

The Boundaries of Legal Professionalism in England & Wales

Author : Richard Parnham

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Andrew Francis, [At the Edge of Law: Emergent and Divergent Models of Legal Professionalism](#), Ashgate 2011.

As a current PhD student, whose research interests include legal professionalism and large law firms, I wish Andrew Francis' latest book had been written several years ago. In just 228 pages, the book positively canters through many of the research themes I spent months compiling for my own literature review.

For example, by the end of chapter one, a novice reader will be made aware of the size, entry routes and recent reforms to the English and Welsh legal market, to name but a few topics. By the end of the first page of chapter 2, the reader will be introduced to many historical, and current, writers on a range of issues relating to legal professionalism – no mean feat in a mere 20 pages.

However, these topics – while useful in their own right – are not the central aims of Andrew Francis' book. Rather, the subjects discussed in the first two chapters act as a springboard for his discussion of the two topics alluded to in the book's title. That is, an examination of the where the "edge" of the English and Welsh legal market currently lies. And, secondly, as a review of shifting nature of legal professionalism itself – albeit almost exclusively from an English and Welsh perspective.

To some extent, the book's contents page (available [here](#)) provides an early indication of where Francis believes the "edge" of the English and Welsh legal market currently lies. However, this definition is made more explicit on page seven of the book's introduction. Firstly, Francis suggests that "many of the actors considered in this book" are 'cutting edge' in the work they do, challenging accepted practices and patterns of behaviour in the field." His second definition describes those who are 'edgy' – "displaying status anxiety or identify dissonance about their place in the professional field".

On a purely practical level, the very specific focus of Francis' book may limit its potential audience, even amongst those interested in studying the world's legal professions. Notwithstanding the first two chapters' excellent introduction to the nature of contemporary professionalism – which will appeal to readers from any jurisdiction – relatively little of this book is given over to a discussion of issues surrounding contemporary professionalism in relation to "mainstream" providers of legal services in England and Wales – i.e. solicitors (barristers are not discussed at all). Rather, Francis' book will arguably only make sense to those who already have a sound understanding of where the mainstream of legal practice / legal professionalism in the England and Wales currently lies. It is only by understanding this mainstream will Francis' debate about the nature of professionalism at the law's "edge" make sense.

Turning to the individual chapters themselves, several are devoted to the second of his stated research themes – that of "edgy" legal professionalism. Here, Francis' main interests is the way in which the English and Welsh legal profession continues to exercise an (albeit) weak form of social closure – that is, the profession continues to influence which people it "allows" to join its ranks. For example, chapter three focuses on the way in which large firms continue to use a variety of techniques to consciously (or

unconsciously) exclude potential recruits who have an unconventional educational or career background. This theme of exclusion and marginalisation is also carried over into chapter four, which examines attitudes towards the “third” (i.e. not typically regarded as being part of) branch the English and Welsh legal profession – [Legal Executives](#). Here, Francis examines both the subservient regulatory status of the Institute of Legal Executives relative to the Law Society, and also the (perceived) lower status of Legal Executive practitioners relative to solicitors.

After a somewhat standalone chapter on cause / activist lawyering (chapter five) – which is arguably the only chapter which substantially deals with Francis’ first stated aim of discussing “cutting edge” approaches to delivering legal services – chapters six and seven return to the concept of “edgy professionalism”. Here, chapter six operates as a case study of the [Society of Trusts and Estates Practitioners](#) (STEP), while chapter seven examines the charging governance structures relating to the English and Welsh solicitors’ profession.

If one was to crudely summarise and contrast these two chapters, one would say that the STEP chapter describes the “bottom up” process by which a private organisation has begun to talk on some aspects of a professional body, notwithstanding the fact that its membership comprises a diverse range of professions, working in numerous locations in addition to the UK. By contrast, the chapter focusing on the Law Society tells a story of the declining importance of the organisation – largely the result of top-down, legislation-imposed, structural change as a result of the [Legal Services Act 2007](#). Telling, the chapter concludes (page 160) by saying the Law Society is “no longer to fulcrum of professional advancements” or the “primary driver of the collective mobility project.”

Overall, given the usefulness of the book as a reference source, and the large number of themes examined in a relatively brief number of pages, one feels churlish for drawing attention to some of its possible shortcomings. Nevertheless, I felt there were three aspects of the book which prevented it from providing as comprehensive a guide to the “edge” of legal professionalism as it otherwise could have been.

The first challenge relates to Francis’ self-imposed boundaries of the “edge” of law, in terms of which legal service professionals he examined. As early as page eight, he admits he made a conscious decision not to discuss barristers, claims management firms, will writers and immigration advisors, in addition to Legal Executives or STEP members. Francis’ justifies his case history selections by stating that “they all represent different examples of the way in which ‘the edge’ operates as a feature of legal professionalism”. More specifically, “the in depth analysis of legal executives, a largely ignored branch of the legal professionalism, demonstrates the attempt of an aspirant occupational group to deploy many of the traditional strategies of professional advancement yet remain locked at the edge of the law.”

The use of individual case histories to illustrate a wider point is, of course, a perfectly valid approach to research. On a personal note, I confess that, before reading Francis’ book, I had never considered either legal executives or STEP members to be part of the English and Welsh legal market – so the book did change my perceptions of where the law’s “edge” in this country correctly lies. Nevertheless, I did feel that the sheer number of potential legal professionals Francis omitted to study in this book means that it can only be regarded as a partial examination of the true outer “edge” of the English and Welsh legal market.

My second issue with this book is that relevantly little space given over to Francis’ second stated aim: discussing those at the “‘cutting edge’ legal service delivery, challenging accepted practices and patterns of behaviour in the field”. As already mentioned, chapter five is probably the best chapter (if not only) chapter to discuss this topic. What’s more, given the imminent arrival of [truly innovative](#)

[alternative providers](#) of legal service – made possible by the Legal Services Act, I cannot help but feel that Francis’ perception of what amounts to a “cutting edge” of legal practice will (very rapidly) become not particularly cutting edge at all.

The final challenges relates to his attempt to devise a new coherent narrative to explain the “fluidity, fragmentation and heterogeneity” (page 172) of the modern legal profession – discussed in the book’s final chapter, chapter eight. Given that chapters four, six and seven of his book (in particular) spent a large amount of time discussing contradictory trajectories of professionalism, it is arguable that his new idea, that of “contingent legal professionalism” is little more than a shorthand phrase for “documenting chaos”.

Of course, this is not a fact that Francis shies away from. Indeed, even the book’s title “emergent and divergent models of legal professionalism” provide an early clue to his findings. Furthermore, his explicitly justifies his stance as early as page 33, stating that: “The contingency of the framework that I develop in this book is not nervousness about nailing my colours to the mast of a grand narrative.” Rather, his approach aims to describe: “a model of professionalism that shifts and changes according to the markets’ / field’s needs at any one time; a model of complexity.” (page 172).

In other words, the fact that his book does not include a grand narrative about trends in the contemporary legal professions appears to be due to the fact that, having examined the evidence, the main conclusion that Francis was able to draw was that nature of contemporary professionalism is even more fluid and uncertain than was previously thought. What’s more, the more that the debate about the nature of legal professionalism pushes out towards the law’s outer “edge”, the more fluid and uncertain the concept the nature of legal professionalism becomes.

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