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REVOLUTION AND THE MAKING OF THE CONTEMPORARY LEGAL PROFESSION

ENGLAND, FRANCE, AND THE UNITED STATES

Michael Burrage

OXFORD SOCIO-LEGAL STUDIES

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OXFORD
UNIVERSITY PRESS

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Great Clarendon Street, Oxford OX2 6DP

Oxford University Press is a department of the University of Oxford.
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Published in the United States
by Oxford University Press Inc., New York

First published 2006

British Library Cataloguing in Publication Data
Data available

Library of Congress Cataloging in Publication Data
Burrage, Michael.
Revolution and the making of the contemporary legal profession : England,
France, and the United States / Michael Burrage.
p. cm. — (Oxford socio-legal studies)
Includes index.
ISBN 0-19-928298-6 (hardback : alk. paper)
1. Lawyers—England—History. 2. Practice of law—England—History.
3. Great Britain—History—Revolution of 1688. 4. Lawyers—France—
History. 5. Practice of law—France—History. 6. France—History—
Revolution, 1789–1799. 7. Lawyers—United States—History.
8. Practice of law—United States—History. 9. United States—History—
Revolution, 1775–1783. I. Title. II. Series.
K117.B87 2005
347'.05040903—dc22 2005027455

Typeset by Newgen Imaging Systems (P) Ltd., Chennai, India
Printed in Great Britain
on acid-free paper by
Biddles Ltd., King's Lynn

ISBN 0–19–928298–6 978–0–19–928298–2

1 3 5 7 9 10 8 6 4 2

General Editor's Introduction

Michael Burrage's book is a major comparative and historical analysis of the legal profession in France, the United States, and England. The work focuses on the relationship between revolution and profession, considering the question of the nature of the impact of revolution on professional behaviour and identity among lawyers in those three countries. The analysis is centred upon the consequences of revolution for the profession of particular matters: admission and training, defining and defending a jurisdiction, regulating each other's behaviour, and defending and enhancing corporate status.

From its twin organising themes of revolution and profession, the book's starting point is the utopian idea of a society without lawyers, an idea which sometimes comes to the fore in the course of revolution, for in such circumstances it does not always seem utopian and wildly impractical, as the author points out, to dream of a society without legal specialists. Burrage analyses three such moments when such an idea might have arisen, namely the revolutions in seventeenth century England and in eighteenth century America and France. His book then goes on to trace the lasting consequences of revolutionary ideals and events so as to explain how they shaped the contemporary legal profession.

This ambitious book is, in every sense, a *magnum opus*. It is impressive in its learning and in the mastery of its analysis. While the author displays a prodigious knowledge of the legal professions and their evolution in England, America, and France in a book of great scholarship, historical grasp, and theoretical sophistication, Michael Burrage has at the same time produced a work that is engagingly and elegantly written. His book will be a significant contribution to the development of a better understanding of the role of lawyers and their work.

This book stands alongside other works on the legal profession to have appeared in recent years in Oxford Socio-Legal Studies: those by Abel (*English Lawyers between Market and State*), Halliday and Karpik (*Lawyers and the Rise of Western Political Liberalism*), and Parker (*Just Lawyers: Regulation and Access to Justice*). It is a study on the grand scale, one which marks a major advance in our knowledge and understanding of the legal profession.

Keith Hawkins
Oxford
July 2005

Acknowledgments

My thanks to those who helped me to write this book go back a long, long way. First I must, grudgingly, admit that I owe something to the Royal Air Force who having asked for, and ignored, my posting preferences enabled me to observe the US Air Force at work, and obliged me to engage in a kind of daily cross-cultural analysis. My thanks to my flatmate from student days, Tony Hidden, later Mr. Justice Hidden of the Queens Bench Division, are anything but grudging. He first interested me in the distinctive manners and mores of the English bar. Hopefully, this work will be a rather more informed, and interesting, reply than any I was able to make at the time. With the help of the American Council of Learned Societies I was able to pursue my interest in American society as a Fulbright scholar at the University of Pennsylvania, and later as a Ford Foundation Fellow at Harvard. I there benefited from the wry humour, sharp insights, and support of the late David Riesman, and with the help of that incurable comparativist Seymour Martin Lipset, was able to study a variety of American work settings, in one of which I met, and learned much from, that comet of a lawyer-CEO, Eli Goldston.

Ever since it has been difficult to avoid comparative analysis and debate, even had I wished to do so. I was lucky enough to be a visiting fellow at one of the world's most hospitable intellectual environments, the Swedish Collegium of the Advanced Study of the Social Sciences at Uppsala, and with one of its directors, Rolf Torstendahl, share the duties of editing the work of some of the most distinguished scholars of the professions. Over several years, I benefited from two of the outstanding centres of research at the University of California, Berkeley. Martin Trow, the founding-director of the first, the Centre for Studies in Higher Education, happened to be an inspired architect of academic space. Designed rather like a doughnut, it enabled visiting scholars as much peace and quiet as they wished, but also to join debate in the communal space of the library, seminar and lunch room at its centre. In that space, I benefited greatly from the advice and suggestions of Sheldon Rothblatt, its second director, and of Mary Barrett who patiently, and with immense good humour, corrected my translations of Dalloz, Sirey and other French legal texts. Martin's unstoppable flow of ideas and suggestions continued far beyond it, to the football stadium, the baseball diamond, Oxford, Moscow, wherever. They always helped. The other centre, also in the shadow of Berkeley's Campanile, was the Institute of Governmental Studies, whose director Nelson Polsby, first astonished his visiting scholars by doing without the basic prerequisite of directors around the world, an office, and thereafter continually interrogated, provoked, amused and encouraged them. I for one will be forever grateful.

At the London School of Economics I was fortunate in having Ernest Gellner as my tutor, later my colleague, my travelling companion around Normandy notaires, my fellow trespasser on the Tocqueville estate, and still later my interpreter in courts and lawyers' offices in Moscow. None of Ernest's works, nor, alas, any of his jokes, are quoted in these pages, and none of the Russian advocates we met are mentioned, but both influenced me enormously. A series of British Council lectures I gave at the

University of Pernambuco, Brazil, and exchanges after them with Silke Weber and her colleagues, made me think more than I ever previously had about lawyers' role in the activation of civil society. Analysts of other professions, were also helpful, most notably Leroy Schwartz, M.D., an immensely perceptive observer of both American and British medical institutions, who insisted that I experience American medical practice first-hand, as a physician's assistant assistant in his own Staten Island practice. Kevin Lewis, a student of English inns and taverns, has made helpful and pertinent observations on his own and other subjects over many years.

I have also been able to learn from some of the outstanding experts in the sociology of law, starting with those assembled by the indefatigable Richard Abel and Philip Lewis at Bellagio some twenty years ago, and later from Lucien Karpik, Terence Halliday and from Wesley Pue, especially in his seminar at Green College, in the University of British Columbia. On some points, I disagree with each of them, but I remain, as the pages that follow demonstrate, indebted to them all. Marc Galanter was kind enough to try and correct my errors about the American lawyers. Maître Dominique Saint-Pierre patiently outlined some of the principles in his report on the organization of the French profession, though I suspect I may have learned from the manner in which he defended them.

I owe much to my son Nicholas, who took it all in his stride, never disturbed, and always helpful. Without the lawyer I married, Pamela Vargas, asking me to explain things, what follows would certainly have been more obscure than it is, would have more howlers than it does, and probably would never have been completed at all.

Contents

1

Investigating a Fateful Encounter

I. Utopian Ideals and Revolutionary Practice

Lawyers are often the heroes and heroines of contemporary television dramas, those of the English-speaking world at least. Why this should be so, when there is no evidence that lawyers are particularly esteemed and admired in ordinary life, is something of a mystery. Perhaps it is because they are never seen to charge fees. In the literature of the past, lawyers have rarely been heroes, and in one brand of fiction, utopias, they were invariably the villains, the one occupation that all utopias preferred to be without. One of the constants of utopian thought has been that wrongdoers would be punished and disputes settled, without any formal legal procedures or specialist intermediaries. Utopias have invariably been law-abiding, but without lawyers.

Traces of this ideal are to be found as far back as Hesiod's account of a 'golden race'. It reappears in most of the ideal republics devised by Athenian philosophers of the fourth century BC, including the most celebrated of them all, that of Plato. In the dialogue which identifies the failings of contemporary Athens, Plato has Socrates ask whether it is not 'a scandalous sign of bad education if one's sense of right and wrong is so deficient that one has to seek justice at the hands of others as one's masters and judges?' Socrates adds, 'I can't think of anything worse'. In subsequent dialogues, Socrates explains that in the ideal republic, justice would be the concern, not of specialist lawyers, but of every citizen. The guiding principle would be that 'everyone sticks to their own job and doesn't interfere with anyone else's'.[1] Thus, the members of every occupation would be left to arbitrate disputes by themselves and to punish any wrongdoers.[2] The guardians of Plato's Republic were, therefore, to be given no specialized legislative or judicial functions, and were expected to maintain a just social order by eugenic and educational policies, rather than by court proceedings.

This ideal of a law-abiding society without courts or lawyers was evidently very familiar to Athenian audiences, since Aristophanes satirized it in *Assembly of Women*. In it, the women who took over Athens decided that henceforth there would be 'no

[1] pp.102–5, Plato, *The Republic*, trans. H. D. P. Lee, Harmondsworth: Penguin, 1955.

[2] Athens presumed that every citizen was able to defend himself before the court but there were, nevertheless, specialist defense advocates, professional speechwriters, rhetoricians or logographers. Although many of them made large incomes, they were not well-respected, so Socrates was not expressing an unpopular view. In his own trial, he declined to make use of one of them who offered his services free of charge, a decision that may well have cost Socrates his life. p.253, Coleman Phillipson, *The Trial of Socrates*, Stevens, London, 1928. Most scholars have thought that Socrates did not really try to defend himself, an inference contested in Thomas C. Brickhouse and Nicholas D. Smith, *Socrates on Trial*, Clarendon Press, Oxford, 1989.

fines, no debtors, no actions' and 'each court and arcade of the law shall be made a banqueting hall for the citizens'.[3] The idea survived Aristophanes' ridicule, and was transposed from ideal republics to ancient Sparta under the mythical King Lycurgus. According to entirely unreliable Athenian reports, the laws of Lycurgus were savage but at the same time simple and just, and therefore commanded universal respect. As a result, the ancient Spartans were thought to be spontaneously law-abiding and to have no need of courts, of lawsuits or of lawyers. Other Athenian historians told similar tales of distant peoples they knew still less about. In Dio Chrysostom's account, 'justice was served among the Scythians by the tribes' inherent respect for it, not by the laws'.[4]

Roman authors seem to have been rather less inclined than the Greeks to utopian speculation, perhaps because their devotion to Rome itself discouraged them from contemplating alternative, ideal cities without law. Or maybe they acknowledged law as Rome's greatest intellectual achievement or perhaps the conquests of Roman armies made them less inclined to attribute blissful, virtuous ways of life to distant peoples.[5] The idea, nevertheless, appears in Roman literature. In Ovid's *Metamorphoses*, for instance, the golden age was one in which 'with no one to compel, without a law, of its own will the people kept faith and did the right. There was no fear of punishment, no threatening words were to be read on brazen tablets; no suppliant throng gazed fearfully upon its judge's face; but without judges lived secure'.[6] Similar images are to be found in Virgil's *Messianic Eclogue*, and in the island of the blessed in Lucian's *True Story* and *Saturnalia*. However, like Ovid, they leave the impression of a literary convention borrowed from the Greeks, rather than a spontaneous aspiration of their own.[7]

Medieval utopias are also a slight exception to the rule, since their vision was either of a divinely-imposed order, like Augustine's *City of God*, or one in which there was no state and no legal institutions at all, so the notion that human behaviour might be changed by reconstructing both, which is central to most utopias, was missing. All the utopias from middle Europe analyzed by Kraus, were monarchies rather than republics, set in the past rather than the future, and commonly supposed to have been contingent upon a good king, and therefore to have come to an end with his death. They are more like fairy stories, with simple delights like food and jewels, and make no reference to the resolution of routine disputes.[8]

The idea of the lawyerless but law-abiding society, emerged once more, however, in the collection of medieval lore and legend known as *The Travels of Sir John Mandeville*, published in 1398. This contained an account 'Of the Goodness of the Folk of the Isle of Bragman' who, when approached by the armies of Alexander, sent messengers to explain to Alexander that 'Thou shalt find nothing in us, that may cause thee to war against us. For we have no riches, ne none we covet. . . . We have been in perpetual

[3] pp.86–8, Aristophanes, *Assembly of Women*, trans. Robert Mayhew, Prometheus Books, Amherst. NY, 1997.

[4] p.18, John Ferguson, *Utopias of the Classical World*, Thames & Hudson, London, 1975.

[5] Van Caenegem speculated along these lines. p.82, R. C. van Caenegem, *Judges, Legislators and Professors: Chapters in European Legal History*, Cambridge University Press, 1987.

[6] p.74, Frank E. Manuel and Fritzie P. Manuel, *Utopian Thought in the Western World*, Belknap: Cambridge, 1979.

[7] pp.99–104, *ibid.*

[8] F. Graus, 'Social Utopias in the Middle Ages', pp.1–19, *Past & Present*, 38, December 1967.

peace till now, that thou come to disinherit us. . . . For justice ne hath not among us no place, for we do to no man otherwise than desire that men do to us.' Impressed by these words, Alexander, so the story continues, left the folk of Bragman alone.[9]

Early in the sixteenth century, the ideal is found again in what is commonly thought to be the first modern utopia, that of Thomas More, first published in 1516. His utopians have few laws because they thought 'it against all right and justice that men should be bound to those laws which either be in number more than be able to be read, or else blinder and darker than that any man can well understand'. They therefore considered it 'most meet that every man should plead his own matter, and tell the same tale before the judge that he would tell to his man of law.' They therefore 'entirely exclude and banish all attorneys, proctors and sergeants at law which craftily handle matters and subtly dispute the laws.'[10]

In the course of the sixteenth and seventeenth centuries, many more utopias were devised in Germany, France, and Italy as well as England, all of them similarly excluding lawyers and legal proceedings. For instance, Richard Burton's *Anatomy of Melancholy*, published in 1621, referred to lawyers as 'gowned vultures', and complained that in England there were 'so many lawyers, advocates, so many tribunals, so little justice, so many magistrates, so little care of the common good; so many laws, yet never more disorders.' Burton therefore looked forward to the day when there will be 'few laws, but these severely kept, plainly put down', and there will be simple procedures with a small, fixed number of lawyers, paid from the 'common treasure', though 'wherever possible, each was to plead their own cause.'[11] When Burton's work was being published, Thomas Campanella was languishing in a Naples gaol, designing his utopia, *The City of the Sun*, where there were likewise 'but few laws and these short and plain'. Instead, as in Plato's Republic, 'everyone is judged by the master of his trade, and thus all head artificers are judges'.[12]

In the early eighteenth century, similar notions are found in several of the 'remote nations' visited by Swift's Captain Gulliver. In Brobdingnag, for instance, there was no need of legal specialists, since:

> No law of that country must exceed in words the number of letters in their alphabet; which consists only of two and twenty. But indeed, few of them extend even to that length. They are expressed in the most plain and simple terms, wherein those people are not mercurial enough to discover above one interpretation. And to write a comment upon any law is a capital crime. As to the decision of civil causes, or proceedings against criminals, their precedents are so few, that they have little reason to boast of any extraordinary skill in either.

Similarly, the Houyhnhnms had no need of laws, of courts, judges and advocates since, as they explained to Gulliver, 'nature and reason were sufficient guides . . . in shewing us what we ought to do, and what to avoid.' Gulliver therefore had to explain

[9] pp.87–8, 112–14, Sir John Mandeville, *The Travels of Sir John Mandeville*, trans. C. W. R. D. Moseley, Penguin, Harmondsworth, 1983.

[10] pp.113–14, Thomas More, *The Utopia of Sir Thomas More*, trans. Ralph Robinson, Macmillan, London, 1908. The same theme was found in a contemporary German utopia, Johann Eberlein von Günzburg's *Wolfaria* published in 1521 pp.65–6, J. C. Davis, *Utopia and the Ideal Society: A study of English utopian writing 1516–1700*, Cambridge University Press, Cambridge, 1981.

[11] pp.92–8, *ibid.*

[12] pp.107–28, Miriam Eliav-Feldon, *Realistic Utopias: The Ideal Imaginary Societies of the Renaissance, 1516–1630*, Clarendon Press, Oxford, 1982.

to his amazed hosts that there was in his homeland 'a society of men . . . bred up from their youth in the art of proving by words multiplied for the purpose that White is Black, and Black is White, according as they are paid. To this society, all the rest of the people are Slaves'.[13]

In the early nineteenth century, the idea of the lawyerless society became a commonplace of utopian thought. Etienne Cabet, writing in France under the July Monarchy, claimed that in his Icaria education would be so effective that there would be virtually no criminal offenses, and therefore little need of courts. Law and order would be a matter for all members of the community to uphold, mainly by informal sanctions and public censure. Icarians might denounce any offenses that they witnessed before *ad hoc* 'people's courts' which could convene in factories, in the street, in restaurants, in the home, or wherever an offense was committed. Cabet suggested that these courts would deal with moral offenses, such as 'avarice, unkindness, unfraternal acts', rather than crimes. In the rare event of a serious criminal offense, all the people of the locality, some two thousand in all, would assemble to judge the offender.[14]

In the late nineteenth century, virtually every socialist utopia centred on the idea that the abolition of private property would automatically bring an end to formal legal procedures, and to the work of legal specialists. This idea occurred, for instance, in Edward Bellamy's *Looking Backward*, first published in Boston in 1887, and said to be the best-selling utopia of all time.[15] The hero of this story awoke in the United States in the year 2000, and discovered that there were no longer any lawyers since 'there is neither private property, beyond personal belongings . . . nor buying and selling, and therefore the occasion of nearly all the legislation formerly necessary has passed away.' Rooney's content analysis of 119 lesser known, or previously unknown, American utopias, written between the 1880s and the First World War, showed that 49 of them favoured 'the elimination of the legal apparatus.'[16]

William Morris' *News from Nowhere*, published in 1890, was written, in part, as a riposte to Bellamy's picture of the United States in the year 2000, which Morris found distastefully mechanical and militaristic. Morris' work, nevertheless, contained similar notions of a social order maintained without courts and lawyers. The hero miraculously finds himself in a future Britain in which the legislature and courts have fallen into disuse following the abolition of money, of private property, of marriage, and of all the 'legal crimes' which these institutions had 'manufactured'. Related notions such as that of women being the property of men, or of 'success in besting our neighbours as a road to renown', had also disappeared, which meant that crimes of violence had been drastically reduced. They were, however, not quite eliminated. 'Hot blood will err sometimes', Morris allowed, and there is 'an occasional rare homicide, an occasional rough blow'. But these offenses are not handled by courts. Nor are there any police or

[13] pp.41, 120, 175, 232–4. Jonathan Swift, *Gulliver's Travels*, in H. Davis, ed., *The Prose Works of Jonathan Swift*, vol. 2, Blackwell, Oxford, 1941.

[14] pp.48–61, Christopher H. Johnson, *Utopian Communism in France, 1839–1851*, Cornell: Ithaca, 1974.

[15] Edward Bellamy, *Looking Backward, 2000–1887*, Belknap, Cambridge, 1967, first published 1888.

[16] p.45, Charles J. Rooney, Jr. *Dreams and Visions: A Study of American Utopias, 1865–1917*, Greenwood, Westport, 1985. Rooney distinguished twenty-one 'solutions' for present ills in these works. Only 'shorter working hours' and a 'subsistence income' appear more frequently.

prisons. 'If the ill-doer is not sick or mad (in which case he must be restrained till his sickness or madness is cured) it is clear that grief and humiliation must follow the ill-deed; and society in general will make that pretty clear to the ill-doer if he should chance to be dull to it; and . . . some kind of atonement will follow—at the least an open acknowledgement of the grief and humiliation.'[17]

In the twentieth century, utopian thought has declined, or perhaps, as some observers claim, expired altogether. The ideal of the law-abiding but lawyerless society seems, however, to have found other vehicles. It is, for instance, a recurring theme in Marxist thought, the main twentieth century heir, or perhaps one should say, usurper, of the utopian tradition. It is also a constant theme in the most popular, worldwide myth of the twentieth century, that of the American West, which convey an enormous respect for the law, and in which justice somehow triumphs, while courts and professional lawyers, almost invariably remain off-screen. As interest in real 'red Indians', the Native Americans, has grown in recent times, they, like the Spartans, Scythians and others before them, have been credited with a golden past, living together in peace, harmony and equality, and are supposed to have devised higher forms of justice which do not require formal legal procedures or legal specialists. The legal institutions, due process, and lawyers of white Americans have therefore been portrayed as a means of manipulating and oppressing these innocents who knew nothing of such things.[18]

One could follow the trail of the notion, I suspect, through some of the anti-utopias and science fiction of the twentieth century, one common ingredient of which is an oppressive framework of laws and regulations to which their heroes are subject, or mystifying procedures by which they are trapped, or endless investigations and interrogations, ordered by some distant, anonymous authority. Perhaps, we might finally come back to where we started, to the fictional lawyers of television dramas with their high ethics, unswerving commitment—and who never charge fees. For viewers resigned to the ubiquity and venality of lawyers, it may be they are a form of utopia.

Enough, however, has been said to show that law without lawyers has been one of the more enduring and resilient ideals of western civilization, recurring in the works of authors of varied temperaments and philosophies, separated by vast distances of time and culture, and living under diverse social and political systems. Whether the ideal ever struck a responsive chord among the readers of these works, or was incorporated in what the Manuels referred to as 'unwritten, popular utopias', and became a part of culture in a wider sense, is impossible to say.[19] The idea that Plato, More, Campanella, Swift and the others were representative spokesmen of their societies is hard to swallow. And it seems unlikely that this ideal sank deep and extensive roots into the culture of their societies, for whenever literate people have been able to engage in practical politics, their pursuit of a better society has invariably entailed more and more legislation, which has usually meant more and more litigation, and therefore more and more

[17] pp.61–2, 84–93, William Morris, *News From Nowhere*, Longmans, London, 1890.

[18] James A. Clifton, ed., *The Invented Indian: Cultural Fictions and Government Policies*, Transaction, Brunswick, 1990; and pp.19–28, James A. Clifton, 'Cultural Fictions', *Society*, May/June, 1990.

[19] The Manuels observe that, with the possible exception of Spain, 'the utopian propensity is common to the Western world' and their book amply demonstrates the point. None of their utopias include lawyers. pp.9,14, Manuel and Manuel, *op.cit.*

lawyers. Lord Melbourne, Prime Minister of Britain in the early nineteenth century, thought that legislating about every problem that came along was a passing fashion, which would shortly, to his great relief, come to an end. Well, some considerable time has passed since his premiership, and there is still no end in sight, so we may reasonably conclude that a better society is thought to require more legislation, more litigation and more lawyers, even if an ideal society has none. Another case where the good society has been the enemy of the best.

There are, however, two occasions, when people have decided that the good and the better should no longer stand in the way of the best, that the ideal society should no longer be postponed, but realized here and now by making the law so simple that there is no longer any need for legal expertise and legal specialists.

The first of these occurred when small groups of people 'who are of one mind upon some question which to them shall appear so important' decide, psychologically and perhaps physically, to leave the society in which they live and create a new society anew, free of the customs, laws and institutions of the old. Dozens of such communities were established in England and the United States in the nineteenth century, and many more in the twentieth. Few, if any, of them made provision for any formal procedures for settling disputes, or for dealing with crime, and none recognized the need for any legal specialists.[20] Instead, they hoped that their own commitment, the careful selection and socialization of new members, and informal community sanctions would make formal legal procedures unnecessary. Disputes in such communities were usually resolved by their founder, or by some committee of founders, like the trustees of the Zoarites and the elders or 'characters' of the Shakers, or by some form of organized community action, such as the 'mutual criticism' of the Oneida community in the mid-nineteenth century New York.[21] Such procedures invariably excluded any role for specialist intermediaries. Lawyers appeared in these communities, only when they were already in decline. Their appearance is, in fact, the surest indication that the original community was disintegrating.

Such utopian communities were invariably small, invariably short lived, and their self-imposed isolation ensured that they had little impact on the larger societies from which they hoped to escape. They are, therefore, only minor exceptions to the general rule that people look to the law, to litigation and lawyers to improve their condition. The second exceptional occasion when people tried to realize the ideal of a lawyerless society is much more significant, since it involved entire societies. It occurred when masses of people rebelled against their rulers, violently overthrew their existing system of government and sought to establish an entirely new political and social order—during those periods, in other words, which are commonly described as revolutions. At these moments, the idea that legal specialists are unnecessary, no longer seems wildly impractical and utopian.[22] The dream then became, for a moment at least,

[20] W. H. G. Armytage, *Heavens Below: Utopian Experiments in England, 1560–1960*, Routledge & Kegan Paul, London, 1961; Yaacov Oved, *Two Hundred Years of American Communes*, Transaction, New Brunswick, 1992; Foster Stockwell, *Encyclopaedia of American Communes 1663–1963*, McFarland, Jefferson, NC, 1998.

[21] p.186, Mark Holloway, *Heavens on Earth: Utopian Communities in America*, Dover, New York, 1966; p.226, Charles Nordhoff, *The Communistic Societies of the United States; from personal visit & observation etc*, Harper, New York, 1875.

[22] p.14, Manuel and Manuel, *op.cit.*

practical politics, and prompted efforts to create a new kind of legal order that did not depend on organized legal experts. Three of these moments are the subject of this investigation, those that accompanied or followed the revolutions in seventeenth-century England, in eighteenth-century America and France.

Today, of course, all three of these societies have complex systems of law, elaborate legal institutions which utilize large numbers of legal specialists, so I will be describing ideals that were frustrated or abandoned, and dreams that failed. They did not, however, all fail for the same reason, or to the same extent, and it would be mistaken to assume that, simply because they failed in their main goal, their aspirations had no impact on the subsequent development of their legal institutions and legal professions. Indeed, there is reason to believe that the way in which these legal professions resisted or recovered from these revolutionary attacks, and later adjusted to, or were forced to adjust to, the institutionalized settlements of revolutionary ideals can help us to understand their peculiarities in the modern world. The aim of this investigation, therefore, is not only to describe great events, and failed dreams, but to trace their aftershocks and later reverberations, and show how these shaped the professional landscapes we now take for granted.

II. Two Contested and Honorific Concepts—Revolution and Profession

Revolutions and professions, the two phenomena at the centre of the investigation, are, as it happens, both also the centre of academic battle zones. Curiously, both are evaluative, as well as denotative or descriptive terms, so that in using them one is often thought to be, not merely describing a phenomenon, but bestowing some kind of accolade, and for that reason perhaps both are used rather indiscriminately. The use of these terms in this investigation therefore requires a preliminary word of clarification and explanation, especially that of revolution, since a number of scholars have denied that two of the three revolutions I mean to investigate, the English and the American, are real revolutions at all. In their view, these two revolutions should not, or cannot, be compared with the authentic, total, social revolution of France, presumably on the grounds, though these are seldom elaborated, that one would not be comparing like with like, or parts with wholes.[23]

There are, no doubt, profound differences between these three revolutions and there is no reason to minimize or overlook these differences. Some of them are the very heart of the subsequent investigation. However, in three respects that matter in the present context, they are similar, even identical. To begin with, they all involved armed revolt against the agents, institutions and legitimacy of the existing state, which lead to

[23] Rosenstock-Huessy, for example, referred to the American as a 'minimum' or 'half-revolution' and put it in a sort of second division of revolutions along with those of Spain, Sweden, the Netherlands and Poland. p.662, E. Rosenstock-Huessy, *Out of Revolution: Autobiography of Western Man*, Jarrolds, London, 1940. Moore did not think the American was a revolution at all on the grounds that it 'did not result in any fundamental changes in the structure of American society'. p.112, Barrington Moore, Jr., *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*, Allen Lane, London, 1967.

its collapse and the transfer of its authority to new state institutions, which claimed legitimacy on new grounds. Second, they all provoked attacks on the law, the courts and the legal profession which were all without parallel, in scale, fury and content, in either the previous, or the subsequent histories of these societies. Third, these attacks prompted attempts to reform the law, the courts and the legal profession, which were also more comprehensive and radical than those at any other time in their history. Whatever other differences there may be between these three revolutions, and however important these differences may be in other contexts, they are similar in these three respects. These revolutions therefore plainly satisfy the cardinal requirement of comparative analysis, that in certain fundamental respects the phenomena being compared are alike.

This being so, there is no need for further discussion of the nature of revolutions, or of the attributes required of a revolution before it may be justly included in the revolutionary pantheon, nor, incidentally, of their causes. Throughout this investigation, revolutions are treated as they usually appeared to the legal professions themselves, as external events, almost as acts of God. Individual lawyers often played a major part in the events leading up to these revolutions, and in the revolutionary events themselves, but collectively, as professional bodies, even when had been formidable opponents of the pre-revolutionary regime, were never leading participants in revolutionary events. On the contrary, they were bystanders, targets or victims, and the aim of the investigation is to examine and compare the injuries inflicted on their corporate institutions and how they recovered from them. It is not necessary, therefore, to evaluate the various explanations of why these revolutions happened when they did, and no attempt will be made to do so. Historical and sociological literature has been preoccupied, disproportionately preoccupied one might say, with the *causes* of revolutions, and has had much less to say about their course or their consequences. This study may redress the balance somewhat by tracing their course and consequences in some detail—if only for the legal profession.

Like the term 'revolution', that of 'profession' has also prompted discussion for many decades, something of an intellectual game in fact, which I am not inclined to join here. There are arguments enough in the pages that follow and no point therefore in picking a fight, so to speak, on one's way to the ring. The term 'profession' has no common and precise referents or equivalent meanings in the three societies, some words of explanation and specification are necessary, if the comparison is not to be hopelessly confused.

In England and Wales, for instance, the term legal profession may include both the barristers and solicitors, though more often perhaps, these are described as branches of the professions or as separate professions. Occasionally, the judiciary might also be included, but not lay justices or law graduates who are not practising barristers or solicitors. In the United States, the term usually refers to all practising lawyers, but may also include judges and sometimes law school professors. In France, there is no exact equivalent to the term. The generic word 'jurist' is applied, rather vaguely, to all those with some sort of legal education, whose work requires specialist legal knowledge, but further specification must then be provided by reference to a particular occupation, to either judges, prosecutors advocates, *procureurs*, the attorneys of the *ancien régime*, *avoués*, their post-revolutionary successors, *notaries*, and *conseils juridiques* or legal advisers.