
Legal Data Banks, the Glut of Lawyers, and the German Legal Profession

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Recent developments in higher education and in microelectronics have converged to alter the work and status of the legal profession. In this study of the subject of these far-reaching trends on lawyers in the German insurance industry, the professional jurisdiction of lawyers is found to have been greatly weakened. The need for the professional expertise of lawyers is greatly reduced because qualified nonlawyer business clerks have access through the legal data banks to legal knowledge once only available to them after many years of experience. Ironically, however, the excess supply of lawyers has led insurance companies to hire them to do work below their qualification level that can be done by qualified nonlawyer clerks; thus these over-credentialed lawyers find it almost impossible to establish or maintain any professional legal jurisdiction.

In the past two decades, two developments in particular have intrigued social scientists: the powerful expansion of the educational system in Western industrial nations and the triumph of microelectronics in almost all areas of human existence. These developments have given rise to widely varying predictions, especially in connection with the effects both developments might have on work, for example, changes in qualification structures for all occupations and in particular for the professions, changes in segmentation of the job market, and the like. Predictions—the focal point of many studies—range from radical dequalification and proletarianization of university graduates to a general increase in qualifications and a rise in professionalization. Although actual changes have, in the meantime, revealed some predictions to be fallacious or exaggerated, many trends are much debated.

One important example is the legal profession. Opinions are also divided about the impact of change on the legal profession, especially in light of the enormous rise in the number of

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lawyers (Abel & Lewis 1988a, 1988b, 1989) and the growing use of computers in law-related work. Although in Anglo-American countries, most scholars predict increasing deprofessionalization (Abel 1985, 1988a, 1988b, 1988c; Rothmann 1984; Spangler 1986), some disagree, and some even draw diametrically opposed conclusions (Paterson 1988; Powell 1985). Views in the Federal Republic of Germany are also disparate. Predictions of both deprofessionalization (Hartmann 1987, 1988, 1989, 1990) and reprofessionalization (Hommerich 1988; Hommerich & Werle 1987, 1988) have been offered.

In the Federal Republic of Germany (FRG) the number of lawyers has risen considerably—from 94,000 in 1970 to more than 140,000 today. Each year, about 12,000 students begin studying law and about 6,000 graduates pass the state examinations and, being thus qualified for the bar, pour onto the labor market. These graduates crowd into the private practice of law (which has increased from 23,000 in 1970 to now more than 60,000) or into the commercial sector, including business associations, where between 15,000 and 20,000 lawyers are employed. In contrast, the public sector, once the primary employer of lawyers in Germany, has become far less important because it needs relatively few recruits. In 1992 there were only about 600 new positions for judges and district attorneys; this sector still employs about 40% of all lawyers, but there is a clear downward trend.

The steadily increasing use of data processing technology has, in contrast, received scant attention in social science discussions in the FRG. Especially neglected is the development of legal data banks, the use of which is spreading rapidly. Legal data banks make up a steadily growing share of the market for commercial data banks, which is itself expanding at yearly rates of between 20% and 25%. The market share for commercial data banks in the FRG rose from 1986 to 1988 from 2% to 9% of total use (Scientific Consulting 1990), thus achieving a growth rate surpassing that of all other fields. Such an increase of almost 700% within two years demonstrates the great importance of the legal data banks, particularly LEXIS and WESTLAW (Harrington 1985).

In light of this rapid development, it is surprising that the impact of these changes on lawyers' work and professional position in Germany are only now engaging the interest of social scientists and legal profession theorists (for discussions in the Anglo-American context, see Calhoun & Copp 1988; Clark & Economides 1988; Katsh 1989). So far, however, these discussions of change in the work of lawyers in Germany are based on neither empirical surveys nor detailed theoretical foundations. Furthermore, use of legal data banks is only one of several

problems being addressed. No study has thus far dealt with this issue from the perspective of the sociology of professions.

In this article I examine the impact of both the increasing glut of lawyers and the rising use of legal data banks on the competition for employment between lawyers and qualified insurance clerks in the Germany insurance industry. The findings reported may be formulated thus:

1. Except for core legal fields with high needs for special legal expertise, the use of legal data banks reduces lawyers' employment advantage over competing nonprofessional workers, such as insurance clerks.
2. In combination with the recruiting policies of business enterprises, which are determined by the labor market, use of legal data banks makes it impossible for lawyers to create and secure an exclusive professional jurisdiction in the insurance industry.
3. Ironically, despite the declining importance of the expertise gap between lawyers and qualified insurance clerks due to widespread use of electronic legal data banks, insurance companies continue to recruit lawyers to provide a reserve to meet any unanticipated demand for legal advice. They are doing so because the glut of lawyers makes lawyers less difficult to hire than good, highly experienced, qualified insurance clerks, who have won a more privileged position under industry employment practices.

Use of a specialized legal data bank developed by several German insurance companies, the *Rechtsprechungsdatei* (juridical data bank) was chosen as the focus of this research chiefly for two reasons. The commercial sector, particularly the insurance business, is becoming increasingly important as employers of lawyers. In 1992, the biggest German insurance group (40,000 employees) employed as many lawyers as the judiciary of Northrhine-Westphalia, the largest Bundesland with a population exceeding 17 million. Furthermore, the *Rechtsprechungsdatei* is used far more intensively in the commercial sector (with the insurance companies again in the fore) than are legal data banks in the public sector or in private practice. For example, the most widely used German general-purpose legal data bank "Juris" has thus far barely achieved 100 connections.

For a study of changes in lawyers' work and professional status, the insurance industry has two further important advantages. The insurance industry has in recent years recruited a particularly sizable percentage of college graduates,¹ together with an increasing number of lawyers. Because of the zones of professional jurisdiction which distinguish the work of these

¹ The percentage of employees with a college degree rose from 3.1% in 1978 to 6.5% in 1989; that of employees with college or polytechnical college degrees or the Abitur (high school diploma) from 13% in 1981 to 24.6% in 1989. In toto the German insurance industry employs almost 14,000 college graduates.

very lawyers, stiff competition has arisen between them and the qualified insurance clerks who have traditionally dominated the position of claims processor (Hartmann 1988, 1990). Furthermore, the Rechtsprechungsdatei is easily accessible by both lawyers and qualified insurance clerks via desktop computers. Thus, introduction of this data bank allows immediate insights into how use of data banks affects both the devaluation of professional knowledge and firm hiring policies.

The research project is based on a qualitative study of three middle-sized and five large German insurance companies. In-depth interviews were conducted with 60 employees of these insurance companies, including clerks and supervisors from claims departments and management representatives from personnel departments. Employees were asked about the character of their work, the qualification requirements, and the changes arising from the use of data banks. In addition, the researchers examined internal company records and documents on work procedures, personnel recruitment, and the use of data banks (internal company papers on the use of data banks were, however, only available in one insurance company).²

I. Data Bank Usage, Professional Jurisdiction, and Educational Expansion

The Anglo-American discussion of professions has concentrated, as it has in the FRG, on the effects of the so-called glut of lawyers. For the most part, researchers agree that the substantial increase in the number of lawyers is leading to grave problems for the legal profession and will continue to do so. Scholars have focused on the violation of minimum fee standards set within the profession (Powell 1985), the closing of the "knowledge gap" between professionals and nonprofessionals (Rothmann 1984; Hartmann 1987, 1988, 1990), the weakening of professional autonomy due to the dominance of large enterprises as employers or as clients (Heinz & Laumann 1982; Hommerich & Werle 1987; Spangler 1986), and the increasing rift between segments of the legal profession (Abel 1985, 1988a, 1988b, 1988c; Blankenburg & Schultz 1988; Hagan et al. 1988; Heinz & Laumann 1982; Spangler 1986).

The relationships between various subgroups of the legal profession, paraprofessionals, and lay competitors play an important role in those few analyses that deal with the consequences for the legal profession of the use of legal data banks.

In this vein, Clark and Economides (1988) point out that

² This article also draws on another study in which 59 in-depth interviews were conducted in large banks and industrial companies and 41 in-depth interviews were conducted in large insurance companies to examine the nature and the hierarchical organization of the work of the lawyers employed in the companies (Hartmann 1990).

the use of such data banks might lead not only to differentiation between lawyers with varying capabilities for research but also to a schism between those lawyers responsible for direct client counseling and those who spend most of their time preparing documents. The latter represent for Clark and Economides the lower end of the qualification spectrum, whereas the former constitute the upper end. Clark and Economides (1988:58) even speak of the danger of a proletarianization of the "legal research tasks." Separating document preparation from client consultation is a reasonable arrangement, since such specialization can help develop good researchers. Depending on the organizational form and complexity of legal problems, the need for good research may thus lead to not merely differentiation between adequate and inadequate researchers but also between researching and counseling lawyers. Thus, the use of legal data banks could very well lead to a lasting division of lawyers into two groups with completely different functions (see also Calhoun & Copp 1988).

Katsh (1989) not only deals with the possible consequences for the internal structure of the legal profession but also touches on the consequences of the development of computer-aided information procurement for delineating the boundaries between the profession and outsiders. In doing so, he arrives at some interesting prognoses. He predicts that data bank use will make it more and more difficult for lawyers to maintain claims of special expertise. He points out that the electronic media clearly facilitate nonlawyers' access to legally relevant information, since it is, in contrast to printed material, no longer necessary to understand the internal organization of the data base. Where once a successful search for information in libraries or the *American Digest* required familiarity with both facilities, Katsh maintains that nonlawyers can easily use data bases (p. 221). He thus predicts that as a result of the new electronic access channels, "the rules about who may do what legal work can be expected to be an area of growing conflict" (p. 225).

From my viewpoint, the studies by Clark and Economides (1988), Calhoun and Copp (1988), and Katsh (1989) are marred by one essential flaw. They deal almost exclusively with differentiation within the profession or the relationship between professionals and clients. Except for a brief reference by Calhoun and Copp, these researchers do not deal with competition with other professions or occupational groups without college degree qualifications. From the viewpoint of the sociology of professions, the most interesting questions center on the possibilities that, on the one hand, as a result of the use of data banks, knowledge acquired in institutions of higher education will be devalued and that, on the other hand, because of the glut of lawyers, competition between lawyers and

paraprofessionals without degrees will increase dramatically (Abel 1988b).³

An American sociologist, Andrew Abbott, has developed the most useful approach to the analysis of the relationship between actually or potentially competing professions and occupational groups. Abbott's (1986, 1989) concept of professional jurisdiction, which is central to his approach, posits a three-tier process in which recognized competence is achieved: (1) through immediate work and cooperation with other occupational groups; (2) through public recognition, and (3) through state-regulated recognition. To secure professional jurisdiction, a profession must, according to Abbott, prove on all three levels that it exclusively is capable of handling all or part of a given problem.

For this to succeed, there must be objective foundations in the type of problem (a lawyer can conduct a lawsuit but not surgery), but the problem must also be defined as appropriate for a professional, in the sense that it can be classified as within the work of a certain profession, even though the facts may not be clear-cut. Abbott thus maintains that whether a tax consultant or a lawyer counsels on tax issues is primarily an issue of professional problem definition, which may vary from one country to the next, rather than one of objective jurisdiction.

This double character of professional jurisdiction makes itself felt especially, then, when jurisdictions tend to be less stable. In Abbott's opinion, this is first and foremost the case at the level of immediate work and cooperation, because technological innovations, changes in problem constellations, and restructurings in professional and scientific knowledge challenge previous boundaries much more quickly and directly than would, for example, changes in legal regulations. Extending Abbott's argument, one can maintain that when tax

³ The relationship between established professions (lawyers, doctors, etc.) and nongraduate occupational groups, with regard to their cooperation as well as competition, has been neglected because the independently practicing professional (especially in the United States) still represents the primary research focus. Research on competing nongraduate occupations is exceptional. And other professions are only rarely included in studies (e.g., the tax advisor as the lawyer's competitor), because work in private practice is determined to a very large extent by the relationships with professional colleagues and clients. Thus it is hardly surprising that in Great Britain, where the doctor with a private practice plays a much smaller role in the health system than in the United States, the emphasis of social science research on the medical profession is also different. In studies of the sociology of professions, the relationships between the doctors and the other occupational groups (in the health system, which is largely state organized) play a far greater role than in the debate in the United States (MacDonald & Ritzer 1988). It is again hardly surprising that the indisputable dominance of the bar in the Anglo-American countries, where the majority of lawyers work in law offices, results in an equally indisputable concentration of social science research and investigation on the profession's internal problems or the relationships to clients. Little room remains for a critical analysis of the relationship to competing occupations, as is indicated by the most recent results of an international research group (Abel & Lewis 1988a, 1988b, 1989).

consultants and lawyers work together in a firm, who does what work depends more on direct performance comparisons and less on traditional jurisdictional considerations than would be true when the two work separately in their own private practice. That is especially true for those large firms in which professionals are engaged only to perform specific functions within a larger operation. In these cases, professional traditions are less important and direct performance comparisons play a greater role. Furthermore, for enterprises selling products rather than services to the customer, state protection of professional services does not apply (Hartmann 1990; Larson 1977). Most uncertain of all with regard to jurisdiction is the professional employed in a large industrial group, bank, or insurance company, who is exposed most directly to competition.

Abbott (1986) illustrates the difficulties in drawing boundaries by looking at functions that, like trusteeship or auditing, are contested for by lawyers and other professionals with college degrees (business graduates, etc.). He limits himself to competition between professionals, thus revealing the influence of U.S. practices on his approach.

From a broader perspective, one point becomes clear. The issue of fields of jurisdiction involves not only matters of inter-professional competition based on possession of different forms of "abstract knowledge" (Abbott 1989:178–79) but encompasses as well the conflict between college graduates and "practitioners" without a college education. Thus, as Abbott (1986) mentions in connection with the example of tax auditing, because of the importance of practical occupational experience, those work areas in which much of the necessary knowledge is acquired on the job give members of nongraduate occupational groups an edge over the professionals. They can effectively cast doubt on the professionals' competency (based primarily on university education) by emphasizing the importance of practical experience (Haug 1973). Not only are the professionals in competition with other professionals, but in a number of fields of activity they also face threats to their jurisdictional claims from paraprofessionals or those without a college education (Abel 1988a, 1988b).

Employees' access to legal data banks also affects competition between professionals and paraprofessionals or lay competitors. Because of the excess supply of lawyers, more and more lawyers must take positions in commercial enterprises (Abel 1988b, 1988c; Sander & Williams 1989) where the competition with other occupational groups (especially nongraduate groups) for fields of jurisdiction is the stiffest. Since it is not legal services that are being marketed, the employer—an industrial group, a bank, or an insurance company—can give preference to the employee who can best do the work required. Gen-

erally, the employer need not be concerned about protective professional regulations but for legal questions can consult either lawyers or other employees who are knowledgeable about the issue at hand. Lawyers thus find themselves in a situation like that of engineers, whose professionalization suffers significantly for the same reason (Larson 1977). The business's reliance on the best expertise available thus serves to exacerbate the threat posed by the legal data banks. For if zones of jurisdiction can only be secured on the basis of an advantage in expertise, then the closing of the knowledge gap has far more serious consequences than it would have when federal or public regulations play a greater part in the delineation and assignment of such jurisdictions (Abbott 1986, 1989). The use of legal data banks can undermine the lawyers' position considerably and substantially strengthen that of competing paraprofessionals or lay competitors.

In the following sections, these problems are pursued in relation to the German insurance industry. In section II, I describe the functioning in the insurance business of lawyers and insurance clerks and report on the displacement of insurance clerks by lawyers because of company policy of recruiting from the many lawyers available to provide companies with a welcome even if by no means indispensable reserve of persons with legal qualification. In section III, I deal with the effect of legal data bank usage in several large insurance companies on the competitive positions of lawyers and qualified insurance clerks. In section IV, I consider the apparent paradox that while the competitive position of the lawyers has been weakened by the use of data banks, the displacement of qualified insurance clerks by lawyers continues nonetheless and is even accelerating. The concluding section summarizes the essential results of the analysis with regard to the issue of professional jurisdiction.

II. Competition between Lawyers and Business Clerks

In the German economy, insurance with its about 200,000 employees is the enterprise with the highest proportion of lawyers employed among all business enterprises; lawyers (4,470 in 1989 compared to 2,970 in 1978) make up as much as 2% of employees.

The chief reason for the unusually high percentage of lawyers in the insurance business is the strong legal cast to the business of insurance. There is "hardly any other product which is defined in all of its particularities by regulations of an exclusively legal nature, as is the case in insurance, and where problem cases thus call for lawyers" (Weyers 1986:33). Indeed, the contract embodies the core of the business in insurance

even more than in banking. In the contract, all the rights and responsibilities of the insurer as well as the policyholder are spelled out, down to the smallest detail. Legal questions are thus quite important when one considers the diversity of the provisions and formulations in insurance contracts, ranging from comprehensive general liability and car insurance to property and transportation insurance to health and life insurance. In principle, every insurance case gives rise to the legal question of the insurer's obligation to pay.

Nevertheless, one cannot thus conclude that there is high demand for qualified legal know-how. For one thing, the insurance business has become highly standardized in many major areas such as health, life, and automobile insurance, just to name the three largest fields. The need for equal treatment for all policyholders and the large number of policyholders have led to widespread uniformity in insurance provisions. But the problems to be dealt with recur constantly, and little legal clarification is usually needed. Thus, the nonlawyer has a very good chance of being able to solve the legal problems that crop up because of experience with similar problems. Standardization favors here using employees without high-quality expert knowledge.

But to a high degree insurance law consists of a set of special rules used only by the insurance industry. The reasons for this unusual legal development are of historical nature. When the German civil code (BGB) was created, to establish a unified legal system in the German Empire the existing general contract law (AVBen) and other legal provisions regulating the insurance industry remained more or less unaffected. Insurance law has kept its special status and remains largely unchanged today.

Because of insurance law's strong practice bias and its comparatively weak connections with other legal areas, any employee who works daily with insurance law can become as knowledgeable as the traditional university-educated lawyer. With years of experience, a qualified insurance clerk is quite capable in many areas of rivaling a lawyer. Furthermore, whether zones of professional jurisdiction have or can be established in many areas of the insurance industry remains an open question to a far greater extent than in the more traditional fields of legal work.

Most legal problems occur in claims inspection; therefore, this area of practice has the greatest demand for legal know-how. All damage claims with which the insurer's clients are confronted must be checked to ascertain whether the claims are being made rightfully and, if so, whether the insurance contract covers such claims. To fulfill these tasks, a claims inspector must first carefully investigate the case, size up its legal aspects,

and then evaluate the resolution from a business point of view. Accordingly, all insurance companies have rules that govern from start to finish the way in which the qualified insurance clerks process the mass of claims cases in each company's local offices and branches. Only those cases that pose legal problems of larger dimensions (fundamental decisions, foreign law, environmental protection problems, new legal problems, etc.) or which exceed a certain financial limit (a limit that varies from company to company) reach the claims department in the headquarters.

The individual caseworker in the headquarters general comprehensive liability department is most often assigned to a specific branch office and a specific limited type of material. The caseworker thus develops considerable specific legal knowledge and ability in his area of responsibility. But even when, for example, knowledge of foreign and public law (about, e.g., water pollution) is called for, use of lawyers, although clearly favored, is not obligatory. Because of experience, however, a clerk may be as capable as a lawyer of handling a highly technical area. Substituting qualified insurance clerks for lawyers is thus in principle a possibility but in highly technical areas not likely.

The tasks in the headquarters motor vehicle damages department are basically the same as those for general comprehensive liability damages. As a whole, however, the work is less complex and demanding, since it is characterized to a much greater extent by routine mass business involving two types of claims, material damages and personal injury, which make up 90% of the claims. In recent years issues relating to environmental protection law have increased, but the spectrum of possible motor vehicle damage claims is not very broad, even in the central departments, where only the most complicated cases or those with damages exceeding a certain financial limit are handled.

The specialized and routine nature of the claims, of course, affects the demand for legal knowledge. Here, the usual questions that arise relate to liability, traffic, and social insurance law. From a legal point of view, issues relating to social insurance law are certainly the most demanding. Despite the high financial stakes and the complexity of social insurance law, the legal requirements only seldom achieve such dimensions that a lawyer's expertise is needed. Here, as with motor vehicle issues, the same situations come up again and again. Usually, an experienced qualified insurance clerk can handle the work. Thus, lawyers' routine activity in this area is estimated to be very large, about 80% to 90% of the work. For motor vehicle claims, routine processing is, in fact, so dominant that qualified insurance clerks can satisfactorily handle most claims after two

or three years of experience. Comprehensive legal education is seldom required.

Hence, the share of the total workload characterized by legal elements differs widely from one sphere of work to the next. According to employees and supervisors interviewed, it makes up only around 15% of the work in those offices that take care of routine claims. In the headquarters offices, which are grouped into offices for motor vehicle liability and comprehensive general liability and handle all the complicated claims, the legal element ranges between 20% and 70%. The lower percentages between 20% and 40% are accounted for by motor vehicle liability claims, which are more standardized, whereas the higher percentages occur in the industrial business in the comprehensive general liability sector, where the most complicated claims arise. The claims inspectors themselves, however, consider the share of really demanding questions among the total legal elements of the work to be much less significant. For the branch offices, they offer an estimate of around 5%,⁴ for the central motor vehicle liability departments a good 10%, and around 25% for the central departments for comprehensive general liability. The lawyer is at a clear advantage with regard to legal issues over the qualified insurance clerk only in such complicated cases. But even then, the experienced insurance clerk is a formidable competitor, for because of his practical experience and the lack of ambiguity in insurance law, he only has to defer to the lawyer in claims cases of unusually great complexity. With his job experience, on the other hand, he can handle the majority of the cases, even the complicated ones, almost as competently as a lawyer.

Notwithstanding the limited advantages of using lawyers to process most claims, in recent years, insurance company central claims departments and branch offices have increasingly hired lawyers to fill caseworker positions. In some companies, the lawyers hold 80% to 90% of caseworker positions in central claims departments, compared to 15 years ago, when they held at the most about 10% of such positions, and the proportion of lawyers in branch offices is also rising. The rise in lawyer recruitment should not be seen as a result of work requirements. Rather, the reason lies mainly in companies' attempt to acquire reserves of qualified employees at a time when the supply of lawyers is so large that they can be recruited at relatively low cost. The result is that in those rare, highly complex cases, the companies will have available a higher level of legal exper-

⁴ When considering these figures, one must remember that they represent estimates by the clerks in those offices, who must turn all the really complicated cases over to headquarters. Thus, one may assume that claims of a level of difficulty comparable to those which the caseworkers in the headquarters claims departments consider demanding hardly ever arise. The estimate of 5% thus creates a distorted impression.

tise. Thus, only in a few cases is it appropriate to think of lawyers as having achieved a secure professional jurisdiction in the claims area. In general, their jurisdiction is highly unstable.

III. Use of the Legal Data Bank (Rechtsprechungsdatei) and Its Effects

The legal data bank, which contains between 13,000 and 14,000 relevant decisions from the field of insurance law gathered from professional journals or insurers' records, began operating in 1986. Now, more than ten middle-sized and large insurance companies access the data bank. The decisions are stored in the form of key sentences. The data file is subdivided into five partitioned data sets on motor vehicle liability, comprehensive general liability, compensation for personal suffering, social insurance law, and property damage. These partitioned data sets are also arranged in three levels of increasing specificity: section ("Abschnitt"—e.g., extent of coverage), sentence ("Satz"—e.g., loss of use), and point ("Punkt"—e.g., second vehicle). Access to the individual decisions is gained via keywords or index numbers that allow information to be called directly to the caseworker's computer screen.

Insurance companies had two chief goals for using the legal data bank. First, with access to extensive legal information, the quality of the claims inspection would be improved, especially in the branch offices, where caseworkers had usually had access only to one professional journal and, perhaps, private files of modest quality. It was hoped that data bank usage would also bring qualitative improvements in information access to the directing departments, to supplement the already existing files. Second, those claims caseworkers maintaining private files would be relieved of doing so and thus would be available for claims inspection work.

The companies were essentially able to achieve these goals, but the range of use is much broader than had been expected (see Table 1). In the headquarters claims departments (except for the central department directors), almost 70% of the employees check data files at the most once a week and only 28% do so at least once a day. In contrast, in the branch offices, about 30% of caseworkers consult the data bank once a week, but almost 60% consult the data bank at least once a day.

The gross difference between headquarters departments and branch offices is matched by the equally substantial difference in data bank usage by lawyers and qualified insurance clerks. The figures for the qualified insurance clerks at headquarters correspond for the most part with those in the branch offices, whereas the figures for lawyers (excluding trainers and lawyers assigned to file maintenance) are even lower than those

Table 1. Use of the Legal Data Bank (*Rechtsprechungsdatei*) (Percent)

No. of Times Used	Total	Branches	HQ	Lawyers (incl. Training)	Qualified Insurance Clerks
Up to 4 times a month	52	31	68	84 (73)	32
4–10 times a month	7	11	4	0 (0)	14
1–3 times a day	<u>41</u>	<u>58</u>	<u>28</u>	<u>16</u> (<u>27</u>)	<u>54</u>
Total	100	100	100	100 (100)	100
<i>N</i>	(58)	(33)	(25)	(25) (30)	(28)

for headquarters departments. Only 16% lawyers make use of the data bank at least once a day, but 84% use it once a week at the most. These details show that, also in the departments at the headquarters, the qualified insurance clerks use the data bank more often than do the lawyers, not just the young and sometimes inexperienced qualified insurance clerks in the branch offices, but also their more experienced colleagues there, and even the highly qualified insurance clerks. There is yet another, albeit far less marked, difference. The data bank is always used less often by those—lawyers or nonlawyers—working on comprehensive general liability than by those in the motor vehicle liability sector.

There are three primary reasons for the pronounced differences in the frequency of use. First, individual attitudes toward data processing differ. The qualified insurance clerks are more open-minded about using data banks, as a result of their early job entry age and the pronounced orientation of the training program toward data processing. In Germany, gaining familiarity with data processing still only plays a very minor part in the study of law. Furthermore, lawyers are far more skeptical than the qualified insurance clerks about the information in the data bank, which is only available in the form of key sentences. They mistrust the abbreviated accounts of court decisions, on the grounds that this can falsify the tenor of the decision.

The second reason is, however, far more important and, in the final analysis, decisive. The data bank provides a considerable qualitative and quantitative improvement in the supply of information to the branch offices; this aspect is far less important for the lawyers in headquarters departments. In contrast to their branch colleagues, they not only have had a comprehensive education in law but also have already acquired much information. When confronted with complicated or unusual problems, they can draw on a relatively large amount of information (from journals and private files), thanks to their broader legal knowledge, to identify the main aspects relatively quickly. This was not true of most qualified insurance clerks in the headquarters and especially in the branch offices. The follow-

ing remark by a qualified insurance clerk is typical of their perspective:

In the past, the painstaking search through the key word index of the "ZfS" [*Zeitschrift für Schadensrecht*—Journal for Claims Law] was the only way. I have to tell you: it's just the way it goes, what with all the pressure people are under—the bottom line is that because of the necessity of a long search, people give up quickly. But today, we just go into the key word index of the file on the PC, and find what we are looking for pretty quickly.

To the qualified insurance clerks, ease of locating important legal information is the decisive advantage of the data bank. For example, at the insurance company with by far the worst data processing hardware, the qualified insurance clerks make extremely extensive use of the data bank. At this company, before the data bank was installed, information access had been particularly limited—there was only one journal and no private files existed, leading the clerks to ask the director for help in unusual cases. When the data bank was put in operation, it was heartily welcomed and used with alacrity.

The third reason for difference in frequency of data bank use is that lawyers are less competent in dealing with computer-related commands, especially in handling highly complicated legal problems. These lawyers have little experience with switching between subfiles or moving around in them, which may be necessary for complex issues. Because of lack of experience, they may make more mistakes or have other difficulties. As a result, they are reluctant to acquire the competence they need for access to the data bank.

In light of these differences in legal data bank usage, what are the effects on the boundaries separating the qualified insurance clerks and the lawyers? The zones of professional jurisdiction of the lawyers working in claims inspection are being hedged even further. The legal expertise headstart they enjoy, which is quite limited due to the nature of the insurance business (Hartmann 1988, 1990), is again being diminished noticeably.

This is true in three different respects. First, for qualified insurance clerks in their first years on the job, access to legal knowledge from legal data banks is perceptibly easier than from other methods. Using the data bank now gives them what they could once only have attained after much training and long years of experience in the business: a broad knowledge of insurance law and related jurisdictions. Much more rapidly than was once possible, they are able to deal independently with the ordinary range of legal questions. They are able to recognize the most important points and to reach, from a legal and business point of view, correct and sensible decisions.

The second positive consequence for the qualified insurance clerks has a similar slant. Using the legal data bank, experienced qualified insurance clerks can reduce lawyers' knowledge advantage for legal questions; they can search the data bank in unusual and exceptional cases to inform themselves more quickly and deliberately on the legal aspects and, in new areas of activity, to gain an overview of the legal problems that might arise. The following comment by a department director is characteristic for both younger and older qualified insurance clerks:

The legal data bank is an orienting aid for the staff, to deepen their knowledge in familiar fields and to acquire basic knowledge in fields which are less frequent, especially in the area of personal injuries. They thus penetrate to legal depths which they would otherwise have to neglect in their working area, or else have to turn over to their superiors in that field.

The third respect relates to the qualified insurance clerks' familiarity with legal terminology and ways of thinking, which increases with data bank usage. They get used to the specific legal terminology more quickly and thoroughly when they use the data bank regularly and can thus to a great extent compensate for the advantages of a law school education. This is of practical importance in two areas in particular. It is useful when dealing with lawyers, who, especially in motor vehicle liability cases, represent the opposing side with rising frequency. Thus, it is more common now for both parties to use the same language when they write letters or statements. Furthermore, especially in unusual and tricky cases, the caseworker can launch a more precise and thus more rapid search for relevant court decisions, law texts, or other important sources.

All things considered, it is safe to conclude that use of the legal data bank in claims inspection serves to further hedge lawyers' existing professional jurisdiction in this area. By being able to access the legal material which is important for their work more quickly and, in some special areas, in greater depth, and by being better able to familiarize themselves with this material, the qualified insurance clerks—especially the younger ones—can reduce, at least as far as legal expertise is concerned, the qualifications gap separating them from the lawyers. On the commercial side, the qualified insurance clerks may well be the lawyers' equals in many areas, perhaps even surpassing them in some. Only in rather rare questions of high legal complexity is the lawyer able to maintain a relatively stable zone of jurisdiction. But for the lion's share of the work, which consumes well over 90% of daily working time, the lawyers must swallow a further cut in their lead in legal knowledge. Considered only from the qualifications standpoint, their competitive situation

compared with that of the qualified insurance clerks has deteriorated considerably.

IV. Erosion of Zones of Professional Jurisdiction and Company Personnel Policy

In light of the consequences of data bank usage described here, it seems particularly amazing that the trend of lawyers edging out qualified insurance clerks, identified in my earlier work (Hartmann 1988, 1990), has not only continued but even gathered momentum. For not only is just about every caseworker position in the headquarters claims department being filled by a lawyer, but in addition qualified insurance clerks are being replaced by lawyers in the branch offices as well. However unhappy the personnel directors and branch managers we interviewed may be with this development, since they expect lawyers working below their qualification level to be dissatisfied (Hartmann 1991), they nonetheless unanimously predict an increase in lawyer use in the branches.

This prediction is based almost exclusively on the supply of lawyers on the job market; changes in job requirements scarcely play any part at all. It is not demand-side effects, for example, increasing complexity of legal problems, that have caused the rise in the employment of lawyers in caseworker positions at the headquarters and branch offices. Rather it is changes in the supply side. Put very simply, recruiting lawyers presents fewer problems than recruiting qualified insurance clerks. A personnel director's remark is typical: "We can choose from the pool of between 150 and 180 lawyers who apply for an advertised position as claims inspector at the headquarters, but only relatively few qualified insurance clerks apply."

Such figures are by no means the exception nowadays, but rather the rule. The number of lawyer applicants for a single position occasionally reaches two digits even for branch-office positions. The surplus supply of law school graduates is vividly demonstrated by the fact that, at one insurance company studied, several lawyers recently even applied for a position as a simple clerk in the records department, a position clearly beneath the requirement profile in claims inspections.

But the poor labor market for lawyers—the well-known "lawyer glut"—is only one side of the coin. The other side, which at first glance is even more surprising, is the lack of qualified insurance clerks, which is much bemoaned by personnel directors and department heads. This shortage seems initially astonishing because the number of insurance trainees is rising from year to year and reached a new high with 13,595 in 1989.

Since the insurance industry employs 211,100 people, such proportions hardly justify expectations of recruiting problems.

One reason why supply and demand are nevertheless so imbalanced for good qualified insurance clerks lies in the need for continued studies to increase qualifications after initial training. A growing number of the qualified insurance clerks leave their company after a few years when, seeing few or no opportunities for advancement or positive change, they consider a college education to be their last chance to improve their situation and life prospects.

The problem is also aggravated by the fact that continuing training, offered outside the university, for insurance business experts (*Versicherungsfachwirt*),⁵ also has a negative effect on the number of applicants for positions as caseworkers, especially in branch offices. Qualified insurance clerks who complete such additional training do so to improve their chances of advancement. In 1989, 1,021 did so, twice as many as in 1980, a substantial percentage, considering the fact that in 1989, 5,019 people completed the qualified insurance clerk training program. They want to advance at least to claims office director or group leader. That results in an even greater decrease in the supply of good qualified insurance clerks for normal caseworker positions, especially in claims offices.

The strong tendency of many qualified insurance clerks to supplement their qualifications either at professional academies or at universities or polytechnical colleges affects not only current hiring policies in the insurance business. It also indicates that the companies, still relying on their traditional personnel policies, have themselves played a significant role in bringing about this state of affairs. The trend among a considerable number of qualified insurance clerks toward higher qualifications is in principle merely a reaction to the insurance companies' behavior. Because of the large number of lawyers available, the companies have evolved a recruiting policy directed toward placing lawyers in leading positions in the headquarters claims departments, as well as in positions that are interesting from a professional standpoint. In so doing, the insurance companies have given the qualified insurance clerks—crowded out by the lawyers and disappointed in their hopes of advancement—the impression that there is a close connection between higher educational credentials and higher

⁵ The insurance business specialist program offered at the insurance academies (founded by the insurance industry) covers material in macro and micro economics as well as legal subject matter. In addition to being exposed to a comprehensive treatment of insurance laws as such, students are also instructed on parts of other fields of law, such as the civil code, commercial law, stocks and bonds law, and procedural law. Lawyers' advantage in knowledge is thereby reduced considerably. Since 1971, 10,000 candidates have successfully completed this program (*Versicherungswirtschaft* 1989:1002).

professional positions. Those among the clerks who were quite committed to their profession, good at their work, and ambitious concluded that they, too, must attempt to acquire higher educational qualifications. They entered the professional academies, polytechnical colleges, or universities to develop their professional career. The insurance companies then had to accommodate those who completed the training as insurance business experts. Most of the supervisory positions are therefore currently being reserved for them, when such positions are not filled by lawyers.

But a vicious circle is thus perpetuated. The ties between educational titles and position cause many of the best qualified insurance clerks to pursue higher qualifications formally, and this trend toward higher qualifications in turn stabilizes and cements the dominant personnel policy, since the enterprises want neither to disappoint the insurance business experts nor to forgo the creation of reserves of lawyers. Although the insurance companies see clearly the serious problem of job dissatisfaction among lawyers working at underqualified positions, and/or disappointed in their career expectations, and would prefer to fall back on competent qualified insurance clerks in increasing measure, they nonetheless cut themselves off from this possibility as a result of their own personnel policy. Thus, in future, a further discrepancy between the demand for, and supply of, good qualified insurance clerks must be expected. Consequently, the trend toward the use of lawyers on all levels of claims inspection will continue and presumably even increase markedly. In a few years, the lawyer as claims inspector in the claims office is likely to be considered quite normal. Furthermore, this development cannot be stopped, nor even slowed, by the evening out of advantages in professional expertise as a result of legal data bank usage. The number of lawyers employed in insurance companies will thus continue to grow, although the lawyers' professional position will be further weakened.

V. Conclusion

When the concrete developments in the German insurance industry I have described are considered in terms of the professionalization debate sketched at the outset, one thing becomes immediately apparent. Contrary to opposing prognoses, German lawyers have been able to cultivate an extensive new field of activity. They have not been displaced by paraprofessionals or lay competitors, as, for example, Abel (1988b) supposes, but rather to a large extent have themselves crowded paraprofessional and lay competitors out of their traditional working

fields. The demand for lawyers has increased, even though the drastic increase in their numbers has not lessened.

On close examination, however, this “success” turns out to be a Pyrrhic victory. In the insurance industry lawyers are placed in positions requiring some legal expertise but only rarely drawing on it. The work can usually be done by good, highly experienced, qualified insurance clerks, even though perhaps not at the same speed. The lawyers must thus pay for this expansion of their field of work by relinquishing traditional demands on the kind of work they do and by accepting work noticeably below their qualification level.

This situation becomes aggravated by legal data bank usage, because it clearly reduces the lawyers’ expertise advantage over the qualified insurance clerks. The legal data bank gives the qualified clerk quick and extensive access to legal knowledge previously only attained through long years of job experience or not at all. The subject matter in question involves those fields of legal knowledge in the insurance area which, although certainly characterized by a high level of complexity, nevertheless are not part of the core of legal knowledge. This core of legal knowledge, which can usually only be gained from a law school education, remains lawyers’ exclusive domain, although it plays only a small part in the daily work in insurance companies, and so has no significant effect on the delimitation of zones of professional jurisdiction. For more than 95% of the time, even the lawyers are dealing with legal problems of a medium to high level of complexity. Questions extending into the core area of legal knowledge only crop up perhaps three or four times a year. They are thus of almost no consequence in the demarcation of zones of jurisdiction, whereas more complex problems play a decisive part in this respect.

Thus, with regard to the issue of professional jurisdiction, two conclusions are possible. First, the increasing hiring of lawyers by the insurance companies is the consequence of an over-credentialism that results, on the one hand, in an expansion of the working fields for lawyers but, on the other hand, in instability of the lawyers’ professional jurisdiction in the new fields of work. The lawyers cannot achieve a secure professional jurisdiction, because their employment is based only to a slight extent on the legal demands of the work. Lawyer employment for such work for the most part reflects a company policy of hiring lawyers from the large supply available to provide a qualifications reserve that is by no means indispensable but in case of high legal demand is welcome.

Second, the weakness of professional jurisdiction is increased by legal data bank usage, because it affects the competition between insurance lawyers and qualified business clerks in all fields outside the core of legal expertise. By facilitating

easier access to relevant legal information, it undermines the lawyers' position and strengthens that of their competitors in the insurance business. In the end, the data bank thwarts the lawyers' efforts to establish an even merely tolerable level of stability in jurisdiction, because it deprives the lawyers of a large part of their already quite limited expertise advantage.

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