Professions, Trades, and the Obligation to Inform

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ABSTRACT The concept of a 'professional', as distinguished from that of a 'tradesman', encompasses both white collar workers and those who produce excellent work in any occupation. These divergent meanings have a common philosophical source in the way workers justify their work. A worker becomes a professional by professing reasons for doing his work in a certain way. A worker is a tradesman if the value of his work in trade is the sole justification for the way it is done. Workers can be both professionals and tradesmen, unless what the consumer will buy and what is proper are different, placing 'reason value' and 'trade value' into conflict. Value conflicts are most likely in occupations involving a high level of theoretical knowledge, where the consumer has trouble judging what is proper. Thus, we say that professional persons work in white collar occupations, but that is misleading, for 'professional' is a way of handling value conflicts, not a kind of work. In value conflicts the worker has an obligation to inform the consumer—to profess reasons—about what is proper work.

1 The Problem

On the face of things, the concept of 'profession' does not appear philosophically problematic: just survey the dozen or so occupations everyone calls professions and list their common attributes. Typically, it is said that law, medicine, teaching and other professions share an unusual level of dependence upon a theory or science, unusual autonomy, authority over some important societal concern (such as justice or health), high income and high status. Philosophical analysis often commences with the question whether the attributes just listed entail that professionals qua professionals have special rights, duties and obligations [1].

There is no error in this inventory. There are occupations we call 'professions' which share certain attributes, and the question whether these attributes give these occupations a special moral character has inspired an important body of philosophical work. Nonetheless, the concept of 'profession' is philosophically problematic.

The problem begins with the fact that we use the word 'professional' in two divergent ways. First, we use it to denote any work of exceptional quality or to denote the person who performs such work. Call this the 'egalitarian usage'. Secondly, we use it in connection with a certain group of occupations; for reasons I will explain later, I will call this the 'shorthand usage'. These two usages are not co-extensive, for not every lawyer or doctor is even competent, let alone committed to turning out high quality work, while most people who do produce excellent work do not work in one of the traditional 'professions', which employ only a minority of the workforce.

We must resist the temptation to deal with this divergence by shelving each meaning under a different dictionary sub-entry. There is nothing wrong with shelving them there, but that does not explain why we use one word to denote both excellence in
work and a minority of well paid, highly educated people. This is something other than snobbery and we should be puzzled at this apparently irrational juxtaposition.

To further complicate matters, we often define ‘professional’ by reference to attributes which seem arbitrary: professionals work for a salary, not for hourly wages, and they (as distinguished from amateurs) are paid for their work. Moreover, professionals are said to have clients, not customers, and they practise in their fields, rather than working in them.

In short, the concept of a profession is linked both to a certain set of occupations and to excellence in work in any occupation, and somehow this is tied in with the idea of being paid, but not in hourly wages or any other compensation that correlates strictly with the amount of work done. All this is described in a special terminology of ‘clients’ and ‘practice’. How did this peculiar package of meanings get assembled?

2 Distinguishing professions from trades and why the egalitarian usage is right

The package did not get assembled by accident, for these diverse meanings and attributes have a common source involving justifications: whether one is a professional, I will argue, turns on how one justifies the way one’s work is done. For the professional person work must be justified by reasons independent of the preferences of the consumer who purchases that work, and whether the consumer is pleased with the work the work was done does not settle whether it was done properly. A lawyer has not achieved the legally correct result by getting a judgment for her client if the law does not entitle the client to that judgment, even if the client, judge, and jury mistakenly believe the right result was reached. A doctor has not properly treated a curable ailment with mere painkillers, even if the patient is delighted with a fresh supply of Percodan.

Of course, this is true of all occupations (a janitor has not done his job properly by sweeping dust under the rug, even if the customer will accept such work), but I will later show that this is not trivial, and that it is particularly important for the occupations listed under the shorthand usage. For the moment, let us note that a professional justifies her work with reasons she can profess for doing it a certain way, and that these reasons are independent of consumer preference or satisfaction [2]. Most important, these reasons are independent of the value of that work in trade for the consumer’s money. Evaluating and justifying work in this way invokes ‘reason value’.

It is otherwise with ‘tradesmen’, the putative opposite of professionals. The very word suggests an exchange: the consumer’s money, taken in trade for the work, is the basis for justifying the way the work is done. The work is done properly if the consumer with whom the work is traded is satisfied with the way it is done. If the consumer willingly and knowingly agrees to pay a particular price for a particular kind of item or service, then the trade is proper. If the trade is proper, the work is properly done. The fairness of the bargaining procedure is the only justification for the way the work is done.

This is certainly true of commercial trades in general: the trade is justified if the bargaining procedure is fair. This is reflected in the law, for courts will not review a contract to determine whether it was a good bargain, but hold that any payment under a contract, of any amount, is legally adequate [3]. A tradesman, then, is someone who treats work as a commercial trade and justifies it as such. For example, if the consumer
knowingly accepts shoddy work for whatever reason (to save money, to throw away after one use, or because she has poor taste) then shoddy work is justified; justified by its value in trade, its 'trade value'.

This is why we say that professionals have clients, while everyone else has customers. "The customer is always right", while the client is represented and guided through situations he may not have the experience or wisdom to handle on his own [4]. The customer is always right precisely because in a fair bargaining situation, work is proper if the customer will accept it [5]. Yet, whether the consumer is a customer or a client turns on whether the worker is a professional or a tradesman, and we cannot draw the profession/trade distinction by adverting to the distinction between customers and clients.

This also explains why we often distinguish professionals by saying that they work for a salary rather than an hourly wage. Of course, there are many professionals who are not paid by salary, but the stereotype persists. This stereotypical attribute of professionals seems arbitrary and unmotivated until one considers that those who justify their work in terms of its value in trade are likely to apportion the amount of work provided to the amount of value received. Hourly wages are an easy way of doing this: the work is valued at what is paid for it, unit for unit. On the other hand, those who justify their work in terms of reasons they can profess, which turn on something other than consumer satisfaction or acceptance are likely to be paid by salary, for they expect to keep working on a project until it is done right, even if they underestimated the cost and thereby lose money. Their efforts are calibrated to the propriety of the work, not to the payment received.

Whether a worker is a professional or a tradesman depends upon whether he evaluates and justifies his work by reference to reason value or to trade value. Yet workers can comfortably live on both sides of the distinction, for professionals can and do engage in trade. In fact, we will later see that engagement in trade is essential to the special obligations of workers as professionals. There is nothing unprofessional in a worker marketing her work with a careful eye to profit, consumer satisfaction, and good business. The distinction becomes pertinent when trade value and reason value pose a 'value conflict'.

In a value conflict the proper way of doing the work is not the way the consumer will accept (or at least pay for), for the consumer does not understand or does not value the reasons the worker professes for wanting to do the work differently than the consumer proposes. For example, the criminal defence lawyer who is legally required to disclose damaging evidence faces a value conflict; so does the surgeon who risks losing his patient to another practitioner if he refuses to undertake a foolhardy operation. In keeping with the egalitarian usage, value conflicts can also bedevil occupations not usually considered to be professions, as with the janitor who can satisfy his client by sweeping dust under the rug (assuming the client knows and does not care), or the assembly worker who (with her employer's consent) skips the final weld on every third widget in order to meet her production quota.

In everyday commercial and professional dealings, the possibility that the consumer may take his business elsewhere if the worker does not produce the kind of (improper) work the consumer insists upon is by no means remote. Lawyers run into this problem quite frequently as prospective clients may insist on filing a legally unwarranted lawsuit, or structuring a business deal in a way that is illegal. Many lawyers handle such value conflicts by telling the client what he wants to hear in order to keep the client. Accountants and bookkeepers may face the same problem with clients who want
to ‘cook the books’, and who will shop around to find someone who will co-operate. Similarly, a minister may risk losing parishioners if she refuses, on theological grounds, to deny burial in consecrated ground to a criminal deceased. The point is that there is more at stake in a value conflict than a consumer who does not know what is good for him; there is often a very real possibility that the worker who insists on proper work will lose business by their insistence.

So who is a professional and who is a tradesman? Value conflicts settle the point. The worker who resolves a value conflict by giving the consumer what he wants even when it is ‘wrong’ in light of the reasons which define proper work for that occupation has sacrificed reason value to preserve trade value by saving a valuable trade. This makes him a tradesman, whatever his occupation. The worker who resolves a value conflict in the other direction by insisting upon proper work whether or not the consumer values the reasons professed for doing it that way has elevated reason value over trade value. This makes her a professional, whatever her occupation. Workers are forced to choose between being professionals or being tradesmen when value conflicts force the choice; occupations do not classify one way or the other, and most of the time the worker can be both. In short, the word ‘profession’ is misleading, for it implies a noun, when we should be using the adjective ‘professional’. Professionalism is a way of working, not a distinction between types of work.

3 Occupational theory and why the shorthand usage is right

We have accounted for the egalitarian usage of ‘professional’ as denoting a certain attitude and course of conduct when consumer preferences conflict with the proper way of doing the job. This usage is similar to the usage of ‘professional’ as denoting dedication to quality, but rests upon a more interesting conceptual distinction.

Yet there remains an equally strong tendency in the language to use ‘professional’ as a noun to denote those persons who work in a relatively short list of occupations, including law, medicine and other white collar occupations requiring considerable education. Although this list of occupations appears to be in conflict with the definition of ‘professional’ offered above, there is actually no conflict between the egalitarian and the shorthand usages once we understand that, although workers in every occupation can choose to handle value conflicts as a professional, some occupations face value conflicts much more often than others. We use ‘profession’ as a designation for those occupations which face value conflicts with unusual frequency, thereby forcing their workers to profess values more often than most. Typically, these are white collar occupations requiring a high level of formal education. To understand why these occupations face value conflicts so often, we must understand the importance of theoretical and technical knowledge in defining an occupation, and in thereby generating value conflicts.

When a worker judges that his work should be done in a particular way, and that that way is proper regardless of whether the consumer agrees with it, the worker must be able to profess reasons for his view, lest that view be arbitrary and indefensible. Reasons are the children of theory; they spring from arguments and find their place in explanations. The consumer’s reaction to the work, particularly a reaction uninformed by any theoretical or technical understanding of the work, cannot be a reason in this sense. To have reasons, the worker must have a ‘theory’ defining the work he does—a body of knowledge, techniques, rules, and principles to inform, guide, and ultimately define the work. Every occupation, however simple, has its occupational theory, but
some occupations have more sophisticated theories than others. These are the occupations which most often face value conflicts and, therefore, end up in the ‘list’ of professions.

Value conflicts arise to the extent that an occupation is theoretically rich, for value conflicts are likely to the extent that the consumer has trouble understanding why a particular work project should be done in a particular way. For example, a client cannot usually tell whether a legal argument is even remotely valid. Yet walking into a courtroom and making random assertions is not legal work, any more than walking into a room and randomly moving things around is janitorial work, for both occupations have occupational theories which define what is proper work. However, the occupational theory for janitors is so basic that the consumer can easily judge the propriety of the work using observations aided by precious little in the way of theory: is there dust here? (The exception, significantly, is in hospitals, where the germ theory of disease requires standards of cleanliness beyond what the consumer can easily perceive.) At a higher level of occupational theory, the client cannot understand whether a motion in limine (that is, a motion to exclude evidence) was done properly without some understanding of the law of evidence and of the strategic significance of the evidence in question. Thus, value conflicts are possible to the extent that it is possible for the consumer to be satisfied with, or to prefer, work that is not proper in light of the relevant occupational theory. In turn, it is possible for the consumer to prefer or be satisfied with improper work to the extent that the occupational theory is complex enough to confuse the uninitiated.

Theoretically simple occupations, such as janitoring, are not usually called professions because they rarely pose value conflicts more subtle than sweeping dust under the rug. Similarly, because car mechanics work in a field easily comprehended by many of their consumers, their consumers are less likely to be satisfied with or insist upon improper work. Of course, even in theoretically simple occupations value conflicts can happen. The janitor’s client may request that dust be swept under the rug in order to keep costs down, or a car owner may want an airfoil installed on his car when it makes no structural sense to do so.

The connection between theory-dependence and the concept of a profession is thus motivated by the role of theory in generating the value conflicts which force workers to behave as professionals or as tradesmen. The occupations we call ‘professions’ are the ones with rich theory, and to say that a given occupation is a profession is simply a shorthand way of saying that workers in that occupation face value conflicts more often than workers in most other occupations. This theory-dependence also accounts for the fact that professionals are characteristically engaged in the ‘practice’ of their work, for the more important theory is to a given occupation, the more sense it makes to distinguish theory from its application, its practice. There is no need to emphasise the practical side of occupations that have uninteresting theoretical dimensions.

Sometimes an occupation evolves over time into a more theoretically rich occupation, and gets promoted into the shorthand list of ‘professions’. The word ‘tradesman’ has historically implied commercial trade, as insinuated by those who opposed the introduction of business schools at leading universities on the grounds that they teach a ‘mere trade’. Yet, as business developed more sophisticated theory (theories of accounting, marketing, personnel management, finance and so on) business evolved beyond the art of the deal. As this body of theoretical and technical knowledge developed, training in business became institutionalised into schools and business attained the status of a (shorthand) profession. It is no accident that the oldest branch
of business theory, accounting (which began in Renaissance Italy), is the one that most often faces value conflicts, for managers or owners may prefer accounting techniques which distort financial truth. Recent years have seen liability suits against accountants, insurance for accountants, accountant/client privileges in evidentiary law and other dubious trappings of professionalism.

Occupational theory and its relationship to value conflicts also goes some distance toward explaining why some professions are so widely disliked by the general public. Lawyers, for example, appear to be widely disliked on both sides of the Atlantic; in the United States they share this stature with doctors [6]. This seemingly parochial issue nicely illustrates the way value conflicts can go awry.

Lawyers and (in America) doctors are not resented for their income, power or status; other groups in society have as much or more of these things as doctors and lawyers, and without being so detested. The real reason lies in the frequency and, more important, the nature of value conflicts in law and medicine. Both occupations involve services and occupational theories which are distant from the comprehension of their consumers, and the more technically, intellectually or scientifically complex an occupation is, the greater the odds that those who consume and pay for such work will not understand what they are getting, or know whether they received what they bargained for. A client has trouble evaluating legal work except by reference to whether he must pay the court’s judgment; a patient may not understand medical terminology, treatments or prognoses, but he knows how he feels and how much it cost to get that way.

As work becomes more theoretically complex, it becomes more difficult to forecast results. As results become more difficult to guarantee, the consumer’s resentment grows, and the greater cost of technically and theoretically complex work only fuels the resentment. That resentment is further exacerbated by the fact that the consumer has trouble understanding why the desired result is often not achieved. Finally, consumer resentment is greatest toward those occupations (such as law) which typically deal with the consumers who know very little about the relevant occupational theory. Such consumers will often not understand what they are buying, why it costs so much and takes so long, why the results are so uncertain, and why the worker so often tells them they cannot or should not get what they ask for. The expense and aura of expertise heighten expectations, while the uncertainty of results and frequency of value conflicts frustrate those expectations. This is less likely to occur in occupations whose consumers are not in close contact with the worker, such as business management, or whose consumers tend to understand the occupational theory, as with specialists who are hired primarily by other specialists.

4 How to resolve value conflicts—the duty to inform

A value conflict is a conflict between trade value and reason value, between what must be done to save the trade and what must be done to do the job properly. If all consumers consistently wanted the job done properly in light of the relevant occupational theory, there would be no value conflicts, and no interesting distinction between professionals and tradesmen.

Of course, there is no question that all consumers want the job ‘done properly’, or at least would say so if asked, and there will be no conflict over the proper way of doing the work if the ‘proper way’ is stated with sufficient abstraction. Every client wants ‘justice’, every patient wants ‘health’, everyone who hires an engineer wants ‘structural stability and efficiency’. However, although the consumer understands that he has
agreed to ‘buy’ health, justice, etc., he may have a different notion of what constitutes health or justice for him than the worker does. Value conflicts, in short, are usually technical disputes, differences of opinion between the worker and the consumer over what best achieves the ultimate goal.

The consumer may not foresee or understand the consequences of the course of action she wants the worker to undertake, or she may fail to understand the consequences of alternative ways of doing the job. For example, a client may want to forge ahead with a lawsuit because he misjudges his chances of winning or miscalculates the likely cost of the contest. On a more subtle level, a psychotherapist’s patient may want to make a relationship work while the therapist professes reasons, drawn from psychological theory, why breaking off the relationship would be healthier. Where the advisability of a given result seems to be at issue, the real issue is usually whether that result best achieves the ultimate goal.

So value conflicts are, at base, conflicts of understanding. There are two ways to resolve such conflicts: tolerate or even encourage the misunderstanding in order to save the trade, or clear up the misunderstanding by professing to the consumer reasons for doing the work in a different manner, or toward a different result, than the consumer proposes, even at the risk of losing the consumer’s business. The worker as professional tries to resolve value conflicts in the second way, achieving an understanding with the consumer by educating the consumer about the best way to achieve the ultimate goal of justice, health, etc. The difficulty of making the consumer understand the theoretical reasons professed by the worker depends upon how theoretically rich the occupation is.

Of course, the propriety of the work does not turn on whether the consumer understands why it is proper. Medical treatment is not less efficacious because the patient does not comprehend it, nor is a verdict less just because the defendant does not grasp its logic. If there were nothing more to a professional’s work than the work itself—that is, if she worked for no one, or if she worked for free and did not need to make a trade—then trade value would never enter the picture. It is precisely because a worker is also involved in trading her work for a consumer’s payment that value conflicts are possible.

The acceptance of payment, which occurs only in trade, subjects the worker to a moral obligation to provide what the consumer has agreed to buy. If the worker knowingly gives the consumer something other than what was agreed upon, then the consumer’s rights under the contract have been violated. It may also be said that something has been taken from the consumer under different conditions than the consumer agreed to, and that the taking is therefore non-consensual. However the wrong is analysed, it is clear that, to fulfil her ethical obligations in the transaction, the worker must make sure that the consumer receives what he agreed to buy. This is why we commonly define a professional as someone who is paid for what she does. At first sight this seems overbroad and uninformative, for nearly all workers are paid for their work, yet not all are considered to be professionals. The significance of being paid lies in the fact that a worker who receives payment is involved in trade.

The obligation to inform arises when the consumer thinks he is ‘buying’ health, justice or some other abstract item, yet the particular result or procedure that fulfils that item is different from the particular result or procedure he asked for. To give the consumer the abstract item he agreed to buy, the worker must give him a different result or procedure than he agreed to pay for. Thus, to fulfil her obligation to give the consumer what he agreed to buy, the worker is obliged to inform—to profess
reasons—showing the consumer why a different result or procedure is preferable. The obligation to give the consumer what he agreed to buy entails, in the case of value conflicts, an obligation to inform.

It is possible for this obligation to arise even in the absence of payment, provided that the worker is aware that a consumer is depending upon the worker to do a proper job, and the worker has a choice whether to accept responsibility for the consumer’s interests in the work. The obligation here arises not from the acceptance of payment. The possibility of detrimental reliance this creates can give the consumer a moral claim upon the worker equal to that generated by payment in trade. Nonetheless, situations involving such detrimental reliance are relatively unusual, arising chiefly when a worker does a favour for family or friends, or when the worker takes on charity. Trade is still by far the most important source of the obligation to do a good job for the consumer, and this accounts for the definition of ‘professional’ as someone who is paid for their work.

If, despite informing the consumer about what is proper, the consumer still wants a result or procedure which the worker finds for reasons of occupational theory to be improper, then the worker must either refuse the trade or perform improper work. Whether it is unethical to perform improper work for a client who has been made to understand how and why the work is improper, and wants it anyway, cannot be answered in the abstract. Much depends on the circumstances, on whether anyone will be hurt, or on whether the work is improper in a way which involves unethical behaviour such as lying, breaking promises, coercing people without a right to do so and so forth.

The obligation to inform is reflected in the variety of testimonial privileges in the law of evidence. These privileges entitle the consumer to prevent the worker (in certain occupations) from testifying in court concerning communications between the worker and the consumer made in the course of the services provided. Indeed, only the consumer can waive such a privilege. For example, a patient can refuse to let her doctor testify in court concerning statements made by either patient or doctor in the course of diagnosis and treatment. Significantly, most of the evidentiary privileges are awarded only to those occupations we find on the shorthand list of ‘professions’: there are privileges for lawyer/client, doctor/patient, priest/penitent, psychiatrist/patient, accountant/client, journalist/informant and even optometrist/patient communications [7]. Why would the law protect these communications and why is the list confined to these occupations?

The answer lies in the importance of open, honest communication between workers and consumers whenever the duty to inform is significant [8]. This duty is most frequently activated in the ‘professional’ occupations, and not only its more obvious importance, but also the ease of drafting laws to fit particular occupations explains why the law of evidence singles out those occupations for special attention: they need it more often, and they are easy to identify.

Yet, just as all workers can encounter value conflicts, so all workers engaged in the trade of their work are subject to the obligation to inform, for that duty is entailed by the moral circumstances of trading. Indeed, the obligation to inform becomes particularly significant in the trade of products or items that the consumer cannot easily understand. This is recognised in the law of contracts, where the seller has (at least in some jurisdictions) a legal duty to disclose important facts about the thing he is selling when he has knowledge of those facts and the buyer does not have access to the same information [9]. Under the Uniform Commercial Code, when the seller has reason to
know that the buyer is relying on the seller's skill or judgment concerning the goods he is selling, then the seller is bound by a 'warranty' (whether he mentions any warranty or not) that the goods are fit for the buyer's purposes—unless the seller informs the buyer otherwise [10]. Similarly, products liability law is replete with duties to warn consumers about dangers or defects in a product [11].

The obligation to inform arises with respect to all trades, but it does not usually become an issue unless the product or service is complex enough to require counsel to the consumer on whether the product or service is proper. As products become more complex, the sale of those products requires greater technical knowledge, and even salesmen become recognised as 'professionals'. A stockbroker is essentially a salesman engaged in the trade of shares, but corporate shares and the corporations they concern are sufficiently complex that these salesmen must be highly trained in the nature of their products and, therefore, get included on the shorthand list of professions. Similarly, real estate is a sufficiently complex item of trade that real estate agents are subject to a legal duty to inform their clients about the nature and characteristics of the property, and the legal and economic concerns that govern its sale [12].

In short, the obligation to inform—to profess—characterises professionals, but ironically, it arises from trade. Hence, we speak of mere tradesmen, not simply to denigrate, but to indicate that they deal in items of commerce too simple to require much explanation, and which do not often involve the morally significant and ennobling obligation to inform. At the other end of this spectrum there is an occupation identified by the act of professing theory: 'professors', who sell no product or service beyond their effort to profess the theory, science or technique which defines and comprises their field of specialty. Yet the tradesman and the professor are linked, not separated, by the obligation to inform. As our economy comes to require and reward increasingly high levels of worker training, we must all be prepared to profess reasons for working as we do, whatever the price.

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NOTES


[5] This point comes from E. Greenwood (1983) Attributes of a Profession, in B. Baumrin (Ed.) Moral Responsibility and the Professions (New York, Haven Publications), p. 23: 'A non-professional occupation has customers; a professional occupation has clients. What is the difference? A customer determines what services and/or commodities he wants, and he shops around until he finds them... In a professional relationship, however, the professional dictates what is good or evil for the client...'.

[6] The British system for distributing health care regardless of income may explain this difference in public attitudes, and cancel out other factors that can engender resentment.

[7] Murl A. Larkin (1989) Federal Testimonial Privileges (New York, Clark Boardman Co., Ltd). There are other testimonial privileges, such as that for husband/wife communications, but there are none for occupations not generally considered to be 'professions'.

[8] This rationale is recognised by legal scholars in the field of evidence law. Wigmore, for example, notes that evidentiary privileges have a common basis in society's concern for the communications which
are very important to certain types of human relationships, and which will be hampered unless the parties can be confident that the communications will not be disclosed. 8 Wigmore *Evidence* 2285 at p. 527 [McNaughton Rev. 1961).


