THE PROFESSIONS

By: William J. Baechtold

November 5, 2018

To paraphrase a Buffalo Springfield song:

> There's something happening here
> What it is ain't exactly clear
> There's a man with a computer over there
> Telling me I got to beware

What exactly are the professions? Going back many years they were one of three occupations, referred to as the learned professions, which where were medicine, law and theology. These were traditionally believed to require advanced learning and high principles. Over the years this has morphed to include, at the least, engineering and architecture in the more elite professions. However, in today's world the term professional and profession are applied to a host of occupations from athletes to financial planners. For my purpose this evening I will focus on the three so called learned/traditional professions.

What true professions have in common are many, but not necessarily all, of the following, (i) a specialized or institutional training or education, (ii) a control over the knowledge paramount to that profession, (iii) some form of statutory qualification, (iv) some type of apprenticeship, (v) a code of ethics, (vi) some form of self-regulation either or by a governmental regulation and (vii) perhaps a need to be a member of a professional association.

So, how did the professions begin? How have they evolved over time? And what may likely be their future?

The roots of professions are to be found in the guilds of the middle ages. In his book Death of Guilds, Elliot Krause states that "guilds are social groups, institutions created by groups of workers around their work, their skill or craft." Their structure, power and evolution or disappearance are heavily impacted by the nature of the economies and government systems in

which they exist. This boils down to power and control over the association itself, over the workplaces and the marketplace and its relation to the government.

A guild of craftsmen created all of the rules which governed their particular craft. This included who was eligible to enter the craft; how a new member could be trained; how its product would be made and marketed, and at what price. The craft through its guild in essence held monopoly powers, including the power to enforce the rules of their craft both among themselves and in the marketplace. They limited and defined who would enter their craft as well as who would succeed. There was no competition. The craft held all the knowledge and completely controlled its product.

The academic guild developed in the universities of Europe and later interfaced with the learned professions of theology, medicine and law. The various guild's monopolies were first undercut and then unraveled by the industrial revolution and mass production.

Against that backdrop let's explore how the three so called learned professions were founded or existed and how each evolved. Theology or Divinity Studies is the critical study of concepts of God and the nature of religious ideas. Augustine of Hypo defined it as "reasoning or discussion concerning the Deity." Membership in the learned profession of theology is acquired by completing specialized training in religious studies usually at a university, school of divinity or seminary.

Going back to the time of Christ and before, we know of the existence of the Pharisees who at various times were a political party, a social movement and a school of thought in the Holy Land. The Pharisees main purpose was to preserve and teach traditional Judaism. They insisted on a literal interpretation of the law and in following the traditions of the elders. Pharisaic beliefs became the foundation, liturgical and ritualistic basis for Rubbinic Judaism.

Another group which enjoyed authority and leadership in Israel were the Scribes. The Scribes were the copyists and, because of their work, became the authorities on all of the important texts. Many were priests and they were clearly associated with the Pharisees. They were the early authoritative teachers and in that role gained great standing.

The Roman Catholic Church traces its beginnings to the time of the Pharisees and Scribes. Over the centuries it has developed an elaborate organizational structure headed by the Pope. While there are many positions within the Church, the term "theologian" is applied to a relatively small group of individuals who would qualify as a learned professional. The function of these theologians is to be the experts on the theology of the Church. They deal in the study, clarification and intellectual defense of the Church's teachings. They themselves are not the primary teachers in the Church, but rather their thoughtful work assists those teachers. Writing on this topic in the "Steubenville Register" in 1968 the Rev. James B. Nugent put forth the following:

> "There are a number of factors that go together to constitute theologians in this restricted and exclusive sense. Frequently, they have occupied for a long time the professor's chair at one or more of the top-ranking schools of Catholic theology. In addition, they have generally published a good deal on theological topics and have won approbation and praise from the Church hierarchy. Usually they are consultants and advisors not only to the laity, but also to priests and Bishops and even to the Pope. Another sign of the kind of theological expertise here considered is that a theologian will be regarded as having it by his theological colleagues."

The sixteenth century saw the explosion on the European scene of the first of the Protestant theologians. Most notable of these were Martin Luther famous for his ninety five theses which began the Protestant Reformation and John Calvin who followed Luther in solidifying the Reformation. Luther was a German theologian and Calvin was a French theologian.

Calvin was the principal figure in the development of the system of Christian theology later called Calvinism. He was influenced in many of his doctrines by the Augustinian and other Christian traditions. The most comprehensive statement of his theological doctrines is found in his work Institutes of the Christian Religion.

Luther, soon after being ordained a Catholic priest, was appointed to teach theology at the University of Wittenberg. By 1517 he had evolved what he believed to be a scholarly objection to Church practices. These came to be known as the Ninety-five Thesis which Luther nailed to the door of All Saints Church in Wittenberg on October 31, 1517.

I submit that each of these groups, Pharisees, Scribes, Catholic and Protestant Theologians meet the criteria of a profession. So, going forward, what are this professions most formidable challenges? The decline of organized religion and the impact to technology.

The decline of organized religion in Europe occurred after World War II. The pews of the great cathedrals of Europe are sparsely populated. Organized religion in America and elsewhere in the world appears to now be in a similar decline. It has been reported that the non-religious are the single largest identification among young U.S. voters.

At the same time, organized religion, i.e. religion associated with a particular faith such as Methodist, Presbyterian or Catholic is being supplanted by the large, entrepreneurial consumer oriented arena churches who have no denominational affiliation.

Where does this leave theologians and their profession. The direction of theologians may be away from structured doctrine to a more philosophical outlook. That is arguably already present in much of Western Judaism and many mainline Protestant denominations. And Catholicism may not be far behind.

Are theologians philosophers? Is theology a branch of philosophy? Theology does employ philosophical methods. This leads to the view that philosophical theology is both a branch and a

form of theology in which philosophical methods are used in developing and analyzing theological concepts. If something along those lines were to or has occurred what is its impact on theology as a profession? The answer to that would seem to be blowing in the wind.

Like other professions, theologians are the gatekeepers, which in this instance is their faith. They are the conduit between the faithful and their scriptural texts. In the past, they were almost the only ones who had the depth of access to sacred texts. Now, most are on line. In the past such access would likely have been strongly objected to as being inappropriate for that playing field was reserved to the professional theologians.

The use of the Internet by contemporary religious figures has allowed them to spread their own interpretations of their faith. And as we know, the reach of the Internet is huge. Consider its influence compared to a scholarly theological book. Richard and Daniel Susskind in their book, The Fixture of the Professions observed that, "People are no longer passive recipients of the ideas of a few traditional religious figures. They have access to vast quantities of text-based religious knowledge and analysis." In addition to providing access to this large quantity of texts, the Internet has provided a platform for many theological communities to exist completely untethered from any traditional church authority or teaching. And it is not just the general public who are affected; the Internet is also changing theological and religious scholarship itself.

At the very least, this reflects a dilution of the traditional role of the theological profession but it has not yet proven to be its apocalypse.

Let's turn now to the learned profession of medicine. The history of medicine tells a fascinating story of how societies have, from prehistoric days forward, evolved their approach to treating illness and disease. Hippocrates wrote the Hippocratic Oath in ancient Greece, in the fifth century BC, defining what a doctor should strive to be. It became the inspiration for oaths that have been taken by doctors ever since upon entering the medical profession and for the medical codes of

ethics which govern behavior in the profession. Hippocrates, known as the father of medicine, is probably also a good starting point for discussing medicine as a profession.

Ancient Romans like ancient Greeks and Egyptians made a huge impact on medicine and health. As to the latter, the Romans in particular, had a keen eye for public health and preventing disease. As the Roman Empire expanded to Greece, many Greek doctors came to Italy and Rome and would become popular with Roman emperors and public alike for their knowledge and skills.

Byzantine medicine developed during the span of the Byzantine Empire from 400 AD to 1453 AD. It is best characterized as having built upon the Greco-Roman knowledge base of medical knowledge and for also preserving medical practices which dated from antiquity. It was also during this period that Islamic medicine rose up the ladder of medical sciences. However, it is fair to say that during this timeframe the practice of medicine and medicine as a profession experienced a serious decline in Europe. This began to change in the thirteenth century when the European universities began the systematic training of physicians with schools founded in France and England leading the way. The Renaissance brought an intense focus of the scholarly study of medicine which ushered in the first modern period from the sixteenth to the eighteenth centuries. Medicine as a profession was cemented.

In colonial America medical education was haphazard and inconsistent, and was generally learned by apprenticeships with established physicians. Only wealthy colonials had the privilege of studying medicine in England or other European countries. However, in the mid-1770s medical schools were established in the colonies: Columbia University (1767); University of Pennsylvania (1769); and Harvard University (1783). By 1820 the United States had 13 medical schools, and apprenticeships were far more standardized. Medicine as a profession in the colonies had matured. In 1766 The New Jersey Medical Society was chartered, marking the first organization of medical professionals in the colonies. By the early 1800's, the medical societies were in charge of

establishing regulations and soon followed training programs for doctors developed and administered by those medical societies. In 1847 representatives of these societies and the medical colleges founded the American Medical Association (AMA). In the years that followed all of the states adopted licensure requirements for doctors.

While it is a hallmark of most professions to have a code of ethical conduct not many have had such a code as long as that governing doctors. I mentioned the Hippocratic oath put forth in the fifth century BC which laid out several clear dictums for physician's behavior. When the American Medical Association (AMA) was founded in 1847 among its goals was establishing uniform standards of conduct in physician's practices. This led to the AMA Code of Ethics last updated in 2012.

The American Medical Association probably reached the highest pinnacle of power an independent profession could reach during the years of the Truman and Eisenhower administrations. As Krause notes in his book on guilds, it was in that period that the AMA was universally respected, and those sectors of capitalism that made money from health care delivery – the hospital industry, the construction firms and banks, the drug and medical supply companies – worked with the medical profession, with profits for all. During this period the AMA also asserted its general power by limiting the population of doctors. Its power over the medical workplace was virtually unchallenged. In the decades which followed the capitalist sector increasingly viewed the profession as an impediment to its own profits. The Kennedy-Johnson years and the introduction of Medicare and Medicaid opened the doors to the assertion of the powers of the federal government over the medical profession which increased steadily to where the profession is today.

Another sea wave of change to hit the medical profession was the introduction and evolution of health insurance. I will focus only on the United States in this regard. In general terms, health insurance in our country began during the Great Depression of the 1930s. Prior to that time

there were government related or sponsored plans for workplace injury (Worker's Compensation) and private industrial sick funds. However, the Great Depression prompted hospitals and doctors to develop forms of insurance to ensure payment for services both in and out of the hospital. The World War II era and thereafter saw the growth of employer sponsored group health insurance as a fringe benefit. Blue Cross and Blue Shield were developed during the 1930s, approved by the AMA and often provided the coverage under those plans. Other commercial insurers entered the market in the 1930s offering hospitalization insurance policies. As I mentioned before, the 1960s saw the introduction of Medicare and Medicaid by the federal government. Over the ensuing decades those programs were expanded. From the 1980s to the present in the private insurance sector there was the introduction and continual alteration of managed health care plans typically referred to as prepaid group practice plans now called HMOs, preferred provider organizations called PPOs and point of service plans called POS plans.

What all of this has led to for the medical profession is a loss of control over the pricing of its services. As stated earlier, control of pricing and the market was one of the key elements of the power of any guild and likewise for the medical profession.

Capitalistic motives and federal government power greatly reconfigured the medical profession in the United States into a shadow of its former self. At the same time the influence of technology on medicine has been increasingly felt each year.

If the growth and power of the health insurance industry was a sea wave for the medical profession, technology in its many forms, may well be the profession's tsunami. For just as a tsunami displaces large quantities of see water, technology has displaced or reconfigured countless ways of doing things in the field of medicine. It may be fair to say that almost every area of practice within the profession has been affected.

The advances in medical equipment because of technology has been stunning. From CAT Scans and MRIs to minimally invasive surgical procedures the impact on how medical services are delivered to patients is radically different from the not too distant past. During a recent hospital visit I was struck by how almost everything was tied to an electronic device or computer of some sort. From the IV bag, to the blood pressure cuff to the charting and scanning of every medication that is administered, to the results of blood work, x-rays and other tests. The patient's information is all right there for every doctor, nurse and tech to access on-line whether they are on or off site.

Another aspect of this technology explosion is the access to medical information by patients themselves. For example, platforms like NHS Choice and WEB MD network provide extensive guidance on symptoms and treatments. It has been reported that there are approximately 190 million visits to those websites each month.

About half of the doctors in the United States now make use of an app known as Epocrates. This is a digital drug-reference resource that provides its users with information on how different drugs interact. This has replaced the hard bound 2,500 page manual known as the Physicians' Desk Reference which reportedly was time-consuming to use and often inconclusive. These examples are truly but a few of the impact of technology on the medical profession. Doctors face the looming threat of possible obsolescence as a result of knowledge-based technology. What were once extraordinary skillsets will soon be rendered ordinary by the advance of machines. Surgical systems using artificial intelligence have already been developed. It is not wild speculation to conclude that it is only a matter of time until the robot will be performing the surgery on its own. We as medical consumers may be served well by these advances. However, this is a very significant break from the time, not too long ago, when the medical profession had the complete control over the knowledge and the delivery of medical services.

Finally, I turn to the legal profession of which I have been a proud member for the last 46 years. In discussing this profession I will not venture beyond the profession as it originated and developed in England and as it was then imported to and grew in the United States. For our legal system is based upon the English system of Common Law. The legal profession has been the focus of many scholarly books. To name just a few:

The Origins of the English Legal Profession
By Paul Brand (1992),

The Legal Profession and The Common Law Historical Essays
By J. H. Baker (1986)

The Lawyer from Antiquity to Modern Times
By Judge Roscoe Pound

The roots of the English legal profession are to be found during the reign of Edward I of England from 1272 to 1307. At that point in time it included two types of lawyers: serjeants and attorneys. Serjeants were pleaders who spoke for their clients, while attorneys, for the most part handled procedural matters. Serjeants seemed to have derived their title from the knights Templar wherein they were recognized as a separate fraternity in the very early history of lawyering. Serjeants were barristers, *i.e.*, advocates, and would later be referred to as barristers in the English system, entitling them to plead at the bar; as contrasted with attorneys who drew up pleadings, prepared testimony out of court who were also referred to as counsellors, who at times may have also appeared at times in certain courts. Later the term solicitor arose. Often the words "barrister," "attorney" and "solicitor" are used interchangeably in our country; however, in England they were differentiated by both the functions they performed and the courts in which they practiced. The differentiation between attorneys and serjeants served as the basis for today's separation between solicitors and barristers in England.

Initially, both the serjeants and the attorneys were amateurs. However, as these individuals developed expertise they began to charge for their services. They were the predecessors of professional lawyers whose role and existence was recognized by the end of the 13th century.

Two laws were proclaimed in England in that time frame which weighed greatly on the formation of the English legal profession. The first was the London Ordinance of 1280 which enactment regulated both admission to practice and lawyer conduct in the courts of London. It defined the role of serjeants, defined standards for pleading and set forth penalties for improper behavior. The Ordinance of 1292 dealt with the admission of attorneys and apprentices to what was known as the Common Bench (the bar) and regulated the number of attorneys admitted to practice at the Common Bench. Controlling the number and admission of attorneys was viewed as a way to deal with lawyer misconduct and to respond to numerous complaints about lawyers lodged by the general public. This ordinance is recognized as a major event in the development of the English legal profession and the beginning of the recognition that lawyers were officers of the Court.

With respect to the teaching of the law in England, both Oxford and Cambridge Universities based their teaching of the law on Roman law. Not included was any instruction on English Common Law. Instruction in English Common Law appeared first in the 18th century with Blackstone's well known Vinerian lectures. The Vinerian Professorship of English law formerly the Vinerian Professorship of Common Law was established by Charles Viner who by his Will dated December 29, 1755 left 12,000 pounds to the Chancellor of the University of Oxford to provide a Vinerian Scholarship to the student giving the best performance in the examination for the degree of Bachelor of Civil Law. This is in contrast with legal education on the Continent with the oldest university program being the law school at the University of Bologna which also taught Roman law.

At that same time the legal profession in the American colonies was at an unsteady beginning. In the pre-Revolutionary War era no formal law training was available. Since there were

no law schools, lack of structure in the legal profession resulted, and because the apprenticeship program was not required, knowledge possessed by colonial lawyers varied greatly. Throughout the colonies there were complaints about shysters, you know, those triekish knaves who carry on legal business. During that period lawyers were few in number. Contrast that with there now being in excess of an estimated 1.2 million lawyers in the United States.

Lawyers were definitely not favored and frequently not welcome in the colonies. The colonists viewed lawyers in England as a profession of special privilege with its own rules and language. The colonists were happy to do without lawyers and did so for quite a while. However, as life grew more complex and the new U.S. government was formed, the role of lawyers grew in prominence. This had much to do with both the change in the governmental structure, the economic growth and the frontier movement. Lawyers would soon become the technicians of change as the country expanded.

During this period colleges began to establish professorships for the purpose of giving lectures on the law. Thereafter schools of law evolved from the apprentice-based system and these lectures. The earliest and best known of these schools was the Litchfield School in Connecticut founded around 1774. The teaching approach was by unpublished lectures. Coinciding with this was "reading the law" either with an older lawyer or alone. Blackstone's Commentaries was the most popular legal text for such studies. The Harvard Law School was founded in 1817.

In the early nineteenth century, while apprenticeship was still the main pathway to the practice of law, many lawyers began to believe that apprenticeships alone were not sufficient. This gradually led to the growth of law schools and by the 1850s an increased interest in the bar and law in the U.S. led to lawyers being seen as a learned profession. In 1850, there were 15 law schools. By 1920 there were 146. By the late 18th century the approach to teaching law shifted from lectures to the case method. The latter based on the belief that law was, in fact, a science and that the teacher

could draw out the principles of law from those cases through inductive reasoning. This approach is often referred to as the Socratic method. For the lawyers in the room who were trained by this method who will ever forget asking the professor a question only to receive a response which was a question. One professor of mine would sometimes alter his response to "well now that's a feet on desk, pipe in mouth question."

The American Association of Law Schools (ALAS) founded in 1900 joined with the American Bar Association to set standards and eventually accreditation for law schools. By the middle of the 20th century, the ABA approved university-based law schools were quickly becoming the pathway into the profession.

The American legal profession also has its own code of ethical conduct. The American Bar Association (ABA) Model Rules of Professional Conduct was first promulgated in 1983. For many years each state had its own version of ethical cannons and disciplinary rules. Today, all states have either adopted the ABA Model Rules verbatim or some version thereof.

Until fairly recently those young persons in the United States with their law degrees in hand and their bar admission secured entered a profession which, if truth be told, had not changed much from the time of Charles Dickens. The structure for the practice of law whether in resolving disputes, advising on transactions or counseling clients has been on a hand-crafted, on a one-to-one basis often by lawyers in partnership, with volumes of accompanying documentation. Looking back at the products of the guilds, this would fit as a bespoke product. Since the 1970s charging for legal services has generally been on an hourly basis other than contingent fee cases.

Richard Susskind in his book Tomorrow's Lawyers predicts that the legal world will change more radically over the next two decades than over the last two centuries. And numerous commentators have stated that they believe the legal profession to be on the brink of unprecedented upheaval.

The following forces are driving this.

Cost, most notably billable hour rates, are putting immense pressure on the traditional approach to the practice of law. Non-lawyers struggle to understand this opened-ended approach to the cost of the services being provided to them by lawyers. Charles Dickens in Bleak House put a spotlight on part of the problem, i.e. the volumes of paper. He referred to legal papers as "mountains of costly nonsense."

With the advent of the Internet, lawyers lost their monopoly on legal knowledge and the production of legal documents. Prior to the Internet, in order to do legal research and answer legal questions a person first needed access to a law library, and once inside needed to know how to do legal research. Law libraries were at law schools, in law offices and in some counties, like Hamilton County, in the county and federal courthouses. The general public had little awareness of the location of these libraries and accessing them by non-lawyers, while probably not impossible, was certainly problematic. Lawyers were trained in law school how to get into those books. It was different from doing general research in a regular library. The Internet changed all of that. Punch in your topic and you'll get an incredible amount of information, accurate or not.

Lawyers also pre-Internet had a monopoly on the forms that produced legal documents such as pleadings, contracts, wills, trusts, etc. Granted some forms were available to the general public pre-Internet, but completing them properly by a non-lawyer was often not a sure thing. Well, that has all changed. Can we all say Legal Zoom, now in its seventeenth year and far more sophisticated than at its founding.

Competition with non-lawyers in the non-litigation and non-criminal defense areas is very real and growing. In England and Australia, the legal market has changed such that lawyers no longer have a monopoly over legal work. Look at the array of advisors and consultants in our

country who now give advice and provide products that formerly were heavily the province of lawyers.

And finally, yet again, technology. Track the progression from the quill pen to the fountain pen to the ballpoint; from handwritten documents to typewritten documents; from handwritten copies to carbon paper copies to copying machine copies; from telegrams to fax machines; from typewriters to word processors to networked computer systems; and from the telephone to the conference call to video conferencing to email. While all of these things changed how lawyers did their work, they were, nonetheless, crammed into the traditional practice model.

But now, looming on the horizon is the latest creation of technology – artificial intelligence. Wikipedia defines artificial intelligence as "sometimes called machine intelligence, or intelligence demonstrated by machines, in contrast to the natural intelligence displayed by humans or other animals. . . Colloquially, the term "artificial intelligence" is applied when a machine mimics cognitive functions that humans associate with other human minds, such as learning and problem solving."

Do we all remember IBM's Watson on Jeopardy?

There seems to be little doubt that artificial intelligence will be the next big legal technology trend; but what, when and where remains to be seen. Regardless of the what, when and where, I submit that its introduction will be far different and have a very different result from the innovative changes I mentioned before. We will see.

With regard to all of the learned professions, but probably more so with respect to the medical profession and the legal profession, we are witnessing the end of an era. I will refer here to the conclusions drawn by the Susskinds on their book, The Future of the Professions. They state that "There is a strong sense that the professions, as currently organized, are approaching the end of an era – in the work that they do, in the identities of the providers of service and in the nature of the service that is delivered. We are advancing into a post-professional society."

This state of flux across all of this is moving rapidly. Those near the end of their careers hope they can hang on before the transformation engulfs their profession. Those thinking of entering any of the professions may be having second thoughts for the picture down the road is far from clear. Again, to quote from the Susskinds book, "The end of the professional era is characterized by four trends: the move from bespoke service; the bypassing of traditional gatekeepers; a shift from a reactive to a proactive approach to professional work; and the more-for-less challenge." They go on to say, "What you are going to see for a lot of jobs is a churn of different tasks." For example, "A lawyer today doesn't develop systems that offer advice, but the lawyer of 2025 will. They'll still be called lawyers, but they'll be doing different things." Query, will they still be called professionals.

I will close with the lyrics from the song "The Changing Times" by Earth Wind and Fire.

As you discover changing times
You must have the strength to endure
As you discover a changing world
You can't be guessing, you must be for sure
In these ever changing times
You must learn to stand up on your own

Life has so much to show you
You must be ready for the new
Space on the strife, fix up your life
Space on the strife, fix up your life

As you discover changing times
Its' not so bad as you will find
As you discover a changing world
A new direction you must keep in mind

Life has so much to show you