



# Professional Self-regulation in North America: The Cases of Law and Accounting

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## Abstract

Professional and expert work holds the potential for misconduct that can harm clients or the public. According to the traditional model of professional self-regulation, developed during the “golden age” of the professions in the mid-20th century, societies grant professional communities freedom from external regulation in return for their commitment to regulate their members’ conduct. Professions were said to cultivate distinctive ethical norms, socialize new practitioners, and engage in social control of deviant behavior. In light of dramatic changes in the professional world since that time, this essay reviews research on the legal and accounting professions in North America to assess the extent to which this traditional model still holds. The two professions continue to resemble the traditional model in some respects but diverge from it in others, and on some points, there is insufficient evidence to draw a conclusion. The traditional model of self-regulation is probably best viewed as an ideal type that can serve as a standard of reference, not as an accurate representation of social reality. This conclusion opens up new topics for research and opportunities to inform policy.

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In North America, as elsewhere, professional and expert work represents an important and growing segment of employment. The Bureau of Labor Statistics of the US Department of Labor (2010) projects that health care services, “professional, scientific, and technical” services, and educational services will together gain nearly 10 million new jobs between 2010 and 2020. The same three industries have shown especially strong recent growth in Canada as well (Uppal and La Rochelle-Côté 2013). In addition, across all industries, employment is expected to grow faster in occupations requiring master’s, doctoral, or professional degrees than in occupations requiring less education (Bureau of Labor Statistics, US Department of Labor, 2010). New developments in knowledge and technology have led to the emergence of new expert occupations. Aided by information technology and the globalization of markets, the extent of professional and expert influence is expanding as well, especially in occupations that serve large organizational clients.

It is not surprising, then, that following a period of quiescence, the study of professional and expert work is currently experiencing a revival in North American social science (Gorman and Sandefur 2011).<sup>1</sup> Research remains fragmented across a variety of disciplines and subfields, however – including the academic branches of professions themselves – and relatively little of this groundswell has been felt within the sociology of work and occupations. Yet new developments in professional work should hold considerable interest for sociologists of work, who can in turn contribute a valuable perspective to this growing interdisciplinary research conversation. The regulation and self-regulation of professional and expert conduct, in particular, reflects longstanding sociological interests and represents an especially compelling focus for sociological attention.

An earlier generation of sociologists developed a theoretical model of professional self-regulation during the “golden age” of the professions (Freidson 2001; Galanter and Palay 1991)

in the mid-20th century. Since then, the professional world has changed in significant ways, making it important and timely to take a fresh look at this topic. For one thing, the concerns to which regulation responds have shifted. When most professional practices were relatively small and local, the need for regulation of professional work arose primarily from the risk that professionals would exploit the information asymmetry between them and their clients to the clients' disadvantage (Goode 1957; Wilensky 1964). Today, given the rise of sophisticated organizational clients, a growing concern is that professionals may misuse their expertise *on behalf of clients* to the detriment of others – employees, consumers, investors, and the public as a whole. For another, demographic change, specialization, and globalization have weakened the ability of professional communities to regulate their members.

The legal and accounting professions present especially interesting cases for examination. Both are traditional professions that had already established self-regulatory systems by the time of the “golden age.” Both professions are now prominent among the expert occupations that serve the needs of large corporate and governmental organizations. They now share (together with the financial professions) the potential to wreak widespread economic havoc, as recent financial scandals and crises have demonstrated. Yet, interestingly, the core ethical values of the two professions are at odds in ways that bear on their potential for opportunism toward both clients and the public. For lawyers, the fundamental ethical principle is “zealous advocacy” on behalf of the client (Granfield and Koenig 2003; Sarat 1998; Suchman 1998). For accountants, in contrast, it is “independence” from the client's views and wishes (Gendron, Suddaby, and Lam 2006; Herron and Gilbertson 2004).<sup>2</sup>

This essay reviews recent research on North American lawyers and accountants with a twofold purpose.<sup>3</sup> First, I assess the extent to which these professions continue to conform to the traditional model of professional self-regulation and highlight the pressures that may be pushing them toward other forms of regulation. Second, more broadly, I hope to overcome some of the barriers that have blocked the flow of knowledge and ideas between disciplines, subfields, and countries and to persuade sociologists of work – in North America and elsewhere – to turn their attention to the variety of engaging issues raised by current developments in professional and expert work.

### **The traditional model of professional self-regulation**

The “golden age” sociology of the professions held that self-regulation was one of the hallmarks of professionalism (Cogan 1953; Wilensky 1964). Regulation of some kind is needed, in this view, because of the danger that those who possess expert knowledge will exploit the ignorance of clients for their own advantage.<sup>4</sup> In return for a professional community's commitment to regulate its members' conduct, the surrounding society grants that community freedom from external regulation (Goode 1957). Three key components of professional self-regulation emerge from this literature: cultivation of distinctive ethical norms, socialization of new practitioners, and social control of deviant behavior (Goode 1957; 1961; 1969; Merton 1958; Wilensky 1964).

First, the traditional view sees professions as relatively cohesive “communities within a community” that develop shared cultures, including standards of professional conduct that may diverge from the ethical norms of the broader society (Goode 1957; 1960; Van Maanen and Barley 1984). The distinguishing characteristic of professional culture was said to be a “service orientation” – the idea that professionals should place the interests of clients and the public above their own personal gain (Goode 1957, 1960, 1961; Parsons 1951, 1954). As professions mature, they formalize their standards of conduct in codes of professional ethics (Abbott 1983; Wilensky 1964).

Second, professional communities establish mechanisms for instilling their ethical standards in their new members, including both formal professional education and informal workplace socialization (Cogan 1953; Goode 1960). Professional socialization is unproblematic, in this view; individual practitioners dutifully internalize their profession's service orientation and moderate their own conduct accordingly (Goode 1969; Parsons 1951).

Third, according to the traditional model, professions exercise both formal and informal social control over individual practitioners' behavior. Informally, professional communities offer status and social support to those whose behavior is exemplary, while shaming or shunning those whose behavior is unacceptable; formally, professional associations establish systems for monitoring and discipline (Freidson and Rhea 1963; Goode 1957; Reichstein 1965).

Taken together, these three features form a coherent model of professional self-regulation. In North America, the dominance of this model as a schematic representation of social reality has never really been challenged. In the 1970s and 1980s, a new critical perspective questioned the traditional account of the *reasons* for the establishment of systems of professional self-regulation, arguing that they served primarily as means of advancing professions' own interests in wealth, status, and power (Abbott 1983, 1988; Larson 1977). This perspective did not, however, question the *effectiveness* of professions' control over their members and markets. Indeed, widespread suspicions that systems of professional self-regulation function as economic cartels fueled efforts to dismantle those systems in the 1970s and 1980s (Powell 1985) and remain alive today (Terry, Mark, and Gordon 2012a, 2012b; Terry 2013).

When the vast majority of clients were individuals or small businesses and even larger corporations employed few professionals "in-house," the problem of information asymmetry between professional and client was real and salient. Yet harmful effects, when they occurred, were scattered and limited in scope – seemingly the fault of individual "bad apples" rather than a sign of systemic problems – and did not give rise to support for external regulation. Meanwhile, powerful and culturally cohesive local and state- or province-level professional communities wielded substantial influence over the economic and status rewards available to individual professionals, who largely practiced alone or in small partnerships (Abel, 1986; Freidson 1960; Hall 1948). In these circumstances, the traditional model of professional self-regulation arguably offered an adequate conceptual fit to empirical patterns.

In recent decades, important changes in the social context of professional work have brought new pressures to bear on the idea of self-regulation. For professions that serve the needs of businesses and other organizations, perhaps most important has been the shift in market power from professional to client. Huge multinational banks and corporations now offer fees on a scale that was previously unknown. They also employ staffs of "in-house" professionals who are well qualified to evaluate the work of outside experts. Older notions of longstanding client-professional relationships have faded away, so that professionals must compete to win and retain corporate business. Such clients enjoy a combination of sophistication and bargaining power that allows them to impose far-reaching controls on the performance of professional work, undermining professionals' ability to make independent substantive and ethical judgments (Kronman 1993; Whelan and Ziv 2012). Indeed, critics have faulted both the legal and accounting professions for playing an enabling role in recent episodes of corporate misconduct that caused widespread economic hardship (e.g. Parker and Rostain 2012; Whelan 2007; Wyatt 2004). Thus, although the need to protect individual and small-business clients from unscrupulous practitioners remains (see, e.g. Abel 2006; Levin 2004; Schneyer 1997), a new need to protect the public from the concerted actions of professionals and clients is becoming increasingly clear.

Meanwhile, both internal and external forces have operated to diminish the self-regulatory capacity of professional communities. Internally, professions have become more fragmented and less cohesive. As a result of recent rapid growth and increased demographic diversity, professions are now much less culturally homogeneous than they were during the “golden age.” Professions that serve both individual and business clients have become bifurcated into distinct “hemispheres” by client type, with few social connections between them (Heinz and Laumann 1982; Heinz, Nelson, Laumann, and Sandefur 2006).<sup>5</sup> Even more narrowly, as professional knowledge becomes more specialized, some professionals identify primarily with their specialty community (Mather and Levin 2012; Zeff 2003b). The globalization of markets and institutional fields has undermined local communities’ ability to offer economic and status rewards and penalties. Even large professional service firms are, to a substantial extent, an “enemy within”: They draw attention and commitment away from professional communities by providing alternative social collectivities that impose their own restrictions on professional conduct, backed up by their own positive and negative sanctions (Fortney 1996; Schneyer 1997).

Externally, professional communities face increasing pressures from governmental and transnational regulators. Courts and government agencies have limited the ability of professional associations to impose formal controls that have the effect of restricting economic competition and remain open to the possibility of further “deregulating” measures (Competition Bureau of Canada 2007; Powell 1985; Zeff 2003a). As professional practice becomes less geographically bounded, professionals and firms are increasingly likely to be subject to the jurisdiction of multiple geographically based regulating agencies, at both the national and subnational levels; these regulators may impose conflicting requirements (Terry, Mark, and Gordon 2012a). Efforts at establishing international regulatory regimes are also underway (see Faulconbridge and Muzio 2008; Suddaby, Cooper, and Greenwood 2007). Finally, weakened professional communities are vulnerable to the incursion of ideologies and institutional logics from newer expert service occupations that lack a tradition of self-regulation, such as management consulting (Wyatt 2004).

The dramatic changes that have occurred in the world of professional and expert work may have undermined the usefulness of the traditional model of professional self-regulation as a way of representing and understanding that world. In light of these changes, to what extent does the traditional model still apply to lawyers and accountants in North America? The remainder of this essay considers that question, examining the three components of the traditional model – cultivation of distinctive ethical standards, socialization of new members, and social control of deviants – in turn.

### **Cultivation of distinctive ethical standards**

Ethical standards may be shared as informal norms and values or expressed in formal codes of professional ethics. Empirical research on informal professional communities and cultures is limited for both the legal and accounting professions in North America. Formal codes have received more extensive scholarly attention, especially from the academic branches of the professions themselves.

#### *Norms and values*

In the legal profession, while there is no shortage of commentaries bemoaning a perceived shift toward a more commercial culture (e.g. Barnhizer 2004; Glendon 1994; Kronman

1993), empirical research on profession-wide culture seems to be entirely absent. At the local level, there is evidence that many lawyers belong to “communities of practice” (Maiman, McEwen, and Mather 1999): lawyers who regularly interact with each other and share common experiences relating to the same laws and court systems. Such communities have been observed among lawyers whose day-to-day work draws them into interaction with peers outside their own offices, such as rural divorce lawyers (Mather 2001), urban solo and small-firm practitioners (Levin 2004), and large-firm litigators (Sarat 1998). These communities of practice seem to be highly effective at maintaining shared norms concerning acceptable levels of aggression and adversarialness toward opponents in various circumstances, such as face-to-face interaction, “stonewalling” an opponent’s attempt to obtain evidence during the discovery phase of litigation, and negotiating settlements of disputes.

In the case of accountants, in contrast, research on informal values and norms has focused on the national and global levels rather than the local level. Unlike the legal profession, the accounting profession in both the United States and Canada is dominated by a small number of very large transnational firms that employ thousands of accountants worldwide (since 1980, their number has shrunk from the “Big Eight” to the current “Big Four”).<sup>6</sup> At the national and transnational levels, rather than reflecting a shared consensus, the culture of the accounting profession seems to represent a contested terrain where the views and interests of the elite firms are pitted against those of the much larger number of small practitioners (Cooper and Robson 2006; Montagna 1986; Muzio and Kirkpatrick 2011).

This cultural power struggle came to a head in the 1990s, when the elite firms and the national professional associations – in particular, the American Institute of Certified Public Accountants (AICPA) and the Canadian Institute of Chartered Accountants (CICA) – embarked on a multifaceted effort to expand the accounting profession’s scope of practice and remold corresponding understandings of the profession’s aims and expertise (Covaleski, Dirsmith, and Rittenberg 2003; Fogarty, Radcliffe, and Campbell 2006; Greenwood, Suddaby, and Hinings 2002). In their new vision of the profession, accountants would be seen as possessing broad expertise concerning the communication, management, and use of many varieties of business information. Accounting firms would become “multidisciplinary practices” (MDPs) offering technology consulting, general management consulting, and legal services as well as traditional accounting services, and would serve as one-stop shops for business advice (Greenwood, Suddaby, and Hinings 2002; Suddaby and Greenwood 2005).<sup>7</sup> Perhaps the boldest suggestion was to replace the traditional public accounting certification (CPA in the United States, CA in Canada) with a broader designation, referred to as the “XYZ designation” until consensus could be reached on a new name (Cooper and Robson 2006; Fogarty, Radcliffe, and Campbell 2006). These proposed changes implied a weakening of the profession’s emphasis on independence and objectivity in favor of a new emphasis on responsiveness to client demands. The initiative encountered indifference and even outright resistance from small-firm accountants, who had little to gain from the proposed changes (Greenwood, Suddaby, and Hinings 2002; Lander, Koene, and Linssen 2013). However, its ultimate failure was due to the series of accounting scandals in the early 2000s and the subsequent demise of Arthur Andersen LLP, one of the elite firms (Fogarty, Radcliffe, and Campbell 2006; Suddaby and Greenwood 2005).

### *Codes of professional conduct*

Because codes of ethics (and mechanisms for their enforcement, discussed below) sometimes carry the force of law, national distinctions are more salient in this area than in others. In the



United States, the formal codes governing both the legal and accounting professions represent hybrids of self-regulation and governmental regulation. In the case of lawyers, bar associations do not maintain codes of conduct; instead, lawyers are subject to the official, enforceable code issued by the supreme court of the state in which they are admitted to practice. However, state supreme courts largely delegate the task of drafting these codes to national and state bar associations (Zacharias 2008). In 1908, 1969, and 1983, the American Bar Association (ABA) issued “model” ethics codes that state supreme courts could consider for full or partial adoption, with input from their state bar associations (for a detailed history, see Barton 2004). The most recent model code, the *Model Rules of Professional Responsibility*, has been adopted, with varying degrees of alteration, in 49 states and the District of Columbia.<sup>8</sup> On the one hand, then, bar associations significantly shape the content of governing codes of ethics; on the other hand, state supreme courts influence both the codes themselves and, importantly, the extent to which other laws are consistent with those codes (Zacharias 2008).

For Certified Public Accountants (CPAs), who are licensed by state governments, the situation is similar but not identical. Unlike bar associations, both the AICPA and the various state-level CPA societies maintain their own codes of ethics; non-compliance can result in suspension or loss of membership, independent of state disciplinary action. State laws governing the practice of public accounting, which are administered by state Boards of Accountancy, include codes of conduct that are legally enforceable by suspension or loss of the license to practice. In most states, however, these legal provisions simply replicate important portions of the AICPA code. Thus, as in the case of lawyers, a professional association largely determines the content of the regulatory code enforced by government. (Accountants whose work is not relied on by the public need not obtain state licensing and are subject only to the ethics codes maintained by their national professional associations – the Institute of Management Accountants (IMA) and the Institute of Internal Auditors (IIA).)

Canada, by comparison, has been called “the last bastion of unfettered self-regulation” for professions (Rhode and Woolley 2012). All provincial governments have delegated regulatory responsibility over both the legal profession and the accounting profession to recognized professional associations. In the legal profession, provincial law societies act as independent administrative agencies exercising authority granted by statute and each maintains and enforces its own code of conduct.<sup>9</sup> Although the Canadian Bar Association (CBA) issued model ethics codes in 1920, 1974, 2006, and 2009 (Canadian Bar Association 2009; Dodek 2000, 2008), use of the CBA codes has varied among the provinces, ranging from consultation as a non-authoritative source to wholesale adoption as the professional responsibility rules of the jurisdiction. In December 2012, the Federation of Law Societies approved an alternative model code, which provincial law societies are now considering for adoption.

For Canadian accountants, formal ethics codes are similarly the responsibility of provincial professional societies acting as legally authorized self-regulatory agencies. Accountants in Canada are currently divided into three branches – Chartered Accountants, Certified Management Accountants, and Certified General Accountants – although efforts are under way to unify the profession under the designation “Chartered Professional Accountant” (Lahey 2012). As of this writing, each of the three branches has its own self-regulatory association, or “institute,” in each province, which in turn maintains its own code of ethics. As in the United States, only accountants who perform work relied on by the public must obtain a government-sponsored license to practice, but this licensing authority is delegated to the self-regulatory provincial institutes as well; as a result, no governmental agencies maintain separate codes of conduct.<sup>10</sup>

Do existing codes of conduct adequately reflect the ethical cultures of their respective professional communities? Both the legal and accounting professions have debated the relative merits for this purpose of codes that list specific, enforceable rules versus those that articulate broad ethical principles. In both professions, advocates of principles-based codes argue that they more effectively express professional values and norms and encourage moral introspection on the part of individual practitioners (Herron and Gilbertson 2004; Hutchinson 1999; Wilkinson, Walker, and Mercer 2000). Rules-based codes, they contend, encourage professionals to think in terms of minimal compliance rather than high standards, to seek ways around the rules, and to delegate ethics expertise to specialists (American Institute of Certified Public Accountants 1986; Barton 2004; Raymond 2005; Satava, Caldwell, and Richards 2006). Advocates of specific rules point out that broad principles may not provide adequate guidance in complex situations and cannot serve as a basis for disciplinary action (Schneyer 1994; Zacharias 1993). This ongoing dilemma seems to stem from the dual purpose of professional ethics codes – to promote high moral aspirations and, at the same time, to establish a “floor” of minimally acceptable conduct.

In the legal profession, the dominant trend during the 20th century was toward greater specificity. The ABA’s first model code, the 1908 *Canons of Professional Ethics*, consisted entirely of broad principles. In 1969, the ABA issued a second model code, the *Model Code of Professional Responsibility*, which contained both broad “ethical considerations” and specific “disciplinary rules.” Finally, the 1983 *Model Rules* dropped the “ethical considerations” and elaborated the specific rules. Similarly, in Canada, the CBA’s 1920 *Canons of Ethics* were principles-based, but the 1974, 2006, and 2009 versions of the CBA’s *Code of Professional Conduct* moved toward specific rules. In both countries, however, growing dissatisfaction has led to calls to reinstate more general principles, at least in some portions of the governing codes (Barton 2004; Raymond 2005; Zacharias 1993). In Canada, the Federation of Law Societies’ 2012 *Model Code of Professional Conduct* includes both broad principles and specific rules.

The accounting profession has already moved toward a greater emphasis on principles in ethics codes. As long ago as 1989, the AICPA revised its formerly rules-based code of professional conduct to include principles. The International Federation of Accountants, a global umbrella organization of which the AICPA and the three national Canadian associations are members, has also adopted a principles-based code of ethics (International Ethics Standards Board for Accountants 2013).

### **Socialization of members**

Perceptions of ethical decline over time are common among commentators on both the legal profession (Barnhizer 2004; Glendon 1994; Kronman 1993; Schiltz 1997) and the accounting profession (Copeland 2005; Smith 2003; Wyatt 2004), but as yet it seems that no empirical research has examined the issue.<sup>11</sup> Any ethical decline would presumably reflect the failure of one or both of the two principal institutions of professional socialization: professional schools, where standards of conduct are taught in formal classes, and professional workplaces, where practitioners absorb norms and values through informal observation and interaction.

Both the legal and accounting professions incorporate ethics into the professional education curriculum, but there is variation on this theme across professions and across countries.<sup>12</sup> In the US legal profession, all law schools offer instruction in legal ethics, a requirement for ABA law school accreditation since 1974. In contrast, most Canadian law schools have not historically taught legal ethics (Arthurs 1998), but Canada’s law societies have recently

adopted an ethics instruction requirement that will come into full effect in 2015 (see Federation of Law Societies of Canada 2013). Legal ethics is typically taught through the “discrete” approach – that is, a dedicated course on the subject (Pipkin 1979; Rhode 1992). By comparison, in accounting, ethics is usually taught by the “pervasive” method – in other words, by integrating it into courses on substantive topics – although there is some evidence of a trend toward the establishment of separate ethics courses as well (International Accounting Education Standards Board 2006; McDonald 2003; Romal and Hibscheiler 2004). In practice, most auditing courses consider ethical issues, but the integration of ethics into other courses is inconsistent (International Accounting Education Standards Board 2006; Misiewicz 2007).

How effective is formal ethics education? Despite an abundance of commentary and debate on the merits of the “discrete” and “pervasive” approaches in both professions, empirical efforts to study their usefulness have been scarce. In the legal profession, researchers have focused on practitioners’ subjective evaluations of ethics education. Law students rate legal ethics courses relatively low on intellectual difficulty, compared to other law school courses, and devote little time to them (Pipkin 1979). While practicing lawyers believe that legal ethics can be effectively taught in law school (Garth and Martin 1993), many feel that their own ethics courses failed to address the most vexing moral issues encountered in practice (Granfield and Koenig 2003). More broadly, there is evidence that law students’ moral idealism *declines* during law school (Erlanger, Epp, Cahill, and Haines 1996; Granfield and Koenig 1992).

In accounting, researchers have investigated whether ethics education raises students’ objective scores on psychological scales of moral development. The limited evidence suggests that ethics modules in auditing courses do not improve students’ moral reasoning abilities (Earley and Kelly 2004; Ponemon 1993), but dedicated courses on ethics and professionalism do have positive effects on moral development (Dellaportas 2006; Mohamed Saat, Porter, and Woodbine 2012; Welton and Guffey 2009; Welton, Lagrone, and Davis 1994).

Turning to the workplace, in the legal profession, the limited existing research suggests that ethical socialization varies across work settings. Solo and small-firm practitioners seem to learn the standards and norms of their local communities of practice fairly quickly through informal interaction (Levin 2004; Maiman, McEwen, and Mather 1999). This socialization may indeed produce a service orientation: Sole practitioners perceive their work as more service-oriented than do attorneys who work in firms (Wallace and Kay 2008).<sup>13</sup> In large, elite law firms, ethical socialization may be less effective. As partners’ time has become too expensive to devote to mentoring, many junior lawyers feel that their firm’s ethical expectations are unclear (Sarat 1998; Schiltz 1997). Large firms lawyers tend to develop a pragmatic ethical orientation, defining acceptable and unacceptable behavior on the basis of its practical and economic consequences for the client and the law firm (Suchman 1998).

In accounting, there is also evidence of variation in socialization across work settings. Accountants’ commitment to ethical principles is weaker in public accounting firms than in corporations, government agencies, or other settings (Gendron, Suddaby, and Lam 2006).<sup>14</sup> Within public accounting firms, commitment to ethical principles is weaker in large firms than in small firms (Suddaby, Gendron, and Lam 2009). Accounting firms do seem to undertake active efforts to shape their members’ professional identities and commitments (Anderson-Gough, Grey, and Robson 2000; Covalleski, Dirsmith, Heian, and Samuel 1998) and are often successful in influencing their employees’ ethical judgments (Douglas, Davidson, and Schwartz 2001; Ponemon 1992; Sweeney, Arnold, and Pierce 2010). Of course, *whether* accountants are being socialized and *what* exactly they are learning are two different questions. Intriguingly, some studies have found that accountants’ moral development is inversely related to their organizational rank and seniority, implying that more ethical junior



accountants either voluntarily leave their organizations or are not promoted (Ponemon 1990; 1992; Shaub 1994; but see Conroy, Emerson, and Pons 2010).

### Social control of deviants

Professional social control can operate through informal interactional processes or through formal systems of monitoring and discipline. Very few scholars have turned their attention to the issue of informal professional social control, despite its potential to halt misconduct before consequences become serious. The very limited evidence suggests that lawyers and accountants prefer to avoid confronting their colleagues. For example, in Morrill's (1995) study of an elite accounting firm, accountants responded to perceived misconduct with silent toleration. Professionals' silence may result from a perception of conflicting moral obligations. In Fortney's (1996) survey of 191 Texas law firm managing partners, 55 percent of respondents felt that firm partners have an ethical duty to monitor each other but 31 percent believed that such peer review inappropriately impinges on professional autonomy.

Formal social control is another matter. Both professions have developed elaborate formal systems of social control. In the legal profession, formal social control has traditionally taken the form of retrospective disciplinary proceedings after violations have occurred. The accounting profession has taken a very different approach, emphasizing forward-looking inspections of accounting firms' ongoing practices rather than sanctions for past rule violations.

#### *The legal profession*

In both the United States and Canada, formal social control operates at the subnational (state or province) level. In the United States, the authority to suspend or withdraw a lawyer's license to practice rests with the relevant state supreme court. Most state courts historically delegated that disciplinary authority to their state bar associations (Maute 2008; Powell 1986). Only 12 states do so today, however; the rest administer discipline through a judicial agency under court supervision (Fischer 2006; Maute 2008; Powell 1985; 1986). In Canada, in contrast, the profession retains almost complete control over the disciplinary process. Authority to investigate and discipline lawyer misconduct lies with the provincial law societies. Decisions are made by panels of "benchers," or elected members of a law society's governing board, who are usually unpaid (Rhode and Woolley 2012). Canadian courts' authority to discipline lawyers is limited to matters relating to the conduct of litigation before them; they are not entitled to suspend or disbar lawyers or to sanction any conduct occurring outside the litigation context (Rhode and Woolley 2012).

How well do legal disciplinary systems protect clients and the public and deter lawyer misconduct? Commentators have criticized disciplinary systems in both countries on several grounds. State- or province-based disciplinary systems may no longer be adequate to deal with conduct occurring across multiple jurisdictions with differing ethics rules (Schneyer 1994; Zacharias 1994). The resources of subnational entities may also be insufficient for regulatory needs, especially in Canada, which relies on volunteers (Rhode and Woolley 2012). Because disciplinary agencies lack authority to initiate proceedings unless a complaint is filed, forms of misconduct that are less visible to clients tend to escape punishment (Schneyer 2011). Moreover, with the exception of New York and New Jersey, no jurisdictions impose discipline on law *firms* as entities, despite the fact that misconduct can arise as a result of firm-level practices or pressures (Schneyer 2011). Finally, and most fundamentally, the retrospective nature of disciplinary systems provides no means of preventing ethical lapses from occurring in the first place (Schneyer 1994; 2011; Terry, Marks and Gordon 2012a).

Although formal social control has traditionally been the domain of professional associations, law firms are increasingly establishing their own formal social control systems (Schneyer 1997). Whether or not such organizational practices should be considered a new form of professional self-regulation is unclear, but in any event they do not conform to the *traditional* model of self-regulation. Fortney's (1996) study of Texas law firms found that the majority prohibited or limited partners' investments in clients' business ventures or their acceptance of roles that could create conflicts of interest, such as trustee or corporate director of another entity. Large percentages of respondent firms also required compliance with prescribed procedures for accepting new business, determining fees, and billing clients. In half of surveyed firms, lawyers engaged in general monitoring of each other's work at department meetings and 34 percent had designated a partner or committee for such general peer review. Approximately three quarters of respondent firms had named a partner or committee to address ethics and malpractice problems as they arose. In subsequent qualitative research on 44 large law firms based in several different US cities, Chambliss (Chambliss 2006; Chambliss and Wilkins 2002) found that such "compliance specialist" roles within firms are becoming more clearly defined and professionalized.

### *The accounting profession*

In the accounting profession, although disciplinary mechanisms exist, the primary vehicle of formal social control has been forward-looking inspection of ongoing practices. In the United States, the AICPA established a mandatory peer review program for association members, including accounting firms, in 1990.<sup>15</sup> In the current form of this program, accounting firms that perform audits are required to undergo peer review every 3 years (firms that do not perform audits may have to undergo a limited form of peer review or may be exempt) (American Institute of Certified Public Accountants 2013). The AICPA's peer review program is administered by state CPA associations, with oversight from the AICPA's Peer Review Board. A firm can choose to be reviewed by another accounting firm or by a team assembled by its state CPA association. Peer reviews focus on evaluating and improving a firm's quality control practices rather than on determining whether actual misconduct took place; the purpose is educational and corrective rather than disciplinary (Bunting 2004). Reviewers first familiarize themselves with the firm's quality control policies and procedures, then select a sample of engagements and review the related work documents to assess the extent of firm accountants' compliance with those policies and procedures. The results are summarized in a report with an overall rating and a supporting letter of comments and recommendations (Anantharaman 2012).

In the wake of the accounting scandals of the early 2000s, the 2002 Sarbanes–Oxley Act created the Public Company Accounting Oversight Board (PCAOB), a quasi-governmental entity under the jurisdiction of the Securities and Exchange Commission (SEC), and charged it with conducting regular inspections of accounting firms with publicly held corporate clients. Similar to peer review, these inspections involve reviewing a sample of the firm's audit engagements and evaluating the firm's quality control systems (Anantharaman 2012). The new law thus established partial direct governmental regulation of accountants. Because AICPA member firms must still participate in the AICPA's peer review program, responsibility for review of public company auditors is shared by the PCAOB and the AICPA. Review of firms that audit only privately held clients is overseen by the AICPA alone (Hermanson, Houston, and Rice 2007).

In Canada, the profession has been more successful at fending off direct governmental regulation. The monitoring and discipline of accountants and firms have traditionally been

the responsibility of the provincial self-regulatory institutes, with the national professional associations instead concentrating their attention on promulgating accounting standards and ethical rules (Pritchard and Puri 2006). The provincial bodies have long had the authority to conduct periodic inspections of accounting firms. In 2003, the Canadian Public Accountability Board (CPAB) was established by agreement among the provincial and federal securities commissions and the Canadian Institute of Chartered Accountants.<sup>16</sup> The CPAB is a private, independent organization and not a governmental agency, and it is funded by the accounting firms that it regulates. Its power stems from the fact that, under Canadian securities laws, securities issuers must be audited by firms that are subject to CPAB inspection (Pritchard and Puri 2006). Firms that audit 100 or more reporting issuers per year are inspected every year, those that audit 50–99 issuers are inspected every 2 years, and those that audit fewer than 50 issuers are inspected every 3 years. In practice, the CPAB continues to delegate inspections of smaller firms to the provincial institutes (Canadian Public Accountability Board 2013).

How effective is self-regulatory inspection at forestalling unethical conduct in accounting? Plainly, it was not sufficiently effective to avoid the scandals that spurred the US Congress to establish the PCAOB. However, research provides some support for the usefulness and validity of self-regulatory peer review. Peer reviews are statistically associated with alternative evaluations of audit firm quality: Negative peer review findings are correlated with subsequent malpractice claims (Casterella, Jensen, and Knechel 2009), and there is a moderately strong association between peer review findings and subsequent PCAOB reports of inspections of the same accounting firms (Anantharaman 2012). Moreover, audit clients appear to take peer review findings seriously: Firms with “clean” peer review reports gain clients, while firms with problematic reports lose clients following the peer review (Hilary and Lennox 2005).

## Conclusion

The research reviewed here suggests that the legal and accounting professions in North America continue to resemble the traditional model of professional self-regulation in significant ways. Despite these points of resemblance, it would be too simple to conclude that law and accounting are still self-regulating professions in North America. In other respects, the research evidence strongly suggests that the traditional model no longer offers a good fit. On a third set of issues, the dearth of scholarship makes it difficult to draw a conclusion concerning the applicability of the traditional model. These areas are ripe for future research.

### *The legal profession*

With respect to *distinctive ethical standards*, consistencies with the traditional model include the cohesive ethical cultures of local communities of practice and the important roles of professional associations in shaping formal ethics codes. However, in the United States (although not in Canada), final say over ethics codes lies with the courts, not the profession. In both countries, ethics rules have become so specific that they may no longer reflect shared professional ideals. Apart from commentators’ anecdotal impressions, little is known about the informal ethical culture of the legal profession above the local level.

On the issue of *socialization*, the legal profession conforms to the traditional model by requiring ethics instruction in law schools. Yet law school ethics courses were long optional in Canada and remain devalued in the United States. In the workplace, communities of practice

seem to socialize solo and small-firm practitioners, but research on the nature and effectiveness of workplace socialization in law firms is scarce.

With respect to *social control*, little is known about informal practices in the legal profession. On the formal side, Canadian law societies and some US state bar associations administer the disciplinary systems governing lawyers in their jurisdictions, as the traditional model would predict. Contrary to the traditional model, however, disciplinary systems are administered by state judicial agencies, not bar associations, in most states of the United States.

### *The accounting profession*

On the topic of *ethical standards*, the profession resembles the traditional model in that the AICPA (in the United States), and the provincial accounting institutes (in Canada) determine the content of accounting ethics codes. One point of divergence is that enforceable ethics codes require governmental approval in the United States. Another is that, in both countries, professional culture is dominated and arguably distorted by a small number of powerful firms. Research remains scarce with respect to the ethical culture of local communities of practice.

With respect to *socialization*, instruction in ethics is offered via the pervasive method in accounting degree programs. However, the extent and quality of accounting ethics instruction is inconsistent across courses and institutions. Accounting firms undertake active workplace socialization practices, but those practices do not seem to produce effective moral development.

With respect to *social control*, research on informal practices is sparse. As to formal practices, the profession retains control over the system of firm inspection in Canada through the provincial institutes and the Canadian Public Accountability Board. In contrast, the most significant deviation from the traditional model of professional self-regulation in either profession is the Public Corporation Accounting Oversight Board's assertion of authority over the inspection of public accounting firms in the United States.

### *Implications*

Thus, the picture that emerges is mixed. To an important degree, the legal and accounting professions retain self-regulatory authority in the United States and especially in Canada. Plainly, self-regulation has not been replaced by governmental regulation. Yet it also seems clear that the full traditional model of self-regulation, as articulated by mid-20th-century sociologists of the professions, no longer provides an accurate representation of social reality in the professional world. That model hinges on the conception of powerful, cohesive "communities within a community" – a vision that was retained by the more critical theorists of the 1970s and 1980s, who simply reinterpreted their motivation as self-interested pursuit of a "professional project" (Larson 1977) rather than fulfillment of a societal function. Whether or not such communities ever truly existed, the evidence strongly suggests that they do not now exist in the North American legal and accounting professions. In the North American setting, the traditional model of self-regulation is probably best viewed as an "ideal type" that can serve as a standard of reference, rather than as an accurate representation of social reality.

The implications of this conclusion should be of interest to sociologists of work and occupations. From the standpoint of theory and research, it opens up a number of new questions. To the extent that the traditional model of professional self-regulation does not hold, what other forms of regulation operate to curb potentially harmful conduct on the part of professionals and experts, and how should we conceptualize them? In everyday usage, the term *regulation* usually refers to laws and rules promulgated by governments, as well as mechanisms for their enforcement. In a globalized world, it may also refer to transnational governance

structures established by agreements between nations. Certainly, the state and its extensions represent an important regulatory force, but not the only one. Constraints on professional and expert work can also be imposed by private actors with market power, such as large organizational clients. Instead of exercising the classic market option of moving their business elsewhere, such actors may seek to intervene directly in shaping professional practices. What are the consequences of these different forms of regulation for clients, for the public, and for professionals themselves? Why do we see different configurations of these forms in different professions?

If sociologists contribute to the analysis of these issues, they may also have an opportunity to inform policy. Currently, there is something of a global trend to reconsider the nature of professional and expert regulation (Terry 2008, 2013; Terry, Mark, and Gordon 2012). Some countries have expanded governmental regulation of professional work, including other English-speaking societies without a historical tradition of state involvement in the professions, such as the UK (Flood 2011; Whelan 2008) and Australia (Parker, Gordon, and Mark 2010). It remains to be seen whether the balance shifts toward increased governmental regulation in North America as well. Sociological ideas and findings could influence the course of this policy debate.

## Short Biography

Elizabeth Gorman is Associate Professor of Sociology at the University of Virginia. Her research interests include workplace inequality, organizations, employment practices, and professional and expert work. A current project (with Fiona Kay of Queen's University) focuses on identifying organizational characteristics that promote or hinder racial diversity in law firms. Her previous work has appeared in the *American Sociological Review*, the *American Journal of Sociology*, and a number of other journals and volumes.

## Notes

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<sup>1</sup> An earlier period of active sociological attention to professional work occurred during the middle decades of the 20th century. However, as social conditions changed and older theoretical frameworks fell out of favor in the 1980s and 1990s, research on professions all but ceased in North American sociology (Gorman and Sandefur 2011). A more vigorous stream of work has continued in Europe (for a recent review, see Evetts 2013).

<sup>2</sup> In the United States and English-speaking Canada, lawyers work within an adversarial system where each party's representation by counsel is supposed to guarantee that the greater good is served. As a result, lawyers view their central ethical obligation as running toward the *client*. Accountants prepare or audit financial reports that are relied on by a business's investors, lenders, employees, and other stakeholders. Thus, their primary ethical obligation runs to the *public*, not to the client who pays them – an ongoing source of ethical tension for the profession.

<sup>3</sup> In an essay of this length, it is impossible to do justice to the varied regulatory regimes that govern the legal and accounting professions around the world. I focus on North America because the sociological model of professional self-regulation was largely developed there and because professions arguably retain greater freedom from external control – either by the state or by private entities outside the profession, such as corporate stockholders – than they do in many other countries. I treat the United States and Canada together because the cultural and institutional similarities between them greatly outweigh the differences. This essay is not intended to offer a comparative analysis; more modestly, it simply aims to identify common patterns and explore variation around those patterns (see Ragin 1994).

<sup>4</sup> Although the potential for harm to the public was recognized, it typically was not emphasized (see, e.g. Goode 1961).

<sup>5</sup> Among accountants, this split has been obscured by the differences between the especially large and powerful Big Eight (now down to Big Four) firms and the rest of the profession.

<sup>6</sup> This reduction in number is due to mergers among the former Big Eight and the collapse of one of the former Big Eight, Arthur Andersen LLP, in 2002.



- <sup>7</sup> The legal profession offered strenuous resistance to the MDP idea (Suddaby and Greenwood 2005).
- <sup>8</sup> California is the lone holdout. See [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/alpha\\_list\\_state\\_adopting\\_model\\_rules.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html) (accessed July 15, 2013).
- <sup>9</sup> Unlike American state bar associations, provincial law societies do not undertake public relations or lobbying efforts on behalf of the profession; those matters are left to the Canadian Bar Association (Rhode and Woolley 2012).
- <sup>10</sup> In Canada, "public accountants" may be members of any of the three branches of the profession.
- <sup>11</sup> One study of Canadian accountants found that commitment to auditor independence was positively related to age (Gendron, Suddaby, and Lam 2006), but because the data were cross-sectional, it is impossible to know whether the finding represents a cohort effect (in other words, a temporal decline) or an effect of aging itself.
- <sup>12</sup> Professional legal education occurs in graduate law schools and generally culminates in the Juris Doctor (J. D.) degree. Canada also requires a period of apprenticeship before admission to the bar. Professional accounting education takes place in undergraduate programs and, for those who wish to become CPAs or CAs, in additional master's or other post-baccalaureate programs.
- <sup>13</sup> In both professions, reported ethical lapses occur most frequently among solo and small-firm practitioners (Arnold and Kay 1995; Hermanson, Houston, and Rice 2007). This could be due to a variety of causes, however, such as a lack of administrative support or a greater propensity to file complaints on the part of individual clients.
- <sup>14</sup> A "public accounting firm" is a private professional service firm that provides services to publicly owned companies.
- <sup>15</sup> In the United States, the AICPA permits the membership of accounting firms – and, indeed, requires it in the case of firms that audit publicly held corporations. As a result, unlike bar associations, the AICPA has the authority to regulate firms directly, as distinguished from their individual partners and employees (Fogarty 1996).
- <sup>16</sup> Until recently, only Chartered Accounts (CAs) were permitted to perform public audits, but most provinces now allow CMAs and CGAs to engage in public accounting if properly qualified.

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