring from other professions or from other jurisdictions, though figures for the last available year ending 31 August 1993 show a substantial fall from 1,094 to 742, a 32% drop. Overall figures for 1993 admission for comparison are 3,675 direct entry (3,050 law graduate and 624 non-law graduate i.e. routes 1 & 2 plus 1 school leaver) accounting for 83% and 742 entry by transfer.

ILEX or legal executive transfer (route 3) is the only transfer subgroup which has increased over previous years and represents 134 individuals, 18% of transfers or 3% of all entries (Law Society, 1995c).

It is impossible to be accurate in estimating the amount of time it would take for an individual to gain admittance to the solicitors' profession via each of these routes as there are too many unaccounted factors such as whether any course is taken part-time or full-time. However, it is possible to suggest the most likely range of time periods it would take for the completion of each route from the point of entering a degree or, in the case of Legal Executives, entering employment. In all likelihood route one would take 6 years and route two would take an additional year, however, either may take up to 10 years. Route three is the most variable as it could take as little as 8 years but in the vast majority of cases it would take many more.

### **An account of recent historical developments in legal education and training**

It is the intention of this section to outline some of the recent changes in legal education and training since the Report of the Committee on Legal Education chaired by the Hon Mr Justice Ormrod (Ormrod Report, 1971). There have been a series of reviews of legal education and training by government committees, a Royal Commission, the Law Society and most recently the Lord Chancellor's Advisory Committee on Legal Education and Conduct. This has resulted in numerous reports (Ormrod, 1971; Benson 1979; Marre, 1988; ACLEC, 1996), Law Society publications (Law Society, 1990b; Sherr, 1991a; Economides and Smallcombe, 1991; Law Society, 1991c), Council for Legal Education funded studies (Johnston and Shapland, 1990; Shapland, Johnston and Wild, 1993; Shapland, Wild and Johnston, 1995; Shapland and Sorsby, 1995) and government Command Papers, both green and white, resulting in the Courts and Legal Services Act 1990. This has happened against a backdrop of constantly increasing student numbers, an expansion of the system of higher education, growth in the number of law schools and places on law degrees, and a year by year rise in the number of entrants to the profession.

The Report of the Committee on Legal Education (the Ormrod Report, 1971) provided the first authoritative review of legal education and training for twenty years

(Stevens, 1972). The Report "placed legal education in a contemporary perspective" and introduced the now familiar stages of legal education and training; academic stage, professional stage and continuing education, elsewhere referred to as 'the Gower plan' (Twining, 1986). The professional stage is equivalent to what is now generally termed the vocational stage consisting of two parts, the vocational course and a period of in-service training. The Committee envisaged the academic stage as "normally but not necessarily" consisting of a "law degree" i.e. a three year full-time degree covering eight law subjects, five mandatory and three optional. Two exceptions were provided, a two year conversion course or a mixed degree, so long as they included the eight law subjects. Furthermore, "professional bodies ought not to specify the contents of the curriculum as a condition of recognition of a particular law degree", however, the committee themselves required that course provider ensure students have "covered the basic core subjects and acquired a sound grasp of legal principles and sufficient knowledge of, and ability to handle, law and its sources so that he can discover for himself, with reasonable accuracy and without unreasonable expenditure of time and effort, the law which is relevant to any problem with which he is likely to be called upon to deal in his early years of practice". It was recommended that the professional stage, what is now the vocational stage, be common to both branches of the profession and consist of a two year institution-based training course and a period of in-training. It was further suggested that this might eventually take the form of a combined or expanded university (or polytechnic) course similar, presumably, to architecture. The period of in-service training for solicitors would be provided by a three year period of limited practice rights replacing the then articles of training. The report stressed the importance of post qualification continuing education that would continue throughout the professional career and stated that law should be a graduate profession. The Committee set up the Lord Chancellor's Advisory Committee on Legal Education (1971-90) which in turn was to set up a working group made up of representatives of the professions and academic bodies to review the Law Society and Council for Legal Education requirements for a qualifying law degree (1987-90).

Less than a decade later the Royal Commission on Legal Services (the Benson Report, 1979) returned to many of the recommendations made by Hon Mr Justice

Ormrod in the earlier Report. However, the Commission appeared to vacillate on a number of key issues, for example, it had been recommended that law be a graduate profession, the Commission backed down on the all graduate admission retaining legal executive and mature student access. Furthermore, they accepted the more limited one year conversion course (the new Common Professional Examination) as equivalent to the academic stage. As far as the vocational stage (I have now dropped earlier references to this as the professional stage) was concerned, the Commission still pushed for a joint course with the Council for Legal Education (barristers). However, the Law Society introduced the new Law Society Finals course as a preparation for practice which was offered at the College of Law and seven approved polytechnics (Birmingham, Bristol, City of London, Leeds, Manchester, Newcastle and Trent). The Commission recommended "that on any future occasion when the present systems of training are reviewed, the opportunity should be taken to assimilate them into a single system of vocational training". The Benson Report both recommended numerous improvements to articles and suggested their replacement with a two year vocational course including a period of placement work experience. What they were suggesting was effectively a form of integrated vocational sandwich course. The Law Society responded by regulating articles more tightly through the introduction of a list of approved headers, of which trainees must cover three, as well as certain specified skills. The Commission also recommended that continuing education be made obligatory. In 1985 the Law Society introduced local monitoring panels to monitor the arrangements for articles and made a system of post qualification continuing education and training mandatory.

The Report of the Committee on the Future of the Legal Profession (the Marre Report, 1988) reversed previous recommendations on the academic stage of training, maintained the view that the vocational stage should become a common system for both solicitors and barristers, and found no practical alternative to articles. Their criticisms of the academic stage concerned the perceived inadequacies in terms of students' "intellectual and analytical powers, written and oral communication skills, and abilities in legal research". This time however, it was suggested that, partially due to concerns regarding the funding of higher education, the academic stage should not be combined with the vocational course to make a four year university or

polytechnic course. The report also endorsed articles as adequate and the system of monitoring as effective but highlighted criticism of the Law Society Finals course. The course had been “updated” in 1980 but “was still the bastion of old-style legal education” (Sherr, 1991b). It relied almost entirely “on memorising large tracts of law and procedure, and regurgitating them in stylistic form at the end of a ten-month course through the medium of two- and three-hour examinations in some seven different papers” (Sherr, 1991b). Sherr summarises some of the major criticisms of the old Law Society Finals as still based on a hypothetical “four-partner firm in Oldham”, and characterised by the attitude that “this was the way we were taught and suffered, this is the way you’ll be taught and suffer”. The course was entirely examination driven and the primary form of “teaching” was dictated notes. The common feeling among students was that the course had little to do with practice, that it lacked a “commercial approach”, and that there was no opportunity to specialise.

January 1989 saw the release of a government Green Paper entitled *The Work and Organisation of the Legal Profession* (HMSO, 1989). The chapter referring to legal education highlighted the growth in specialisation and the importance of financial regulation and the European Community. The subsequent White Paper *Legal Services: A Framework for the Future* (HMSO, 1989) reinforced a long established recommendation:

“The Government agrees with the views expressed in the Ormrod, Benson and Marre reports that there are strong arguments in favour of a common system of vocational training to cover the whole legal profession.”

The Courts and Legal Services Act 1990 established the present Lord Chancellor’s Advisory Committee on Legal Education and Conduct which embarked upon a wide ranging review of legal education and training. The First Report “aimed at preparing the system of legal education and training for a new era” has recently been published (ACLEC, 1996). The training of solicitors was entering a period of great change as 1990 also saw the publication of *Training Tomorrow’s Solicitors* (Law Society, 1990b), a consultation paper, following the Law Society’s own review of legal

education which proposed the replacement of the Law Society Finals by the current Legal Practice Course. The new course was intended to develop practical skills as well as knowledge of substantive law. The Law Society issued specific guidelines (see the following section on competences) relating the course elements. Course provision would be extended to any approved establishment. Articles were to be replaced by a Training Contract held in-service by approved solicitors firms or other organisations employing solicitors, termed an authorised Training Establishment, which would appoint a principal and follow a training code. The Training Contract would include the completion of a professional skills course lasting the equivalent of one month and taught either in-house or by external course providers.

The early nineties may also have witnessed the first step towards the common professional legal education so long dreamt of by Committee after Committee with the Joint Announcements on full-time qualifying law degrees by the Council for Legal Education and the Law Society (1994) which relaxed the requirements on degree course providers regarding the teaching hours, assessment and introduction of the foundations of European Union law as a compulsory or core subject.

### **Legal education and training into the 21st Century**

The last few years have served to emphasise the enormous changes occurring in legal education and training in response to pressures from both inside and outside the profession. The profession, in turn, is undoubtedly experiencing one of the most turbulent phases in its history (Birks, 1993). Various commentators have predicted the deprofessionalisation, decline and ultimately, the demise of the profession, certainly as it is at present (Abel, 1989a; Glasser, 1990; Shapland, 1994). These are questions that shall be addressed in relation to the profession (see Section 3.3).

However, it has been suggested that historical change occurs at an exponential rate, like a juggernaut gathering momentum (Giddens, 1992). This would certainly appear true if we were to take recent accounts of the impact of wider social and political changes on the future of the solicitors' profession as a guide (Law Society Gazette, 1995; Paterson, 1996; Lee, 1996). It would be inappropriate to dwell on a recapitulation of recent social and political changes among western nations.

However, a brief mention of those changes impacting on the solicitors' profession

generally, and the future of legal education and training more specifically, will be mentioned. As has been stated, the nineties has seen enormous change for the solicitors' profession, including an expansion in the numbers of practitioners (Jenkins, 1993) holding practising certificates and a change in the composition of the profession both in terms of age (with a younger profile, Abel, 1988), and gender. There are now approximately equal numbers of men and women entering the solicitors' profession (Jenkins, 1992). We have also witnessed the Thatcher inheritance of four successive Conservative governments leading to public expenditure cuts, the privatisation of public utilities and massive restructuring of the old industrial base. Alongside this there has been a rise in large-scale unemployment, substantial deregulation and a growing division between the north and south of the country. For solicitors, these have not necessarily been bad times. The eighties saw an unprecedented rise in numbers entering the profession and an increasing demand for legal services from, for example, the buoyant domestic and commercial property markets, an increase in financial services, deregulation and the new private utilities and mergers and acquisitions - it was a boom period. We also witnessed the fall of the Berlin wall and the gradual collapse of the Eastern Bloc. This led to the growth of the mega law firms (Galanter, 1983), the merging or networking of medium law firms and the first multinational and multi-disciplinary firms. Globalisation was happening apace, alongside the increasing importance of the European Union. The nineties felt the bite of deepening economic recession

The profession came under increasing pressure both from within and without. The Law Society relaxed regulations on competition, multi-disciplinary practices and advertising, and, under increasing public and political pressure, following high profile cases of scandal and corruption, introduced new measures of accountability, quality and competence enhancement, continuing education points and client care rules. Changes in the system of legal aid have affected many small practices as well as raising broader questions about access to legal services. There have also been some non starters as far as the solicitors' profession are concerned. These include the growth of new legal service providers and the hawked proposal for a merging of the professions, both recently mentioned by ACLEC (1996), or the transformative impact of information technology. None of these have really emerged in quite the same way

as the pervasive elements of commercialism, commodification and fragmentation (Glasser, 1990).

As far as the future for legal education and training is concerned, current pressures look set to continue. The increasing numbers entering the profession and the cost of academic legal education are likely to continue the move into establishments of higher education and private course providers. Education will play a greater role in selection and entry to professions, for example, the Bar Vocational Course is moving into the university sector, and there is an increasing provision of specialist courses alongside continuing education provision. The fierce competition for training places will also continue, resulting in increased job insecurity and exacerbated worries about trainee debt (Moorhead and Boyle, 1995). Training partners have expressed concern at the increasing costs of training and the temptation among the medium sized firms without in-house training to "poaching trainees" much as they "poach" established solicitors seeking partnership.

Others have speculated on the impact of current trends on the future of legal education and training for solicitors, most notably, the Lord Chancellor's Advisory Committee in the First Report on Legal Education and Training (ACLEC, 1996). The Committee identified changes in practice, changes in the market for legal services, new knowledge and skills and the ethical challenge facing lawyers in the new millennium. Many of the changes in practice stemmed from "a much wider movement in the legalisation of society as a whole. More and more aspects of people's daily lives and of their economic, social and political relationships have become the subject [of] specific legislation and have otherwise been brought within the purview of the law and lawyers". De-regulation has given rise to a substantial body of new legislation and to the creation of new markets for legal services. The international market for legal services has also grown throughout Europe and on a wider global basis. Much of this change has challenged "traditional notions of professional autonomy", a proposition which is developed in subsequent sections (see 3.3). The Report continues by stating that "forms of education and training are required that will ensure that the lawyers of tomorrow fully appreciate the essential link between law and legal practice and the preservation of fundamental democratic values". This

hints at a Durkheimian notion that increasing fragmentation and differentiation among the profession, "running warfare between different Law Society factions" (Smith, 1995), alongside a process of commercialisation and commodification, can weaken professional ethics and undermine their role as public servants of justice. ACLEC address changes in the market for legal services which have already been summarised above. They point to greater competition, however, their reasoning for this follows on from their interpretation of the market-oriented emphasis in the Courts and Legal Services Act whose objective was to foster "new or better ways" and a "wider choice of person" providing legal services in the future. The ACLEC Report anticipates "a greater diversity of groups, drawn from both the established and the "emerging" professions, will seek to enter into the traditional markets for lawyers' services. But there are also likely to be new markets offering fresh opportunities". It is questionable to what extent the former supposition is likely. Despite government interest in shifting such legal services as legal advice and dispute resolution away from legal aid funded practices to the legal centres and Citizens Advice Bureaux this possibility has existed for many years and is unlikely to have a dramatic new impact with a capping in legal aid funding. The latter supposition, of an expansion in new markets, is a virtual certainty due to the dynamics of market growth. However, this dynamic works both ways; just as other "emerging" professions may compete for the market in legal services so the legal profession is altering to respond. A clear example is offered by the diversification in commercial and financial services and the boundary disputes with accountants (see Section 3.3). The ACLEC Report also highlights the increasing pressure to specialise which, in terms of legal education and training, may have "damaging effects both for individuals, who may be pressured into inappropriate career choices at very early stages in their education, and for the content of legal education and training in general", leading to a demand for specialised, vocational and skill based, practice-oriented courses earlier in academic education. This is a very real concern among academics, voiced since the collapse of the binary line between former polytechnics and universities and the introduction of specialist vocational courses. To what extent does this undermine the purpose and values of a liberal education? This is one of the issues addressed at the end of this section. The Report continually emphasises the need for life-long learning. "In a

world of rapid economic and social change and diminishing job security, the education and training of lawyers must enable them to take any opportunity that comes their way, and to develop transferable skills that can contribute to their lives inside and outside legal practice". A point emphasised by the Law Society system of continuing education points and the introduction of multi entry and exit point forms of flexible learning. People are spending longer in education, returning to education more frequently and training and re-training throughout their careers. Indeed, to some extent the very concept of a career is archaic. Solicitors are expected to change specialisation at least three times in their "career" (Baker, 1996), and move job probably more often. Globalisation and Europeanisation have already resulted in the addition of European Community law as a core compulsory element to the legal practice course and law and language courses are increasingly popular. Many commentators have emphasised the need for a greater understanding and appreciation of both common law and civil law jurisdiction with the growing influence of the European Union on domestic policy arrangements (Partington, 1992; ACLEC, 1996).

Whenever anyone speculates on the future one further issue is sure to arise, the role of information technology (Clark, 1992). ACLEC suggest that if solicitors are to meet the threat to traditional markets presented by banking and insurance they must move towards "the wider application of technology for the purposes of knowledge-manipulation, practice management and quality control of services, and product analysis and development". This has pervasive ramifications for the control of legal knowledge, the form of legal service and the future of the profession, each of which will be addressed in later sections. It is however, unlikely, that IT will have such a dramatic or immediate impact on the majority of solicitors. Even the long standing suggestion that computers will arrive on every solicitor's desk leading to a "paperless office" and allowing flexible home-base working seems a long way off. The routinisation of aspects of a professional's work may indeed be occurring (Watkins and Drury, 1994), however, we are also witnessing an increase in the ratio of para-legal and support staff to practising solicitor (Chambers and Harwood-Richardson, 1991, pp20.). A growing proportion of these para-legals are in fact trainee solicitors (Shapland and Allaker, 1994). This is particularly true for the larger firms that take

the highest proportion of trainee solicitors for the simple reason that they and legal executives constitute fee-earners and, therefore, attract potential additional revenue.

This represents a partial view of at least some of the trends which are likely to shape the legal profession. Factors specifically affecting the provision of legal education into the next decade have also been identified. These have elsewhere been divided into four categories; government policy in relation to higher education, the response of institutions of higher education, professional factors and developments in legal education (Partington, 1992). Whilst these are interesting in painting a background canvass, the picture is all too familiar. The central factors leading from the Robbins Committee Report (1963) which set in motion an expansion in higher education followed by the more recent government calls for "greater efficiency", what Partington refers to as "government-speak for a reduction in the unit of resource for teaching" and the collapse of the binary divide previously mentioned, have all contributed to many of the changes in higher education teaching mentioned above. Common themes include resource constraints or funding issues, an increasing concern with quality and a vocational orientation which may be in conflict with the "traditional" values of a liberal education. These current debates will be revisited below.

### **The outstanding issues and continuing debates around legal education and training**

There are a vast number of issues under current debate that impact indirectly on the training and education of would-be solicitors, such as the calls for greater accountability, regulation and review. There has been a sustained drive towards quality through the implementation of British Standards (e.g. BS 5750), total quality management (TQM) and client care programmes. However, the two issues which hold the greatest current relevance for trainee solicitors, and which constantly re-emerge as issues of concern, relate to access and funding. These will be addressed below. Issues such as these influence the form and structure of legal education and training in as much as they are pervasive elements of wider trends, also affecting higher education for example, and also through their ideological impact on the culture of practice. The culture of practice and the culture of education profoundly influence

trainees' becoming. They each frame the experiences of trainee solicitors as they move from legal studies into legal practice. Both are dynamic concepts embedded within, and inevitably affected by social, political and economic trends within society as a whole. A recurring theme in relation to both is what academics tend to view as "tension between the ideology of the legal profession and the ideology of the enterprise culture" (Thomas, 1991), or what practitioners see as an "even greater commitment to a service culture" (MacDonagh, 1995). I set this question up as the impact of the market model on legal education and training. This debate will also be addressed below.

### **The funding and access to legal education and training**

The Law Society themselves have recognised that "progress along the pathways of legal training does not simply depend upon academic performance. Financial pressures prevent some aspiring lawyers from pursuing their legal training and there is evidence that certain groups are disadvantaged when they seek to enter the profession" (Shiner and Newburn, 1995). However, this is not the full story. Whilst a law degree is still not a requirement for entry to the solicitors' profession, it is by far the favoured route (Abel, 1988). This provides the opportunity for access to the solicitors' profession to be limited through education and training in a number of ways, what Burrage calls the "gatekeeper function" (Burrage, 1992). There are possible advantages to the profession in maintaining exclusive membership which shall be detailed in a later section (see Section 3.3), however, the major mechanisms include the operation of discriminatory selection procedures or limitations and the prohibitive cost of education and training for certain sections of society. The results of these mechanisms have long been documented, though recently there are indications of change. The gender division among law undergraduates is now approximately equal (Birmingham et al, 1996), and findings suggest that for the first time over half of the new entrants to higher education are from lower income families (DEE, 1995), similarly, "minority groups are not under-represented amongst the [law] students, although there exists some variation between groups" (Halpern, 1994). However, these somewhat startling findings are not maintained further along the qualification route to becoming a solicitor. Less than one in five solicitors are women and just under one in ten women make it to partner status (Chambers and

Harwood-Richardson, 1991, pp23-25). Evidence also exists that suggests law students are not representative of the majority of undergraduates. Over half had managerial or professional fathers and less than one in five had working class fathers (Benson, 1979). Other surveys report similar findings (McDonald, 1982; Abel, 1988). Numbers of ethnic minority trainees and newly qualified solicitors are half those of law students (Moorhead and Boyle, 1995, pp 219) i.e. they are twice as likely to fail to get a Training Contract. There are complex reasons accounting for these disparities, some of which will be addressed in relation to the operation of professions or exclusionary aspect of professional culture (see sections on Professions and Professionalisation, Socialisation and Culture). However, attempts to encourage ethnic minorities, mature learners and the children of lower income families into higher education through the introduction of modularised course structures, credit accumulation and transfer schemes (CATs) and flexible learning highlight the lack of financial support as a strong exclusionary factor.

ACLEC propose a multi entry and exit system of qualification as a potential solution and suggest that "students should have the benefit of the fullest and clearest information about the routes to the profession, the likely financial costs, and the experience of previous student cohorts" to enable them to make an informed choice (ACLEC, 1996). At present, financial support for law students relies heavily on the discretionary powers of local education authorities. There is well documented evidence of a substantial reduction in the availability of such discretionary awards. A Law Society survey in 1994/5 found only 34% of LEAs offered awards for graduates beginning the legal practice course (Shiner and Newburn, 1995). Failure to obtain a discretionary award restricts law students to student loans, access funds, career development loans or loans from charitable trusts. It has also optimistically been suggested that there may be an increasing role for private sponsorship (Partington, 1992). Despite these sources of funding the majority of students rely on other sources of funding including parental contributions, earnings from employment, loans from banks or building societies, and sponsorship by private and commercial organisations. Indebtedness is a major problem with over one in four trainees expressing strong worries about debt (Moorhead and Boyle, 1995). Tuition fees for the legal practice course alone range up to £5,200. Firms provide minimum trainee

salaries which are currently recommended by the Law Society at approximately £11,000. However, it is the larger firms which tend to bear the main cost of funding and training entrants to the solicitors' profession as the cost of running the new Professional Skills Course and the administrative cost of complying with the new authorisation procedures make it increasingly less attractive, and less possible, for the smaller firms to take trainees. There are concerns that this may encourage the poaching of trainees and may lead to would-be solicitors gravitating towards the larger city firms that already take 37% of trainees as it is only they that will be able to afford to hire training managers or directors of training to administer in-house training and provide practice seminars through economies of scale.

### **The impact of the market model on legal education and training**

The final question that I wish to address is one that I have struggled to define and yet it is primary and pervasive in all debates around legal education and training. The question relates to the ideological battle around the purpose, definition and values underlying legal education and training. The two armies in the battle, if I may be permitted to extend the metaphor, are the academic lawyers against the practising lawyers, the liberal educationalists against the vocational skills trainers. The lines are not clearly drawn but the current battle involves the Legal Practice Course. There is one further player in this scenario, the financier reputed to be behind the vocational push into university territory - the market.

This is an absurd metaphor, however, it serves the purpose of introducing the protagonists. Certain academics and educationalists see a very real danger threatening to debase the high ideals of a liberal education. Their argument is that "the defining principles of education and of the market-place are fundamentally contradictory in their goals, their motivations, their methods and their standards of excellence" (McMurtry, 1991). Many academics would agree that they are fighting a rearguard action in defence of a good and balanced university education against the onslaught of commercialism. There have been countless examples in recent government policy towards higher education that illustrate this, such as the constant squeeze on resources, the freeze on student grants which undermines the right and access to free higher education for all, the introduction of league tables to foster

healthy competition, and the commodification of knowledge packaged into modules and certified by national vocational qualifications. There is also the sense in some quarters that this is in some way a non-event, or rather a misinterpretation of current trends - another case of ivory tower idealism raging against the pragmatic realism of 'the powers that be' in the form of the government or big business. In terms of legal education and training, this dispute has been played out between academic culture and the practice culture, between the university context and the firm context, and centres on the Legal Practice Course. When the universities were validated to run the vocational course in law they won a victory in terms of securing resources, for example, but at the same time they unwittingly allowed the enemy within, a Trojan horse of teachers oriented externally towards the profession. According to one of the "horse's" occupants this represented "an intrusion of professional and instrumental values into an already threatened environment" (Jones, 1993). The dispute constitutes more than just a question of where the divide falls between vocational and academic? Which, it has been argued, is in any case "a false dichotomy between ... between Pericles and the plumber" (Paterson, 1995). A hint is provided in Paterson's contribution to the Third Consultative Conference of the Lord Chancellor's Advisory Committee's review of legal education (10 July 1995) and a footnote in the First Report. Both make reference to a concern about the use of the phrase "intellectually rigorous" in relation to the Legal Practice Course. ACLEC were keen not to offend teachers on the Legal Practice Course by implying that the course may in some way lack the intellectual substance of "black-letter law". Paterson however, voiced suggestions that "there is a need to intellectualise current vocational and practical training".

I suggest that the problem is in fact a problem of definitions. On the one hand there are the traditional academics defending their turf. Unfortunately, there is both a degree of ambiguity among them as to what it is they are defending, and to some extent the princess has already fled the castle. The actions of the government and the incursions of market forces represented in the expansion of central administration and the running of universities as businesses has undermined the principles of a liberal education to such an extent that support for such principles is all but untenable. I assume traditional liberal education to reflect a broad "classical" education based on

such things as the one to one tutorial which has ceased to exist outside of Oxbridge. On the other hand, there are the practitioners that have entered the universities to teach vocational skills-based courses. Unfortunately, they also lacked a coherent rationale in terms of theories of knowledge and learning to justify their approach. This has left the matter open to a number of interpretations:

“Legal education and training is experiencing a transformation that will result in the further enfeeblement of the academic lawyer. The academic lawyer is destined to become even less of a scholar and adopt the role of gatekeeper, and the practices of a tallyclerk, in the supply of quality controlled entrants to the profession as higher education and the professions restructure. The role of gatekeepers emphasises the process of selecting entrants and highlights the clash with the ideals of open access to the profession and to a liberal education. An alternative function of the gatekeeper is to regulate the size of the portal in line with fluctuation in the market for legal services” (Burrage, 1992).

Here Burrage identifies the usurpation of legal academics by the mechanisms of the market and the professional project. Rather than serve broad academic ideals, scholars are in danger of becoming mere “gatekeepers and tallyclerks”, the holders of hoops and the counter of sheep as students make their single minded way towards becoming professionals. Lord Mackay expressed the government’s view that:

“free competition between the providers of legal services will, through the discipline of the market, ensure that the public is provided with the most effective network of legal services at the most economic price” (HMSO, 1989).

There are significant problems with this position. It assumes a free market can exist for legal services where consumers are able to exercise free choice in selecting among competing services in a specialist market. This may be possible for the collective

purchaser, be they public such as the Legal Aid Board or private such as a large corporation, or a "repeat player" who possess the ability to discriminate and demand. This is not possible for the majority of the population who seek legal advice only infrequently as uninformed consumers. There is a danger that the quality of service may come to depend upon the ability to pay and therefore compromise access to justice (Balsdon, 1992). These inherent contradictions have to some extent been recognised by the government itself. In the Courts and Legal Services Act there are elements of reasonableness and quality assurance. Professionals would argue that they operate in the public good and serve justice, a position which would be compromised if the market for legal services were to be entirely open to unregulated competition. The "language of the market... consumerism, choice, and value for money replaced the notions of altruism and self-regulation which for so long had justified the protected status of the legal profession" (Thomas, 1991). There is also a fear that any acknowledgement that the professional endeavour can be reduced to constituent skills would make the profession into merely a vocation. These ideas are further developed in the chapter on professions and professionalism.

The final contrast that I wish to offer is of this debate as a fight for the control of knowledge and the production of knowledge. MacFarlane (1992) argues that the competences movement offers an alternative conception of knowledge as experience-based, and learning as process-based. Skills education is not a "soft alternative", it seeks to take knowledge out into the real world. She proposes a re-conceptualisation of the educational rationale displacing "the traditional polarization of academic and vocational", or liberal and vocational, of an emphasis on knowledge 'that' versus knowledge 'how', to acknowledge that learning is endless and necessarily incremental - what Sherr, using Karl Mackie's phraseology, refers to as top loading knowledge bit by bit rather than front loading once and for all (Sherr, 1991b). The opposing camp characterise skills education as "anti-academic" and as part of the growing "culture of technique" (Ellul, 1956; Barnett, 1990). If skills education is what the profession, or the market, wants then this implies the very negation of education. According to McMurtry we are witnessing "the systematic reduction of the historically hard-won social institution of education to a commodity for private purchase and sale"

(McMurtry, 1991). These are again issues which are explored in relation to conceptions of legal knowledge and skills in the following section.

### **Research questions**

The research questions in this area centre around a comparison of the formal structure of training and the actual structure of training for trainee solicitors in England and Wales. The formal structure of training as envisaged and regulated by the Law Society, as reviewed by various committees, commissions and other bodies, as perceived by those outside the training process, and as outlined above, is contrasted with the experience of trainee solicitors in firms delivering skills training, supervision and managing trainees in line with the regulations and requirements governing Training Contracts.

This central research question breaks down into aspects of the form or structure of training "on the ground" and questions relating to the experience of that structure. The former arise from requirements on firms to offer three headers, to provide a wide range of tasks as indicated by the Law Society checklists, and the management structure regulating training including the role of principal, supervisor and Training Partner as reflected in firm's training policies. The latter questions relating to trainees' experience of training can be further divided into three areas relating to the form of supervision, the form of feedback, and the form of control exercised over the trainee by the Training Establishment. These research questions reflect the central importance placed on the principal/trainee relationship by the Law Society and successive review bodies. It is assumed that the supervisory role, originally carried out by the principal under the apprenticeship model, is central to a trainee's experience of training (although this is itself questioned), but to what extent is it functional in the training process? This strikes at the heart of the system of Training Contracts which the Marre Report held to be the most appropriate method of practical training for solicitors. The form and experience of feedback underlies the learning process developed in the subsequent section and is crucial to the training process - this is investigated.

Finally, the question of control lies unspoken in many of the contributions to the debate around legal education and training. The empirical study questions the extent of control over trainees not primarily by the Law Society, but by their Training Establishment through the use of time sheets, work targets, office space allocations and work checking procedures. These questions derive from, and contrast with, the perceived structure of training, and seek to uncover 'the reality of training' which forms the basis for all subsequent sections.

### 3.2 Knowledge and Skills

The previous section has addressed the structure and form of legal education and training. This section will now consider the content of that education and training namely, knowledge and skills. This will entail a brief examination of formal legal knowledge, often referred to as black letter law, and the methods typically used to teach these forms of knowledge. More recently, the question of what it is that solicitors actually do has taken centre stage within the debate around legal skills. This has led to a different conceptualisations of knowledge, skill, competence, learning and expertise (to mention but a few of the more common terms currently addressed). The questions around legal knowledge and legal skills will then be combined to gain an idea of what we might understand as learning as it applies to trainee solicitors on a Training Contract.

There is general agreement that knowledge is both valuable and important, however, there is little or no agreement from either philosophy or psychology about what it is, how it is acquired or indeed whether it in fact exists. The question of "what is knowledge?" is a question central to philosophical enquiry since its inception. Typically, philosophers distinguish between two aspects of this enquiry. Epistemology denotes the search for a theory of knowledge or knowing, whilst metaphysics refers to the quest for a theory of reality or existence. The two are necessarily interdependent. So, for example, the writing of Plato and Aristotle, although vastly different, both assume reality but question how we are able to know of it - what Lehrer (1990) terms metaphysical epistemology. Other philosophers, most notably Descartes, adopted a more sceptical stance on what is real and questioned what we can know about what is real - what Lehrer terms sceptical epistemology. Although this appears to be a more scientific approach, in terms of Popperian refutability (Popper, 1972), Lehrer warns that once one "enters the den of scepticism, an exit may be difficult to find". Furthermore, continual doubt, or demonic doubt, may lead to a situation where, "if we first pretend to total ignorance, we shall find no way to remove it. Moreover, we shall lack even the meagre compensation of knowing that we are ignorant, for that too is knowledge" - so-called Socratic wisdom. In other words, scepticism may dissolve into a sea of relativism. It

may seem as though these are far too abstract, philosophical questions to bear any relation to trainee solicitors - but the distinction between different forms of knowledge in fact seem to parallel the more recent divisions in relation to knowledge, competences and skills.

Having said this, philosophers recognise a variety of forms of knowledge, some of which may be illustrated in the following sentences:

*I know the way to Sheffield*

*I know Sheffield*

*I know that this is a map of Sheffield*

Each of these statements represents a slightly different form of knowledge. The first sentence expresses competence or "know how" - in this case, how to find the way to Sheffield. The second sentence expresses a familiarity with or knowledge of something, in this case the city of Sheffield. It is quite possible that this form of knowledge, "knowing of", may also include forms of competence such as being able to identify Sheffield or find one's way around it, although this need not be the case. To know of Sheffield may be qualified by "I have heard of it" thereby only implying a knowledge of the existence of a place called Sheffield. The third sentence develops this sense of knowledge as a recognition of information. These forms of knowledge are far from exclusive, indeed, the final usage of knowledge in the sense of information is generally assumed within both the competence and the acquaintance sense of knowledge. It is precisely this sense of knowledge as information that will be addressed in the following section specifically in relation to legal knowledge. Knowledge in the sense of competence will re-emerge in subsequent sections relating to skills and competences.

### **The nature of legal knowledge**

It is a commonly held view that legal knowledge is contained within the written body of the law as represented by statutes, cases and texts. This is what may be referred to as "black letter law". Despite recent changes, the majority of a law undergraduate's time is spent learning such material through traditional "chalk and talk" lectures and

tutorials. In this sense knowledge is often conceptualised as the antithesis of skills - an argument that has fuelled the false dichotomy between the ideals of a liberal education and those of a practical training in much of the discussion around legal education (see the previous section). There are other implications to a conceptualisation of knowledge as facts which tend to emphasise content-driven as opposed to process-driven educational methods, ones in which coverage of an ever expanding curriculum is crucial. MacFarlane (1992) characterises the traditional treatment of knowledge in legal education as a body of factual information primarily transmitted by the lecture method: "syllabuses are packed with vast amounts of data which students variously memorize, simplify, misconceive, and then forget"

(MacFarlane, 1992). She quotes Wesley-Smith's summary of this position that:

"mere acquisition of legal knowledge in law school is of little value to a practitioner because that knowledge (a) can only be a tiny part of the whole (b) can be understood only superficially (c) is easily forgotten or only partially or inaccurately remembered (d) is rarely needed in practice in the form in which it is learned (e) is likely to be quickly outmoded and thus dangerous to rely on and (f) is of little use where new problems arise to be solved" (Wesley-Smith, 1989).

While few would espouse the Langdellian tradition of law as a natural science associated with objectivity and encapsulating truth, many law teachers still place enormous emphasis on the transmission of legal knowledge generally in the sense of information or facts. There are however, significant exceptions to this statement. These include the influence of legal realism and more recently critical legal studies that seek to place law in its wider social context (which have influenced the competence movement which will be addressed towards the end of this section). However, the approach towards law as a social construct is very much in contrast to the "objectivist", "logical positivist", "critical rational" or "logical empiricist" characterisation of knowledge necessarily emphasised by many law schools. Such a view also finds favour with those parts of the profession that hold an implicit "idea of

a cherished and highly specialist knowledge-base 'possessed' by a profession, and traditionally used as a means of restricting access and maintaining a professional mystique" (MacFarlane, 1992). There is controversy around this issue but despite the debate around professions (see the subsequent section), the majority of commentators are agreed that they are "knowledge-based occupations" (MacDonald, 1984). It, therefore, follows that the nature of legal knowledge is of central importance to a profession's occupational strategies. Murphy (1988) defines modern knowledge thus:

The process of formal rationalization has generated a new type of knowledge, namely, the systematic, codified, generalised knowledge of the means of control. Most importantly, it has resulted in knowledge of how to acquire new knowledge of such means. Science and technology are important elements of this new knowledge, but it cannot be reduced to science and technology. Knowledge of how to calculate market profitability, to organize and plan in bureaucracies, and to develop, apply and predict the abstract codified laws of the legal system have all been developed under the process of formal rationalization. This formally rational abstract utilitarian knowledge has resulted in new means of control and is a form of knowledge which is qualitatively and quantitatively different from the previous practical knowledge and the status-cultural knowledge" (Murphy, 1988).

This highlights aspects of the control of knowledge (Abbey, 1993) and the proposition that the use of computers to codify professional knowledge is an important element in the degradation of professional work (Van Hoy, 1995), important aspects of professional knowledge that are further developed in the subsequent section.

More recently there has been a shift in thinking about legal knowledge (Jarvis, 1983; Webb, 1996; Jones, 1996) that has led towards a reconceptualisation around knowledge as experience and the birth of the competence movement. The origins of

this shift as it has affected law have been outlined elsewhere (Webb and Maughan, 1996a; Sherr, 1996). They see the initial impetus as growing out of the Realist legal educational reforms in America associated with Llewellyn and then the later interest in live client student clinics. These influences were felt across the Commonwealth and reflected in the new professional courses for the English Bar and the Law Society (see previous section). The conceptualisation of knowledge as experience rather than as information has its origins far earlier in the writings of Dewey (1993). Knowledge in this sense is relative, and is process rather than content-led. It encompasses both factual information and the abilities required to process information, particularly problem-solving. Importantly, this conceptualisation avoids any polarisation in that:

“no-one doubts that competent performance at work, whatever the level, requires employees to think, plan, make decisions and communicate, all of which call upon a body of knowledge, principles, rules, procedures and so on. At higher levels of competence the body of ‘knowledge’ is likely to be considerable” (Jessup, 1990, pp39).

This quote illustrates the inherent relationship between knowledge, ability and action that challenges the notion of knowledge as theory separated from practice and focuses on the accomplishment of knowledge, or experience in the learning process. It forms a basis for the discussion of ideas about skills that have arisen from cognitive theorists, legal educationalists and other adult educationalists more generally. These will now be addressed.

### **Theorising skills**

Any practical understanding of legal knowledge, certainly in application, depends on various skills. What is a skill and what constitutes skilled activity? How can skills be identified, isolated and taught and to what extent is this possible or desirable? These are questions that have attracted a growing amount of attention in relation to legal education and training. These questions also hold wider relevance in professional education, adult education and training more generally.

There is a growing trend towards a reductionist, mechanistic and cognitive modelling approach to skills learning, the holistic approach having fallen into disrepute through its long association with the apprenticeship method. A growing need to specify with increasing accuracy exactly what it is that practitioners actually do has become apparent through the increasing use of skills and task analysis and general talk of professional "competence". The political climate encouraging efficiency and competition, the market economy and the influence of professional consultants (computing consultants, psychologists and educationalists) have all contributed to this trend. I am characterising this trend as a tendency to examine complex human activities as a functionally interconnected series of smaller units which can themselves be examined, sub-divided and specified. The general purpose of such a simplification is in order, for example, to set job descriptions, allocate tasks, measure quality, efficiency and effectiveness, and assess performance for training and certification purposes. It is suggested that such an approach is seen to serve current political, management and training needs. An obvious example is provided by National Vocational Qualifications and also, to some extent, the adoption of management terminology in the latest Law Society guidelines on training (see education and training).

There is a need to question the assumed intrinsic value of such a trend as well as the means of its application. Training supervisors generally lack any formal teacher training, opening the individual trainee to enormous variations in quality of training. Generally the knowledge is available, the main problem seems to be disseminating and applying it appropriately. However, the ground is still shifting and it seems likely that the form of vocational and professional training will alter in line with these changes in the profession's structure and value systems. Britain is at present in the grips of a skills crisis. However, with the recent publication of a Government White Paper on further education and training (HMSO, 1991), skills training has risen to the top of the political agenda. This is happening within a climate of anticipation and expectation engendered by growing professional interest, public debate and media attention.

Skills training has been something of a buzzword throughout industry and commerce, but now the fire seems to have spread amongst the professions. From the lowliest YTS worker to the chartered accountant, from the semi-skilled to the professional, people are re-examining what exactly it is that they do and how they do it. This involves quantifying and codifying. Perhaps the introduction of IT has contributed, but by far the over-arching factor has been the general climate of the Thatcher era with its push towards greater efficiency and "value for money". Further inducement to rationalise might also be related to the recession-induced belt-tightening.

### Early theorising about skills

Against such a background, Harvey (1991) questions the paucity of relevant psychological research and experimentation. By way of introduction he differentiates between two general approaches. Skills are either examined as static performance, the internal representation and underlying processes in skilled behaviour or as dynamic aspects of performance, acquisition, training, transfer and forgetting.

Early research can be traced to Bartlett's work (1948), dividing skills into *motor skills*, such as surgery, and *cognitive skills*, for example, clinical decision making. This serves to highlight the distinction between cognitive psychologists and ecological psychologists. The former see a mental element involved in the execution of both motor skills and cognitive skills, "both involve procedural knowledge and require judgement", whilst the latter see no role for cognitive mediation in the performance of motor skills, and adopt a "direct action" approach (Harvey, 1991: 444). The Applied Psychology Unit at Cambridge was in the vanguard of British psychological research into skills during the period of expansion immediately prior and during the Second World War. Under the directorship of Craik (1945) the main emphasis was on performance improvement (training), fitting jobs to people (psychological aspects of instrument design) and suiting people to jobs (personnel selection). There followed a nation-wide growth in skills-related research (see Harvey, 1991) in for example anticipatory, feedback and timing processes underlying tracking and positioning movements (e.g. Carpenter, 1950), experiments on stimulus-response compatibility (Leonard, 1966), the effects of fatigue on performance breakdown (Welford et al, 1950), age (Kay, 1951), stress (Mackworth, 1947) and drugs (Drew et al, 1958).

Away from an analysis of static performance much work flourished looking at dynamic aspects of skills such as improvement, acquisition (Annett, 1959), training (Belbin, 1958) and transfer (Gibbs, 1951). This trend continued well into the 1960s. Recently, apart from some high-quality work on skilled motor performance (Hardy and Parfitt, 1991) and the creation of groups such as the Motor Skills Research Exchange, there has been very little work on-going in this area. There has been a shift in favour of forms of highly applied research on dysfunctional motor skill conditions, such as Parkinson's disease, which is at least partly responsible for the lack of substantial theoretical contributions in recent years.

The situation with regard to cognitive skills is perhaps worse. There are studies into acquisition, decision making and working memory (Baddeley, 1989), but the study of skills has to some extent fallen foul of a well-documented (Fox, 1989) general trend within psychology towards cognitive or computational modelling and AI. "The demise of the British-based journal *Human Learning* and its reincarnation as *Applied Cognitive Psychology* reflected the trend away from studying learning towards studying representation". Interestingly, relevant research in this area is conspicuously under-represented (1 paper of 360, SAPU, 1990) at the MCR/ESRC Social and Applied Psychology Unit at Sheffield. "British psychological departments now carry out virtually no experimental work on motor skill acquisition and precious little on cognitive skill acquisition or motor skill performance" (Harvey, 1991: 445). Whilst American academics are experiencing a boom in the area of cognitive skills, in the United Kingdom such work is now mainly being undertaken within business schools and the LSE, which involves few psychologists.

This then is the state of play with the work on skills training at least as far as psychologists are concerned, however, in the wider society much of relevance to skills has happened. The National Council for Vocational Qualifications (NCVQ) takes the existence of core skills for granted and stresses the importance of transferability of skills, such as problem-solving and manual competence, despite the lack of experimental data. It would seem that some harbour doubt within governmental circles and amongst psychologists. However the recent ESRC "Initiative in Vocational Education and Training" with its emphasis on quantity and

quality of training, motivational factors and transfer of training (skill portability) will at least keep skills training a live and funded issue, if not amongst psychologists, then at least amongst the larger academic community.

### Legal education and skills

Two events serve to place the birth (or re-birth) of skills training amongst British legal educationalists. The first in 1983 was the start of the *Journal of Professional Legal Education*, a Commonwealth effort which had a profound, if tardy, catalytic effect, leading to a multi-disciplinary workshop on legal skills convened at Nottingham University by Karl Mackie. Papers were later published in a volume by three of the prime movers in the 'field': Karl Mackie, Neil Gold and William Twining, the latter being a long-time advocate of skills teaching (Gold et al, 1989).

Twining's (1989) main premise is that the direct teaching of professional skills is under-theorised and under-researched. No coherent or articulate theory exists as to what constitutes basic lawyering skills nor to what extent these are really intellectual skills that can be abstracted or otherwise identified in a manner that would enable them to be taught. Taking as a starting point the commonly held view of skills as ineffable or unteachable, being either picked up by the individual through a process of trial and error or requiring a greater or lesser predisposition, he extends the view that "basic lawyering skills" are merely applications of the generic human skill of "clear thinking". This would generally involve the majority of the following: asking questions, diagnosing problems, evaluating evidence, interpreting, creating and manipulating rules, negotiating, using and abusing statistics and the construction and criticism of arguments. In effect it involves work handling, people handling, rule handling, fact handling and money handling and may also include the processing of information, values, people and words. The question of potential skill transferability, whether one means geographically or professionally, is raised but not greatly explored. Twining then turns to the question of teaching, indicating the need for job analysis, skill analysis, monitoring educational programs and testing competence.

In conclusion Twining suggests that "maybe much of formal legal education, especially the skills aspect, should be *au fond* a training in logic or logics. But this

needs to be suitably blended with planned experience". However he argues that work needs to be done to provide an informed, realistic and coherent picture of the role of lawyers in a given society and recognises that practical skills cannot be isolated from the ideological and ethical concerns which must be faced in teaching.

Twining offers by his own admission a largely speculative piece which, despite its firm educationalist perspective, tags a number of pertinent ideas. His view that what distinguishes lawyers is how they combine "the generic human skills of clear thinking" and also the level to which the skill needs to be developed. This suggests a refinement process is at work, where extant skills or at least neonate skills are taken and developed (or polished) within a legal context.

By contrast, Gold (1983a, 1983b, 1989), possibly the most active in the field at the time, defines competence as the "state of having the ability or qualities which are requisite or adequate for performing legal services...at least equally to that which lawyers generally would reasonably expect". Knowledge, attitudes and skills are outlined as the three components of lawyer competence. For Gold, however, these are steps to assessing competence as a performance criterion.

By "knowledge" Gold includes intellectual and analytical skills as well as, and within, an understanding of substantive law. The crucial point is that knowledge must be coupled with know-how. In other words, the knowledge itself is not necessarily sufficient unless accompanied by the ability to use or manipulate such knowledge. By focusing on competent performance Gold is able to avoid the strict knowledge/skills distinction other commentators make. He thus identifies a pro-active form of knowledge or a working understanding which by necessity includes certain skills. Although blurring the generally more appealing and functionally discrete divisions that he initially postulated, Gold develops what would appear to be a far more honest if slightly confused picture which, incidentally, corresponds closer to lawyers' own impressions (see below).

In terms of skills Gold arrives at a small number of very general skill groups or abilities by what one was left to assume was an informal method. He outlines "the lawyer", almost a Weberian ideal type, and lists the various roles demanded of them

as an interviewer, an adviser, a negotiator, a drafter, a writer, an advocate, an investigator, a manager, an organiser and an analyst. From these are distilled the vital packages of abilities necessary for competent practice, namely interpersonal skills, formal and informal writing skills, systematic development and management skills. Despite being indefensible on methodological grounds Gold arrives at a common-sense, almost indisputable group of essential skills. What the value of this might be apart from informing the profession of what they already know I feel is limited. By their very generality and multi-applicability these categories are, on the one hand, unarguably correct, whilst, on the other hand, self-limiting and lacking any explanatory power. Ultimately these skills as such may be of far more value and relevance to an orthopaedic consultant or building site manager than to say a tax lawyer.

Where first Gold talks of attitudes, he later shifts to professional conduct, again pulling a fast one in "concretising" his category. However, within the tradition of "pulling the fangs" of your concepts to keep them manageable, Gold's side-step is far from fatal. By professional conduct Gold means an understanding of and adherence to the codes, conventions and customs of the profession, being aware of one's duties and responsibilities in the greatest sense i.e. to the client, to yourself, to your firm, to the public etc.

Initial attempts at assessing the learning needs of articulated clerks and newly admitted solicitors were undertaken by asking such questions as: What should they be able to do? What are their deficiencies? What are the solutions? A group of eight course designers/developers listed all the tasks involved and the skills required to perform them successfully, 250 skills in total (Gold, 1983b). These skills were then distilled down and related back to the original tasks/functions such as the task of "can they question effectively?", which involved, amongst others, the skills of advocacy, negotiation and interviewing. Some skills were found to be over-arching, for example, organising information.

In later work collaborating with Kilcoyne (1986) Gold advocates the application of the 'systematic instructional design' procedures involving five stages: performance or job analysis, task analysis, capabilities (skills) analysis, capabilities (skills) hierarchy

development and the development of performance objectives. Almost as a precondition for this comes their demand for greater research effort into studying the actual work of lawyers. A clear description of legal work in all of its varieties would need to be created, enabling researcher developers to ascertain the specific knowledge, skills and attitudes required for competent performance.

He argues that the "Gower Plan", what Stevens (1985) refers to as the "Lagos model" consisting of academic, professional, apprenticeship and continuing stages of legal education and training (see page 58), has during the past thirty years provided the prototype for legal education and training in the UK and much of the Commonwealth. Despite significant variations it can be seen to divide into a series of separate stages: academic, professional, apprenticeship and continuing education. The second stage was originally envisaged as full-time, intensive, direct training in professional skills. "In our view this characterisation is not only detrimental, it is incorrect ... it has spawned an enduring series of false dichotomies; knowledge vs. skills, theory vs. practice, academic vs. vocational, policy vs. black letter law, professional vs. academic etc.". This is characteristic of new vogue thinking that considers legal education to be a continuum, a never ending process building on previous learning experiences; it is top-loading as opposed to front-loading (courtesy of Sherr, 1991b).

A recurring criticism voiced by Gold is that "we (legal educators) have not made the effort to identify with any specificity or clarity what we hope our graduates will *be able to do*". Vague generalisations of "well-trained", "competent" and worse yet, "adequate" are wholly insufficient and manifestly non-descriptive. He advocates instead the much maligned "drive for excellence" and questions "what is that curious mix of intellect, skill, knowledge and concern which distinguishes the craftsman from the labourer?" The ultimate goal is to enable lawyers "to learn to learn. Knowledge is inevitably transitory, skills are continuously developed and enhanced through practice, revision, discovery attitudes are forever in a state of flux as internal or personal values interact with external conditions, be they situational or societal ... equipping them to meet the demands of the future".

I find this distinction and elaboration difficult to reconcile with the earlier dichotomy between knowledge and skills. If the knowledge/skills distinction is deemed incorrect, then why observe differences between learning or practice? If skills (if used) are almost automatically up-dated, when used efficiently, and directed towards targets, why should this not be the case for knowledge (or attitudes)? I would suggest that attitudes may very well 'harden', as we gradually lose flexibility of outlook and develop a closed mind as we delineate for ourselves an area of specialisation or competence, or sphere of control. Flexibility necessarily carries the corollary of insecurity. However, so long as knowledge is used or practised, there is no reason to postulate that it will not be up-dated in much the same way as skills. Equally, as long as it is advantageous to maintain and exercise flexibility of mind, in terms of attitudes, a broadmindedness should persist. However, this is hardly a crippling criticism of the rest of Gold's points.

Kilcoyne and Gold go on to outline the method by which a change in the learner's performance (new behaviour) is facilitated. Within their three-fold distinction of knowledge, skills and attitudes, they adopt what might be termed a data-processing approach. Knowledge encompasses both informational input (data) and the basic intellectual skills necessary to understand and manipulate such information (processing). In effect the former are primarily facts and principles whilst the latter include recall, comprehension, application, analysis, synthesis and evaluation (adapted from Bloom's "cognitive objectives", 1956). The term 'skills' is expanded by Kilcoyne and Gold to "functional or operational skills" and includes management, investigation and research, interviewing, counselling, negotiation, drafting, writing and creating(!). They further point to the fact that these skills are only nominally legal in as far as they are contexturally related to law/lawyers/the legal system and therefore hold something in common with Twining's common skills set (Twining, 1989). Finally, attitudes relate to the "affective domain" (of emotions) of values, interests, and feelings, reiterated as personal attitudes towards people, groups, things and situations, and also involving a large element of "acting professionally responsible" (Gold later expands this) and having such outcomes as "tolerance", "objectivity", "initiative", and "compassion".

The process of "systematic instructional design" by which 'exact' skills have been distilled by Kilcoyne and Gold is relatively complex and involved. The five stages of analysis mentioned at the outset are followed in sequence. Identified tasks are broken down into sub-tasks and flow charted, giving a defined series of discrete actions which may be taught independently. A group of qualified individuals then assess what personal capabilities are necessary successfully to complete each task/sub-task. These are then allocated between the three domains of knowledge, skills and attitudes, and ranked according to the stage of training at which performance might be expected. Lowest ranked are those assumed entry level skills (e.g. reading, writing and recall), then pre-requisite skills (e.g. interviewing, negotiation, counselling, research and analysis), and finally so-called master skills (e.g. the nine needed for drafting), each of which may be further disassembled into sub-skills.

Theory has been put into practice with what has generally been recognised to be a high degree of success (since repeated elsewhere) in the professional legal training program (now course) at The University of Victoria, British Columbia, Canada. For the skills researcher, however, the outcome is Kilcoyne and Gold's master skills hierarchy. This states that certain skills are independent, whilst others lie within a dependent sequence. It indicates the order in which skills must be learned with basic skills necessary at the outset, then interpersonal skills, and finally legal and decision-making skills (or master skills). Ideally instruction should take the form of a presentation, practice and feedback loop with skills being related to the practice context in which it will be used. Skills hence form a framework for knowledge thereby thwarting, theoretically, memory erosion over time. An example being that one never forgets how to ride a bike, whilst the unstructured cramming before an exam has a very short memory life.

While no single definition of a skill has won universal acceptance amongst educational psychologists, one can list the main features which are seen to characterise skilled behaviour. Karl Mackie (1987a, 1987b, 1988) conceptualises "a skilled behaviour" as being:

*goal-directed*; behaviour which is directed towards achieving a desired result rather than being a product of chance or accident

*learned*; built up gradually through practice rather than being reflexive or instinctive

involving *co-ordinated activity that is responsive to environment* i.e. choices, actions and reactions

involving a *repertoire of 'micro-skills'* and

demonstrating a *transition from learning to accomplishment* accompanied by a *shift to intuitive levels of response for 'micro-skills' elements*.

Mackie provides an analysis of the psychological and educational thinking on the subject of the teaching of lawyer skills, asking such questions as: What is a skill? How do skills relate to transactions? What are the significant links? In a brief introduction to the concept of skill in the psychology of learning he finds "the essential element of a skill is the ability to make and implement an effective sequence of choices so as to achieve a desired objective". Reference to 'skills' can be justified in educational terms as it focuses attention on behaviour, emphasises the essential role of practice and implies an idea of patterns of response, the need to draw on a variety of skills to accomplish a single task. This can belie the fact that 'skill' is not a precise term but rather represents "a convenient linguistic tool" and whilst for legal educators the constant need to grapple with "a continuum of practical expertise" can be avoided it remains implicit and must not be forgotten. Despite some resistance at the more abstract end of "the spectrum of skills" to any association with lawyers 'art', 'intuition' or 'creativity', there is still value to be gained.

Both researchers and practitioners involved with skills training are hampered by the lack of a common shared vocabulary. Mackie suggests that when talking of lawyers' skills we are typically referring to a "congerie of techniques of varying complexity directed to performing a particular task or series of tasks, an 'operation', to an acceptable level of performance i.e. skilfully". The complexity and interdependence of human skills allows room for a number of alternative teaching approaches ranging from the intuitive or holistic to that of 'systematic instructional design'. The former combines a sense of art and unity whilst the latter articulates in terms of 'micro-skills' and seriality.

In sum, we have seen that the notion of skill suggests a learned competence, proficiency or expertise in an area. Initial interest amongst psychologists centred on the study of 'perceptual-motor' skills (e.g. typing, driving). The analysis of such skills provides a helpful analogy by which skills in more complex areas of human behaviour might be studied (e.g. intellectual skills such as problem-solving, reasoning, social or communication skills, interviewing, negotiation). The psychological approach emphasises that much human behaviour is learned, as opposed to being attributable to predetermined genetic or personality factors. It also provides a framework for analysing the processes involved in this learning and behaviour - and has been taken to a fairly complex form by Gold and Mackie.

We can now turn to the more inductive attempts to look at skills in laying the analysis of lawyers' practice, rather than through deductive reasoning from psychological propositions. Johnston and Shapland (1990) approached the question of skills with a particular group in mind; pupils and junior barristers, and with a specific intention; the development of a practically based training course. Initially this involved identifying the skills vital to the pupil or newly called barrister in their first few years of practice. Or, as they put it, identifying "the basic skills which are required for competent practice over a range of different areas of the law and which are needed by the practitioner to apply his or her legal knowledge to the particular problems of the client in the relevant fora". Indeed the very "essence of training as a practitioner in a profession is...acquiring these skills and being able to apply them successfully".

Johnston and Shapland (1990), in conjunction with those developing the new vocational course at the Council for Legal Education, examined the main types of work done at the Bar through interviews and questionnaires to young barristers of four years of call and below and produced a list of the main skills which reflects this practice. The resulting list was then compared against the actual workload of the junior Bar. As a final measure, the researchers sought to acquire input from the junior Bar itself as to the process of acquiring these skills and the difficulties faced in order to distinguish the specific skills relevant to barristers from the more general or academic skills.

The relatively informal method by which a taxonomy of skills was arrived at lent itself suitably to the educational endeavour, but was however, open to a degree of subjectivity. First, senior professionals were asked what skills were required for successful practice. This tended to result in a list of personality attributes and characteristics of good practice rather than specific skills as such. The problem lay in the fact that "barristers do not talk in terms of skills, but of legal procedures". The concept of a skill proved elusive as these complex activities, when reduced to smaller stages, were still "descriptions of activities" and required translation into the skills necessary for their successful completion. Hence the adoption of a rather pragmatic approach that shared much in common with the ideas of Gold et al (1989). Johnston and Shapland asked barristers how they would approach specified tasks in different fields of practice and "talked them through" what they would do and why. In the company of a competent practitioner they thus "unpicked each part and translated it into skills".

The resultant list was rationalised and a distinction drawn between high and low order skills i.e. the steps and the stairs. The skills were further grouped into main skills, practice support skills, people skills and adaptability skills. The main skills involved assimilating information, identifying errors, formulating strategies, interviewing, negotiating, preparing logical and persuasive arguments, drafting/writing and finally the construction and giving of a spoken account. Practice support skills included keeping adequate records/accounts, informing others, familiarisation with office technology and updating ones knowledge. People skills involved appropriate professional conduct, efficient telephone communication, preparing clients, informing and advising them, coping with distress in others, dealing with office relations and in some cases teaching pupils. Adaptability skills involved 'thinking on ones feet', an immediate mental flexibility involving elements of timing, keen observation and even mimicry. This was to be coupled with a longer term ability to adjust, involving keeping informed, networking, and encouraging a co-operative climate. Each of the four areas of skills was not to be thought of as separate, but rather as overlays on each other. So, for example, drafting would not simply be effective drafting, but must be accompanied by the ability to set the drafted document out on a computer, address it to the correct addressee and modified it if necessary for different courts.

Hence, central to barristers' own views of what it is that they do is the application of legal knowledge, be it substantive or procedural, to an individual client's situation. An apparent distinction was made between the 'core' skills of advocacy and drafting, as opposed to support skills made up of techniques and abilities. This gives a flavour of the professions' own view of themselves, which incidentally was reinforced by Lord Mackay in the introduction to Blackwell's 1992 guide. The work of Johnston and Shapland (1990) in defining the areas of work carried out by barristers and the skills required to accomplish these tasks paved the way for the new vocational course for barristers at the Council for Legal Education. In a very practical sense this work represented the first step towards specifying what it is exactly that lawyers do - a question that many researchers have asked with reference to solicitors (Abel, 1988) but few have fully addressed. Indeed, Shapland and Johnston concluded that:

there is no agreement on a typology of skills for any type of lawyer within the literature. There is certainly no empirically researched and accepted set of skills known for the Bar. We believe that the concentration on typologies in the literature has led to an amount of rather semantic bickering. At the current state of development, and with the lack of empirical and rigorous research, we do not feel that the right task is to spend much effort to produce a perfect list, which is complete and which shows all the right skills and assigns them to different levels" (1990, pp70-71).

The Law Society followed suit in commissioning two sets of research to identify the skills used by solicitors and to evaluate various methods of enquiry (Sherr, 1991a). A further study took these findings into the field to assist in defining the standards of competence required for qualifying solicitors (Economides and Smallcombe, 1991). Sherr's study examined three methods of determining what entry-level solicitors do: observation, a self-assessment and reviewing the work done in terms of files and time spent on various tasks. Economides and Smallcombe's study adopted the observation method to examine the skills used by and the tasks that were assigned to training

solicitors in 30 firms of varying size in Bristol, London and Bath. The main conclusions of the study were that trainees generally lacked skills in administration and management. Specific skills felt to be lacking by over half of trainees were general drafting and advocacy. A substantial minority felt that they could have received better training in interviewing technique. Beyond these course-aimed conclusions, the researchers found that trainees spent their days involved in the following tasks:

information extraction	37%
administration	28%
written and verbal communication	25%
other or time unaccounted for	10%

The results clearly showed that differences in the size of firms necessarily meant different tasks for trainee solicitors. For example, trainees in smaller firms tended to spend a far greater amount of time on practical work, court work and interviewing than those in the bigger firms, who tended to spend much of their training on research, proof-reading and the compilation of data. The necessary skills or competences were divided into six components:

- knowledge
- intellectual ability
- interpersonal competence
- administrative ability
- professional responsibility
- personal attributes

Interestingly, these skill categories diverge from the triumvirate of knowledge, skills and attitudes used by Gold et al (1989) and replace legal skills with intellectual abilities and interpersonal competence. Fitzgerald (1994) provides a clear synopsis of the methodological detail of this and other studies that represent the state of current research on lawyer competence. It should be remembered that the studies carried out by the Law Society provided the basis for the Legal Practice Course introduced in 1993 and, therefore, specifically focused on educational criteria. It also represents the

first concrete attempt to elucidate what it is that trainee solicitors do and as such warrants further examination. I therefore propose to look in greater detail at the definition of skills used and the development of their ideas in relation to the work of junior solicitors.

Kim Economides and Jeff Smallcombe (1991) observed trainee solicitors and the work that they did. They also questioned trainees and examined the files that they work on. They began by defining a 'task' as a piece of work performed and a 'skill' as an ability to execute a task. This is pure tautology. Such a definition is further problematic because the task is seen as relating to the skill in a one to one relationship, whilst in fact a task may involve numerous skills/micro-skills. Indeed the effect of two cocktails might be identical whilst the ingredients may vary quite considerably.

The idea of 'transferability' skills as used in effect means the skill would be used in more than one task. This is a very limited definition as all skills can be considered transferable if reduced to the level of their micro-skill elements. What Economides and Smallcombe refer to as 'composite' skills one might redefine as skills that did not fit neatly into their design. As for personal attributes including such elements as demeanour and persona, this is very much an ambiguous, almost a throwaway concept. It is unclear what exactly is meant by it and, as they are not considered within the learning equation, one must assume that they constitute a given, perhaps genetic but certainly fixed quantity. In effect, the components of competence that are developed can be reduced to a knowledge of law in the substantive sense, a number of latent skills in terms of common usage, and a variety of relevant personal attributes which trainees either do or do not possess. All three are interwoven in Economides and Smallcombe's conception of vocational legal training and there is questionable word use and meaning. For example, the ability to organise oneself, one's time and one's work is classed as a personal attribute, when clearly it is an ability, a competence or a skill. Methodologically, there must also be a question mark over their use of a task-analysis approach naming and grouping tasks then retrospectively identifying the skills used in accomplishing these tasks. Since the introduction of the Legal Practice Course and other more recent developments in vocational legal

education (see the previous section), the question of what exactly it is that solicitors do and how skills can be conceptualised and theorised has attracted substantially more research interest (Jones, 1994; ACLEC, 1996; Webb and Maughan, 1996b). There has also been renewed interest in reinterpreting cognitive theories and the work of educationalists to the specific situation of legal training. These most recent developments will now be addressed.

### **Recent developments around legal skills and the competences debate**

The impetus for much of the recent work in the United Kingdom stems from a wider competences debate the origins of which are clearly outlined by Phil Jones in *Competences, Learning Outcomes and Legal Education* (Jones, 1994) and have been reflected in the Lord Chancellor's Committee on Legal Education and Conduct's *First Report on Legal Education and Training* (ACLEC, 1996). Some of the educational implications of these changes have been addressed elsewhere (see previous section), however, the underlying conceptual shift from an emphasis on knowledge to one on skills, competences, abilities and capabilities, and from an emphasis on theory to one on practice demand attention. As Jones puts it:

“These changes are dramatic and the consequences of change may be profound. Students will be assessed on their ability to complete the steps and procedures involved in certain key transactions and on their ability to perform a range of lawyers' skills. They will be assessed as 'competent' to move on to the next stage of legal education; supervised practice within ... a Training Contract” (Jones, 1994, pp3).

This quotation betrays certain implicit aspects of the current renewed interest in legal skills. Such interest is primarily focused on the vocational stage of training although the Professional Skills Course has also attracted some attention. The vast majority of the work is again from an educational perspective and focuses on assessment and outcomes, tasks, transactions and performance. This has led to renewed concerns of under-theorisation (MacFarlane, 1992; Webb, 1996). Although I do not propose to

examine the “tensions within the model of competence based education developed by the National Centre for Vocational Qualifications” (Jones, 1994), I will draw attention to some of the misgivings which also relate to the current approach to the Training Contract stage of legal education. There is a concern reflected in the earlier debate around the value and purpose of a liberal education in law that an emphasis on competences and performance “understates the need for knowledge, conceptual understanding and personal development”. A functional analysis which “focuses not on particular tasks but the activities performed in an occupational role” not only underplays the role of implicit knowledge but places a stress on the control of organisations for examples and situations -both in the sense that law firms will be able to exert greater control and that current practices will tend to dominate - i.e. turning the work place into an active classroom. This mirrors Illich’s broader criticism of the technologisation of learning creating a global classroom and life-long learning (Illich and Verne, 1976). “The standard methodology is atomistic ... and neglects the holistic dimensions of human behaviour”. It further “implies that human performance can be objectively measured” (Jones, 1994). Core skills can often become life skills and the reliance on personal competencies or “the intrinsic quality or innate ability of a performer” can lead to an ideal type or “superman”, when in reality we operate in a state of only partial knowledge about best practice, particularly in relation to expertise. This can be supported by anecdotal evidence that different solution makers often have very different abilities which may be situation specific - Churchill made an excellent *wartime* prime minister. Interesting work has been done on modelling expert practitioners drawing on the techniques of neuro-linguistic programming (Kershner and McDermott, 1992) and by comparison with the problem-solving techniques of chess masters (Blasi, 1993). Whilst this does not relate directly to the experiences of trainees, it provides evidence of the inability of expert practitioners to verbalise what it is that they do and also questions the level of competency often inherent within a skills approach - adequacy or expertise? This is a question which relates to the profession’s myth of uniform competence addressed in the subsequent section.

We have seen that professional legal education and legal skills have moved away from the knowledge-based, teacher-centred approach, what Twining (1994) refers to as “a

neutral expository, descriptive science of law” or what Webb (1996) succinctly calls “teaching as telling”, which emphasises the transmission of information. It is this approach that is still characteristic of many undergraduate law courses. The shift has been in the direction of more active methods of learning. Beyond this there have been calls to “rethink the epistemological basis of our teaching ... to view it as a reflexive and context-related activity” (Webb, 1996). These centre around the notions of theory in practice and the reflective practitioner in the highly influential writings of Donald Schön (1983; 1987).

“The modern society is reaching for other definitions of knowledge. Notions of skill, vocationalism, transferability, competence, outcomes, experiential learning, capabilities, enterprise, when taken together, are indications that traditional definitions of knowledge are felt to be inadequate for meeting the systems-wide problems faced by contemporary society. Whereas those traditional definitions of knowledge have emphasised language, especially through writing, an open process of communication, and formal and discipline-bound conventions, the new terminology urges higher education to allow the term ‘knowledge’ to embrace knowledge-through-action, particular outcomes of a learning transaction, and transdisciplinary forms of skill” (Barnett, 1994, pp71).

This quotation serves to return talk of skills to its epistemological basis within the conceptions of knowledge with which we began this section, and to re-situate the debate within the process of learning rather than teaching, a process that is central to the matter of this study. It is not sufficient to say that:

“the reality of the profession is a reflection of the values of the educational process through which all its members have passed. It would be hard to say which came first; what is clear is that the values and ethos of the present profession

are mirrored to a large extent in legal education” (Jeeves and MacFarlane, 1986, pp396).

For whilst this may be true (see section on the profession), becoming a professional is, in our view, accomplished through the learning of the trainee rather than by the formal structure of training per se. I propose to round this section off by addressing some of the most current ideas on the learning of trainees before raising a number of specific research questions.

### **The process of learning for trainee solicitors**

There are a number of theories of learning that are examined more broadly in the final theory section in relation to the socialisation of trainee solicitors. Here I propose to apply some of the ideas from cognitive theories of learning and the work of Piaget (1973), Kolb (1984), Vygotsky (1962), Bloch (1982), Schön (1983) and Eraut (1994) to the learning experiences of trainee solicitors.

Cognitive theorists, in contrast to say behavioural learning theorists, examine the mental experience of learning and situate the learner as an active participant within their learning process - “active in the sense of being anticipatory, selective and constructive” (Tomlinson, 1981, pp31). The prolific writings of Jean Piaget (1932) have had a significant influence on cognitive and moral development theory. He was interested in the cognitive and moral development of children, how they received, interpreted and stored information or sensory data in terms of sense making models or “schemata”. Schemata represent theoretical constructs of prototypical knowledge structures or working theories of practice which are continually adapted and modified through processes of assimilation and accommodation (see also section on socialisation). The essential idea is that “the simple perception of experience is not enough. Something must be done with it” (Kolb, 1984). Kolb adapts the concrete and abstract cognitive stages of Piaget in describing “experience-based learning as the dialectic between concrete experimentation on the one hand and abstract conceptualisation on the other ... a cyclical process of experience and reflection” (MacFarlane, 1992). Vygotsky (1978) further situates the learning within the context of significant others, be they parent, teacher or friends, and the environment such as

home or school. He uses the term "zone of proximal development" to emphasise the mediating role of others and the importance of the context of learning in the realisation of a learner's potential. Bloch (1982) relates these ideas to andragogy or adult learning and stresses the self-directed nature of adult learning, drawing on accumulated knowledge and relating to practical, "real" tasks i.e. immediately relevant to the learner. Emphasis is also placed upon the high motivational aspect in adult learning relating levels of confidence to levels of competence (Mackie, 1981). To summarise, this brief exposition of ideas highlights certain aspects of the learning experience for trainee solicitors as adults involved in professional training. They operate in an uncertain learning environment, and professional work environment, by means of cognitive schemata which attempt to relate new knowledge and "ways of doing things" to previous models by pattern searching. All learning is strongly mediated via the training supervisor, the training structure and the firm's learning culture. There are three further aspects of this proposition that I wish to explore further. These relate to the situated nature of cognitive learning (Brown et al, 1989), the problem-solving basis of cognitive schemata (Blasi, 1993) and the reflective nature of professional education (Jones, 1996).

Brown, Allan and Duguid (1989) state that "many teaching practices implicitly assume that conceptual knowledge can be abstracted from the situations in which it is learned and used. ... knowledge is situated, being part a product of the activity, context, and culture in which it is developed and used". They attempt to bridge the gap between learning and use expressed by the concepts of know-what and know-how. A conception of knowledge as formal, abstract and decontextualised ignores the role of the situation in "co-producing" knowledge through activity and is in danger of defeating its very aim of providing useable and robust knowledge. Their argument adopts a linguistic parallel with indexical words. Indexical words are words which take their meaning from their context such as I, now, here and tomorrow. "Experienced readers implicitly understand that words are situated. They, therefore, ask for the rest of the sentence or the context before committing themselves to an interpretation of a word". Similarly, knowledge, or more precisely, understanding is contextual and conditional. It is context-dependent and relates to the situation in which it was learned. Concepts, like our understanding of words, are continually

under construction. Learners develop an implicit understanding of words and concepts through use, however, as has been mentioned, it is not always possible to make such understanding explicit. This has implications for the transmission of concepts:

“knowledge ... can only be fully understood through use, and using them entails both changing the user’s view of the world and adopting the belief system of the culture in which they are used ... thus in a significant way, learning is, we believe, a process of enculturation” (Brown et al, 1989, pp33).

This has enormous implications for conventional education in which concepts are learned within a particular culture, be it a school or university, which is not *authentic* to the conceptual knowledge being imparted. The understanding gained is, therefore, not readily transferable to other contexts and the skills developed are specifically based on educational, artificial, criterion. The implications for professional education and training are that no formal training outside of the practice environment can hope to approximate the actual intuitive learning environment of the work place in terms of, for example, the depth of non-verbal behaviour of participants, the genuine emotive content of activity or the implicit rules of conduct. A solution is suggested in the form of “cognitive apprenticeship” whereby a mentor coaches a novice in the practice of the art of lawyering, in the context of the genuine activity of lawyering. This acknowledges the social construction of knowledge. Any attempt to make knowledge explicit through conceptual representations of what is essentially implicit understanding is equivalent to teaching a foreign language through formal structure (grammar) in the native tongue and in the home country - a poor substitute for concentrated, structured immersion in the actuality and rich culture of a foreign country (see Hall, 1976).

In a paper presented to the Third International Conference on Lawyers and Lawyering at Lake Windemere in July 1993, Gary Blasi outlined the cognitive differences between what novice and expert lawyers know. He offered a heuristic picture of lawyering as problem-solving based on pattern-matching, the use of

schemata, scripts and frames, mental models and situational models. I propose to offer a brief overview of some of the most salient points.

Blasi suggests that commonly expertise is equated with experience, the greater the experience the better the judgement. This need not necessarily be the case (Sherr, 1993). "The passage of time alone does not produce expert lawyers: Some lawyers seem to get better with age, while some merely get older" (Blasi, 1993). Blasi presents lawyering as principally entailing problem solving. Attempts at what he terms "the analysis of verbal 'think-aloud' protocols" from expert lawyers are notoriously unreliable, however, he elicits certain indications as to their "cognitive apparatus and expertise" from these. "What makes an expert is not the quantity of his or her detailed knowledge, but the quality of its organisation ... structured knowledge representations that make this pattern-recognition possible" i.e. schemata.

Effectively, he suggests that in more complex or uncertain situations experts construct mental models that they are able to "run in simulation" in order to evaluate the likely consequences of alternative course of action. How then do experts acquire these schemata? It should be noted that this relates to others' subsequent ideas relating to reflective practice in that it examines how people appropriate theory and knowledge, in the formal sense, into their own personal cognitive structure through experiential learning.

As I indicated above, Blasi focuses on problem solving. "Lawyering means problem-solving. Problem-solving involves perceiving that the world we would like varies from the world as it is and trying to move the world in the desired direction" (Lopez cited in Blasi, 1993). While this overstates the proposition it certainly captures a central element of lawyering, namely, solving clients legal problems. Blasi therefore addressed problem-solving theories. These typically include heuristic searches entailing means-ends analysis and subgoaling, lists of procedures or propositions, flow charts, decision trees or game trees. However, these tend to reflect means of teaching problem-solving explicitly rather than reflecting the inherent nature of expert problem-solving. Here Blasi introduces the notion of an expert as someone who has a highly organised knowledge of the subject matter from which they are able to draw the solution to problems - often apparently effortlessly as if by magic. Work with

chess players (Chase and Simon, 1973) suggests that "chess masters have through their experience in chess play developed an internal vocabulary containing larger structured patterns of information. What appears to a novice to be a huge number of small patterns of board positions is to the master a much smaller number of much larger patterns". It has long been known that individuals are only able to retain on average seven individual and unrelated items of non-sense (Miller, 1962). This finding relating to pattern recognition only holds true if the chess board represents an actual game. An extension of schema theory goes beyond such a static categorisation of objects and events by offering 'scripts' as a means of relating events i.e. a schema with a time dimension. However, with complex problems or situations, even scripts lack flexibility as conceptions of internal representations, as they are unilinear. A more versatile conception integrates scripts and schemata into an idealised mental model or situational model which can be run with a variety of values to assess and predict future actions. Blasi argues that the acquisition of a large repertoire of well constructed models coupled with possible solution scripts enables expert practitioners quickly to identify deep problem structure (while novices may be distracted by irrelevant surface features) and routinely, almost automatically provides the solution. The use of such template diagnoses may also leave the conscious mind free to forward plan, work laterally or otherwise enhance the solution. It is only when this schematic knowledge fails to produce a match that the expert retreats to slower methods of reasoned problem solving. Support for this conceptualisation is provided by the inability of experts to verbalise these complex models which, to a large extent, have become internalised, sub-conscious and implicit. The phenomenon of practised individuals leaping to solutions before the problem had been fully presented is in tune with this idea, in that it suggests that sufficient elements (e.g. symptoms) matched the model to enable diagnosis.

Hence "expertise consists mainly in the ability to recognise deep patterns in complex situations, and entails the use of schemas and mental models". Experience plays a central, although not necessarily a productive, part in the development of expertise. As has previously been stated, "experience is mediated by the internalised effects not only of past individual experience but also of the partially communicated experiences of others, and of culture, theory, language, philosophy, ideology, situation, viewpoint

and desire” (Blasi, 1993). This links directly to the richly impressionistic work of Donald Schön describing the practitioner’s reflection-in-action, reflection-on-action, and their ongoing “conversation with the situation” (Schön, 1983).

“The idea of reflective practice and the concept of the reflective practitioner have emerged as key terms in debates about the future of professional education. They have immediate appeal, providing an image of the open-minded professional who stands back and thinks both before and after acting. The reflective practitioner is thoughtful, wise and contemplative, not just ‘skilful’ or ‘competent’ but one whose work involves intuition, insight and ‘artistry’. The reflective practitioner works not just in the world of predefined rules and checklists, and is not just a technically proficient problem solver. He or she works instead with a repertoire of richly refined exemplars, constantly framing and reframing a problem, testing out interpretations of the problem and reviewing his or her interventions at the very moment of action” (Jones, 1996, pp291).

Jones contrasts this evocative distillation of the ideas of Schön against the traditional form of professional education based on the apprenticeship model. Although altered and regulated the Training Contract shares much in common with the ethos if not the practice of the original articles of apprenticeship. Under ideal circumstances one might envisage an approximation to the cognitive apprenticeship of Brown et al (1989) or the *reflective practicum* of Schön (1987), where a trainee is provided with a carefully selected, well structured (in terms of their learning) variety of work coupled with the “experience, observation, guidance and inspiration” or coaching of a master solicitor. In the reality of a busy solicitor’s practice this is likely to remain, at best, an ideal to which both trainee and trainer aspire. The Training Contract may provide invaluable direct experience of legal practice in context; it is, however, variable, to what extent this is structured as a learning process. Schön’s work

recognises the emphasis on lifelong learning from experiential learning theory and situates professional learning within *practicum* or trainee-trainer-firm nexus.

Excellent critical accounts of Schön's writings have been provided by other commentators (Jones, 1996; Webb, 1996; Winter, 1996). It is not my intention to offer a definitive recapitulation here. Given Schön's enormous influence on contemporary thought around professional knowledge, skills and education it is, however, appropriate to distinguish some of his central concepts. Knowing-in-action represents the implicit understanding or tacit knowledge that professionals rely on when making judgements or engaged in skilled activity.

"Reflection-in-action is central to this process. It is the process that arises when people, stimulated by surprise, turn thought back on action and on the knowing that is implicit in action. As the professional works on a problem, something puzzling, troubling or interesting will prompt reflections on the understandings which are implicit in the action, understandings which the professional brings to the surface, criticises, restructures and embodies in further action" (Schön, 1983, pp50).

This draws on the same ideas from cognitive theory that Blasi's work does, relating to the feeling a practitioner develops through the use of schemata, scripts and models or 'sets', 'frames' and 'constructs'. The professional is thus able to situate the uncertain and hectic nature of problems arising from professional practice within a continuum of structured experience. Jones identifies a number of problems behind the powerful Schönian rhetoric. The first of these is a question of the relationship between public knowledge and personal knowledge, professional growth and personal development. Reflection implies a continual harmonious growth which is rarely reflected in practice. There are also epistemological ambiguities again relating to dramatic but somewhat false dichotomies. As Jones (citing Selman, 1988) argues, following a constructivist epistemology, "if all human action involves design, creation and construction, then these are not the distinctive processes that characterise professional action: they are the processes common to all forms of human action".

There are also ambiguities in distinguishing between reflection-in-action and reflection-on-action in terms of the degree of conscious introspection and the timing of such reflection in relation to the 'discrete' action which lead Jones to suggest the missing dimension in Schön's analysis is "the time-frame within which practitioners are engaged in a task" or the "performance period" (Eraut, 1994). In summary, Schön's analysis provides:

"too stark an opposition between formal knowledge and academic knowledge and tacit knowledge; it constructs reflection-in-action as the paradigmatic form of practical reasoning, when it is best seen as one form of practical reasoning; and it constructs an argument for an approach to professional education in general from an analysis of the narratives of experts in a particular professional domain" (Jones, 1996, pp306).

These criticisms are mirrored in Eraut's exposition of Schön's work (1993) where he avoids some of the ambiguity relating to the term reflection either in or on action by substituting the term metacognition. The distinction becomes one between deliberation, which might include such activities as reframing and reflective conversations with the situation, and metacognition, what I would call introspection on the processes of deliberation. In effect we have the thinking while doing and the thinking about the thinking and doing. An important aspect of Eraut's work stresses the central importance of time and speed in professional work, as he says "daily talk among many professionals suggests that deliberation may be more the exception than the rule". If we then include the additional uncertainty experienced by trainees as newcomers to the professional scene we recognise the importance of what Kershen and McDermott (1992) call "thinking on your feet". An accurate picture of trainees in practice may in reality have little to do with the calm and assured reflective practitioner sketched by Jones. Indeed, if the commonly held impression of trainees daily practice is correct, then many experience extended periods of low activity interspersed with short bouts of hyper-activity. Such circumstances would call for very different abilities and techniques such as coping strategies which hold

implications for the process of learning. These implications and others from this section are summarised below in the form of research questions taken into the field.

### **Research questions**

The paucity of empirical research on solicitors in practice leaves a vast number of questions to be asked. Despite the introduction of the Legal Practice Course, the Professional Skills Course and the tighter regulation of Training Contracts we still have very little idea of what it is that trainees actually do. These are questions that will be addressed in relation to the form and structure of training in the previous section. The questions in this section are equally vast they relate to how trainees accomplish the work that they do and specifically, what are the skills and knowledge that they bring to bear in so doing. The work of Sherr (1991a), Economides and Smallcombe (1991) and the growing body of literature on professional skills suggests a core set of professional skills common to all solicitors. To what extent is this true for trainees? There is also an implication in much of the writing of legal educationalists that knowledge and skills develop incrementally. To what extent is this an accurate reflection of trainees' experience? Under an ideal form of the apprenticeship system and within the model of cognitive coaching it is suggested that trainees learn through a gradual process of enculturation. Is it possible to discern a stage by stage process of learning and can this be seen in the quantity and quality of the work 'fed' to trainees?

Thirdly, central to virtually all theories of cognitive development and experiential learning is the value of reflection. Such reflection may take the form of deliberation on the task in hand, which may mean that it takes the trainees longer to complete than it would for an adept performer. Reflection may also take place after the event or on the wider experiences of training. Are trainees allowed the time and space for such reflection and do they feel that they need it? Finally, there has been the recurrent role of trainee's confidence, both in the overall enculturation process and in the specific development of competence. To what extent are trainees able to recognise these aspects of their own growth?

### 3.3 Professions and Professionalism

Previous sections have dealt with legal education and professional training, legal knowledge and professional skills. The overall focus of the study is on the entry of law students into the legal profession via the Training Contract. It is curious then, that there is continued uncertainty in both a general and specific sense about what exactly it is that trainees are joining - what is a profession and to what extent is it appropriate to talk of *the* solicitors' profession? The first of these questions has been under academic debate for a century or more and lies at the heart of the sociology of professions. This debate is addressed, firstly by restructuring the early contributions according to their approaches, and secondly, by picking up some of the elements of these theories and relating them to debates surrounding the solicitors' profession. This is supplemented with reference to more recent contributions, particularly those more directly relating to the solicitors' profession. The second of these debates brings in the question of a unitary solicitors' profession in relation to concepts such as the fracturing of the profession (Glasser, 1990), deprofessionalisation (Haug, 1973), prolaterianisation (Oppenheimer, 1973), increased specialisation (Shapland and Allaker, 1994) and globalisation (Flood, 1993) with the advent of multi-disciplinary and multi-national practices. In conclusion, this section draws together elements and themes in relation to trainee solicitors and addresses them specifically towards the research in hand.

The title of this chapter reflects both the structure and the nature of the content in two ways. The term 'professions' evokes traditional, and rather dusty, conceptions of formal education, esoteric knowledge, status and control, whilst 'professionalism' is a far more dynamic term that leads one to think of professional training, skilled activity and ethical conduct. These are dual themes which will be developed in the following sections. The underlying duality throughout all of these theory sections is a shift from the static or structural to the dynamic or process-based. In this particular section the duality also mirrors a division in the content of the section. Initially, all professions will be addressed, including the various approaches that have been adopted to the study of the professions, the possibility of defining professions and an

overview of the literature on the sociology of the professions. This first half of the section represents, as it were, the *pure* theoretical approach to the subject matter. The section addresses professions generally and in a rather academic fashion. The remainder of the section represents the *applied* theoretical approach. Here the theoretical ideas suggested in the first half of the chapter are situated and contextualised. They are also more specifically focused on the solicitors' profession in England and Wales and made relevant where possible to the experiences of trainee solicitors. The *pure* theory section ends with a modified conception of the professional project. In the *applied* theory section this conception is situated historically through a brief examination of the development of the solicitors' profession and the activities of its professional body, the Law Society. This is further brought up to date with reference to current social and political changes by introducing a modified conception of status and jurisdiction. In effect, this broadens the scope of the professional project beyond primarily economic pursuits by incorporating the idea of a collective status strategy (Burrage, 1996). Finally, the theoretical focus is specifically applied to the attitudes and activities of individuals - namely trainee solicitors - and the implications for the present study are stated.

It is both illustrative and illuminating to examine the way in which previous authors have approached the subject of the professions. Typically, they have adopted one of three approaches. The inclusive approach attempts an overall definition of professions from either a common usage perspective (e.g. Larson, 1977) or a semantic perspective (e.g. Freidson, 1986). The most common approach is to engage the on-going debate directly by addressing the work of previous authors, which usually involves a re-categorisation either theoretically-based (e.g. Abel, 1988) or substantively-based (e.g. Witz, 1992) or both (e.g. MacDonald, 1995). The final approach has tended to re-define the entire debate by shifting perspective - such as from professions to professionalisation (e.g. Vollmer and Mills, 1966). In an attempt to unify discussion I propose to adopt all three of the approaches in turn before fully engaging the specific subject matter relevant to this research. This may, at first sight, appear to be slightly perverse, however, it will serve to align the current research with previous contributions, provide an overview of these contributions and triangulate in

on the most relevant contributions without uprooting them from their broader theoretical context.

It would seem appropriate to begin with a brief examination of the term profession - its history, usage and semantic development. This is followed by a commentary on the definitional debate generally. This narrative style is continued in a brief recapitulation of the sociology of professions from its beginnings in the early 1900s through what Freidson (1994) has termed the early post-war period, the critical period and into the emerging comparative approach or what, from a reading of Collins (1990a), one might call the preliminary period, the classic period and the revisionist period. He also proposes that the academic community are now entering a post-revisionist period which is characterised by historical and comparative analyses. While I will adhere to a chronological account of the contribution to the debate around professions I shall make comment on these categorisations as well as the common theoretical and historical division into schools of thought based on the three giants of sociology Durkheim, Marx and Weber. This ends what I earlier referred to as the pure theoretical half of the section. The applied theoretical section begins by addressing various debates within the sociology of professions. These include questioning whether professions are in decline, whether the professional ethos is giving place to a new managerial ethos in relation to the increasing numbers of employed solicitors, a relaxation of restrictions on advertising and the growth of multi-national and multi-disciplinary practices and ends by revisiting the debates around education and credentialism and knowledge and power. The section then ends where arguably it might have begun - with an outline of the extant solicitors' profession in England and Wales and a series of theoretical implication for the study as a whole.

### **A semantic definition of "profession"**

I here propose to examine the history, usage and semantic development of the term profession and the associated terms profession, professional, professionally, professionalise, professionalism and professionalisation. This has been attempted elsewhere (Freidson, 1986). Despite the length of the following discussion and a certain degree of unavoidable repetition in addressing a variety of closely associated

and overlapping terms, it is both essential and enlightening to do this in detail. Furthermore, it is my intention to examine patterns and developments in the common usage and dictionary definitions, as opposed to the definitions and re-definitions arising from academic debate in the sociology of professions, although limited mention is made of the latter to situate later discussion.

All of the above mentioned terms derive their original meaning from the term *profess*. The term *profess* derives from the French *profès* and the Latin *professus*. It had its earliest usage in Middle English and is thought to have taken its original meaning from the Latin verb *profiteri* "to declare aloud or publicly" (Little et al., 1987b). Originally the term was religious and referred to the taking of vows for a religious order but, with the increased secularisation of society the term developed other meanings such as "to lay claim to", "to declare oneself expert or proficient in", "to be duly qualified", or as "an avowal or expression of intention or purpose". Already we can begin to see some of the "contradictory connotations and denotations connected with the word" (Freidson, 1986). For example, to declare proficiency may imply a degree of insincerity. Within the debate around professions:

"professionals *profess*. They profess to know better than others the nature of certain matters, and to know better than their clients what ails them or their affairs. This is the essence of the professional idea and the professional claim. From it flow many consequences..." (Hughes, 1963, pp656)

What then is a *profession*? Its many meanings include the following:

"a public declaration, the act or fact of professing, as for profess... the occupation which one professes to be skilled in and to follow, a vocation in which a professed knowledge of some department of learning is used in its application to the affairs of others, or in the practice of an art founded upon it, applied specifically to the three learned professions of divinity, law and medicine; also to

the military profession. In a wider sense: Any calling or occupation by which a person habitually earns his living, the body of persons engaged in a calling" (Little et al., 1987b)

Freidson (1986) proposes profession and professional as more desirable terms than intelligentsia and intellectual, which he had previously offered, for identifying "the carriers of formal knowledge" because it specifically implies "a method of gaining a living while acting as an agent of formal knowledge ... differentiated into specialised occupations". There is an inherent contradiction that develops through common usage as the term, originally meaning religious and then university educated occupations which were originally almost exclusively the prerogative of the well born, becomes increasingly generalised. "Even as early as the sixteenth century the word profession could be used to mean either a very exclusive set of occupations or the exact opposite - any occupation at all" (Freidson, 1986). If we turn to the definitions offered in the academic literature we find innumerable attempts at containing this problem, however, each definition almost inevitably draws its meaning from the particular interpretation the commentator is attempting to develop. For example, Carr-Saunders claims that a profession:

"may perhaps be defined as an occupation based upon specialised intellectual study and training, the purpose of which is to supply skilled service or advice to others for a definite fee or salary" (Carr-Saunders, 1928, pp4).

If we examine the definitions offered by others adopting a similar approach we can see the central tenet of the structural-functionists or trait theorists emerging; a profession is:

"a vocation whose practice is founded upon an understanding of a theoretical structure of some department of learning or science" (Cogan, 1953, pp49)

"a professional group controls a body of expert knowledge which is applied to specialist tasks" (Elliot, 1972, pp11)

Vollmer and Mills (1966) suggest the use of the term profession as “an ideal type” but this did not resolve the thirty year tradition of further definition. This early debate concerning the definition and place of professions in society is often referred to as the traits approach, traits school or, when associated with the corpus of Talcott Parsons, the functionalists or structural-functionalists, and represents the starting point for an examination of the debate below.

Further ambiguities are introduced when we examine the common usage of the term *professional*:

“Pertaining to, proper to, or connected with a or one’s profession or calling, engaged in one of the learned or skilled professions” (Little et al., 1987)

This refers to someone that “follows an occupation as his or her profession, lifework, or means of livelihood” and specifically as applied to one who “follows, by way of profession, what is generally followed as a pastime” e.g. a professional sports person. It can also be applied disparagingly to one who “makes a trade” of something such as politics or who engages in an activity primarily, or for which the sole purpose is, to gain money e.g. professional gambler. A further distinction can be drawn between an amateur who “plays” at an activity, or pursues it for “love not money”. Similarly, “one who makes a profession or business of what is ordinarily followed as a pastime” hence *professionally*. Referring back to an earlier discussion about the purpose of a liberal education it is important to recognise the impact of an expansion in higher education and specialised vocational training which replaced the earlier notion that a graduate program was specifically *not* to train people in a pursuit from which a living might be expected. There is also the contradictory meanings of professional and amateur. Beyond the idea that there may be something sullied in the fact that the former is paid to perform whilst the latter does it for free, there is a contrast in the quality of service or performance. A professional or expert service implies a consistently high quality whilst an amateur may provide something of variable quality if they turn up at all. As Freidson puts it:

“the amateur is a dabbler at a mere pastime, a Sunday painter; the professional is dedicated to practice and refinement of his or her skill during the working days of the week and so seeks support for it. In this sense, the professional is an accomplished expert, a full-time specialist cultivating a particular kind of skill and activity” (Freidson, 1986, pp24).

This sense is further apparent in the dictionary definitions for the associated terms *professionalism* and *professionalise* respectively defined as:

“professional quality, character, method, or conduct; the stamp of a particular profession. The position of a professional as distinct from an amateur; the class of professionals. So professionalist, one who follows an occupation as a profession; a representative of professionalism” (Little et al., 1987)

“to render or become professional” (Little et al., 1987)

An examination of these terms extends the definition of professions as possessors of formal or esoteric knowledge and expert skill to include notions of honour, dignity, prestige and status. There is also a strongly implied sense of a process of collective social control over professional behaviour. An indication of this is provided in Freidson’s definition of professionalism as:

“commitment to professional ideals and career [as] expressed in attitudes, ideas and beliefs” he continues “operative professionalism is thus constituted by commitment to occupationally defined knowledge and technique and occupationally defined public service, to a particular occupation’s view of correct knowledge and ethicality” (Freidson, 1970, pp151-153).

These implicit notions re-emerge in subsequent discussion aligned to different conceptualisations of professions, professionalism and the professional project which will be addressed later. It should also be noted that these terms may be used in relation to an occupation or an individual. Here again, not surprisingly, there is no universal agreement among writers (Jarvis, 1983). Profession and professionalisation refer to the collectivity whilst professional and professionalism apply to a constituent individual. The term professionalise may refer to either and gives rise to the ambiguity surrounding the usage of the final term *professionalisation*. This is a term that is not in common usage and is not in my edition of the Shorter Oxford English Dictionary (Little et al., 1987), however, it can be taken to refer to the process by which an individual or more commonly, an occupational group achieves recognition as a professional group and all that this entails. A final warning regarding professions reminds us that:

“both the meaning of the term, and the occupations that might be described as professions, have changed over time, and members of professions have energetically propagated their own definitions of what they are, what they are doing and what it is that entitles them to be called a profession. The difficulties of the term are compounded when it is used in comparative analyses beyond the English-speaking world” (Burrage et al, 1990, pp204).

The term profession, and those associated terms, are historically and, to a certain point, nationally specific. It is not a scientific concept that is generalisable across a wide variety of settings. The peculiar Anglo-American form of professions is situated in both language and history, and represents a “folk concept” (Becker, 1970). Concepts like profession are socially defined, and vary in accepted popular content according to the success of groups in pursuing their occupational strategies. As Cain suggest, perhaps “a sociological definition of an occupation should be in terms of the specific practices of that occupation” (Cain, 1979). These are questions addressed in depth later. I now turn to consider some of the problems associated with seeking a definition of professions that has bedevilled the sociology of professions.

### **Words of caution regarding defining and analysing the professions**

One could write a voluminous tome on the problem of defining broad social concepts which have a variety of meanings in common usage and still be none the wiser. As we have seen, 'professions' is just such a concept; it has almost as many definitions as there are people seeking to define it. Paradoxically, it is enormously difficult to approach a subject without attempting at least some form of definition and yet any definition, be it operational, existential or metaphysical, offers as many problems as it does solutions. I propose to contain this problem by making a few initial statements regarding professions but make no claims of avoiding the definitional imperative that appears to afflict even the staunchest advocate of non-definition.

Professions are a form of occupation or job, which exist within a social, political and economic reality and alter over space and time, geographically and historically. Any attempt to delineate or define a profession would be precisely that, a definition of a specific profession in a specific place and time. Furthermore one's reasons for defining a profession necessarily colour the form of the definition itself, so it would be possible to go further and also implicate the precise experiences and political outlook of the commentator. A definition remains valid only so long as it is employed within its context. This may mean employing it only within its strict area of explanation as might be indicated by the terminology used - economic or social. Alternatively this may mean restricting its use to a specific level of explanation i.e. at the level of the individual or the society as a whole. Unless a definition is formally stated in this way it cannot usefully and validly be called upon. Even if professions are defined in a precisely specified way, such a definition will only be of use within those limitations and under those understandings. When dealing with a socially constructed or "people-made" concept one also runs the danger of falling-in with official interpretations or adopting the subject's own self-definition. So whilst the common rule remains, that one should start with a definition of one's subject matter, in effect such an exercise is fraught with such problems and short-comings as to make it of very limited value. Having thus undermined my endeavour I further propose to question the various approaches adopted in the debate surrounding professions.

The body of literature on professions has been approached in a variety of ways by different writers. Each has attempted to categorise the work of previous writers and the approach they adopted. In effect this has led to a variety of ways of categorising the debate as a whole. Each author has proposed a categorisation and, therefore, an interpretation of the work of previous writers in the field in relation to their interpretation, to substantiate it, whether by complement or contrast. This is a generally accepted method of approaching an area of study: a categorisation by main theorists, starting with the founding fathers and leading to an extension of their theories to the contemporary situation, followed by a chronological assessment of the contribution of each subsequent theorist.

Taken together this typifies the common approach to the literature on professions. A reverent nod to the acknowledged fathers of sociology Marx, Durkheim and Weber, is followed by a historical overview of the field. An outline of Carr-Saunders and Wilson's seminal work (1933) is followed by the series of developments or variations within the so-called "trait" theorists school; Caplow's stages theory (1954), Greenwood's continuum theory (1957), Millerson's recapitulation (1964) and the final wavering contribution by Elliot (1972). Other theorists have voiced criticisms of these definitional approaches most notably C. Wright Mills (1956). In line with Kuhn's theory of scientific revolutions (1970) a shift then occurred during the early 1970's from defining a profession to an examination of the process of professionalisation, as heralded by Johnson's *Power and Professions* (1972). Larson (1977) consolidated a service orientated approach in her adoption of economic terminology in examining professions as market definers and controllers. Apart from the important yet rather anachronistic contribution of Eliot Freidson (1970, 1986), beginning with his in-depth study of the medical profession, and also a brief empirically based criticism of Johnson by Maureen Cain (1983), we are brought up to date by the comprehensive historical contribution of Richard Abel in his exhaustively researched *The Legal Profession of England and Wales* (1988). In this he adopts rather whole-heartedly a Larsonian or what Abel himself terms a Weberian/neo-classical economic approach.

Rather than involve myself in yet another exhaustive recapitulation of this existing literature (see MacDonald, 1995) I propose to examine professions anew, making reference to others' work as and when appropriate. It is essential that we remember that professions are not "principally an economic activity" as Abel would have us believe, but primarily a human activity and that as such its common unit of explanation is the human individual. This is what makes it such a dynamic phenomenon. It is constructed of social, economic and also, very importantly, ideological agents. Having said this it is appropriate briefly to set further discussion in the context of previous contributions to the debate surrounding professions. For this reason I propose to sketch a brief outline of the early work in the sociology of professions before developing issues from the current debate in relation to trainee solicitors.

### **Contributions to the early debate surrounding professions**

It is not possible to place the beginning of the debate surrounding professions with any accuracy and indeed any attempt to do so would be both arbitrary and pointless. It would seem that an appropriate place at which to address the debate on professions is with the contributions of the central figures in the sociology of work and sociology more generally, namely, Marx, Durkheim and Weber. Depending on the commentator you read it would seem as if they each had a great deal to say about professions, or that they had virtually nothing of direct relevance to say. There are also those that focus on the contributions of one and disregard the others. I would suggest that all of these interpretations are to some extent correct and, it is exactly that, that there are variations of degree based in the reading of the original works. None of the three writers make specific mention of professions with direct relevance to the current debate. However, the work of each has had a fundamental influence on all that has come after and as such can be re-read, and re-interpreted to have relevance to professions. This is where I shall begin.

Marx (1976), unlike Durkheim and the later structural functionalists, saw the state as a medium of class domination as opposed to a vehicle of social reform. For Marx social differentiation and class structure were paramount and within this he sought to position the professions between the bourgeoisie and the proletariat. It has been

argued that this interpretation of Marx leaves little room for analysis focusing as it does on production. The mode of production changed but the relations of production defines a vertical division between two opposing classes; the bourgeoisie and the proletariat. The marginality of professions within this conceptualisation presents them as a historic residue of petty bourgeois artisans squeezed between the polarisation of capital and labour yet required as a mediating functionary. The axiomatic question for Marxists centres around whether professions are destined to ally with labour or capital or remain an independent force within the ongoing struggle.

It is important to place these approaches within their broader context. We are all products of our age. Whilst Marx formulated his ideas during an age of oppression Durkheim wrote from an historical background during a period when society had overcome adversity, there had been a successful revolution and now the educated population were enjoying relative affluence. Writing as he was during this period of relative political and social tranquillity after the upheaval and turmoil marked right across Europe in the 1840's. His writings were inevitably tempered by the Liberal and bourgeois hegemony and he died prior to the outbreak of the first "Great War". Durkheim (1947) looked back at the increased division of labour as fracturing social fabric and in order to maintain social cohesion and control, individual members of society required a "consensus universel", a form of moral consensus. This process Durkheim modelled as a move from mechanical solidarity to organic solidarity. Both were based on the relations of exchange within a differentiated division of labour.

Drawing on Durkheim's work on social order; the reduction in traditional institutions of family and church coupled with increased mobility ran the dangers of egotistic individuals lacking common values and rather pursuing purely selfish materialism. This perceived breakdown in the traditional moral order during the Industrial Revolution and the increase in the division of labour led to a search for new bases of moral integration and cohesion. Durkheim proposed the establishment of communities based on occupational membership, most notably the rising professions. They provided an image of community within the anomic mass of society. As the pre-capitalist, traditional values disintegrated, professions acted as a bulwark maintaining social control by example. They were uninterested in self-

aggrandisement and gain rather in altruism. A self-regulating counter-weight to the monolithic state.

Max Weber (1978) did not apply his central tenets of rationalisation, bureaucratisation and the competition of status groups directly to the role of professions in society, however, each of these concepts has had an enormous impact on the study of the legal profession, for example, in terms of the rationalisation of the system of law, the bureaucratisation of professional activity and the competitive strategies of professional groups. This has led some to attribute the origins of the power approach to Weber's "theory of monopolisation" (Berlant, 1975) or "sociological conflict theory" (Collins, 1990b). The point can best be made with a quote referring to the monopolistic tendencies of status groups:

"When the number of competitors increases in relation to the profit span, the participants become interested in curbing competition. Usually one group of competitors takes some externally identifiable characteristic of another group of (actual or potential) competitors - race, language, religion, local or social origin, descent, residence, etc. - as a pretext for attempting their exclusion. It does not matter which characteristic is chosen in the individual case: whatever suggests itself most easily is seized upon. Such group action may provoke a corresponding reaction on the part of those against whom it is directed." (Weber, 1978: 342).

Subsequently, commentators on the professions have adopted or stressed different elements implicit in Weber's writing such as the professions' state legitimised monopolistic practices (Berlant, 1975), "collective mobility project" (Larson, 1977), closure theory involving strategies of exclusion and usurpation (Parkin, 1979), monopoly jurisdiction over a "task domain" (Larkin, 1983), market control strategies (Abel, 1986), boundary conflict (Sugarman, 1994) or collective status strategies (Burrage, 1996). Accounts of these will be developed later. However, it is possible to offer a characterisation of these Neo-Weberian approaches to the rise of the

professions. They are each concerned to demonstrate how these occupational groups achieved status, privilege, power, dominance and reward not through intrinsic merit, as is claimed by the functionalists and trait school, but by creating and controlling a market for their services. As many have pointed out this is:

“a process which required consumers to both realise the value of the professional service and to believe themselves - through the mystification of that service - incapable of performing it themselves” (Sommerlad, 1995: 162).

The ideas of Marx, Durkheim and Weber have each had a profound effect upon the writing in the sociology of professions and each have contributed to a particular approach. Durkheim's ideas had the greatest early impact through the structural-functionalism of Talcott Parsons and trait approach which maintain a hegemonic position, particularly in the United States for over thirty years. The 1960's saw what one might appropriately call a shift of power towards Marxian and Weberian accounts of professions. Many of these also drew on the undercurrents of interactionist and social constructionist interests prevalent at the time (Blankenship, 1977). A chronological account of the theoretical alignment of commentators on professions from Herbert Spencer, Beatrice and Sidney Webb and R. H. Tawney encompassing both sides of the Atlantic is provided elsewhere (Freidson, 1994). Here I shall address the early contributions to the sociology of professions looking first at the functionalists and trait school before moving on to Johnson (1972, 1973, 1984), Freidson, 1970, 1986), Larson (1977, 1990) and Abel (1979, 1982, 1986, 1989a).

Functionalists, such as Talcott Parsons (1954b), developed the ideas of Durkheim and sought to define professions as a positive force in social development, standing against the excesses of laissez-faire individualism and state collectivism. Drawing on the Durkheimian break-up of traditional institutions of moral order and a fragmenting division of labour they saw society as being potentially rectified by the formation of moral communities based on occupational membership. These would provide cohesion, stability and collective activity whilst subjugating rampant self-interest and individualism.

The development of ideas about the sociology of the professions then entered a phase in which the focus on social mobility and stratification led to a series of definitional exercises attempting to map the unique attributes of "a profession". More recently this, in turn, has been roundly criticised as fictional, an exercise in cloud-catching. In these definitional attempts, autonomy, "altruism" and the "service orientation" of professions was seen as central to any definition. Various proponents included Talcott Parsons (1954b) arguing that professions are to be distinguished from business as collectively-orientated rather than self-orientated. Professions owe their authority to the functional significance of their work as opposed to say television repairmen. Halmos (1970) presents a diluted version of this with his "personal service professional". T. H. Marshall (1963) saw the professions as providing a bulwark against threats to stable democracy, an idea directly rooted in Durkheimian theory. Carr-Saunders and Wilson (1933) talked of professions as the most stable elements in society whilst Lewis and Maude (1952) identified industrial and government bureaucracies as presenting the gravest threat. These theorists tend to imply the professions operate as maintainers of the status quo and run the risk of accepting the professions own self-image, as pillars of society and carers of the people whole-heartedly, unproblematically and unequivocally. Common good was paramount whilst individualism and self-interest were of lesser importance.

The seminal work of Carr-Saunders and Wilson (1933) began the so-called trait approach or altruistic model of professions. Common good was paramount whilst individualism and self-interest were of lesser importance. The underlying sentiment was that of a gentleman's club, nobility, public duty and honour. Marshall (1939) most clearly voiced the altruistic bent stating that, "professionalism is not concerned with self-interest, but with the welfare of the client". Despite superficial variations a common theme run through the early trait theorists, the later stages approach (Caplow, 1954), Greenwood's continuum theory (1957) and Wilensky's elements in "the process of professionalisation" (1964). Among his "stages" Caplow includes the establishment of a professional association, a change in occupational title, the introduction of a code of ethics, legislation restricting certain practices to the occupation along with the development of training facilities and the control of admission to training, qualification and entry into the profession. Greenwood argued

that no true difference, whether qualitative or quantitative, existed. Occupations in society are distributed along a continuum with well recognised and undisputed professions such as physician, attorney or professor at one end and the least skilled and attractive occupations at the other such as truckloader. Wilensky took this a step further and suggested that all occupations were engaged in a "process of professionalisation" to a greater or lesser degree. However, while recognising that the sequence is not invariant, he proposed a similar series of criteria that must be accomplished. Millerson (1964) distilled the attributes of a profession from twenty-two scholars as the essence of professionalism. These were adopted by the Monopolies Commission (1970) as necessary characteristics, despite having argued that definitions were impractical and unnecessary. They were; a specialised skill/service, intellectual/practical training, autonomy/responsibility, fiduciary relationship with client, sense of collective responsibility, control on practice methods/advertising, competence testing/regulating standards, discipline. Hickson and Thomas (1969) tested Millerson's scale of British qualifying associations and found it to have face validity with doctors, lawyers, engineers, architects all scoring highly. However they criticised the assumption that professions are static phenomena not a dynamic process at three different levels; general social change, occupational organisation, and individual life-cycle. Elliott (1972) was the last in the altruistic tradition yet his resolve appears to waver. He talks of "terminological clarification" and points to the differences in definition of professions as largely dependent on the purpose the authority had in proposing them, positing three forms they might take; persuasive definitions, operational definitions, or logistic definitions. He proposes two historical types: status professions and occupational professions. The former he defines as professions which "were relatively unimportant in the organisation of work and community services but occupied a niche high in systems of social stratification" while the latter are "based on the specialisation of knowledge and tasks". Elliott's recognition that professions are not an either or category but vary according to their history, social situation or knowledge-base is reflected in the five categories presented by Reiss (1955):

- i) "Old established professions - founded upon the study of a branch of learning e.g. medicine.

- ii) New professions - founded upon new disciplines e.g. chemists, social scientists.
- iii) Semi-professions - based upon technical practices and knowledge e.g. nurses, teachers, social workers.
- iv) Would-be professions - familiarity with modern practices in business, etc. distinguishes this group who aspire to professional status e.g. personnel directors, sales directors, engineers etc.
- v) Marginal professions - based upon technical skill e.g. technicians, draughtsmen."

(cited in Jarvis, 1983)

The term semi-profession mirrors Etzioni's (1969) differentiation between groups aspiring to professional status and those that have achieved it.

Initial criticism of the traits or "check-list approach as a mere exercise in apologetics tended to reflect a wider reaction to the collapse of the functionalist hegemony (Johnson, 1972). However, there are some very real criticisms that will be summarised. The essentialist approach of many functionalists in distilling the defining elements of a profession tended, of necessity, to adopt an ethnocentric bias in favour of the current model of professions (Torstendahl, 1990). While many theorists of professions have identified necessary traits of professionalism, stages of professionalisation or degrees of professionalisation, de-professionalisation or even re-professionalisation, such an approach is essentially static, functional and structural. It is ahistorical and culturally specific - failing to distinguish or make mention of the civil law world (Collins, 1990a). Indeed, Paterson (1996) suggests we should be looking towards new models of professions and there is some indication that this may be happening. This has led to quite fundamental criticisms of an idealised end state based on the Anglo-American model of the liberal professions providing descriptive, as opposed to explanatory or predictive categories often developed in an uncritical and under theorised manner (MacDonald, 1995). The initial critique was simply that:

“not only do ‘trait’ approaches tend to incorporate the professionals’ own definitions of themselves in seemingly neutral categories, but the categories tend to be derived from the analysis of a very few professional bodies and include features of professional organisations and practice which found full expression only in Anglo-American culture at a particular time in the historical development of these professions” (Johnson, 1972: 26).

Despite the existence of critical reaction, negativity and empirical quibbles no substantive alternative was offered until the early 70’s with Johnson’s examination of professions in terms of power relations. Johnson (1972) attempted to side-step the definitional minefield of professions by examining professionalisation as a process and questioning the circumstances under which claims of occupational status were successfully made. He drew on the general idea that an increased social division of labour and specialisation leads to greater economic and social dependence and widening social distance, both being aspects of a reduction in the area of shared experience or knowledge, which paradoxically increases both inter-dependence and social distance, giving rise to uncertainty or “indeterminacy” (Giddens, 1973). For example, the transition from *Gemeinschaft* to *Gesellschaft* (Weber, 1978) or mechanical to organic solidarity (Durkheim, 1957) represented a move from a society of undifferentiated labour and shared common knowledge to one in which labour was increasingly differentiated, compartmentalised and specialised. Knowledge became both rationalised and ritualised initially within Guilds and later within professions. In such situations individual consumers lacked the specialist knowledge or experience to judge the form of service provided e.g. by a doctor, and had to rely on a degree of trust. High-status professions, like shamen before them, have a ritual cast “from operating in conditions of high uncertainty, and sometimes high dependence and potential distrust by clients, which foster ritualised procedures and the ceremonial impressiveness of practitioners before the uninitiated” (Collins, 1990b: 37). It is this angst-creating state of uncertainty between producer and consumer which must be resolved or at least reduced. Johnson argues that various institutions arise to perform this function and the power relationship, or power gradient, determines if uncertainty

is to be reduced at the expense of the producer or the consumer. In this sense, professions are an “institutionalised form of occupational control”, historically specific to the rise to power of the urban middle classes, which enables the producer to define the needs of the consumer and thus maintain an advantageous power gradient. Under professionalism the producer-consumer relationship will be fiduciary (the trust relationship is as unequal as the power gradient), one-to-one, initiated by the client and terminated by the professional. This all serves to weaken the consumer’s control and choice. Successful professionalisation is hence dependent on a relatively homogeneous occupational group offering similar services to a heterogeneous, isolated and disempowered clientele. Johnson outlines a typology of institutionalised modes of control: *collegiate*, such as professions or guilds; *patronage*, that can be oligarchic, corporate or communal; and *mediation*, by either the capitalistic entrepreneurial or the state. Where a consumer is able to define his/her own needs, corporate patronage or communal control develops. Where a third party mediates, then capitalist entrepreneurialship (the middle-man) or state mediation occurs. The major collegiate function, the exercise of occupational authority, is generally carried out by a practitioners’ association (e.g. the Law Society). Such an association bestows identity and status, attempts to maintain uniform interests, minimises intra and extra-professional competition, maintains monopoly practice and regulates entry (and incidentally exit) to the profession, registering and sanctioning its members in accordance with a charter. For Johnson, professions are never static but rather under constant and varying tensions between occupational authority and consumer choice. In summary of his position Johnson states that:

“Professions are occupations which provide highly valued services based upon a complex body of knowledge. All such occupations ... naturally develop to an end-state of professionalism and as a result enjoy a high degree of autonomy, wield great authority and receive high economic and social rewards. Their autonomy and power is furthered, in so far as the problem of client ignorance is solved, through the setting up of an association of

practitioners which guarantees the trained competence of its member: for such associations characteristically monopolize rights to carry out certain kinds of work and wield control over the application of certain kinds of knowledge" (Johnson, 1980: 342).

This approach offers a great deal more in terms of explanatory power than previous trait theories. For example, contemporary changes in the solicitors' profession are altering the power gradient with the growth in corporate clients (corporate patronage), government pressure to introduce a multi-portal entry system and their control of legal aid funding (state mediation). With further routinisation and computerisation as harbinger of change (Murphy, 1990), the increasing use of paralegals including trainees in larger firms (Chambers and Harwood-Richardson, 1991) and the loss of exclusive rights to conveyancing are indicators of an uncertain future. These points are picked up later in relation to current debates.

Cain (1983) criticises Johnson's work on professional power for being excessively negative, specifically, an interpretation of his work as applied to lawyers which portrays them as social controllers manipulating clients' problems to their own advantage through the use of legal language (also Felstinger and Sarat, 1992). In an influential yet limited empirical study, Cain found that solicitors did act as translators of clients' problems into legal terms, however, they managed the client interview in an unexploitative way. It is not inconceivable that both these situations are valid. At the level of the individual a professional agent must maintain personal integrity by believing in the work they do. Simultaneously, at the level of the collective, a professional project could operate via a variety of mechanisms to enhance each professional's individual economic position. Professionals are in an almost unique position, in this regard, in that unlike an individual commercialist who pursues self-interest, a lawyer can profess selfless altruism whilst others maintain his or her status and level of economic remuneration. It is not necessary to attack all-out, as few people would deny that doctors, for example, deserve a high regard and fiscal reward. However, we must be aware that restrictive practices could equally serve to protect the less competent or even incompetent doctor, which is an undesirable situation.

The phenomenological approach of Johnson, and also Larson (1977), questions “how society determines who is a professional”. This reframes the definitional question of which occupations are professionals into what kinds of occupations consider themselves to be professions and can persuade others to accept them as professions. As Everett Hughes put it:

“in my own studies I passed from the false question is this occupation a profession to the more fundamental one what are the circumstances in which people in an occupation attempt to turn it into a profession and themselves into professional people?” (Hughes, 1958: 45).

This overlaps with an approach to profession’s self-image and how people respond to them, and reconstitutes profession as a socially constructed and maintained “folk concept” (Becker, 1970). This provides a key to the writings of Eliot Freidson, a figure that transcends the various schools of the debate with his in-depth study of the medical profession (1970). He was a fervent empiricist, who sought explanation through analysis and yet was prepared to alter the approach he took quite substantially, as his ideas developed. Initially he saw the self-regulatory process as the criterion defining a profession which chimes with the view of “trait” theorists that autonomy is a central characteristic of professions. He also pointed to the entry requirements of professional associations and the important role of an association in regulating professional competence. However, this is tempered by the much used quote of George Bernard Shaw to the effect that “every profession is a conspiracy against the laity”, which at least acknowledges the counter-debate citing power and restrictive practices. The anthropological ideas of mysticism and truth, alluded to earlier with reference to Johnson, are first introduced and then greatly developed in a later contribution to the debate (Freidson, 1983) where, having again questioned the validity of the view of professions as “honoured servants of public need”, he identifies professions as “a British disease” or more precisely an Anglo-American phenomenon. In grasping the definitional thorn-bush Freidson often appears to state the obvious, namely that ‘professions’ is a changing historic concept rather than a generic concept, deflating the static phenomenal approach of many “trait” theorists. The definitional

problem is further compounded through the reflective activity of the definitional exercise itself. As Freidson puts it, how “everyday members accomplish professionalism through their activities may in part be influenced by how sociologists define professionalism as a concept and by how official agencies develop it as an administrative category”. A clear example of this interrelated process whereby an academic perspective on professionals impacts on professional’s own self-image, on the public perceptions of professionals and importantly on the attitude adopted by government agencies, is reflected in the findings of the Monopolies Commission (1970) which accepted an integrated picture of professionals as academics see them and as they see themselves.

Finally Freidson identifies a “charismatic” element in doctor, lawyers and the clergy, citing “folk concepts”, such as Florence Nightingale and her lamp. These professions are involved in possibly the three greatest points in anyone’s life, namely, birth, marriage and death. These are periods of vulnerability as possible life crises. The processes of divorce, imprisonment or more general by simply dealing with justice place the profession of lawyer in an almost unique position of personal power. Freidson’s later work focuses on exactly this issue, the role of power or professional dominance in relation to clients, members, kindred occupations and the state. It is for this reason that many subsequent commentators have classed Johnson, Freidson and other “post-functionalists” within “the power approach”. In doing this commentators run the risk of conflating theorists adopting very different approaches and, as Freidson himself warns, replacing the multi-trait approach with “a single ... explanatory trait or characteristic” (Freidson, 1983) i.e. creating a false opposition.

A partial yet valuable recapitulation of the debate is provided in a volume by Esland (1980) in which he draws on the work of Everett Hughes (1963) and C. Wright Mills (1956). In the words of Everett Hughes:

“professions provide esoteric services based on a body of knowledge privy only to other members thereby rendering laypersons incapable of making sound judgements of value of the services received. The client’s need to trust is reflected in the authority afforded organised practitioners

through mechanisms of mandate and license" (Hughes, 1963: 655).

Esland (1980) makes a distinction with regard to the internal organisation of professions between the professional mandate, the professional ideologies and the client relationship. One could go further and identify these three elements with the trait approach, the Freidson approach and the Johnson approach respectively. However, this would be far too simplistic a reading, professional mandates smack of closure and highlight the role of the state in legitimising exclusive rights. Similarly, professionalism is both an ideology and a strategy in which clients, and state, are important actors (see "an actor-based framework for studying professions" later - Burrage et al, 1990). These are themes that were brought together in the influential work of Larson - *The Rise of Professionalism: A Sociological Analysis* (1977).

Magali Sarfatti Larson assumes a very different approach to these previous commentators on professions. However, it is not always recognised that her analysis shares much in common with the contemporary work of Berlant (1975) and Parry and Parry (1976). Indeed, it would not be inappropriate to read Larson's contributions as a synthesis of these writers, the monopolisation market model of Berlant and the collective social mobility emphasis of Parry and Parry. There are clear indications that Larson was unable to include reference to the thesis of the above authors before her book went to print (MacDonald, 1995). She does, however, make frequent reference to the work of Parkin who defined professionalism as "a strategy of exclusionary closure designed to limit and control the supply of entrants to an occupation in order to enhance its market value" (Parkin, 1979: 41). However, he situates his interpretation within a Marxist examination of the wider labour structures. Berlant contrasts Talcott Parsons's functionalist theory of the medical profession with Max Weber's theory of monopolization. Rather than using the term professionalisation he examines the "professional institutionalisation" of doctors through medical ethics and licensure which leads to domination over the medical market and the limitation of external competition. The intention here was to place Larson at the vanguard of a new approach that combined elements of Weber and

Marx with the interactionist and power approaches that were so critical of the previous functionalist hegemony.

Larson adopts an economic perspective within a broadly Weberian framework and views the emergence of professions as an example of the process of bureaucratic rationalisation both of themselves and society. Capitalism and bureaucracy are both manifestations of rationalisation; modern capitalism (and indeed socialism) relying on the bureaucratic maximisation of efficiency in both production and costing. Weber himself made no distinction between professions and bureaucracy, presumably seeing the two as virtually synonymous expressions of the increasing rationality of western society (Weber, 1978). There are difficulties for Larson when attempting to explain professions within a purely Weberian tradition, because professions do not derive power and privilege from a co-ordinating role in the division of labour as, for example, do non-owner managers. Certainly professions enjoy favourable life-chances through educational quality and "cultural capital" (Bourdieu, 1973) but why should this afford them authority? Larson finds the same answer to this question as Johnson, namely that professions are a unique form of organised work. However, she combines a social and an economic interpretation or order whereas Johnson argues in terms of power relations. Larson summarises her position thus:

"professionalisation is thus an attempt to translate one order of scarce resources - special knowledge and skills - into another - social and economic rewards. To maintain scarcity implies a tendency to monopoly: monopoly of expertise in the market, monopoly of status in a system of stratification. The focus on the constitution of professional markets leads to comparing different professions in terms of 'marketability' of their specific cognitive resources. It determines the exclusion of professions like the military and the clergy, which do not transact their services on the market. The focus on collective social mobility accentuates the relations that professions form with different systems of social stratification; in particular, it

accentuates the role that educational systems play in different structures of social inequality. These are two different readings of the same phenomenon: professionalization and its outcome. The focus of each reading is analytically distinct. In practice, however, the two dimensions - market control and social mobility - are inseparable; they converge in the institutional areas of the market and the educational system, spelling out similar results but also generating tensions and contradictions which we find, unresolved or only partially reconciled, in the contemporary model of profession" (Larson, 1977: xvii).

The dual aspects of market control and collective social mobility are combined in pursuance of "the professional project". This is a concept central to Larson's thesis. It "emphasises the coherence and consistence" of a course of action despite the fact that "the goals and strategies pursued by a given group are not entirely clear or deliberate for all members" (Larson, 1977). Effectively, if an occupational group are able to standardise (to an extent) and control the dissemination of an abstract knowledge-base and the market for associated services it is in the position to negotiate a "regulative bargain" (Cooper et al, 1988), an "agreement with the state" (Burrage, 1996), or a "special relationship" (Mears, 1994) in order to legitimate these restrictive practices. Incidentally, "the knowledge base needs to be sufficiently codifiable to be transmitted as a professional culture it also needs to contain sufficient indeterminacy to debar outsiders from professional practice" (Armstrong, 1985, pp132). It has also been suggested that a constituent element in the professional project is the provision of "a ritualised form of socialisation for new recruits" (Sommerlad, 1995), a point that re-emerges in the fourth and final section of the theory chapter. Larson places great emphasis on the inter-locking dimensions of market control strategies and social prestige strategies, the inter-penetration of individual aspirations and collective action, and the importance of relations between the "rank and file members" and the elite of the profession (MacDonald, 1995). As MacDonald rightly indicates confusion has arisen through a misunderstanding of the

gradual shifts in Larson's later work developing the emphasis on professionals as "agents of capitalism". Some commentators (e.g. Abbott, 1988) emphasise the Marxist tenor of her work whilst the central point is simply that "the professional project" must chime with the needs of a modern capitalist state if it is to succeed.

Abel (1979, 1982, 1986, 1988, 1989a; 1995) takes this all one step further by empowering his version of this Larsonian/Weberian/Neo-Economist theory of professions with an exhaustive empirical effort, seeking to ground theory in historical fact. He sees the profession as very much a specific historical phenomenon, attaining its classical form with the emergence of the liberal state and the rise of the bourgeoisie. It is "not by accident, the model of profession developed its most clear-cut emphasis on autonomy in the two paramount examples of laissez-faire capitalist industrialisation; England and the United States" (Abel, 1989a). Abel extends a working definition of a profession as "an occupation [which] exercise a substantial degree of control over the market for their services, usually through an occupational association" (Abel, 1986: 1). For him, autonomy is clearly central, with professions generally demonstrating self-regulatory and monopolistic tendencies over a body of knowledge or field of activity. The central question for him revolves around "how agents seek and attain competitive advantage within a relatively free market, one structured by the state but dominated by private producers" (Abel, 1989a). More specifically, how do lawyers construct their professional commodity (legal services) and seek to assert control over the market for these services? His answer is, by regulating the production *of* producers and the production *by* producers, thereby controlling supply and maintaining collective status and mobility.

Abel presents the "classical form" of professionals as independent producers serving individual consumers, while acting collectively to maintain standards (uniform competence, ethics and discipline) and persuading the state to protect it from "the ravages of unleashed market forces" (restrictive practices) - citing its noble calling and disavowal of consumerism as reasons. Paradoxically, professions also evoke the regulatory mechanisms inherent in the market in order to resist state control and preserve independence (principles of impartiality, loyalty and confidentiality).

“Lawyers, more than most other professions, have been able to construct an enclave of relative autonomy by playing off market and state against each other” (Abel, 1989a: 321).

However, not only is it arguable to what extent the four great professions of law, medicine, clergy and military conform to these formulae, but as Abel himself argues, recent events have gone a long way to undermining such a position and indeed to paraphrase Abel upsetting the profession’s balance on a tight rope between market and state (1989a).

Abel identifies the need to construct an exclusive market for services, in his own words, “the consumer must acknowledge the value of the producer’s services” and “be convinced that they cannot produce the services themselves” (1988: 8). This constructivist notion is inherent in the ideological power to define treatment and to speak for the people, which finds its clearest example in the medical profession, and is reflected in the early work of Cain (1979). The interaction and professional manipulation of symbol and reality, which Freidson (1992) highlights as epitomising the very nature of a profession, presents the three corner-stones of conceptual analysis; privileged status, esoteric knowledge and the power of dispensation.

Abel skirts the power and control arguments around lawyers as “reality definers” and instead develops a complex meta-economic interpretation of the legal profession. Social closure through increased market control and enhanced collective social mobility lie at the centre of Abel’s approach. Market control is in turn dependent upon a control of production *of* producers and production *by* producers - namely, the numbers and types of persons entering the profession, as well as the form and manner of services they provide. Professionals also seek to rationalise and expand the market for their services. Closure is negotiated between the profession (or representatives thereof), the universities and the state. Ultimately the degree of closure depends on state authority particularly with the state’s expanding role in training and legal aid provision. He also sees the demand for professional services as dependent upon a number of factors that lie outside the profession’s immediate control, namely, demographic changes, an increase in middle class, bourgeoisie or middle-bracket

income groups and subsequently, greater home ownership. Other factors that have a marked impact on legal services include a greater use of private pension funds, state welfare and higher divorce rates. These set the parameters in certain areas of professional activity and act as goads to change.

Abel (1989a) goes on to identify a number of the difficulties involved in controlling supply, at least in the UK, mainly due to the independence of the British educational system and the social attitudes and legislation regarding women and ethnic minorities. There also exist competitive pressures towards oligopoly, with market forces breaking down professional monopoly. As greater numbers of professionals are employed in government and commerce, the traditional arguments against competition are gradually losing validity. This is coupled with what Abel terms "the lures and pitfalls of demand creation", by which he generally means advertising, and "the dangers of monopsony" (a monopoly in the buying of labour), by which he means the aggregation of consumers. In expanding upon these areas Abel points to a reconfiguration of the profession and questions public accountability and ultimately access to justice.

Recent events (see page 81) have radically altered the reality of lawyering and appear to be gathering momentum. Most apparent is the state's greater assertion of control as regulator in the spheres of criminal prosecution, the structure of the judiciary and increasingly in legal education and competition. Equally pressure is increasing from the consumer, whether it be from the large commercial client or legal aid funder. Social and economic forces and the professions responses to them underlie much of this change. Abel identifies these as changes in the numbers and traits of intending lawyers, the nature and quality of demand for legal services, the degree of concentration among producers and consumers, and the intensity of competition inside and outside the profession. Over the past decade Abel (1979, 1982, 1986, 1989a, 1989b) has produced a number of primarily economic analyses of the professions responses to these changes within a largely Larsonian theory of the profession which has culminated in his wide ranging study of the legal profession of England and Wales (1988) and across the common and civil jurisdictions (Abel and Lewis, 1988a, 1988b, 1989). Criticisms of Abel's work that he "chose to use a

condensed version of her [Larson's] theoretical argument for his work on the legal profession in England and Wales" and that "one looks forward to Abel's own final evaluation of the merits of his approach. Alas, there is no such discussion" (Berends, 1992: 173 and 174) have some merit. By his own admission he may have "overemphasised the economics of social closure while neglecting the other dimensions of Larson's professional project" (Abel, 1995: 8). Similarly, he defends himself against the view that his model does not fit all jurisdictions (Paterson, 1988) or is Anglo-centric (Burrage, 1990). Many of these wider and more contemporary points are addressed below.

There are signs that differing approaches are being developed and seem to have been adopted by some of the most recent commentators in a European comparative theory compilation edited by Burrage et al (1990) which provides an interesting comparative view of the French and American legal systems as being politically and economically driven respectively. This has implications across the spectrum of theoretical explanations mentioned including the work of Halliday (1987) and Abbott (1988). Freidson suggests we may be entering "an emerging comparative" phase across professions and jurisdiction (Freidson, 1994). These debates and the contributions of current theorists relating to the legal profession are addressed below.

### **A sociological analysis of the solicitors' profession and current debates**

Despite certain criticisms Abel's work marks a watershed in the study of the legal profession. Previous theorists have discussed professions generally (Carr-Saunders and Wilson, 1933; Lewis and Maude, 1952; Johnson, 1972; Larson, 1977; Dingwall and Lewis, 1983; Abbott, 1988; MacDonald, 1995). There has also been a strong tradition of professional analysis in the field of health professionals in relation to doctors (Freidson, 1970; Berlant, 1975; Parry and Parry, 1976; Larkin, 1983), nurses (Abel-Smith and Stevens, 1967; Walby et al, 1994), or individual medical specialisms such as obstetrics (Arney, 1982), psychiatry (Light, 1980) or paediatrics (Halpern, 1988). Some have focused on other professions such as architecture (Kaye, 1960), teaching (Lacey, 1977) or the priesthood (Gouldner et al, 1973), groups of "semi-professions" (Etzioni, 1969; Halmos, 1970). More recently there have been those

that have examined other aspects in relation to professions such as gender (Ried et al, 1987) or class (Burrage, 1990), or that have restricted themselves to particular jurisdictions such as France (Jamous and Peloille, 1970) or Germany (Jarauch, 1990). Given this wealth of theory it can only be surprising that it was not until the late 1980's with the work of Abel (1988) and Halliday (1987) that attention was focused specifically on "the other liberal profession", namely law.

My intention here is to re-focus the previous somewhat general discussion of professions on the legal profession and the solicitors' profession in England and Wales specifically. There are at least three strings to this bow of greater specificity; temporal specificity, geographical and cultural specificity, and subject specificity i.e. looking at the solicitors' profession. I propose to adopt a conception of "the professional project" which has been both modified through the inclusion of notions of jurisdiction and the re-emphasis of the role of status, and brought up to date in line with some of the current social and political changes mentioned in previous sections. This will be achieved through a brief examination of the development of the solicitors' profession and the activities of its professional body the Law Society (Sugarman, 1996) and by revisiting three inter-related areas of contemporary controversy or debate that impact directly on the solicitors' profession. These debates question the centrality of the market in shaping professional practice, the reality of a unitary solicitors' profession and the importance of jurisdictional understandings within an increasingly globalised legal profession.

Many of the assumptions and concepts within the traditional literature on the sociology of professions hold diminishing relevance for today's practitioners. The world of legal practice is needless to say very different and the value system of solicitors is altering in response to these wide-spread social and political changes. There have been numerous excellent attempts at tracing the origin and development of the legal profession in England and Wales (Abel, 1988). It would be inappropriate and unnecessary for the purposes of this study to recapitulate such an account here. It would, however, be appropriate to say something about the development of the solicitors' professional body from the Society of Gentleman Practisers formed in 1739 to the present Law Society chartered in 1831. This rise is charted elsewhere

(Sugarman, 1996; Burrage, 1996) and examines the "classical period" of development from its foundation to World War I. It is during this period that the Law Society "established itself as the predominant voice of the solicitors' profession, the arbiter of admission to the profession and proper conduct, the defender and extender of the profession's monopolies, and an influence of major significance on legislation and legal practice" (Sugarman, 1996: 81). The central question for Sugarman is "how was it that the regulation of solicitors came to vest considerable autonomy in the profession" what he cites as "one of the most important questions about the evolution of the legal profession up to the twentieth century" (Brooks, 1986: 267). This he attempts by examining:

"firstly, the way the Society was constructed from and inscribed within a complex of pre-existing traditions, forms, and vocabularies, including those related to state regulation, self-governance and middle class systems of association; secondly, the swift and successful way in which the Society changed its orientation from coffee-house type meeting place to an energetic, self-sustaining and proactive association; thirdly, its intimate links with elite City firms and the state; and, finally, its success as a pressure group, constituting and influencing legislation and practice" (Sugarman, 1996: 81-82).

It will not be possible to explore some of these aspects more fully here such as the important influence the Society may have had on the legislative process, however, light is shed on "the tensions between serving equally and concurrently the public interest and the interests of the profession" (Sugarman, 1996: 82). Sugarman highlights how, before the Second World War, the Society worked at building respectability through the construction of prestigious headquarters, establishing elite contacts, providing learned lectures, attracting "the right people" and performing "the right work" - what Burrage refers to as "an honourable work jurisdiction" (Burrage, 1996: 55). The period after the war saw increased tensions between the contrasting roles of the Society as defender of the profession, assistant to the state and protector

of the public interest which became apparent through a number of high-profile cases where the efficacy of Society's safeguards were questioned (i.e. the Granville case). This marks the contrasting positions of functionalists and power theorists on professions, a division which has become increasingly blurred through the emphasis on market forces. However, Burrage suggests a tendency to overemphasise the centrality of the market and an underlying "popular assumption" often implicitly embedded in arguments about the professions that they act primarily as economic interest groups. He supports this with reference to a passage from *Bleak House* where Dickens observes that:

"the one great principle of English law is to make business for itself. There is no other principle distinctly, certainly, and consistently maintained through all its narrow turnings. Viewed by this light it becomes a coherent scheme and not the monstrous maze the laity are apt to think it" (Dickens, 1853: 603-604).

However, "if the primary goal of the Law Society ... had been to make business for their members, then they went about [it] in an odd manner" (Burrage, 1996: 46). They failed to make the most of new market opportunities and far from making business for themselves "the legal profession collectively seem more inclined to reduce demand for their members' services" (Burrage, 1996: 47). He also questions the modified assumption that the Law Society acts to "maintain or increase their [members'] incomes within a restricted and sheltered market" (Burrage, 1996: 48). An alternative explanation is sought in the original declared intentions of the founding members of the solicitors' profession, the Society of Gentleman Practisers, to protect and safeguard the honour, the reputation, and the status of the profession. This is effected through a dual commitment to improving professional status and regulating the conduct of their members. Burrage examines this proposition in relation to entry and training, jurisdiction and self-governance by special agreement with the state. A point of particular relevance for the present study is the scorn repeatedly poured on articles by critics (see education and training) as they often amounted to years of drudgery filled with tedious and routine tasks during which clerks may incidentally

acquire some legal knowledge. Historically articles were commonly arranged by a father for his son and the father remained “a silent party to the agreement”. This “fictive-kin character” underlies the principal-clerk relationship to this day including elements of parental responsibility and certain moral obligations. Effectively, this is the argument that articles:

“conveyed a due appreciation of the value of membership of the profession. It also necessarily instilled respect for one’s elders, for their experience, for their manners, conventions, and ethics and for their sense of corporate honour” (Burrage, 1996: 54).

Burrage’s emphasis on “a collective status strategy” shifts the terms of a polarised debate from later power and Neo-economic explanations of professional motive back towards early functionalism and professional sentiments that may be more public-spirited. Halliday incorporates a similar shift, *beyond monopoly*, in his work on the Chicago Bar Association (1987) in which he also challenges the “market monopoly” model. Halliday distinguishes between two phases of professionalisation and argues that attempts to monopolise the market for legal services characterises the legal profession in its early “formative” years. Once the profession achieved professional and market control, it was able to exemplify its “collective interests in an efficient and effective legal system, in the legitimacy of the law as an institution, and in the intrinsic merits of procedural justice and legalism” (Halliday, 1987: 369). As the legal profession reaches maturity it moves “beyond a preoccupation with monopoly, occupational closure, and the defence of work domains” (Halliday, 1987: 347) and “lawyers become sensitive to their civic responsibilities and are willing to nurture contributory relations with the state” (Halliday cited in Shamir, 1993). Halliday is not denying that over the past century collegial legal associations have pursued a “professional project”, but rather that the success of their activities has allowed them in recent decades to move beyond monopoly.

“[I]t is unlikely that professions will serve the state without any consideration of costs to themselves. But it is equally implausible to believe that the only driving

motivation of professions is an unbridled bid for collective gain" (Halliday, 1987: 370).

A counter-argument is that Halliday, and other theorists (e.g. Abbott, 1988; Freidson, 1986) that appear to share an affinity with the work of Larson, "like the functionalists before him, has begun to take the professions at their own valuation" (MacDonald, 1995: 22). I shall now turn to the work of Abbott, who also seems to tend towards a functionalist explanation in developing his *system of professions* (1988). I shall also address a further criticism of the "market monopoly" model that its advocates often assume internal professional cohesion that "in other sections of their discussions, they have been at pains to deny" (Halliday, 1987: 350).

For Abbott, "students of the professions have lost sight of a fundamental fact of professional life - interprofessional competition" (Abbott, 1988: 2). This competition is conducted through the medium of knowledge claims. In other words, it is the content of work, the control of work, and the differentiation of work, which gives rise to internal occupational divisions and to conflict with other occupations over jurisdiction. "It is the history of jurisdictional disputes that is the real, the determining history of the professions" (Abbott, 1988: 2). In contrast, Larkin's earlier use of the concept of "occupational imperialism" (1983) in his study of para-medical occupations, rejects the connotations of "zero-sum conflict" and control in favour of negotiated boundaries, spheres of competence and shared responsibility. However,

"in order to establish a jurisdiction, professional work must be perceived as requiring more than a direct connection between tasks to be performed and people capable of performing them. An unambiguous relationship between a problem and its solution diminishes the ability of professionals to prevent the routinisation of their work and the dissolution of their distinct identity as a bounded community of experts. 'Simple' problems and obvious solutions are not conducive to the monopolisation of expertise and lead to the 'deprofessionalisation' of practice" (Shamir, 1993: 370).

For this reason, the relationship between knowledge and practice complicates the uncritical assumptions of monopolistic practices within the “market monopoly” model.

“No profession can stretch its jurisdiction infinitely. For the more diverse a set of jurisdictions, the more abstract must be the cognitive structure binding them together. But the more abstract the binding ideas, the more vulnerable they are to specialization within and diffusion into the common culture without” (Abbott, 1988: 80).

Numerous criticisms have been made of Abbott’s approach. Firstly, many professionals are not engaged in competition with outsiders most of the time and this serves to “downplay the role of intraprofessional competition within the profession’s jurisdiction” (Shamir, 1993: 371). A complimentary conception of inter and intra-professional relations or the “interaction of social networks of professionals” (Hanlon, 1996: 3) is offered by the concept of embeddedness (Granovetter, 1985). Secondly, “it is very difficult to ascertain what professionals know and how they are using that knowledge. This indeterminacy imbues the theory with a string post-modern quality, allowing it to explain everything (and therefore, perhaps, nothing)” (Abel, 1995: 11). Thirdly, the notion of a system of professions is associated with structure and function and weaken the central tenet of Weber’s work, namely “the meaning and motives of the actors” (MacDonald, 1995: 17). The third of these criticisms is addressed by Burrage et al in their “actor-based framework for the study of professions” (1990). An approach which I shall return to at the end of this section.

Most recently, the question of jurisdictional disputes (turf wars), competition over knowledge claims and the construction of the legal commodity have re-surfaced on an international level (Flood, 1993) in relation to the globalisation of the market for legal services. “Globalisation shifts economic activity from within states to their interstices or across their borders, where rules are either absent or new and unclear” (Abel, 1995: 12). However, just as the solicitors’ profession is experiencing an outward expansion into new international markets so many of its traditional domestic markets are changing or contracting. The most obvious example is the restructuring of the

market for legal aid or the de-regulated market in conveyancing. This has renewed debate about the increasing divisions within the solicitors' profession and questioned the validity of conceptions of a unified solicitors' profession which lies at the heart of much of the earlier work on the sociology of professions. The question of the unity of the solicitors' profession has generally been stated in one of two forms; either in terms of a process, such as deprofessionalisation or proletarianisation; or in terms of structural change, such as a fracturing of the profession (Glasser, 1990) or increased specialisation (Shapland and Allaker, 1994). It is to this question that I shall now turn.

The question of the deprofessionalisation or proletarianisation of the solicitors' profession has itself subsumed a multitude of questions: Are professions dying as a result of consumerism (Sommerlad, 1995)? Are the professions caught between the state and the market (Abel, 1989a)? Who judges what is an acceptable level of service? Are the number of professions increasing and thereby diluting the power and prestige of the traditional or existing professions? Is being a professional consistent with being employed in a firm of solicitors or by a non-legal organisation (multi-disciplinary practices)? Is finance the necessary currency in a large organisation and does this mean that money as opposed to law or justice will become central to the operation of large solicitors firms? Are they just businesses offering specialised legal services? Can a profession be both good for itself and for its clients in terms of fiscal gain, quality of service and ability to pay (Shapland, 1994)? How will firms be affected by changes in relations of power between state as regulator, control by clients and corporate patronage? These are all questions pertinent to the contemporary position of professions in general and the solicitors' profession in particular.

As has been noted (MacDonald, 1995: 22), the question of whether professions are in decline has paralleled the debate around the rise of professions - mirrored in Abel's articles on *The Rise of Professionalism* (1979) and *The Decline in Professionalism* (1986). Marxian debate has generally favoured the term proletarianisation which is associated with the 'labour process' and increased bureaucratisation of professions

(Oppenheimer, 1973) ultimately leading to assimilation into the working class. This position is summarised by Murphy:

“A century ago professionals, unlike the working class, were largely self-employed and had an autonomous relation with clients protected by the state. Today the majority in almost all professions are salaried employees in organisations. Professionals are now submitted to a bureaucratic system of managerial control in formal organisations and have lost their traditional autonomy”  
(Murphy, 1990: 72).

He offers a criticism of two separate versions of this Marxian hypothesis; a strong proletarian hypothesis and a weaker version. The first hypothesises that professionals, like the proletariat, have lost control over “the goals and policy directions of their work” and over their “technical tasks and procedures”. This has occurred through the introduction of computerised protocols which serve to standardise work and diminish the discretion of professionals. However, there seems little evidence for such deskilling (Braverman, 1974) in large, highly bureaucratised organisations where professionals continue to enjoy technical authority and significant discretion. Murphy suggests that the strong proletarianisation hypothesis may have mistaken specialisation in the intensifying division of expert labour for deskilling (Murphy, 1990). The weak proletarianisation hypothesis Murphy associates with the work of Derber (1982) who states that “like industrial workers, their [professionals] labour is effectively subjected to the aims and controls of capitalist production” (Derber, 1982: 31). Derber distinguishes between “technical proletarianisation”, the loss of control over the professional knowledge base, the technical work decisions, and the process of production, and “ideological proletarianisation”, the loss of control over the goals and social purposes to which their work is put. This position is also flawed in that professions cannot be equated with proletariat because although they “share with the proletariat non-ownership of the means of production and dependence on bureaucratic organisations to provide the means to accomplish their labour ... [they] are unlike the proletariat in that they are controlled not so much by direct

management commands as by socialisation into the profession and by individual incentives" (MacDonald, 1995: 75).

The more neutral term of deprofessionalisation is applied by Haug to a similar process of "reverse" professionalisation involving the systematisation and rationalisation of professional knowledge (see previous section), the jurisdictional incursion of "paraprofessionalism" ("new groupings of skills that arise from the demands of a more discerning and better educated clientele" - MacDonald, 1995: 61), and the introduction of information technology (Haug, 1973). However, even Haug admits that there is insufficient evidence to support her "deprofessionalisation hypothesis" but suggests that there is also "no evidence favouring rejecting it either" (Haug, 1988: 54). Patterson clearly rejects these negative process views of current changes to professionalism (Patterson, 1995). He instead emphasises the dynamic basis of professionalism beyond the traditional professions and indicates a degree of myopia regarding what is in fact merely a qualitative shift in professionalism. For example:

"the continuing competition for business and legitimacy - between civil law and common law, "grand old men" and "technocrats", academics and practitioners - constructs and transforms the system of (international private) justice" (Dezalay and Garth, 1995: 27).

A contrasting position is adopted by Sommerlad in her article *Managerialism and the legal profession: a new professional paradigm* (1995) in which she argues that:

"the loss of control over the character of the work, embedded in both corporate management techniques, and the conditions surrounding and mechanisms involved in franchising and 'contracting' for legal aid, presages the dissection and stratification of both legal work, and also, ultimately, of the profession itself. It is further argued that this loss of control is likely to deal a substantial blow to the profession's image as an independent moral agent in the public sphere" (Sommerlad, 1995: 159).

Not only is “new managerialism” undermining profession’s control over their work but “the unitary nature of the profession is becoming increasingly fragile” and their “collective social status” is under threat as professions relinquish their “monopoly over training, which restricted the supply to the market, preserved the esoteric value of professional knowledge and provided a ritualised form of socialisation for new recruits” (Sommerlad, 1995: 166). A similar picture is sketched by Burrage:

“we may bring into sharp relief the differences between the contemporary profession and its gentleman predecessors. It is more educated and heterogeneous, less concerned with its corporate honour, more market-oriented and competitive, with one others and amongst themselves, and therefore less secure. Its clients, with the help of the state, the press and the Consumers’ Association, have been transformed into customers, and are therefore more willing to complain about its services, which, in all probability is a permanent condition since it is doubtful whether a profession can ever keep all of its customers happy. All these things will tend to make it more unruly and fractious, more unethical and disloyal, and point unmistakably to increased problems of governance for the Law Society and even to fragmentation” (Burrage, 1996: 74-75).

The growing divisions between sections of the profession - between the commercially oriented providers of a legal service for business and the smaller operators serving the general public - hold implications for street level quality and access to legal services. This is by no means a new development or a new observation, Heinz and Laumann (1982) made the, by now, classic observation that the American Bar (specifically the Chicago Bar) was composed of two “hemispheres” of lawyers, those serving corporate clients and those solo practitioners or in small partnerships catering to individual clients. Carlin documented in detail the fact that lawyers who practice alone, or in small firms, are usually not “movers and shakers”; indeed, they scramble to make a living (Carlin, 1962). A similar polarisation has been shown to be the case

in other professions for example, accountancy, with the “big six” (Hanlon, 1994). The elite within the big law firms typically represent the voice of the profession as a whole, through the professional body as it is mainly economically secure lawyers who can dedicate time and energy to public activities and to projects that transcend the immediate demands of clients (Gordon, 1984). Furthermore, an attempt is made to show “that solo practitioners are driven by ‘market anxiety’, while established corporate lawyers tend to be driven by ‘status anxiety’” (Shamir, 1993: 363).

In the light of these observations I would like to offer a modified conceptualisation of the “professional project” in line with MacDonald (1995). Professionalism is an ideology and an occupational strategy, it includes inter-related elements of social closure, market control and collective status enhancement. Professions are interest groups and status groups (“stand” - Weber, 1978). As such they share a degree of professional values and identity - common role definition, an esoteric language and social boundaries (Abel, 1988) and membership is attained through a long and painful socialisation process (Rueschemeyer, 1964) - (which will be considered in the final theory section), and are in conflict or negotiation with other groups (including the state) within society in protection and pursuit of their mutual interests. Furthermore, the services that solicitors provide are largely intangible and rely on trust. They operate with varying degrees of discretion and judgement in situations of uncertainty and vulnerability. The notion of a “professional project” is further enhanced by the recognition of solicitors as “social actors”, and economic agents, interacting with their clients, the state, other professionals (including academic solicitors - Burrage et al, 1990) in maintaining professional jurisdiction and accomplishing professional practice. Support also comes from Collins (1990b) who introduces elements of an anthropological analysis of professional activity in terms of exchange theory (Blau, 1964), the circulation of cultural capital (Bourdieu and Passeron, 1977), kinship (Lévi-Strauss, 1969), the inflation of educational credentials (Collins, 1979) and ideological competition over occupational status honour through “ritualized procedures and the ceremonial impressiveness of practitioners before the uninitiated” (Collins, 1990b: 37) within high uncertainty situations. How then do we apply aspects of this modified “professional project” to the experiences of trainee solicitors aligning themselves within the project as fledgling professionals?

## Research questions

The central empirical question is how do the various strands of the debate square up to what trainees feel about being a professional? This holds implications for trainees in relation to changing attitudes around professionalism, autonomy and trust. Initial discussions with trainees elicited two distinct understandings of the term profession and other associated words. The first of these involved being professional as in providing a quality service. The second tended to imply membership of a professional group of like individuals defining and maintaining competence and offering recourse should clients not receive quality service. In the field, do these meanings equate with new managerialism on the one hand and more traditional notions of professionalism associated with the role of the Law Society on the other hand?

These terms are also active at the ideological level both in influencing those outside the profession and reflecting inwards upon professionals themselves. Among other things this serves to maintain the integrity of the profession as a whole - to what extent is this successful? Are traditional notions surrounding professions more about ideology than practice? What is the role of the Law Society within the professional project?

Trainee understandings of professions and professionalism require further unpacking particularly in relation to status and professional project, their attitudes towards professional ethics, and professional self image - What is important about being a solicitor?

Furthermore, how are ideas around professionalism among trainees altering with current changes in solicitors' legally maintained monopoly over service, the breakdown of restricted access to certain arena e.g. courts or activities such as conveyancing? The traditional hierarchical system of promotion in firms is increasingly undermined by diversification and specialisation. There is increasing internal competition among solicitors despite the professional associations enforced restrictions. Multi-disciplinary practices also threaten to introduce conflict at both the economic level and the ideological level e.g. the economic motivation introduced by a joint accountancy firms which tempers the application of justice, however, this can also be a problem for legal aid and the conflict for limited resources and justice for all.

Some of these apparent contemporary changes in the solicitors' profession such as the increase in employed solicitors has been around for a very long time (cf Wright Mills, 1956) casting doubt upon its impact in undermining professionalism. There is resistance to multi-disciplinary practices because of increased competition it is felt that they will create along with the break-down of professional loyalties, internal cohesion and a common professional sense of identity. The fear is that it could lead to a situation where an employed solicitor identifies more strongly with the firm or product e.g. "Toyota man" and then rather than seeing themselves as a solicitor they think of themselves in terms of an employee e.g. "I work for Lambeth, Touche Ross,...". It is to these aspects of professional socialisation and organisational culture to which I turn in the final section of the theory chapter.

### 3.4 Socialisation and Culture

In this, the final section of the theory chapter, I address the twin concepts of socialisation and culture. Taken together these concepts provide a unifying theme to the study of *the becoming of trainee solicitors*. However, neither of these concepts have a clearly accepted meaning and both hold far reaching implications. Each concept has a history of usage across a number of academic disciplines. They also incorporate a wealth of common meaning with relevance to the day to day life of everyday people. There is a very real danger that my grand ambitions for this section will overreach the possibilities and necessities of this study. I therefore propose to present a very brief statement of intent. Parts of this statement will then be addressed more fully in subsequent subsections.

It is my intention to explore elements of what has variously been referred to as professional socialisation, trainee identity formation, self conception, role management, coping strategies and attitude change with respect to trainee solicitors. This occurs within a specific context that I shall also explore with reference to broader theories of organisational culture or management structures, legal culture, professional culture or the professional ethos, firm cultures or the work culture of solicitors and versions of a training culture. The ambiguity in this statement provides an indication as to the complexity of the task ahead. Both socialisation and culture are universal concepts that lie at the heart of what it is to be human. As such, it is necessary to briefly trace them back to their origins and extrapolate through various disciplines towards a clearer understanding of the terms as they relate to trainee solicitors. I shall first deal with socialisation.

“Although Durkheim and Freud had been deeply concerned with the problems of socialisation, the use of the term in its modern sense originated in the late 1930s and early 1940s” (Danziger, 1971: 13). A history of early usage has been traced elsewhere (Clausen, 1968) but it should be noted that nowhere in this thesis is socialisation used in the economic sense with reference to the works of Marx (1976) and the effects of socialism. The modern term emerged simultaneously as a field of study in three disciplines - sociology, anthropology and psychology - and later in education and management literature. In its most general sense it was held to refer to the process

whereby the individual is converted into the person. According to usage the term has been held to be synonymous with education (Danziger, 1971: 13), training (Van Maanen, 1975a: 211), development (as in developmental socialisation - Wheeler, 1966: 68) and "becoming" (Hopper, 1977: 149). These usages can be taken to correspond roughly with the emphasis within each of the social science disciplines. The term *education* is essentially a normative and applied perspective concerned with the value of goals and techniques that is associated with educational teaching and theorising. The term *training* is generally used within the applied human resources approach of much management literature. The sense of socialisation as *development* is most strongly associated with traditions in social and developmental psychology originally stemming from the writing of such as Freud, Piaget, Bruner and Kohlberg and referring to the cognitive and moral development of children. Finally, use of the term *becoming* carries a broader anthropological sense of symbolic incorporation into a larger unit. It may be for this reason that the specific term *socialisation* has typically been associated most singularly with the work of G. H. Mead, the symbolic interactionists (Manis and Meltzer, 1967) and others within the discipline of sociology. Each of these strands will be addressed.

The starting point is to examine the general theoretical approaches that have been adopted in relation to human socialisation. An introduction to the general concept of socialisation is followed by a necessarily brief introduction to the ideas of some of the classical theorist who have influenced all that follows. At this point I shall offer a unified conception of human socialisation under the heading "a process model". This is followed by a more focused examination of the operation of socialisation with regard to legal students undertaking training and also in the organisational context for occupations or professions. The work of management theorists emerges as a fourth contributory discipline at this point. The ideas of some of their main theorists are then examined in relation to the context of socialisation namely culture. The subsection on culture mirrors the structure for that of socialisation. The general concept of culture is addressed. I shall forego an examination of the early anthropological theorists and engage directly with the more precise conceptualisations of culture in relation to trainees namely, organisational culture (of legal firm) and the moderating effects of the wider culture of professionalism, law and the markets

(addressed in earlier sections). Conclusions are drawn in relation to the remaining study in the form of research questions. This concludes the section and the theory chapter as a whole, unifying the process of education and training with conceptions of knowledge and skill and the moderating effects of professionalism.

### **What is socialisation?**

Socialisation is a broad and complex issue (Goslin and Glass, 1969). It is a lifelong process of learning and adaptation (Van Hasselt and Hersen, 1992). As such it is a topic which stretches across numerous academic disciplines. There are few major social theorists that do not have a contribution to make to this debate. The earliest philosophical writings of Socrates to the most recent advances in molecular biology all serve to illuminate this process of change that takes each and every one of us from cradle to grave. How then can we approach such a question as human socialisation, which lies central to our very notion of existence as social beings, in any meaningful way?

What is meant by the term socialisation and to what extent is it representative of a general social phenomenon? Is socialisation only something that happens when two or more people interact "socially" or can one reflect upon past experience in a solitary manner and alter because of it? Socialisation can refer to:-

"The way that we change in response to, and after reflection on our social environment"

"The process by which an individual learns the rules and values of their society"

"The shaping of a person's behaviour and attitudes so that they conform to social conventions"

"How a child learns to participate in society as an adult"

The first of these statements implies a dynamic process in which the individual mediates their own learning. The second of these statements is neutral vis-à-vis the balance of power between society and individual. The third statement presents a

picture of an all encompassing society that moulds individuals to its will. The final statement suggests that socialisation is merely the process by which children become adults. I offer these statements to illustrate some of the central differences in the early usages of the term socialisation. People generally have an informal global conception of socialisation, often holding some personal notion of what such a process might entail. Many people would be prepared to offer anecdotal evidence in support of these views. Academics, as a subset of people, are not so different in their writings on socialisation. Many have been happy to work with a rather ambiguous global idea of socialisation. An exception is those researchers with an interest in a particular aspect of socialisation. However, even here, there has often been a tendency to draw upon a poorly defined global notion to develop a focused approach to the particular aspect of interest, be it child socialisation or political socialisation.

These speculative definitions do, however, serve to illustrate a number of key ideas involved in an understanding of socialisation. Socialisation is a process of change. It involves learning. It includes the process whereby a child becomes an adult and is integrated into society. In some way this involves a putting on and acceptance of social values, attitudes, opinion, norms and rules which are deemed appropriate. In the mainstream interpretation of socialisation in relation to the transition from childhood to adulthood it is a continuous, lifelong integrating process that fits a child for adult life. Socialisation is:

“not a process that ends on completion of adolescence as Freud and the neo-Freudians would have or structurally determined whereby the values and goals of a social system are instilled in the child’s behaviour repertoires.

Socialisation is a never-ending process that is negotiated and potentially problematic in every interactional episode that appears between two or more people”. (Denzin, 1977:

41)

Denzin adopts a Meadian reading of socialisation, involving taking the attitude of the *other* through successive pre-play, play and game stages, the *conversation of gestures* leading to the acquisition of language and *mind* through reflection and self/other

awareness. However, inevitably, such a process can be envisaged in a number of different ways. A theoretical distinction is often drawn between the phylogenetic alteration (development) of behaviour through processes operating at the evolutionary level and behavioural change happening within the life span of the individual. Primarily, I shall be dealing with the latter. I shall have something to say on the former with regard to that old chestnut - the nature/nurture debate (Hirst and Woolley, 1982) - for it is important to remember that "genes need an environment in which to express themselves and the organism needs a structure before it can behave; that structure has a hereditary basis" (McGurk, 1975; pp.130), an idea comparable to Waddington's (1962) "epigenetic landscape".

There can also be a tendency to imbue socialisation processes with a deterministic aspect. It is essential that we do not lose sight of the element of individual agency in all processes of social change.

"The very term 'socialisation' seems to posit society as the goal-setter and active principle, leaving the individual as something that is worked upon, more or less successfully"  
(Danziger, 1971: 14).

Despite certain genetic or biological predispositions, individual human attributes, identity and self-image are produced through interaction between individuals and their socio-cultural (and physical) environment, mediated by other social actors and individuals' own actions. The dynamic processes of socialisation and identity (re)formation, or reaffirmation, play a central role in maintaining the cohesive and stable structures of individuals and groups bound together within networks of social relations (any group from pair to societies) and the well-being of the individual themselves. This stands as a rejection of any crudely reductionist or imperialist theories whether biological, psychological or cultural. Individual identity is negotiated and given meaning within the specific context (socially, historically and culturally) and significant symbolic universe of the individual bounded by the parameters governed by certain universal absolutes (i.e. the laws of nature) and bio-physical predispositions.

Hence we can see socialisation in the image of a colander. The laws of nature define the brim, the specific physical (man-made) context and the individual genetic endowment form the shape and gradient of the sides. However, the near-infinite, mutable and complex social interactions of everyday life, historical and psychological precedence (past choices), today's whims and vagaries (present choices) and future expectations determine exactly which hole the water will run through. As long as we live, the water continues to run down similar or slowly altering channels, but through a seemingly random multiplicity of holes. The reductionist argument that posits the temporal priority of our birth over our entry into the social/cultural world fails to recognise that the instant of our birth as an individual bio-organism and indeed our very conception marks our entry into the stream of evolutionary change and historical material context just as surely as if we had walked into a room. We are conceived into an ongoing scenario of powerful though not immutable forces and a specific material situation. However, from the very moment of our conception, our existence, along with that of every other action-producing entity, provides the stimulus for further change, forever altering the exact instant of our creation. Therefore biology and culture can be seen as just two aspects of one Janus-faced process of universal evolutionary change.

### **Socialisation: Some of the ideas of the main theorists**

Here I will attempt to deal with the early contributions made by some of the major theorists in psychology and social theory to the debate surrounding human socialisation (see White, 1977). Some of the later contributions of those working in education and training have been referenced in an earlier section and the emphasis on organisation in management literature is addressed in relation to culture later in this section. Much of the "classical" work placed an emphasis on early socialising influences: What is now often referred to as "primary socialisation". It is for this reason that I shall emphasise pre-adult socialisation, but will offer a fuller picture of adult role socialisation (e.g. becoming a solicitor) later.

A distinction is sometimes drawn between those processes operating early on in an infant's life and those that build on these early experiences. The former may be termed "primary socialisation", the latter "secondary". The term "tertiary"

socialisation is sometimes applied to particular aspects of adult socialisation such as those processes related to job change, political persuasion or family restructuring. The standard usage accepts primary socialisation as covering those processes operating from infancy to early adulthood and secondary socialisation as referring to any socialisation that takes place after an individual has adopted a socially fully integrated persona - namely once they are adult (Berger and Luckmann, 1967: 149-182). Tertiary socialisation might seem a redundant term, but it refers to the processes of change than can operate at or during periods of life-crisis such as marriage, parenthood, bereavement or redundancy. Berger and Luckmann refer to this as "alternation", the processes of re-socialisation requiring the dismantling and disintegration of "the preceding nomic structure of subjective reality" (Berger and Luckmann, 1967: 177). These terms are not altogether satisfactory, however, they provide an initial categorisation which will serve to group the processes operating at distinct periods in the life cycle. I shall now situate the discussion in relation to philosophical notions of human nature. I shall then make reference to the work of early theorists that may be broadly classed within psychology and that have given rise to the branch of that discipline named social psychology. While the following synopsis may not seem entirely relevant at this moment the ideas of these theorists form the basis for much later work around socialisation and reference will be made to their terminology in later discussion.

Any discussion of socialisation has implicit within it a specific conception of human nature. As such it is a debate which, in innumerable forms, has continued since the dawn of humankind.

"Human beings live in complex, highly interdependent social organisations, all of which are aimed at physical survival, psychological adaptation and personal fulfilment in physical environments of staggering variety. In order to survive, they must develop mastery of their physical and social environment. The prerequisite for the development of this mastery is the recognition of predictable sequences of events and actions. Some form of perceptual regularity

or order, therefore, can be regarded as the root of all forms of learning, without which no adaptation or survival is conceivable” (Moghugh, 1978: 115).

Regularity of physical environment follows immutable laws of nature. Social environment is at once more varied and less constraining; it is managed through language and meaning, images and interactions - this is a complex game to learn (Berne, 1970).

An early distinction is often drawn between the empiricism of Locke (1632-1704) and the descriptive irrationalism of Rousseau (1712-78). Locke starts from the premise that we are born with a clean slate, *tabula rasa*. This frequently used phrase has led to a particular conception of individuals as empty vessels, a computer waiting to be switched on. The new-born infant then gains experience from sensory associations and generates rational theories on the basis of this. The picture of learning here is one of received wisdom or of individuals being given distilled knowledge. In contrast, Rousseau views individuals as constantly active, experimenting and exploring. Here the neonate is not a passive sponge, but an innately curious experience-seeker developing knowledge through interaction with the world - the noble savage.

Early psychological theories vary in terms the emphasis they place on internal and external influences in the socialisation process. Freudian or psychodynamic theory posits the cognitive structures of the *ego* and *superego* as mediating the given nature of the *id* in response to socio-cultural influences. Freud's theory of psychoanalysis (1955) in which early childhood experiences serve to determine adult personality focuses on instinctual biological energy that is structured through critical life stages by "others". The seat of this energy reservoir is the *id* which operates according to the pleasure principle and demands immediate and continuous gratification through release (cathexis). The *ego* serves as an executive body (the consciousness) operating according to the reality principle and mediating between the demands of the *id* and the constraints of the environment. Eventually the *superego* develops following the resolution of the phallic crisis (the Oedipus complex or Electra complex), through a process of angst-induced identification with the same sex parent resulting in the internalisation of social norms and rules. The mature adult personality can be mapped

to the development and interrelationship of these structures following the negotiation of critical phases.

Of the neo-Freudians Jung's theory of personality (1968) rejected Freud's central emphasis on the innate sexual drive (libido). He practised what he termed "analytical psychology", according to which man's behaviour is determined not only by the conflicts already present in his individual and racial history (the personal and collective conscience) but also by his aims and aspirations. The character and indeed even the quality of dreams suggest the striving towards individuation. Man is seen as seeking creative development, wholeness, and completion. The individual personality contains memories, referred to as archetypes, of its ancestral history which can be studied through myths. Jung postulated two basic personality types, characterised respectively by extroversion and introversion. In contrast, Erikson's (1968) "eight ages of man" represent psycho-social stages in a lifelong process of ego development. These crises are conceptualised as bi-polar dynamics between autonomy/shame and doubt, initiative/guilt, industry/inferiority, identity/role confusion, intimacy/isolation, generativity/stagnation and ego integrity/despair. The stage of identity vs. role confusion holds greatest relevance to the situation for trainees. Allport (1955) began the so-called traits approach which considered attitudinal predispositions or *traits* to exist as neuropsychological entities (i.e. they exist somewhere in the brain) which vary along dimensions (i.e. in terms of degree) e.g. aggressiveness. He offered his rather idealistic six features of a mature personality; extension of the sense of self, intimacy and compassion, emotional security, realistic perceptions and skills, self-reflection and a unifying philosophy of life. The features of realistic perceptions and skills through self-reflective learning and the development of a unifying philosophy of life hold relevance for trainee solicitors.

The seminal work of Piaget (1926) holds a dominant position in any discourse around socialisation. He looked to the interaction between the structure of the organism and the demands of the environment that give rise to the cognitive adaptation of schemata through accommodation and assimilation (reference to which is made in the section on Knowledge and Skills). He proposed sequential stages of development, from the sensori-motor stage when the infant is entirely dependent on visual impressions, to the

pre-operational stage characterised by egocentrism, to the concrete operational stage where they develop a sense of object permanence and finally, but not necessarily, arriving at the formal operational stage of abstract thinking. Notwithstanding criticisms of Piaget's work (Donaldson, 1976) his ideas have had an enormous and enduring impact upon analyses of social and cognitive learning. Bruner (1956) developed Piaget's ideas in relation to the role of symbolic language in the advanced stages, focusing on cultural factors. This led to his distinction between moral realism and moral relativism. Similarly Kolberg's theory (1973) specifies levels of moral development based on "one's cognitive level as a shaper of how individuals define themselves" (Hayslip and Panek, 1993: 234) and learn the value code of their society: Pre-moral, conventional, autonomous. Vygotsky (1978) provides the concept of a zone of proximal development in which child development is viewed as a social activity, with children participating in activities beyond their competence through the assistance of adults or more experienced peers. Through social interaction in the zone of proximal development, children are able to do things they could not achieve by themselves. Through such social guidance, children gradually internalise the skills that are demonstrated. The zone of proximal development is a dynamic region of sensitivity to learning experiences in which children develop, guided by social interaction - it is where culture and cognition meet.

Each of these theorists acknowledges the role of cognitive processes in the development of individual learning. No such mediation is present in the interpretations of early behaviourists or learning theorists. Watson (1930) stands out as the early figure that initially developed the notion of operant conditioning later popularised by Skinner (1953) and developed through notions of operant or instrumental conditioning whereby environmental influences act as either positive or negative reinforcers and increase or decrease, extinguish, generalise and discriminate in the shaping of behaviour under different schedules of reinforcement. Bandura's work on identification, imitation and modelling is central to an understanding of socialisation (Bandura, 1965; Bandura and Walters, 1963). He explored aspects of observational learning, modelling behaviour and vicarious reinforcement which point to the possible separation of acquisition (of knowledge and skill) and performance (of the behaviour).

These psychological explanations of social development share an emphasis on the individual as the unit of analysis. "A 'healthy' person develops from a dependent child to an autonomous and independent adult: development itself is identified with separation, and attachments are viewed as developmental impedimenta" (Kitzinger, 1992: 233). Sociological explanations to which I now turn introduce society, as something more than just a collectivity of individuals, into the equation. Initially, symbolic interactionism presents a dynamic dichotomy between the individual and society which maintains "the assumption that the 'social' and the 'individual' exist independently of one another and interact" (Kitzinger, 1992: 230).

"The individual is conceptualised as a relatively autonomous, self-contained and distinctive entity, who is affected by external variables like 'socialisation' and 'social context' but is in some sense separate from these influences. These free and equal individuals create social relationships and institutions for themselves: political institutions are seen as based on contract, consent and agreement. Society, according to liberal individualism, is an aggregate of 'individuals' - a voluntary association of rational agents who (historically or hypothetically) decide, on the basis of cost/benefit analysis, that communal living is more beneficial than isolation, and so contract into 'society'. Thus is the 'individual/society' dualism born" (Kitzinger, 1992: 229).

Kitzinger suggests that "liberal individualism" is a core feature of modern Anglo-American discourse deeply embedded throughout academic analysis, political thought and everyday understandings - this is a point to which I shall return in dealing with social constructionism and later culture (Bauman, 1973).

The work of G. H. Mead (1934) led directly to the school of symbolic interactionism (Thomas and Thomas, 1937) later developed by Berger and Luckmann (1967). In their influential book *The Social Construction of Reality* (1967) they proposed that society exists as both an objective and a subjective reality which can best be

understood “in terms of an ongoing dialectical process composed of the three moments of externalization, objectification and internalization” (Berger and Luckmann, 1967: 149). This for them is the essence of socialisation which is achieved through a number of distinct processes. The individual initially apprehends *the* social world as a meaningful and social reality which they are inducted into. The perceived social reality is then *taken over*, or internalised (and possibly creatively modified) as *their* world. Thus the social world or a sector of it is *filtered* to the individual by significant others who pattern and modify it, both overtly and inadvertently, in the course of mediating it. “The biography of the individual, from the moment of birth, is the story of his relations with others” (Berger and Berger, 1976: 57). During the initial period of *primary* socialisation the relativity of social patterns and social worlds are experienced as absolutes. The primary vehicle of socialisation is language:

“It is in acquiring language that a child learns to convey and retain meaning. He begins to be able to think abstractly, which means that his mind becomes able to move beyond the immediate situation. ...[He] becomes capable of reflection. Past experience is reflected upon and integrated into a growing, coherent view of reality” (Berger and Berger, 1976: 64).

The child thereby becomes increasingly aware of himself as a self through the processes of *turning back* and *talking back*. Central to these processes of interacting and identifying with others is, to use Mead’s phrase, “to take the attitude of the other” (1934). Primary socialisation “entails a dialectic between identification by others and self-identification, between objectively assigned and subjectively appropriated identity” (Berger and Luckmann, 1967: 152). There is progressive abstraction from specific roles and attitudes to generalised norms. The internalisation of the *generalised other* marks the identification with society, “the subjective establishment of a coherent and continuous identity” (Berger and Luckmann, 1967: 153) and the end of primary socialisation.

Clearly, Berger and Luckmann are not merely referring to cognitive learning. The early socialisation of a child occurs within a highly emotionally charged environment. This affective aspect is an essential component of primary socialisation. However, the significant others are not the only agents of socialisation. Drawing an analogy with classical Greek drama - they represent the central protagonists and other more peripheral agents such as family friends or neighbours constitute the chorus or social backdrop. Similarly, whilst it is true that the significant others, typically parents, control the rewards and manage the parameters of socialisation the child always exercises some degree of freedom of selection and can increasingly operate to modify the action of these socialisation agents.

Whilst the intensity and scope of socialisation may diminish after early childhood it never ends. The child is initially inducted into a particular social world and introduced to their *self* - the Meadian concepts of the *I* and the *me* represent the two conversant components - the socialised self concept frequently referred to as identity and the "spontaneous part of the self that confronts the socialised part". There is a passing similarity to the Freudian concepts of the *superego* and *ego/id* structures. Identities vary in accordance with the norms or culture of the socialising context as demonstrated in the classic comparison of American and Soviet child-rearing practices (Brofenbrenner, 1970). However, as an individual appreciates the variability and relativity of social contexts so they are assigned differing aspects of identity or roles. These identities are both ascribed and subscribed - "identity is the product of an interplay of identification and self-identification" (Berger and Berger, 1976: 73). In effect this represents the shift from primary socialisation into a *homeworld* to secondary socialisation into *sub-worlds*. "Secondary socialisation is the acquisition of role-specific knowledge, ... role-specific vocabularies, ... [involving] routine interpretations and conduct ... [and] 'tacit understandings'" (Berger and Luckmann, 1967: 158).

Secondary socialisation is necessitated by the division of labour and concomitant social distribution of knowledge in modern societies. It is sequential to and structurally dependent on primary socialisation but differs from it in terms of the emotive content and context. In the words of Berger and Luckmann "it is necessary

to love one's mother, but not one's teacher" (Berger and Luckmann, 1967: 161). Secondary socialisation is characterised by formality and anonymity. Individuals adopt context specific and role-specific partial selves almost through a conscious learning process. However, identity and subjective reality must be continuously and routinely maintained and transformed through social interaction with others. This interaction generally takes the form of conversation which, mostly implicitly, sustains role identity and plausibility structures. "Language realises a world, in the double sense of apprehending and producing it" (Berger and Luckmann, 1967: 173). Importantly, there are also moments of crisis maintenance in relation to problems of consistency. An individual solves these "either by modifying his reality or his reality maintaining relationships" (notice the similarity with Piaget's assimilation and accommodation). The individual thereby accomplishes "partial transformations of subjective reality or of designated sectors of it. Such partial transformations are common in contemporary society in connexion with the individual's social mobility and occupational training" (Berger and Luckmann, 1967: 181).

The work of Berger and Luckmann is open to a number of criticisms particularly their clear distinction between primary and secondary socialisation (Wassall, 1988). These I shall address in a moment. However, there is clearly a process of social learning at work that takes a child through to adulthood. Psychologically based explanations and these sociological approaches are not entirely incompatible as can be seen in the superficial similarities between Freudian psychodynamic structures and the Meadian self or, perhaps more significantly, the historic developments in the use of the concept of *role* across both disciplines - as evidenced by the position of exchange theory (Homans, 1958), Lintonian role theory (Linton, 1934), Goffman's role theory (1961), role-taking (Turner, 1962), role strain (Goode, 1960) or role determination (Thibaut and Kelley, 1959) discussed in Argyle (1992) and criticised by Weinstein and Deutschberger (1963). An integration of psychological personality characteristics, attitudes and roles with sociological ideas can be found in application to occupational socialisation (see Alutto et al, 1971). Similarly, there can be little doubt that stimulus-response conditioning plays some part in the initial learning process for infants. In order to provide the basis for extensive discussion of later more specialised role-based socialisation I shall combine elements from the ideas of these

theorists and crudely characterise periods in the process of socialisation as something of a straw man. This will then serve as a target for a number of criticisms.

### **A process model**

Drawing on the work of these early theorists it is possible to caricature a consensus model of socialisation. I have called this a process model summarising the hegemonic position - this global definition encapsulates an interactive process from pre-birth to death, and through every intervening stage of life, although the focus of the theorists has traditionally been on the periods of infancy, childhood, adolescence and early adulthood. They have traced the development of individuals as they come under the influence of different people across differing fora or situations, from the mother or early care-giver, to the family and friends and peers, from an expanding concept of home subsequently supplemented with school, college, work and other environments. This indicates expansion from ego-centrism to significant other to generalised other, the infant developing morally from specific rule to generalised rule.

### **INFANCY**

In this idealised process model, the infant has strong attachments (Bowlby, 1965) and identifications to significant others as they seek to make sense of the "buzzing blooming confusion of reality" (James, 1890). At this early stage the infant is sensory dependent, governed by the reality principle (Freud, 1940) or lacking any sense of object permanence (Piaget, 1926). They are ego-centric and id-demanding, bombarded constantly with new stimuli, a fantastic amount of which are absorbed (stimulus-response learning). There is a deterministic tendency to these ideas, which allow only limited agency.

### **CHILDHOOD**

The child has a growing sense of themselves and the world beyond themselves. Through their extending social network and varied contacts, they encounter basic social rules which ultimately lead to rule governed behaviour - the dos and don'ts. This stage of socialisation is rooted in the specific differentiation between self and other, but is still characterised by a high degree of dependency (Ainsworth, 1973).

## **ADOLESCENCE**

By now rules have been learned and are generalised, leading to periods of crisis and confusion (Erikson, 1965). Over-extended generalisations, boundary-testing and social experimentation are representative of this turbulent period but there is also a strong displaced need for attachment, or belonging, which can often be transferred onto peer groups, and into fashion and media idolisation. This can be seen through the rejection of earlier parental identity and the immersion into teen culture. "I am myself", an individual in my own right. The youth experiments with new found powers of agency and runs up against the inherent contradictions in society. Eventually they must move away from the clear dichotomies of youth (accepting/rejecting, on/off, black/white) and develop an ability and willingness to accommodate inconsistencies (the grey shades of reality).

## **ADULTHOOD**

The period of maturity is characterised by consolidation and stability both internally and externally. The individual concentrates on the formation of an acceptable identity package often rooted in educational experience or early employment experience. There is a rooting of opinions, attitudes and outlook. In a sense, one can start looking outwards once one has stopped continuously looking inwards. The self is sufficiently protected and cushioned so as not to require continuous defence and the development of masks begins. There is a move from a dependence on mirrors to a reliance on masks (Strauss, 1959). The anxiously reflective adolescent has become the confident role assumer (Goffman, 1969).

### **The model assessed**

The model sounds plausible but seems to contain some lacunae, if considered solely from the viewpoint of these earlier theorists. What part is left for the individual in this account of socialisation? By accounting for the changing role of agency, the dynamic has been weakened or lost. We are again in danger of adopting an "oversocialized conception of man" (Wrong, 1961) within a false individual/society dichotomy (Kitzinger, 1992).

Another lacunae is the meta-world of appearances - Bandura's learning theory approach (1977) indicates that infants internalise experience in a variety of different ways - not passively like social sponges. They manage the performance of their learning in response to their social environment not as simple stimulus-response or input-output machines which mimic others as in a strictly behaviourist model of learning (Skinner, 1974). Bandura introduced a role for cognitive mediation, much to the chagrin of strict behaviourists. Initially, this mediation may be rather crude, but very quickly the child demonstrates enormously subtle ability, "almost adult like" (Brown, 1976). From this more sophisticated account emerges a picture of individual agents mediating between different roles in response to their social context, rather than the anxious-praise seeker of Berger and Luckmann (1967) or Cooley's (1909) individual straining to catch a fleeting reflection of themselves in the eyes of others.

It must also not be forgotten that socialisation has affective or emotional components that are as essential as the cognitive elements discussed (Bowlby, 1965; Rutter, 1977). For example, "Internalisation occurs only as identification occurs" (Berger & Luckmann, 1967, 151). An alternative conceptualisation might see that the externalisation of internal reality demonstrated in presentation only occurs with a degree of identification. In the sense that one does not reveal one's inner secrets or lessons learned to a complete strangers. The adoption of a subjectively coherent and plausible identity by mimicking and mirroring the roles and attitudes of (significant) others is not sufficient. We need to add to the account of childhood or primary socialisation ideas of individual difference, role, social context and the extent of identification with significant others in that social context. In moving to look at adult socialisation, these 'additional' ideas become ever more important.

### **Socialisation after childhood**

Following this rather general consideration of early socialisation it is important to clarify what exactly we are talking about in relation to this study, namely the processes of socialisation operating during and after the training of solicitors. Authors have variously referred to this period of socialisation as secondary socialisation (Berger and Luckmann, 1967), adult socialisation (Brim, 1966; Mumford, 1970), occupational socialisation (Simpson et al., 1979; Waddington,

1983), organisational socialisation (Schein, 1968b), professional socialisation (Olesen and Whittaker, 1973), pre-professional socialisation (Wild, 1978; Brown, 1991) and even primary occupational socialisation (Alutto et al, 1971). Apart from secondary socialisation, a term coined by Berger and Luckmann to refer to all processes of socialisation operating after primary socialisation, they can all be taken to refer to the processes by which people acquire the social characteristics and distinctive attitudes of particular groups, namely adults, occupations, organisations or professions. The last two terms represent a further refinement in that they specify the context and stage of socialisation. Typically, qualifications of the term socialisation includes reference to context, stage or form. For example, the socialising situation or agencies involved, the period of the life course affected, or purpose e.g. anticipatory socialisation (Merton et al, 1957). The point is that there is a confusion of terms which overlap and interrelate. A degree of clarification is needed.

The term adult socialisation is non-specific and general. It tends to imply a contrast with processes of socialisation operating in childhood and is used in this sense in literature in the fields of social psychology, sociology and education. As has been noted primary socialisation and secondary socialisation draws a similar distinction. Use of the term occupational socialisation occurs in the literature of occupational psychology, management studies and sociology and specifies the introduction, inculcation or entrance into an occupational group. Mumford's study of interns (1970), i.e. junior doctors, is typical. A review of management literature tends to link an analysis of corporate culture with socialisation (Schein, 1968a, 1985a, 1989; Pascale and Athos, 1981; Ivancevich and Matteson, 1993). The focus of these researchers is on the organisational context. It is not surprising that the predominant use of the term organisational socialisation expresses this. More recently, a shift from organisational theory to studies of organisational culture are expressed in a broadening of the term to enculturation (Brown, 1995) or acculturation (Louis, 1980), terms borrowed from aspects of cultural studies (this is developed towards the end of this section). Professional socialisation deals with the literature on socialisation specific to certain professions; teachers (McGurk, 1975), police (Fielding, 1988; Van Maanen, 1975a), prison governors (Waddington, 1983), doctors (Merton et al, 1957; Becker et al, 1961; Haas and Shaffir, 1977; Bosk, 1979) and

nurses (Melia, 1987; Benner, 1984; Simpson et al., 1979). These distinctions represent a superficial reading of the literature. Further qualification with reference to terms such as pre-professional socialisation or primary occupational socialisation highlights sequential aspects that shall now be addressed.

Any attempt to envisage a continuum of socialisation from cradle to grave requires a single, holistic conceptualisation in order to maintain theoretical integrity that is to say, we must have a view of human learning that can both account for the earliest processes operating to integrate an individual into a social group, culture, or society which can equally accommodate later processes of change or learning as the social situation of the individual alters. While it may be pragmatically expedient to separate these processes into earlier and later phases the integral nature and inherent unity of these processes must not be lost. This does however raise questions of structure and sequence. How do the earlier processes relate to the later ones? Are the later processes dependent in some way upon the form of an individual's earlier experiences? The answer would seem to be yes but to what extent must this be the case?

Adult socialisation, whether it be into an organisation, an occupation or a profession (all of which apply to trainee solicitors), generally proceeds in a number of stages. The vast majority of studies mentioned above focus on the socialisation and training of individuals, often students, before they fully enter the organisational, occupational or professional environment. Typically these studies examine the mechanisms of socialisation operating through applied, vocational or professional courses *within the educational environment*. Studies of the socialising experiences of law students (Sherr and Webb, 1989; Smith and Halpern, 1992) provide an example in relation to law. Other studies (e.g. Fielding, 1988) examine the socialising mechanisms operating through a training programme for probationary members *within the organisation or occupation*. Significantly there are very few studies that specifically examine the mechanisms of socialisation (or professionalisation) operating fully within the professional milieu. Exceptions are Mumford's study of interns (1970: 118-136) in relation to medicine and, to some extent, Daniel Poor's doctoral thesis (1994) which studies the "professional identity formation" of "junior associates" (broadly equivalent to trainee solicitors in England and Wales). There is a surfeit of work on

socialisation in the *educational phase* and a dearth of work (indeed none to the best of my knowledge on trainee solicitors except Elliot, 1963) exploring what I refer to as the *training phase*. I have made no mention of the *selection phase* in which trainees select and are selected by their prospective employers (firms) although there is a degree of overlap with studies of law student career expectations. There are numerous studies of recruitment practices and interview procedures generally, however, I shall only address aspects of these in relation to firms culture towards the end of this section. I now propose to review work on the socialising experience of law undergraduates before addressing the substantial literature mentioned above on socialisation in the educational phase.

### **Socialisation into a profession: The educational years**

Most recent and relevant research into the socialisation effects of undergraduate legal education in this country (Webb, 1986; Webb, 1988; Sherr and Webb, 1989; Smith and Halpern, 1992) has focused on two issues; the social origins of students, and changes in attitudes during the period of legal education particularly in terms of the career choice in law. In the former category, of particular importance are social class, previous academic performance and gender. Law schools in the United States tended to attract high-performing males drawn disproportionately from professional origins. There also seemed to be a high degree of occupational inheritance since having a lawyer parent was the single strongest predictor of a legal career choice (Warkov and Zelan, 1965). Stevens's (1973) findings updated these findings although political views, social service leaning and reformist motivation were mixed with more traditional factors such as financial security, prestige and family influence. Erlanger and Klegon (1978) identified a similar set of occupational values although they remarked upon a shift in social origins towards "new white-collar classes". These findings have been confirmed as a result of further research across the United States (e.g. Hedegard, 1979).

In this country, Webb (1986) identified changes in political orientation, the ratings of specific legal jobs, and student orientation towards business or public interest concerns. During the period of legal study it was found that socialisation effects in students reinforced attitudes towards more conservative goals and conventional forms

of legal practice. However, interestingly these changes were slight, seemingly implying that the law school experience by itself was of limited effect. Further studies support this finding that the law school is a poor source of socialisation, which tended only to reinforce existing attitudes with the result that "law school graduates are generally law school freshmen...grown older" (Hedegard, 1979).

Other studies in this country show comparable findings. The social class of British law students is also biased towards the top end of the social scale and prominent reasons for choosing a career in law are financial security and the desire to help people (McDonald, 1982). However, a comparatively large proportion were female (40%), were drawn from the professional classes, and did not intend to practice (30%). This research is summarised in a paper by Sherr and Webb (1989).

This paper was written in the late 80's before the economic boom turned sour. There was still an extraordinary demand for lawyers particularly from the large city firms. The question that Webb and Sherr posed was "are law students affected mainly by the external market for their hire or by the influences of curriculum, teachers and colleagues at university?". They used much of the material that Webb originally gathered for an LLM degree to examine the socialisation effects of undergraduate legal education at "Warwick University limited". They explored issues of social origin, law school experience and career expectations. The study is also informed by the understanding that students "may be influenced by their experiences prior to entry into the law school and by cues they receive from the law school and its curriculum, as well as from the external market for legal services" (Sherr and Webb, 1989: 225). The relationship between the "law school experience" and the external market is approached through an understanding of the "Warwick Law School ethos" described as "law in context" (including a clinical component).

In terms of social origin Sherr and Webb (1989) found results comparable with much of the earlier research mentioned. They questioned the ambiguous concept of *class* with its connotations of life styles, beliefs and family background. Within a law school these elements are thought to play an important role in the process of "training for the hierarchy" of law. They stressed the extent to which training for the professions is a closed process, a "circulation of elites" between professions, which

suggests a close correlation between family origin, education, parental occupation and political orientation.

Just over a quarter of their respondents had at least one parent who had been educated at university. While this is lower than earlier research has suggested it is still well above the national average. However, fewer students than might have been expected categorised the occupation of their parents as "executive" and slightly more placed their father in the "clerical" band. It was suggested that this may be due partly to an underestimation by students using a somewhat ambiguous categorisation, for nationally there are very few typically male occupations that class as "clerical". However, again these figures were far higher than the national average and not incomparable with earlier findings. As far as political orientation was concerned, the majority of students placed themselves towards the centre or right of the political spectrum when they entered university, but with a distinct shift of political views to the left during the period of their legal education. The majority did not feel they could give any specific reason for the shift but of the few that could, more gave reasons unconnected with the university than related to university life (19.1% as opposed to 14.9%). In summary, the Warwick sample came largely from the upper end of the social scale but less so than other studies of law students had suggested. The overall image of a social elite remained. The majority entered university with a small but significant political bias to the right, but for reasons seemingly unattached to their law school experience, there was an increase in those indicating a pro-Labour orientation during their period of study. These findings are largely consistent with other studies.

"Students' primary stated reason for studying law was their interest in the subject matter. The desire for professional training and the desire to enter the profession were also important" (Sherr and Webb, 1989: 245). These findings are almost identical to those of the Policy Studies Institute Study (Halpern, 1994) and very similar to earlier work (McDonald, 1982). Two-thirds of students expressed the intention to practice with the majority intending to qualify as solicitors. While it was suggested by Sherr and Webb that these findings matched the needs of the actual job

market, in retrospect this might well be questioned, with a subsequent distinct drop in the numbers of final year students intending to practice (Smith and Halpern, 1992).

In conclusion, there seems to have been a harmony between student expectations and the law school ethos, a resonance that those writing in the corporate management genre refer to as "effective anticipatory socialisation" (Ivancevich and Matteson, 1993). In this case it is the coupling of Warwick's emphasis on "law in context" with students' wishes to be taught practical skills, "how lawyers actually think".

Ultimately, it is questionable the extent to which law schools operate a critical socialising role in the career of prospective lawyers. If the experience ratings are largely due to a pre-existing congruence with student expectations (Goffman's role relevance) and if the slight (political) attitudinal shift may be explained in terms of the broader "politicising" experience of campus life, what then is the socialising role of law courses? Equally, Sherr and Webb's original question "Law students...do we make then turn to the city?" could be answered simply as the result of financial debt incurred from extensive education and training (Trainee Solicitors Group, 1992) which pushes them towards the more generously remunerative large city firms.

Initial findings from the Policy Studies Institute (Smith and Halpern, 1992) one year into a four year survey of law students covers their intentions in joining the legal profession. Students studying law were asked such questions as: Why did they study law? Where did their interest in joining the profession come from? What were their views on the course? What were their career intentions?

The cohort consisted of law undergraduates due to graduate in summer 1993, i.e. students in the second year of their law degree (incl. overseas students). It is intended that a further cohort of Common Professional Examination students (i.e. non-law graduates) will be included in the next year's sample. The method used was a self-completion questionnaire survey, the development of which involved discussion with legal academics, matching with other questionnaires, and work on other professions to enable comparison. The sample involved selecting half of all institutions offering a law degree and half of the Oxbridge colleges. All the students at the selected institutions were included in the survey. However, the distribution of responses within each institution varied enormously. It was suggested that this could

be compensated for in future cohort selection. Early response rates for Oxbridge, 'new' universities and other 'old' universities of 62%, 60% and 32% respectively were reported, with the greatest variation among 'old' universities (a range of 80% to less than 10%). A comparison of early and late returns to indicate any possible differences on non-returns suggested little if any bias. A flavour is given by the following: 58% female, 42% male; 66% white/British, 10% White/Non-British; 5% black, Afro-Caribbean, 15% Asian; 83% home students (of which 7% Chinese origin, 5% Indian origin, 4% Black, Afro-Caribbean origin) and 17% overseas students.

Ethnic minority representation among law students was substantially higher than would be expected from the general student population (GSP), with the majority being concentrated in the former 'new' universities and a minority in Oxbridge. A similar distribution was found for mature and married students. The students sampled were generally from middle class/professional parental backgrounds (cf. Abel's figure of 50% from m/c professional fathers compared with 20% for the general student population, 1988). Students from independent schools were also over-represented among law students in comparison to the general student population (23% vs. 17%). This difference was further underlined by the discrepancy between law students with working class fathers in relation to the general student population (16% vs. 60%). This figure remained relatively constant as did the figure for students with fathers in manual occupations (cf. Abel; unchanged since 1970's). The figure for those with self-employed parent/s was double the figure for the general student population. There was a far greater probability of a student reading law if any relation was involved with law or legal practice (10-15 fold increase). This was most marked amongst overseas students (50% had a parent with a career in law).

In terms of the A-level scores required by different institutions Oxbridge generally requested three As while AAB-BBC and CCC were the grade ranges required by 'old' universities and 'new' universities respectively. However the dispersal of actual scores varied quite considerably (from very low, medium, to high respectively). Law attracted the third highest A-level scores behind veterinary science and medicine. A breakdown of average A-level scores by ethnicity ranked white highest followed by Chinese, Indian and Black (assuming A=5 and E=1 taking top three 11.1, 10.7, 9.7, 8

respectively). Over a third of the sample had had some experience of lawyers' work (generally with solicitors, occasionally with barristers or with the courts service), with as many as half having had at least some experience in a legal context. This tended to be early on in the students' career (e.g. some experience during school holidays). This was particularly true for public school students (compared to those from comprehensive schools) and among those with relatives in the legal profession.

In terms of students experience of their courses, there was general satisfaction with the course chosen (not surprising in view of psychological literature showing that one is likely to receive a majority of positive responses to such questions). Asked if they regretted the choice of law "to some extent", 42% of Oxbridge students, 30% of students from the 'old' universities and 18% of 'new' university students responded in the affirmative. The most widely held criticism of the courses were that they were too theoretical and not sufficiently practical. A breakdown of students views about the course found that very few thought it too vocational (bear in mind psychological evidence on the reluctance to express extreme views). The majority found it slightly too theoretical and, of those who thought it too theoretical, the highest proportion were in 'new' universities. The consensus on how useful the training will be was clear with the 'new' universities rating it high and Oxbridge lowest.

Students were asked to rank their objectives in taking a law degree and to compare this with lecturers views on the main objectives in teaching law. Acquiring legal knowledge and preparation for legal practice came near the top for student but were rated as average and least important respectively by teachers. Responsibility for law reform and preparation as a policy maker came bottom for both groups. This seemed to indicate an orientation towards the more intrinsic aspects of taking a law degree, as opposed to the instrumental/vocational aspects (cf. MacFarlane's work on law teachers, global vs. practical orientation to education, 1992). 74% of law lecturers rated the development of general mental skills as of greatest importance. The views on assessment methods followed a clear pattern on a continuum Oxbridge-'old' universities-'new' universities, away from exams and towards continual assessment. Again this preference seemed to reflect actual usage.

Students were questioned about their career intentions at the age of 16 and at the time that they completed the questionnaire. In retrospect the vast majority were thinking in terms of a professional vocation. Their overall ranking placed the legal profession top followed by journalism/writing, banking/investment, medicine, as compared to industry/production as least favoured. Gender differences showed a greater preference among men towards being a barrister and conversely towards solicitors for women. This picture remains true throughout the period of their undergraduate education, with the gender difference becoming, if anything, more apparent. In terms of other careers in consideration now, for men banking/investment and politics rated highly whilst women considered other careers in law. 76% of home students at this stage envisaged practising as solicitors.

Students were questioned about their financial concerns during training. Mature and ethnic minority students were over-represented among those who thought it "a major concern", as opposed to white and overseas students (7% overseas compared with 50% black). Students social class was also found to be significant. Drawing on this, the researcher expressed doubts as to the degree of support 'new' universities actually gave to students from the lower socio-economic bands.

The factors thought important in choosing a career were ranked with "intrinsic interest" and "suits talents" coming top and "type of people" and "value to the community" bottom. These factors were shared with students in other disciplines, "security of employment" and "status" were ranked significantly highly amongst solicitors alone. The gender split found women rated "intrinsic interest" and "suits talents" more highly and "status" and "salary" lower. Again, this would imply a reinforcement of the solicitor/female barrister/male tendency. This matches students image of solicitors as grey, dull and reliable and barristers as exciting, glamorous and independent but an exclusive club (Skordaki, 1992).

In terms of subject preference crime came overall top (possibly not surprising considering the majority of respondents are likely to be in their 2nd year and therefore doing crime for the first time after having taken "drier" 1st year options). However, men ranked commercial/property highly whilst women ranked personal injury, family/matrimonial and human rights top. The balance were also in favour of

combining the two branches of the profession (50% in favour with only 30% answering no to is it a "good idea").

Whilst none of these statistics were altogether startling some of the researchers preliminary findings/general points were of interest.

The highest prestige courses (Oxford & Cambridge) were most heavily criticised. A hypothesis was suggested that students tended to select these institutions paying more regard to their prestige than to course content or intrinsic interest. The reverse case existed among 'new' university applicants. The same point could equally apply to the uninformed expectations of prospective employers where they might disadvantage 'new' university graduates with respect to Oxbridge graduates. It was further postulated that the greater emphasis on global theoretical aspects of law at Oxford and Cambridge as opposed to the more vocationally oriented 'new' university courses (i.e. sandwich or skills based) may also play a part. The collective point that market choice conflicts with perceptions of the course (Sherr and Webb, 1989) is important. A disharmony exists between education and profession.

At present the form of hierarchy within the legal profession (in common with the medical profession) of a wide-based, sharp-apex pyramid can only be maintained by the rapid and growing turn-over in overseas graduates. This serves to withdraw numbers from the lower grades and reduce pressure on a limited number of "high grade appointments". In effect the return of overseas assistant solicitors (for medicine house officers or senior house officers) to their country of origin disguises and contains the imbalance which it is suggested would otherwise "burst the pyramid". It is unlikely that this situation will continue for despite the growing demand for entry to the profession and a massive increase in law school places the number of equity partners (consultants) has flattened out. Recent moves by foreign governments to cap the number of lawyers e.g. Singapore (Straits Times 19 Aug. 1993) along with the likelihood that a growing portion of the potential overseas market (in the former Commonwealth) look likely to establish their own independent or semi-independent vocational qualification courses (e.g. Hong Kong) also looks to threaten the long-term stability of this strategy. The very rapid influx of women into the profession over the last decade in particular has largely been contained by side-

railing them into lower status branches and into lower prestige specialities (e.g. family/matrimonial, child law, immigration - Skordaki, 1996). These mechanisms operate to maintain the apex of the professional hierarchy. Women form a quarter of the profession and demand from students entering the profession has doubled over the last few years, what effect will this have and when will it stop? The majority of commentators assume this trend to have levelled-off. However, this assumption may be wrong for three reasons; the proportion of women in tertiary education is continuing to rise, female students tend to work harder and out-perform their male counterparts, and there is a growing tendency for them to enter the solicitors' profession. The phenomenon of "tipping" may occur, where the solicitors branch of the profession is gradually seen as a "women's profession" and the implication is, becomes devalued (Skordaki, 1996). It is arguable that this may have already happened in the preferred female specialisations (Sommerlad and Allaker, 1991).

There are wide implications if this idea of the feminisation of the solicitors' profession is correct. Already growing differences between student perception of where they are going in terms of specialisation and the differential effects of access between male/female, Oxbridge/'new' universities, young /mature, middle class/working class not to mention ethnic and disabled groups. If divisions continue, meaning increased subdivisions within the profession, reducing vested interest, cohesion, increased fragmentation, then it becomes virtually impossible to imagine a single (or even bifurcated) legal profession lasting into the future.

In terms of methodological criticisms it has been suggested that the Policy Studies Institute study (Smith and Halpern, 1992) has, as yet, failed to shed any light on trends in modes of attendance (full-time, part-time, distance learning) or to pick up non-standard entry (e.g. non-A-level). This problem was undoubtedly compounded by the fact that actual numbers are extremely small (access route accounted for >4%).

A potentially more far-reaching criticism (suggested by Phil Jones) questions the wording and phraseology used by the researchers particularly in relation to the mismatched perceptions and expectations of students and teachers. Both groups hold very different concepts or constructs which may have been differentially accessed by the questions introducing bias. Example dimensions might be "vocational-theoretical"

or “knowledge- intellectual skills”. Teachers think that knowledge is the vehicle for developing students general intellectual skills, whilst students often view knowledge as an intrinsically valuable commodity. Time and time again it has been seen that peoples understanding of what it is that they are doing varies, in this case in relation to course organisation and content. Values are transmitted through the institutional ethos rather than through the actual texts used (nb. the Warwick Law School ethos - Sherr and Webb, 1989). Students look upwards to “substantive law” whilst teachers look downwards to “general intellectual development”. The real difference lies in the ethos and control structures of the specific establishment e.g. compulsory attendance, lectures and exams vs. more laissez-faire projects, continual assessment and stress on independent work/thinking.

In summary, these studies provide more detail on the background of students entering law school than they do about the impact of law schools in terms of the mechanisms of socialisation. The consensus appears to be that law schools have a limited and possibly short lived effect on students attitudes and values. The effect that courses do have tends to be more in line with educational traditions rather than any professional ethos. This is apparent in the tension experienced by some students between educational ideals and the perceived instrumental value of courses in terms of vocational application to profession practice. Having said this, the background information on law students can be seen to constitute an earlier and essential “selection phase” of socialisation. Similarly, the exploration of student expectations provide an insight into the process of anticipatory socialisation for example, student idealism about helping people. The approach has been referred to as a process of preprofessional socialisation (Wild, 1978; Brown, 1991) in order to distinguish it from later professional socialisation. Wild in her study of chiropractic students focused on their backgrounds, motivations (i.e. expectations) and career patterns in the construction of *role marginality*:

“A marginal role is ... an imperfectly institutionalised one which means that there is some ambiguity in the pattern of behaviour legitimately expected of a person filling the role, and that the sanctions attending the role tend to be

inconsistently applied” (Wardwell, 1952: 442 cited in Wild, 1978)

Brown builds on Merton’s notion of *anticipatory socialisation* (1957) to suggest that “preprofessional socialisation recruits, generates professional commitment, and aids in the adoption of a professional identity prior to standardized ... training and education” (Brown, 1991: 157).

Finally, socialisation is, at least to some degree, context specific and as such the fact that the educational phase of professional socialisation takes place within an educational environment, institution and culture limits the extent of socialisation that is appropriate to a professional milieu (see earlier references to situated learning) beyond the more formal learning of knowledge and skills. I shall now examine the processes of socialisation within more explicitly professional training situations typically associated with professional courses run in situ in a hospital, for trainee doctors or nurses, a barristers chambers, for pupils, or a law firm, for trainee solicitors.

### **Socialisation into a profession: The training period**

Much of the recent work in the area of professional socialisation has been done in relation to nursing, the work of Melia (1987), Benner (1984) and that of Simpson (1979) are cases in point. To paraphrase Melia, medicine has furnished the sociology of occupations with some of the seminal works on professional socialisation. The two classic studies of medical students carried out in Colombia (Merton et al, 1957) and Kansas (Becker et al, 1961) took different approaches to the business of occupational socialisation. Merton and his colleagues focused attention on the medical school as the socialising agency, and viewed the students as largely passive recipients of the teaching and experiences offered them. This view of occupational socialisation is perhaps best summed up by Olesen and Whittaker:

“Once the educational system has formally started work on the student, his empty head is filled with values, behaviours, and viewpoints of the profession, the knowledge being perfect and complete by the time of

graduation. To achieve this state of grace, the student has slowly moved ever away from the unholy posture of layman, upwards to the sanctified status of the professional, being divested of worldly care and attributes along the way. The result: “the truly professional”, “the finished product”, “the outcome of the system” (Olesen and Whittaker, 1968: 5).

This approach to the study of professional socialisation, then, entails a focus upon the students’ experiences within the context of the institutionalised body which nurtures and keeps the profession’s knowledge and culture. It is an approach that is reminiscent of Locke’s metaphor of man entering the world as a *tabula rasa*. A distinction can be made between this the orthodox (otherwise termed classical, assimilation, induction, normative or structural-functionalist) approach to socialisation and the situational (or reaction, symbolic interactionist or social constructionist) approach.

These classical, orthodox or functionalist statements of socialisation refer to an assimilative or inductive process in an increasingly normative fashion:

“The technical term socialization designates the processes by which people selectively acquire the values and attitudes, the interests, skills, and knowledge - in short, the culture - current in the groups of which they are, or seek to become, a member. It refers to the learning of social roles” (Merton, 1957: 287)

“The processes by which neophytes come to acquire, in patterned but selective fashion, the attitudes and values, skills, knowledge, and ways of life established in the professional sub-culture”. (Merton, 1957: 288)

“In the context of sociology and psychology, *to socialize* means to render *social*, to shape individuals into members

of groups (whatever they may be - familial, religious, or professional)". (Merton, 1957: 289)

An alternative to the functionalist approach to the study of trainee doctors was taken by Becker (1961) and his fellow researchers. Becker et al adopted an interactionist approach which focuses on the students' behaviour rather than the professional role (cf. Bandura, 1977). The interactionists start from the premise that students will react to the education process which they experience and that they will negotiate their role and determine their actions accordingly. Central to the interactionists' work is the notion of a *student culture* which develops as a distinctive subculture within the medical school. They use culture in an anthropological sense to mean: "a body of ideas and practices considered to support each other and expected to support each other by members of the same group of people" (Becker et al, 1961: 436). The perspectives developed by the students in order to *get through* medical school, taken together form the *student culture*.

"They develop ways of acting, studying and working which make it possible for them to achieve the goal in the situation they had defined. Similarly, the students in their clinical years saw the situation as one in which the goal of learning what was necessary for the practice of medicine might be interfered with by the structure of the hospital and by the necessity of making a good impression on the faculty. As they came into contact with clinical medicine they developed new goals that were more specific than those that they had had before" (Becker et al, 1961: 436).

Becker et al then focused their attention on how students got through medical school, how they *made out*. Their analysis is therefore much more to do with how students negotiate their way through professional socialisation and, as such, play a vital part in it. As they put it:

"He [the student] adapts his behaviour to the situation as he sees it, ignoring possible lines of action which appear

pre-ordained to fail or unworkable, discarding those which may cause conflict - in short, choosing the action which seems reasonable and expedient." (Becker et al, 1961: 442)

Merton, Reader and Kendall (1957), as described above, saw the student in terms of *junior colleague* to be created as professional, whereas Becker et al saw him merely as a student. Indeed Becker et al point out at length that:

"students do not take on a professional role while they are students, largely because the system they operate in does not allow them to do so. They are not doctors and the recurring experiences of being denied responsibility make it perfectly clear to them that they are not." (Becker et al, 1961: 420)

Olesen and Whittaker (1968) in their important work on student nurses abandon the *empty vessels to be filled* approach to occupational socialisation. They say that their study is *about becoming*. In many ways their work reflects the findings of Becker et al in *Boys in White* (1961). This is particularly true in their discussion of *studentmanship*, which was the term they used for the student nurses' strategies for success and survival. *Studentmanship* is similar to the *student culture* which Becker et al describe among the medical students in Kansas. Both constructs describe how students develop perspectives on their day-to-day work which allow them to *get through* and achieve their long-term goals. Olesen and Whittaker's study is best described by their own final remarks on the study: "the workable model for study of students in the professions is the model of the student as an active, choice-making factor in his own socialisation". (Olesen and Whittaker, 1968; 300). Merton suggests that socialisation takes place primarily through social interaction with people who are significant for the individual, namely the staff of the medical school, fellow students, and other hospital personnel. In the case of the student nurses in Melia's study, the permanent staff, trained and untrained, and other student nurses appear to have been the significant people in this respect.

Miller, again in connection with medical students, says that:

“Newcomers in any social situation go through an initial process of learning the ropes: finding out who the other people in that situation are, where they are located, what they do, what they expect the newcomer to do, and how they want him to do it. We seldom dignify this process by calling it learning” (Miller, 1970: 118).

This kind of *learning the ropes* experience is exactly the activity upon which the interactionist focus. The students Melia interviewed described how the permanent staff on the wards made clear to them what was expected of them as student nurses. The study focused on the processes involved in finding out about and reacting to these expectations, adopting an almost ethnomethodological approach to uncover the unwritten rules and social control operating on the wards. There was an implicit “understanding” that students should *pull their weight*, work quickly and *look busy*. The intention was to discover the modus operandi of the wards.

Interestingly Melia makes numerous references to uncertainty in relation to student nurses conceptions of *us and them* and the growing need to *fit in*, exactly matching the experiences of trainee solicitors (Greenebaum, 1991). This is an area which provides an overlap with the chapter on skills development in relation to coping strategies and risk management (cf. Fox, 1957; Flood, 1991).

Simpson (1979) draws a similar but clearer distinction between what she terms the *induction* approach (functionalist) and the *reaction* approach (interactionist) to socialisation in the realm of professional education. She develops these terms to discuss many of the same differences that Melia (1987) identifies between the approaches of Merton et al (1957) and Becker et al (1961).

The *induction* approach focuses on the acquisition of the professional role by students during professional education. The tendency has been to study attitudes, values and outlooks along with the skills and knowledge that constitute the professional role into which students are “inducted”. The emphasis here is on the internalisation of a professional self-concept, which includes both cognitive elements and behaviour patterns. This implies a degree of determinism and paternalism, often leading to a

normative and indeed conservative account, highlighting the central part played by socialising agents. The subculture generated during professional training reflects, and is embedded within, the wider society. This leads to a Russian doll effect, where the norms and values of professional education provide a distillation of professional values which are themselves located within society. Notice how comfortably this functional analysis sits with the traditional traits approach to professions.

The focus then is on *professionals in the making*, with the individual students seen almost as passive recipients of their culture (cultural dopes - Becker, 1963), capable of infinite malleability under the uni-directional (and positive) influence of socialising agents. This is required for the continued functioning of the social system - socialisation in the sense of social control.

Socialisation is actually achieved through didactic teaching (notice the focus is not on learning) and indirectly by example and sustained involvement with others in the professional subsystem. The *transmission* occurs through role relationships in which students learn the expectations of professional roles. The professional culture is implicitly conceived as a coherent cognitive set of knowledge, skills and norms that can be taught, learned and carried into professional practice. This approach assumes that the educational programme will impart cognitive orientations that persist across status transitions, and that it develops identities and commitments to the profession that support the student's transition from *lawyering* within the training process into the professional role of the practicing solicitor (see previous sections; education and training, knowledge and skills).

Successful socialisation, therefore depends on the fit between professional training and educational culture, compared to the experience of practice. The aim is to set up role resonance or the appropriate expectations (schemata), into which early practice experiences can be slotted, enabling assimilation without the need for accommodation. This corresponds to *anticipatory socialisation* (Fielding, 1988) and can provide the survival resources so crucial to the first few weeks of practice. The above is a potted version or caricature of a number of theorists. Many of these would not assume that this process will in anyway be complete or indeed that there will be consistency across training contexts. The outcome is not to mould or press

out identical like-minded professionals (relate this to the theory of culture “as a drop forge press, stamping out unitary, identical organisational members” - Poor, 1994: 56), or that norms learned are absolutes with narrowly prescribed ranges of applicability offering no other alternatives. Neither is it assumed that the lessons learned will be fully or coherently integrated and internalised, or that professional practice may not modify them. However, the residing picture is of a unitary profession, with social control arising from shared outlooks and mutual interests. Training is the means of inducting students into the profession in such a way as to ensure its continuous structure and function.

In contrast, the *reaction approach* looks at students' identity and the commitments that sustain and motivate them to complete what is often an extended period of professional training for practice. The focus is, therefore, on students' reactions to their educational and training experiences and how individuals make sense of the specific situation or context, shaping their own behaviour in response. The students can be seen as continually seeking meaning and relevance through contextualised interactions. Gone is the sense of a beautifully integrated whole (like a finely crafted watch), each level or stage embedded in the next - here each experiential environment can, and to a certain extent must, be treated as an independently organised social unit. These are no longer seen as bound together by mutual and complementary interests and role expectations, but rather by negotiated objectives, power and different - often conflicting - agendas. Students' common interests are reinforced through long-range career goals and through their being educated as cohorts. Their views are seen as adaptive responses to their subordinate position in the training environment.

Within this approach, all learning must be situated (i.e. a person only learns to behave in a status once they occupy that status - before that they are doing something entirely different).

“There is some very persuasive evidence that ‘socialisation’ does not explain some important elements of professional performance half so well as does the organisation of the immediate environment”. (Freidson, 1970: 89)

A further assumption often made by adherents of the induction approach relates to the continuity of behaviour across such transitions. The assumption is that behavioural and attitudinal consistency rests on membership of the professional group and the acquisition of its culture. The reaction model rejects this; the future is inherently uncertain, it is unknown and unknowable but also behaviour is an emergent feature of these transactions between the self and the exigencies of situations.

Simpson (from Becker and Strauss, 1956) extends three possible solutions to this impasse for the interactionists. First, the events with which the behaviour is linked are themselves serially and temporally interconnected. Secondly, they tend to share common elements - this would be a neo-structuralist explanation. Similarly the individual's career plan, their life goals and general perspectives may provide continuity across contexts. Finally, a motivational link has been suggested in that the search for individual advantage characterises and therefore links each position (Homans, 1961; Berne, 1970)

Simpson operationalises socialisation into three dimensions (broadly comparable to my distinction between professional attitudes, skills development and identity change). These she terms as cognitive preparation (or the education element that provides know how), orientation providing a frame of reference, and motivation (what she calls "relatedness to the occupation"). She acknowledges the similarity between these elements and those of Brim (1966).

Simpson situates her understanding of professional socialisation within "developmental socialisation" (Wheeler, 1966) - which has examined marriage and socialisation into political organisations. However, it differs in terms of the "typology of interpersonal settings of socialisation agencies" which usually consist of "well-identified and often cohesive cohorts". Professional socialisation for her also differs from other kinds of developmental socialisation where there is "not usually any expectation of exit from the group or organisation doing the socialising - only an expectation of growing identification with it" (Simpson et al., 1979: 14). Professional socialisation entails entry and exit procedures often resulting in certification. It is exactly this professional "knowledge and skill, whose possession defines the profession in the eyes of laymen and practitioners alike" (Simpson et al., 1979: 15).

The next important work to consider in terms of adult socialisation is that of Fielding, who has primarily explored the socialisation of cadets into the police force. His work shares an organisational approach with the extensive contributions in relation to police of Van Maanen (1972, 1973, 1974, 1975a, 1975b) and others (e.g. Hopper, 1977). Although a focus on police training and induction procedures may seem slightly removed from the professional mentoring of trainee solicitors this work represents the closest approximation to professional socialisation *within* a fully operational professional context. Fielding sees “Members as creative choice-makers assessing meaning within a situated context ...[and] look at how the organisation defines its project and how members construct a vision of the world and act accordingly”. (Fielding, 1988: 15). He talks of how agents “reify their own positions by playing out roles to internal and external audiences” (Manning, 1980: 20) within what Fielding refers to as the *enacted environment*. An understanding of the organisational learning culture can be gained from observing “novices’ attempts to develop adroit handling of the organisation’s symbol sets”. (Fielding, 1988; 15). However, Fielding then introduces elements of structuralism with the suggestion that “police training is collective, sequential, fixed, serial, closed and involves investiture” (from Van Maanen and Schein, 1979: 230) and goes on to say that “at first the organisation has a good deal of influence; recruits have to know the system before they can play it”. (Fielding, 1988: 16). This seems to imply that initially, the new recruit (in this case a police trainee) is at the mercy of the organisational beast, only after having *won his/her spurs* can they exercise any degree of agency. He offers the concept of orientations that “provide an ‘operating’ ideology which assists ... in developing a conception of who they are and what they are to do” (Fielding, 1988: 16). “Consequently the police culture can be viewed as moulding the attitudes - with numbing regularity - of virtually all who enters”. (Van Maanen, 1975a: 215).

The arguments that Fielding develops seem to be very similar to those of a particular strand of management literature that relates individual adaptation to the pressures of organisational culture and management structures. This leads to a further conceptualisation around the notion of organisational socialisation. Schein saw this as an attempt to “understand what happens to an individual when he enters and accepts membership in an organisation” (1968a: 1). He felt the re-wording from the

concept of occupational socialisation was necessary to sustain a clear focus on the setting in which the process occurs, namely organisations.

“Organisational socialisation is the process of ‘learning the ropes’, the process of being indoctrinated and trained, the process of being taught what is important in an organisation or some subunit thereof” (Schein, 1968a: 2).

Such a process occurs during professional education but also, and often most dramatically, on entering an organisational milieu for the first time, *starting a new job*. Importantly, it is a process that re-occurs at each subsequent stage of career change; moving departments, promotion, retirement or redundancy. It constitutes a ubiquitous process that is crucial both for the individual and for the organisation. The basic stability and effectiveness of organisations depend on their ability to socialise new members. Professional courses socialise their students with a particular notion of a profession in mind, but organisations socialise their new members to be effective within an actual and specific professional organisation. Here I feel Schein rather misses the point. Yes, organisations do have a strong pragmatic motivation in operating so as to facilitate the rapid and effective adaptation of new entrants into an existing structure. This can, however, be equally true of *academic* students. Although the underlying ethos is different, the would-be successful student must socialise to the informal as well as the formal rules of academe - the hidden agenda. New members can provide a very real threat to the stability of an existing system until everyone can be assured that they understand their position, role and will *toe the line*.

Schein’s - and organisational sociology’s - focus is on the interaction between a stable social system and the new members who enter it. It refers to the process whereby an individual learns the value system, norms, and the required behaviour patterns of the society, organisation or group they are entering. The concept can be seen to assume an understanding of the corporate goals, the preferred means, the individual responsibilities and acceptable behaviour patterns. It also assumes an implicit understanding of the rules or principles inherent to the maintenance of the identity and integrity of the constituent body.

Schein traces a process of socialisation which starts before the individual joins the organisation. This is equivalent to the anticipatory socialisation previously mentioned, which draws on such things as prior experience, the attitudes of friends and relatives and representations from the media. An important addition is the “rehearsal function” (Fielding, 1988) of the individuals own imagination in setting up expectations through a re-evaluation of self-identity (Van Maanen, 1975a). The subsequent phase might be termed *de-socialisation* - what Goffman refers to as role stripping (1969) that is most usually associated with total institutions or *assimilating institutions*, such as army training camps or strict religious sects, and often involves a degree of actual or implied force with elements of symbolic ritual, pain and suffering. However, Schein sees this “destructive or unfreezing phase” as a far more general element of organisational socialisation. The mechanisms by which it operates are perhaps more subtle but equally unsettling. Commonly, the imposition of excessive workloads or demands can generate these “upending experiences” - this is often known by the initiated as “learning the business from the ground up”.

A third phase can be seen as a natural consequence of these “upending experiences” - that is the camaraderie and *pulling together* that may lead to the development of a peer subculture, partly as a problem-solving device, but also, crucially, as a support and information sharing network. It is very important whether the subgroup norms mirror the parent group norms thereby acting as a powerful socialising agent themselves or form counter norms, thereby negating or even reversing the group’s potential role as an effective instrument of socialisation and rendering it a threat to the organisation. Successful completion of these *rites of passage* or re-integration phase are often associated with the conferment of:

“titles, symbols of status, extra rights or prerogatives, sharing of confidential information or other things which in one way or another indicate that the new member has earned the trust of the organisation”. (Schein, 1968a: 9)

Schein illustrates these points with a number of examples of particular “strategies of socialisation”. The individual might be given tasks that are far too easy or trivial or alternatively tasks that are so difficult that failure is all but certain. An important

caveat is that many of these “upending experiences” are also moves in a power play, operating to reconfirm the management hierarchy for the benefit of the newcomer. The outcome of such “upending experiences” also depends on the initial motivation of the entrant to join the organisation and the degree to which the organisation can hold the new member *captive* during the period of socialisation. The organisation could do this in a number of ways. An obvious strategy might be to demand a degree of financial or material investment of candidates (bonding trainees seems to be a growing trend, particularly during a recession) or simply a psychological commitment, building commitment and loyalty to the organisation by building up expectations, or by getting the individual to make a series of small behavioural commitments such that they must then justify their position both to themselves and others (Schein compares this with a communist technique of coercive persuasion obtaining behavioural compliance through public confession, 1968a: 8). “He becomes his own agent of socialisation” (Schein, 1968a: 7). This corresponds to the maxim “if you invest in the employee he will repay the company with loyalty and hard work”. A similar effect can often be achieved by promoting a rebellious person into a position of responsibility and thereby demanding that they change their perspective so as to defend their new position.

In terms of response to socialisation, Schein rejects a simple dichotomy between conformity and non-conformity. He draws a distinction between the values that are central to the organisational ethos, *pivotal values*, less central but still *relevant values* and finally *peripheral values*. He goes on to suggest three types of response; rebellion where an individual rejects all values, conformity where they accept all values and the middle case of selective socialisation to appropriate core or pivotal values - this he terms “creative individualism”. Type 1 and 3 are viewed as failures. The former is usually expelled or marginalised, while the latter curbs their creativity and thereby moves the organisation towards a sterile form of bureaucracy. I believe that a case might be made to extend the notion of a range of optimal socialisation with under-socialisation or inappropriate socialisation and over-socialisation representing the two dysfunctional extremes.

“To remain creatively individualistic in an organisation is particularly difficult because of the constant resocialisation pressures which come with promotion or lateral transfer ... with each transfer, the forces are greater towards either conforming or rebelling. It is difficult to keep focused on what is pivotal and retain one’s basic individualism”.

(Schein, 1968a; 10)

Schein sees professional socialisation as slightly different in that “individualism is supported by a set of professional attitudes which serve to immunize the person against some of the forces of the organisation” (1968a: 10). This implies a particular view of professions (see earlier section on professions and professionalism) existing above and beyond individual solicitors’ firms (Training Establishments) which Schein sees reproducing, through professional education and training (see earlier section on education and training), “a set of professional values which are, in fact, in severe and direct conflict with typical organisational values” (Schein, 1968a: 12). Indeed he goes on to suggest that these professional values which graduates are taught at “school” (i.e. on a professional course) are in many respects “diametrically opposed” to the values a trainee encounters on their first job. This may go some way to accounting for the “reality shock” (Olesen and Whittaker, 1973: 189; Van Maanen, 1975: 222; Hopper, 1977: 160), more accurately “culture shock” which Hughes originally referred to as the often “traumatic” experience of confronting the reality of a new profession (Hughes, 1958). Schein implies the coexistence and conflict between a process of organisational adaptation and professional growth:

“What seems to happen in the early stages of the managerial career is either a kind of postponement of professional socialization while organizational socialization takes precedence, or a rebelling by the graduate against organizational socialization” (Schein, 1968a: 13).

This reintroduces the concept of context either in the general sense of an organisation or the specific sense of a particular solicitors’ firm. Not only must a trainee “learn to play the part” of a solicitor but they must do so within a specific context or culture.

This emphasis is recognised in the use of the terms enculturation (Herskovits, 1948), rather than socialisation, and acculturation or culture contact theory (Malinowski, 1945), to explain the meeting and mixing of cultural systems. Rather than reiterate the variety of agencies and contexts of socialisation (occupational, professional, legal, organisational and firm cultures) I should like to propose a simplified conceptualisation in response to the question; what are the aspects involved in the socialisation of a trainee solicitor? Despite the holistic and integrative unity of processes I suggest that trainee socialisation can be conceptualised in terms of four elements; the acquisition of legal knowledge through education, the accomplishment of legal skills and practice through training, the integration into a legal firm and organisational culture through a process of enculturation, and the acceptance into the legal profession through an aspect of socialisation perhaps best termed professionalisation. Each of these aspects has been addressed in the separate sections of this chapter. All, that is, except for the concept of *culture* and specifically *organisational culture* applied to the context of trainee's experience of their Training Contracts. It is to this that I now turn.

### **Organisational culture**

The single word *culture* refers to the process of "improvement or refinement by education or training: 1510" or "the training and refinement of the mind, tastes, and manners; the condition of being thus trained and refined; the intellectual side of civilization: 1805" (Little et al, 1987a: 471), presumably as opposed to the material side of civilisation. The term first began its academic career in the work of Edward B. Tylor an early anthropologist who defined it thus "that complex whole which includes knowledge, beliefs, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society" (Tylor, 1871: ). The term has since been elaborated throughout the disciplines of the social sciences (e.g. anthropology, archaeology, sociology, ethnology, social psychology and cultural studies). It was the subject of a book by T. S. Eliot entitled, with extreme caution, *Notes towards the Definition of Culture* (1948), of one by George Steiner entitled *In Bluebeard's Castle: Notes towards the Redefinition of Culture* (1971), and of *Culture: A Critical Review of Concepts and Definitions* (Papers of the Peabody Museum of

American Archaeology and Ethnology, 1952). The Fontana Dictionary of Modern Thought had this to say:

“This elusive and emotive word (“When I hear the word culture I reach for my gun”, declared the poet Heinz Johst - not Goering as is generally believed) cannot be comprehensively treated in a work such as this” (Bullock and Stallybrass, 1977: 149).

I do not propose to take an examination of the single term culture any further. Much of the early work on *organisational culture* can be traced to the influential writings of Clifford Geertz (1973). He suggested that studies of culture should rightly adopt “the native’s point of view”, in what has become known as the semiotic approach as it focuses attention on the meaning of language and symbols for the social and cultural participants themselves. Other early influences on the study of organisational culture include the work on organisational climate and variations in national culture.

The phrase “organisational climate” pre-dates an emphasis on organisational culture and refers to the beliefs and attitudes held by individuals about their organisation. Despite the clear convergence in these terms organisational climate has an enduring quality experienced by employees which effects their behaviour (Tagiuri, 1968), however, numerous surveys in the 1970s failed to agree precise parameters. The work on national cultural differences is generally associated with the work of Hofstede - *Culture’s Consequences* (1980). His ideas, as applied to differences between the USA and Japan, have led to the publication of books such as *Theory Z* (Ouchi, 1981) and *The Art of Japanese Management* (Pascale and Athos, 1981) and stimulated popular interest evidenced in books such as *Corporate Cultures* (Deal and Kennedy, 1982), *The Change Masters* (Kanter, 1983) and the massively influential *In Search of Excellence* (Peters and Waterman, 1982).

Organisational culture represents a radical departure from previous emphasis in organisational theory on the formal and rational aspects of organisations. It introduces the compelling notion of organisations functioning as “miniature societies with unique configurations of heroes, myths, beliefs and values” (Brown, 1995: 4). I

do not propose to explore the origins of organisational theory further other than to indicate the influence of *modern structural theory* on the rational, goal-oriented and mechanistic nature of organisations, *systems theory* on interdependent systems linked by inputs, outputs and feedback loops (Katz and Kahn, 1966), and what Brown (1995) calls *the power and politics approach* that views organisations as “complexes of individuals and coalitions with different and often competing values, interests and preferences” (Brown, 1995: 5). Davis argues that a new, flexible and imaginative approach to understanding how organisations work was demanded because:

“we are operating in a post-industrial, service-based economy, but our companies are managed by models developed in, by, and for industrial corporations. This makes as much sense as managing an industrial economy with agrarian models” (Davis, 1984: 2).

When it comes to organisational culture then there is “an embarrassment of definitional riches” a selection of which are outlined by Brown (1995: 6-7). Some common meanings for organisational culture include:

*Observed behavioural regularities* when people interact, such as the language used and the rituals around deference and demeanour (Goffman, 1967, 1969; Van Maanen, 1979b).

The *norms* that evolve in working groups, such as the particular norm of “a fair day’s work for a fair day’s pay” that evolved in the Bank Wiring Room in the Hawthorne studies (Homans, 1950).

The *dominant values espoused* by an organisation, such as “product quality” or “price leadership” (Deal and Kennedy, 1982).

The *philosophy* that guides an organisation’s policy toward employees and/or customers (Ouchi, 1981; Pascale and Athos, 1981).

The *rules* of the game for getting along in the organisation, “the ropes” that a newcomer must learn in order to become an accepted member (Schein, 1968b).

The *feeling* or *climate* that is conveyed in an organisation by the physical layout and the way in which members of the organisation interact with customers or with outsiders (Tagiuri and Litwin, 1968).

Brown suggests a useful distinction in the usage of the term culture as a metaphor and those that see culture as an objective reality (Brown, 1995: 7). Commonly used metaphors involve a comparison between the organisation and a machine or an organism. More elaborate allegories make reference to the theatre (Mangham and Overington, 1983) from Goffman's dramaturgical approach (Goffman, 1961, 1967, 1969, 1971, 1972, 1975, 1981 or Burns, 1992), the political arena (Pfeffer, 1981) and the psychic prison (Marcuse, 1955). In some sense the organisation may be viewed as a metaphor in itself (Smircich, 1983). Alvesson provides a critical appraisal of "culture as metaphor and metaphors for culture" (Alvesson, 1993: 9-26). Schein avoids these complexities by suggesting that:

"the simplest way to think about the culture of any shared group or social unit is to think of it as the sum total of the collective or shared learning of that unit as it develops its capacity to survive in its external environment and to manage its own internal affairs" (Schein, 1989: 58).

Although Schein's vision of organisations and organisational cultures has impacted upon all subsequent work I have a number of reservations regarding this definition as it presupposes a particular type of organisation consisting of competing agents and exists within a hostile environment. More recent definitions influenced by Schein hold that:

"organisational culture refers to the pattern of beliefs, values and learned ways of coping with experience that have developed during the course of an organisation's history, and which tend to be manifested in its material arrangements and in the behaviours of its members"  
(Brown, 1995: 8).

Similarly, organisational culture refers to:

“A pattern of basic assumptions invented, discovered, or developed by a group as it learns to cope with its problems of external adaptation and internal integration - that has worked well enough to be considered valid and therefore to be taught to new members as the correct way to perceive, think, and feel in relation to those problems. These definitions suggest that organizational culture consists of a number of elements such as assumptions, beliefs, values, rituals, myths, scripts, and languages” (Ivancevich and Matteson, 1993: 62 adapting Schein, 1985a: 9).

These definitions make the point that:

“Organizational researchers, though conceptualizing culture similarly, have assessed widely different elements. These elements vary in their subjectivity or objectivity, as well as in their observability and availability to both researchers and organizational members” (Rousseau, 1990: 154).

For example, four specific manifestations of culture at Walt Disney are represented in shared things (e.g. the uniform), shared sayings (e.g. a good “Mickey”), shared behaviour (e.g. smiling at customers and being polite), and shared feelings (e.g. taking pride in working at Disney) - from van Maanen’s *The Smile Factory: Working at Disneyland* (1991). These different elements or aspects of organisational culture may include the following; artefacts, language or discourse (including jokes, metaphors, stories, myths and legends), behaviour patterns (including rites, rituals, ceremonies and celebrations), norms of behaviour, heroes, symbols and symbolic acts, and beliefs, values and attitudes. Each category is outlined in greater detail below.

So called cultural artefacts can include the following;

*material objects* such as firm brochures, annual reports and other publication,

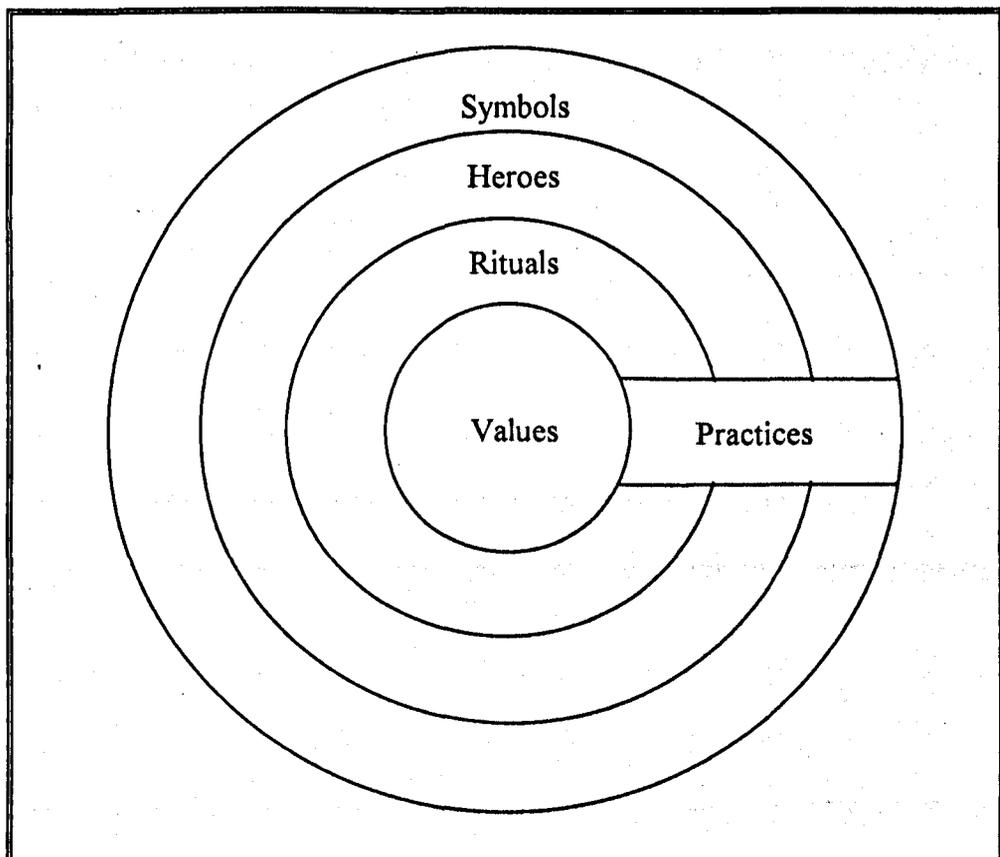
*physical layouts* for example, how office space is used, furnishings arranged, dress codes and appearances managed,

*technology* in terms of the distribution and use of computers, fax machines, photocopiers and telephones as a representation of a firm's position in relation to technological advances,

*language* for instance in jokes, anecdotes, stories, metaphors, jargon in relation to everyday usage,

*behaviour patterns* particularly symbolically enhanced behaviours such as rites, rituals, ceremonies and celebrations,

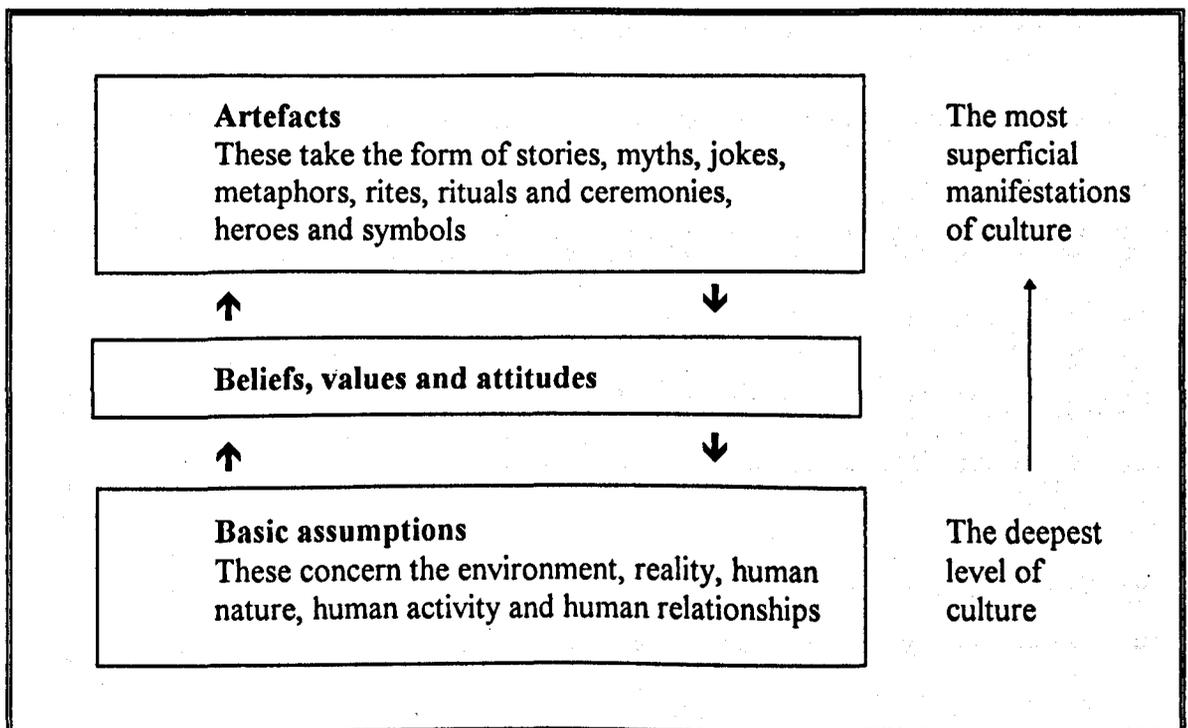
*rules, systems, procedures and programmes* which are the most overt structuring factors in a firm and include human resource strategies and systems for appraisal, promotion, dismissal and disciplinary procedures as well as more mundane meeting and organisational arrangements.



**Figure 10: Manifestations of culture: from shallow to deep**

Source: adapted from Hofstede et al. (1990).

A more extensive treatment of these can be found in any recent text on organisational culture, behaviour or change (e.g. Adam-Smith and Peacock, 1994; Handy, 1985; Morgan, 1986). These categories are suggestive not exhaustive. They are also far from discreet. For example, the founding hero of a law firm will, in all likelihood, have performed symbolic acts and entered through mythologising discourse into legend. Many of these aspects such as values and beliefs are thought to draw on underlying assumptions which may be reified in ethical codes. There is also an important temporal dimension to these aspects of organisational culture such that they are experienced within a specific historical context. and provide pictorial representations of two of the most influential attempts to model organisational culture. Inevitably neither are able to capture the complexities, uncertainties or ambiguities of actual real-life cultures.



**Figure 11: Levels of culture and their interaction**

Source: adapted from Schein (1985b).

Both of these models provide representations of the interrelationship, interdependence and interaction of the various elements, aspects or levels of culture. Hofstede's model places the historically and socially constructed manifestations in concentric circles radiating from and dependent on the core cultural values and shared group norms. The firm practices are both embedded within and related to these

cultural manifestations, however, they cut through these rings to the organisational core values and they draw on these core values in reproducing the other manifestations of culture - what Schein terms artefacts.

Schein's model provides a simple hierarchy of cultural variables with the most visible and superficial manifestations (artefacts) underlain by beliefs, values and attitudes. These are themselves representations of the deepest, and generally inaccessible, level of culture of basic assumptions about humankind, nature and reality. Both these models are open to criticism due to their holistic and subjective nature. There is also a problem relating these organisational cultural structures within a wider cultural framework. Despite the appeal and intellectual coherence of cultural relativism adopting this perspective prohibits the use of culture to frame causal explanations at the level of a subsystem, namely, organisations.

Hofstede (1991) supports this position and has proposed that national cultures differ in terms of five dimensions; power distance, individualism/collectivism, masculinity/femininity, uncertainty avoidance, and Confucian dynamism. A more satisfactory position that is coherent with earlier discussion relating the individual to society (Kitzinger, 1992). Crudely put, society only exists within and through individuals and likewise, individuals are only fully human within society - the two are integrated and interpenetrate within the social dialectic what Lykes (1985) refers to as "the dialectical relationship of self and social". This is suggested in the following quotation from Alvesson:

"Culture is constructed, maintained, and reproduced by people. It is people rather than autonomous socialisation processes, rites, social practices, a societal macro-system, or key figures that create meanings and understandings. Consequently, culture can be understood by studying people as cultural subjects" (Alvesson, 1993: 81).

In a study of managing identity and impressions in a Swedish advertising agency Alvesson (1994) focuses on discourses in organisations, "how advertising professionals describe themselves, their work and organizations, the profession and

clients ... [and] ...regulate their professional identities by means of particular kinds of expressions and verbal symbols” (Alvesson, 1994: 535). He draws on the theoretical work of Bourdieu (1979) and Asplund (1979) in order to explore how actors within an organisational cultural perspective manoeuvre in “a culturally competent way”. It is my intention to step back further and question how a trainee learns to “manoeuvre” in this way. Alvesson suggests that:

“the concept of habitus indicates the ability to demonstrate the possession of certain personal qualities. ... The habitus makes possible a successful use of symbolism. By using style, ways of expression and means of communicating the message, one can imply originality, competence and professionalism. Talk and themes of talk (discourses) are also vital” (Alvesson, 1994: 546-7).

This provides a more dynamic, flexible and theoretically coherent explanatory framework than the tendency to list cultural manifestations predominant in management literature. However, it is illustrative to be aware of the breadth of aspects that constitute “the total physical and socially constructed environment of an organisation” (Brown, 1995: 9). In the case of studies of law firms (e.g. Flood, 1987) these aspects go beyond the explanatory power of organisational ideal types (e.g. Handy’s categorization into power, role, task and person cultures - 1985) utilised by Abbey (1993) in his study of a City of London partnership. They incorporate both formal and informal aspects which are reflected in formal mechanisms of socialisation such as orientations programmes, induction courses, training or mentoring schemes, and also in informal socialisation dealt with above. Culture and socialisation are inextricably linked. They are living, socially constructed concepts that alter through the very process of understanding. Despite attempts at modelling them or specifying the levels at which they operate both are universal dynamic spatio-temporal concepts that are not, and may never be, fully understood.

## **Research questions**

What people? What organisations? What cultures? This is the magnitude of the questions this discussions raises. Whilst some small contribution is made to answering aspects of these questions, such as what makes a lawyer or how do the legal cultures in solicitors' firms vary, the focus is on how are trainees "processed" into the law machine and the solicitors' firm. Initially I address the question of trainees' backgrounds. What sort of backgrounds do they come from? Are a disproportionate number from privileged backgrounds with relatives working in law? How were trainees' expectations of practice shaped? How many had had previous experience in a solicitors' firm or of other legal environments? Who was the central socialising agent in trainees' experience of training? How did this affect their experience?

This links in with earlier questions about what it means to be a professional. What did trainees see as the function of solicitors? What were their socialising aims and objectives. The other side of the coin, as it were, involved engaging the "world" into which trainees were entering. How do trainees characterise the culture of the firm? Are there differences between the perceived or "espoused" culture and the culture experienced by trainees? What does this say about the types of firm and the legal culture generally? These and many other unformed questions were taken out into the field in the initial study.

