23 Professional Ideals in Maltese Legal Practice

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Introduction

In his landmark study of American lawyers, Richard Abel, (Abel: 1989) observed that structural-functionalist theories of the professions share a common basis with professional ideals themselves,[1] since both assume that: 'if protected from outside interference, (professionals) will use their expertise for the general good' (Abel 1989: 35).[2] As Abel (ibid.) also remarks, however, the alleged social effects of ideals of professional independence in actively inducing professionals to pursue the public interest have rarely been empirically investigated. This is the aim of this paper which draws on anthropological fieldwork carried out in Malta to examine the ways in which Maltese lawyers interpret and invoke professional ideals in the course of their legal practice and when confronting recent reforms to the court procedures for compiling evidence. In so doing, it follows the trend in the sociology of the professions to view professionalism as primarily an 'emic' or folk-concept and investigate it as such (Cant & Sharma 1998: 246; Bourdieu 1992: 42; Johnson 1972). An anthropological approach, which concentrates on the role played by professional ideals in the daily practice of lawyers, makes it possible to overcome what has been described as the: 'arbitrary separation between the sociology of law and the sociology of the legal profession' (Buchanan 1997: 364).[3] Moreover this approach highlights the complex inter-relationships between professional ideals and the specific social and cultural contexts in which they are implemented.

Fieldwork

These themes will here be approached from the standpoint of my fieldwork on legal practice in Malta. Fieldwork was carried out for a total of twenty two months, between April 1995 and May 1997.[4] It was based on participant observation in the offices of four Maltese lawyers[5] and in the civil courts. I had access to these offices because I have a law degree, having trained in law before studying anthropology. My research concentrated on the ways in which lawyers and clients negotiate the 'facts' of the case, the production of evidence during court litigation and its assessment during adjudication. The aim was to acquire a holistic understanding of Maltese legal representation in civil litigation by exploring the social relations through which it is carried out. Through focusing on legal practice, I tried to build on my own legal background so as to carry out a more reflexive and practice-orientated ethnography, of the sort that Bourdieu (1997) has recommended.

This paper will initially focus on the pressures clients place on their lawyers in office interviews. Against this backdrop, the way Maltese lawyers interpret and invoke professional ideals in their legal practice will be explored. This will be followed by an account of the recent reforms to Maltese court procedures for compiling evidence. Lawyers' reactions and the role played by professional ideals in the resulting 'problematization' of evidence will be analysed. Finally these observations will be placed in a comparative perspective and their implications highlighted.

Lawyer-Client Interviews

Office interviews with lawyers, in which clients communicate the facts and receive legal advice and guidance, are an indispensable starting point to explore the social uses of professional ideologies. These interviews are central to lawyer/client interaction as during their discussion of the case both parties

1 Abel notes the intimate relationship between Parson's portrayal of the professions and the: 'dominant 'trait' approach to professions which demarcated them from other occupations by elaborating their allegedly socially integrative functions into a series of distinguishing characteristics' (Abel 1989: 16). He shows how this approach has influenced both the English Royal Commission on Legal Services and the American Bar Association's Model Rules of Professional Conduct, observing that this approach reduces sociological analysis to 'little more than professional apologetics' (Abel 1989: 17; cf. Johnson 1972: 25).

2 In support of his argument, he refers to Parson's (1964) analysis of the lawyer's role in terms of the need to resist clients' pressures in their own long-term interest.

3 Buchanan is here quoting Pierre Bourdieu. However the exact reference could not be traced.

4 I am grateful to the Universities of Malta and Durham for funding my research. This was made possible through a staff scholarship by the University of Malta and an ORS grant on the part of the University of Durham.

will also informally negotiate their relationship. During my fieldwork, story-telling was the most prominent feature of the interviews I observed. While my training in law had led me to expect clients to state 'facts' structured according to legal categories, what I experienced was a more confused and contested process. Rural and working class clients in particular would smuggle stories stressing their own morally upright behaviour within their narrative accounts of the facts. Such stories were told despite the inattention of lawyers and although they seemed legally irrelevant. In one case, for instance, a rural small businessman seeking his lawyers' help in some financial matters, explained that he had always 'walked straight', (that is, acted honourably) and that while he was prepared to give away free gifts, he could not tolerate being robbed by others. Similarly, a working-class widow who was trying to repatriate her husband's money kept insisting with her lawyer that she did not want this money for herself, but so as to leave it to her children equally in the event of her death. The persistence of clients in recounting these personalized stories seemed even more paradoxical since lawyers told me that their only aim was to get the facts straight and disclaimed any interest in the moral qualities of their clients 'who should only be judged once'.

Certain features of clients' stories throw light on their significance. These narratives create moral sympathy for clients because they inject powerful cultural values into descriptions of past actions. This can be illustrated by the story of the rural businessman earlier mentioned. He talked about 'walking straight', because in Maltese 'walking' is used metaphorically to morally evaluate the way in which a person relates to others. A person who 'walks straight' is one who avoids corrupting social obligations which deviate one's life-walk, impeding straightforward adherence to moral ideals. Consequently the businessman endowed himself with an honourable autonomy, which could be used to exert pressure on his lawyer,[6] authorizing him to express powerful emotions and thump on his desk in anger at being robbed. Through these stories, moreover, clients also try to translate their moral virtue into legal entitlement in their lawyers' eyes. This is made explicit in the businessman's case, since the expression '*nimxi dritt*', or 'I walk straight' plays on the way '*dritt*' in Maltese not only means straightness, but also a legal right, or even the undifferentiated whole of legal and moral rules.

This analysis indicates that clients' narratives are best understood not solely as ways of communicating the facts, but also as attempts to control their relationships with their lawyers. They operate as what linguist Deborah Tannen (1989) has called: 'involvement strategies', since they are a medium through which clients can involve lawyers in personal relationships based on shared moral values, obliging them to actively 'advocate' their interests. Anthropologists have observed such patronage relationships in Malta (Boissevain 1993) and elsewhere in the Mediterranean region (Campbell 1974). Their ideological structure has been aptly described as 'the moral englobing of political asymmetry that allows the client to maintain self-respect while gaining material advantage' (Herzfeld 1987: 86). Clients use various strategies to try to create these patronage relationships.[7]

These efforts to create patronage derive from complex social causes, which can only be briefly indicated here. Some seem to be common to other Mediterranean societies. Thus, the anthropologist Michael Herzfeld (1993) has related the need for mechanisms of social incorporation in Greek society to the absence of a fully integrated capitalist economy, the competitive and hostile character of extra-familial social relations and the weakness and relative youth of the nation-state.[8] Other causes relate more specifically to Malta, such as the historically derived sense of alienation of the Maltese from a state apparatus belonging to a foreign colonial power (Zammit 1984) or the modelling of political power on Catholic religion with its stress on saintly mediators between person and God (Boissevain 1993). In a small-scale society impersonality can become a scarce (and valued) commodity. As one Maltese proverb has it, 'Malta is small and people are known.'

Popular perceptions of lawyers and the court system may also motivate clients to try to create patronage relationships. Rampant delays in litigation have given a bad name to the Maltese courts and clients may seek their lawyers' patronage to ensure that their cases are handled efficiently. The ambiguous social role of lawyers as mediators between their clients and the state legal system may make it difficult to discover whose side the lawyer is on. If middle-class clients complain about the links between lawyers and criminals, those coming from a rural or working-class background see lawyers as part of a dominating and exploitative upper class. Significantly, it is clients who are the most socially distant from the urban professional classes who often seem to try hardest to involve their lawyers in patronage relationships.

It seems clear, therefore, that Maltese lawyers often come under intense pressure from clients, especially those coming

5 According to my calculations, there were, during the period of my research, close to three hundred lawyers involved in court litigation.

6 Analogously, by stressing her impartial concern for her children, the widow sought to portray herself as a good wife and mother as the role was traditionally conceived in Malta.

7 For instance, clients give gifts to their lawyers and try to involve them in discussions about non-legal matters.

8 Herzfeld, (1993) explains that consequently the Greek nation-state has not absorbed into itself all the idioms of social identity; so that these can function independently of and be employed to contest the state structure.

from a rural or lower-class background, who try to create personal relationships with them in order to control the way they carry out their work. Clients make indirect attempts to develop these patronage ties, evoking moral sympathy through the way they narrate the 'facts' of the case. This strategy is difficult to rebuff, given the 'inescapably moral' (Bruner 1990: 50) character of the stories through which the 'facts' are communicated.

The Social Uses of Professional Ideals

Lawyers' professional ideals have been approached from the standpoint of their interviews with clients because these ideals are not simply abstract principles to which lawyers pay lip-service. On the contrary, they have a direct practical application, helping to equip lawyers to cope with the pressures clients place on them. These social uses of professional ideals are revealed by the way they are taught to new generations of lawyers. Professional ethics are not fully incorporated into the standard academic curriculum at university. They are usually taught to young lawyers by practitioners during the minimal period of transition from the University to legal practice.[9] Moreover a Maltese code of professional ethics for lawyers was only published in 1996.[10] Thus the transmission of professional ideology forms part of a process of oral socialization through which young lawyers learn to view themselves as members of a professional community with its own distinct interests.

An important practical use of professional ideals is that of justifying lawyers' non-response to their clients' stories. During my fieldwork, I often observed lawyers keeping a sceptical distance based on the need to preserve their professional detachment. This refusal to fully endorse clients' narratives was signalled by the ironical comments lawyers sometimes made, the contextual absurdity of which showed they were not 'taken in'.[11] A sense of professional detachment could also be transmitted through formal clothing, the organization of space in legal offices[12] and an aloof attitude when interacting with clients. These invocations of professional ideals clearly reflect attempts by lawyers to resist entanglement in patron/client relationships.

The connection between the professional ideals upheld by Maltese lawyers and their clients' involvement strategies can be perceived by exploring the way the task of legal representation is described according to professional ideology. The comments of one established and highly respected lawyer are typical in this regard. When I interviewed him on this point, this lawyer made a distinction between the 'case', which the lawyer is duty bound to present to the court as effectively as possible, and 'facts', which are 'in the hands of the client' to prove. He observed that the stories clients tell under oath and in the courtroom context are often very different from the ones they originally told their lawyers. Consequently facts should emerge in the court-room setting of an oral hearing, which he termed a 'search for truth' undertaken before the judge. He therefore objected to the use of written affidavits[13] as an alternative way of collecting evidence; claiming that they tempted lawyers to write their clients' stories for them and risk perjuring themselves. He also observed that he had never witnessed a signature in the absence of the person concerned.

Thus, professional ideals portray legal representation as a process where the lawyer's concern with the issues at stake is distinguished from that of his or her client. Lawyers are concerned solely with the 'case'; consisting of the legal arguments and claims to be made.[14] The proof of the 'facts', on the basis of which these legal arguments are raised, is the client's job. This distinction establishes a conceptual boundary between the domain of the client, which is one of potentially changeable oral stories of dubious credibility, and the domain of the lawyer, which is one of legally valid writing. By drawing such a boundary, lawyers escape responsibility for proving their clients' stories, confining their role to legal argumentation. In fact, Maltese lawyers constantly assert their detachment through expressions like: 'trying to win the case for the client', which imply they have no personal interest in the outcome.[15]

9 Generally professional ethics are taught in the sixth year of the LL D course, which was until very recently perceived as a period when the academic teaching of law was at an end, so that students concentrate on their apprenticeship and on preparing their dissertation. Professional ethics are also favourite subjects for speeches on such occasions as the granting of the professional warrant, or in seminars organized by the law students' society.

10 Reference is made to the 'Code of Ethics and Conduct for Advocates', published in 1996 by the Commission for the Administration of Justice, The Palace, Valletta, Malta.

11 For instance, in one case, a landlord kept telling his lawyer what a gentlemanly relationship he enjoyed with his tenants, while he also sought advice on how he could legally increase the rent. His lawyer calmly observed that as the tenants were professional people, it was going to be difficult for the landlord to make fools of them!

12 Professional detachment was conveyed by maintaining a spatial demarcation between the 'front office', where clients wait and their files are located and the 'inner office', where lawyers sit surrounded by law-books.

13 An affidavit is a written statement of the client's version of the facts. They are supposed to be precise reproductions of their stories and clients must confirm them on oath. Maltese judges are increasingly requesting the presentation of affidavits instead of oral testimony.

14 Lawyers are prepared to accept more involvement with the facts in criminal cases.

15 Strictly speaking, lawyers have no financial interest in winning law-suits. This is because their fees are calculated according to an official tariff, according to such matters as the value of the object of the suit. Naturally, however, lawyers who consistently lose suits will probably fail to attract as many clients as others.

This professional model of legal representation is significant for two principal reasons. Firstly, it is almost diametrically opposed to the way most clients would like to construct their working relationships with lawyers. Whereas clients would like to start from a moral consensus with their lawyers concerning the facts of the case; the professional model requires lawyers to base their court-room representation on a prima facie assessment of the facts which is solely intended to clarify the legal issues involved. Clients often believe that once they take on a case, lawyers assume responsibility for ensuring a successful outcome in the court-room. By contrast, the professional model places the burden of producing convincing evidence firmly in the hands of the client, restricting the lawyer's role to 'purely' legal argumentation.[16] Consequently, although the client might feel that this is unethical, the professional model authorizes a lawyer to institute a court case on behalf of an insistent client even if the lawyer believes that he will lose the case because his evidence is not sufficiently persuasive or credible.[17] Evidence belongs in the clients' hands and lawyers are distanced from any responsibility for it.

Secondly and more importantly, it seems clear that professional ideals which have the effect of distancing them from responsibility for the 'facts' can be very useful to lawyers in a social context where clients try to use their narration of the 'facts' to implicate them in patronage relationships. I suggest that Maltese lawyers favour an extensive interpretation of the meaning of professional detachment when representing clients in litigation precisely because it allows them to escape the pressures which clients exert through the medium of the 'facts'. If this is correct, then it shows how the interpretation of professional ideals is influenced by the practical context in which it occurs.

This analysis is open to the objection that I have overemphasized the homogeneity of Maltese lawyers, ignoring the occupational differentiation of the profession and possible differences in style and approach which might lead to different interpretations of professionalism. However, the internal differentiation of the Maltese legal profession is not very great. My statistics[18] show that in 1994, 44% of lawyers were sole private practitioners, 28% were employed with law-firms and 13% with the Government. The remainder were either non-practising or employed with various private companies. Moreover, Maltese law-firms are usually small partnerships where the type of work closely resembles that of a sole practitioner. Indeed, only four of the law-firms listed in 1994 had a membership of seven or more and the largest of these grouped eleven lawyers. In the exercise of their profession, most firm lawyers find that it is important to be flexible and to be prepared to carry out different types of work, even if they have specialized in certain fields.[19]

Stylistic differences in handling clients exist and they do seem to be broadly correlated to occupational status. Sole practitioners are more likely to devote time to listening to their clients and to provide some endorsement of their stories, while firm lawyers tend to place a higher premium on efficient time management. However most lawyers find it necessary to strategically balance between patronage and professionalism when handling clients. The attractions of professionalism are obvious, since it frees lawyers from clients' pressures and allows greater efficiency. Yet there are important reasons why even firm lawyers find that they cannot avoid acting as if they were, to some extent, their clients' patrons.[20] Thus, as already observed, many clients want to create patronage relationships and lawyers, who operate in a very competitive market, are eager not to alienate them. Moreover certain clients do not feel able to confide secrets to their lawyers unless they have a personal relationship with them (Du Boulay 1974). Finally, as was previously argued, patronage relations are in a way in-built into clients' stories.

It follows that despite the existence of occupational and stylistic differences among Maltese lawyers, they generally attempt to strike a balance by providing limited endorsement of their clients' narratives while also trying to emphasize their professional detachment from them. Few lawyers are willing to forego the benefits of belonging to the '*Professjoni Libera*', or 'free profession' as they call it, by wholeheartedly identifying themselves with their clients in patronage relationships. Indeed certain lawyers were criticized by their colleagues both because they develop close patronage relations with clients and because they help to draft affidavits on their behalf. This criticism clearly shows how lawyers tend to equate professional

16 Thus, clients' views on affidavits contrast to those of lawyers. In fact, clients complained to me that their lawyers had barely glanced at the affidavits they wrote. While clients expected their lawyers to take responsibility for the evidence, this is precisely what the latter wanted to avoid.

17 Of course the lawyer has a recognized duty to inform his client that he thinks he will lose the case.

18 Data was culled from the 'Legal and Court Directory' produced by the Camera degli Avvocati, the Maltese lawyers' association. The directory contains a list of practising lawyers which can be considered as fairly exhaustive, given that practically all practising lawyers are members. I consulted the 1994 and 1992 issues of this Directory.

19 This is due to the small size of Malta, which means that the number of legal jobs available in any area of practice is necessarily limited.

20 By, for instance, occasionally waiving payment for legal advice and giving more attention to clients.

detachment, in the sense of keeping the necessary distance from the client,[21] with professional legal representation, in the sense of confining oneself to the legal issues and leaving ultimate responsibility for the 'facts' to the client. Clearly, most Maltese lawyers believe their professional detachment requires the avoidance of excessive involvement with the 'facts', viewed as a potential source of 'symbolic pollution', in Mary Douglas's (1988) usage.

The Reforms and their Outcome

Having explored the way lawyers interpret professional ideals in the ordinary course of their legal practice, it is now possible to reach a deeper understanding of the obstacles impeding certain reforms which the Maltese Government carried out in 1996 to the system by which evidence is compiled in court. By focusing on this particular case-study, the broader social effects of professional ideals will be highlighted. Firstly, however, it is necessary to explain the pre-1996 system for compilation of evidence and the public discontent which motivated these reforms in the first place.

Litigation before the Maltese civil courts traditionally occurs in two broad, successive, phases. A preliminary written phase, in which the litigants send each other their respective written legal claims and statements of defence, is followed by an oral phase when the parties and their witnesses testify and the lawyers question witnesses and present their own arguments. During the written phase and together with their legal claims, the litigants are obliged to send each other a 'declaration of facts' which should contain their respective statements of the 'facts' at stake. Together with this, each of the litigants is also expected to file a list of the documents and a list of the witnesses which s/he intends to produce during the case. After the preliminary exchange of their written claims, the case then shifts to the oral stage where each of the litigants has a chance to testify and to produce any witnesses mentioned in her list. Testimony is usually heard in a certain order: starting from the plaintiff and continuing with his witnesses and followed by the defendant and his witnesses. Witnesses are first examined by the lawyer for the party who summoned them and then cross-examined by the opposing lawyer. Their replies are transcribed by the court clerk. Often, important documents are handed over to the court by witnesses in the course of testimony After all the witnesses have been examined, the judge defers the case so that he can pronounce his judgement.

What this account omits are all the delays which are caused when this system is implemented in practice. These are due to various causes. For instance, litigants often find it impossible to summon all their witnesses to testify on the same day. Consequently, cases are usually postponed for three months so as to hear the testimony of new witnesses. Some litigants tend to name fifty or sixty witnesses and expect to be allowed to summon them all to testify! Additional problems are caused when particular witnesses do not come to court or cannot be traced and the case is normally put off to allow lawyers to try to contact these witnesses. There are many other causes of delay which cannot be mentioned here. Delays mostly arise during the oral phase when testimony is being produced. Court delays have multiplied during the past few years. Statistics for 1997[22] indicate that by the end of January 1997, there were a total of 22,861 cases pending before all the Maltese courts.[23]

Recently, increased media attention has focused on the issue of court delays. It is increasingly acknowledged as a serious problem which results in the denial of justice and alienates people from the courts.[24] Partly in reaction to this growing public concern and in order to enhance the efficiency of the courts, the Maltese government in July 1995 enacted a law to reform various procedural rules.[25] This law contained provisions relating to the trial of law-suits which caused controversy. In particular attention has focused on the new procedure to be followed by judges when compiling evidence in civil trials.

In terms of this new procedure, a pre-trial hearing was to be held before the first sitting in the case. The aim of this hearing in the words of the government minister – himself a lawyer – who introduced the amendments, was to allow the court to: 'identify and record the points of law and fact in contention

[21] A similar model of legal representation is found in the Maltese code of ethics for lawyers (op. cit.). Significantly, this code prescribes that an advocate representing clients in civil litigation: 'is under a duty to say on behalf of the client what the client should properly say for himself or herself if the client were allowed to plead for himself or herself and possessed the requisite skill, knowledge and legal training' (Rule 11, Part IV, Cap 1). By requiring advocates to restrict their representation to what clients should 'properly' say, this code prevents their complete identification with clients.

[22] These figures were given by Justice Minister Charles Mangion in a reply to a Parliamentary Question. They were reproduced in the Maltese daily newspaper *The Times*, March 5th 1997.

[23] Of these, 1,067 cases were pending before the Court of Appeal; 8,318 before the Civil Courts and 11,150 before the Magistrates' Courts.

[24] A good example of the tone of the comments made by the Maltese newspapers are two newspaper editorials which both appeared during June 1997, while I was doing my research. While the editorial of the conservative daily *The Times* emphasized the need to speed up court proceedings, that of the left-wing weekly *It-Torċa* claimed that 'In the administration of justice, the citizen expects the legal process to be *efficient* (my italics), comprehensible and really just. The citizen is not satisfied on any one of these points.'

[25] The law in question is Act 24 of 1995, which amended the Code of Organisation and Civil Procedure. The provisions of this law which concern us were brought into effect by means of a legal notice in 1996.

and the proof to be given by each witness' (Fenech: 1996b). The second major innovation was that after the pre-trial hearing, judges were given the option of choosing the system by which evidence was to be heard. Previously the principle was that all testimony had to be heard orally. Instead judges were now given the option of compiling all[26] evidence by means of written affidavits prepared by parties and their witnesses and deposited in court. However, even if this 'affidavit system' were to be chosen, the opposing lawyer was to continue to enjoy the facility of conducting an oral cross-examination of parties and witnesses on the testimony contained in their affidavits. Finally the third innovation was that judges were then to fix a date for a full hearing of testimony (if the evidence was to be compiled 'viva voce') or for hearing by cross-examination (if the affidavits system was selected). During this sitting all the oral testimony to be presented in the case was to be heard uninterruptedly. There were to be no adjournments except in very special circumstances. This contrasted with the previous system, in which witnesses were heard on several different sittings and adjournments were frequently granted.

Before exploring these innovations further, it is important to consider the way they were implemented. The collective response of judges to the amendments was to introduce a new judicial role: that of the Master, which was not contemplated in the amendments.[27] By agreement among the bench, one of the judges assumed this role and was entrusted with around 3,000 cases in which, to quote the current Chief Justice: 'very little was being done' (Said Pullicino 1997). His task was to be that of conducting a pre-trial hearing in this case and in all new cases to be filed in the future. After he had clarified the points in issue and the proof to be made by different witnesses, he was to transfer these files to the other judges before whom the actual court sittings would be held. Consequently while the amendments had contemplated that all judges would hold a pre-trial hearing in every law-suit they adjudicated, the effect of the judges' decision was that only one of the judges would conduct the pre-trial hearings. Moreover this judge would not be the one before whom these cases were actually heard. The Chief Justice justified these changes on the grounds that:

> in a situation like ours where the administrative infrastructure is lacking, where the number of judges was inadequate and the culture of accepting certain systems of control on the compilation of evidence and the regulation of the cause by the judge objected to, all these amendments, rigidly applied, could not have the desired beneficial effect without bringing about a traumatic experience. There was, on the contrary, the danger that this would bring about a total collapse of the system. It was principally for this reason, therefore, that through an administrative process – which was not contemplated in the amendments and introduced clandestinely – the system of the Master was introduced. (Said Pullicino 1997)

In November 1996 there was a change of Government. On meeting with the new Minister of Justice, the President of the Chamber of Advocates called for the abolition of the affidavits system, which was the second plank of the newly introduced reforms. He claimed that this worked against the conscience and professional training of lawyers. He hoped, however, that the Master system: 'would be operated more effectively' (Cremona: 1996). Following this, there was mounting criticism of the new Master system from various lawyers and judges, on the grounds that it had only served to create another bottle-neck, since one judge could not possibly hold pre-trial hearings in 3,000 cases together with all the new law-suits that were being filed.

The next development occurred in April 1997, when a seminar was organized to discuss the implementation of the new amendments. Opening this seminar, the Chief Justice admitted that the Master system was not working as well as originally planned (Said Pullicino 1997). Then, in June 1997, the Minister of Justice announced the setting up an 'Advisory Committee for the Law-Courts'. The committee was given an extensive brief, which included continuous monitoring of the situation and recommending changes to the laws, administrative set-up and the Master system in order to increase the efficiency of the courts. More recently, in January 1999, the President of the Chamber of Advocates gave a speech in which he called on the legal profession to give the new Master system a proper try, asking them: 'not to discard the system before attempting to employ it in its entirety' (Cremona 1999).

My reason for recounting the ongoing history of these procedural reforms is to draw attention to the relationship all the protagonists draw between court delays and the manner in which evidence is compiled. They argue that there is a Maltese culture or 'ingrained mentality' (Brincat 1997) which resists greater control on the process of compilation of evidence. This mentality is so powerful that it induced judges to introduce the Master system, so as to avoid a: 'traumatic change' (Said Pullicino 1997) which could: 'lead to the total collapse of the system' (ibid.) Moreover, it has even subverted the Master system itself. However, in the light of the preceding discussion of the way Maltese lawyers interpret their professional role, the failure of these reforms does not seem so surprising. If Maltese lawyers believe that professionalism is asserted through avoiding excessive involvement with the facts of the case by leaving them in the hands of their clients

[26] Previously affidavits tended to be restricted to the testimony of the litigating parties.
[27] The master system was modelled on English procedures.

to prove, then they might not be too keen about reforms which operate precisely by obliging lawyers to take more responsibility for the factual aspect of cases.

Taking more responsibility for the facts is the common thread which links the various proposed reforms to the system of compilation of evidence of the Maltese courts. This is most evident in the case of the proposed system for compiling evidence through affidavits, which did in fact provoke lawyers' protests that it obliged them to act unprofessionally. However even the proposed 'pre-trial' and Master systems operate by requiring the parties to state the facts as they see them at the start of the case in a less formal arena than that of ordinary litigation. In such a setting, lawyers would not have such a clearly defined role as they have during a court-room trial and it would be more difficult for them to assert their detachment from the factual aspect of the case. Lawyers would be more personally involved in telling and validating their clients' stories.

In resisting these reforms, lawyers followed a well established tradition. As part of an attempt at reforming the Maltese courts, the British Royal Commission of 1913 had recommended that a written 'declaration of facts' be submitted by litigating parties at the start of their lawsuit. While this requirement was incorporated into the law, it was negatively received by the lawyers, who scented a threat to their professional detachment. Their collective reaction was to draft these 'declarations of facts' in such an elliptical way as to turn them into what are effectively summaries of the statements of the legal claims being made in the case; thus leaving the 'facts' to emerge in the course of the oral court-room hearing.[28]

Analogously, lawyers have expressed resistance to the new procedural reforms in both direct and indirect ways. As the earlier-quoted extract from the Chief Justice's speech made clear, it was actually judges rather than lawyers who aborted the system of pre-trial hearings by 'clandestinely' (Said Pullicino 1997) introducing the Master system. However, as the Chief Justice also noted, they were anticipating the objections lawyers would make; given their objections to: 'certain systems of control on the process of compilation of evidence' (ibid.) All Maltese judges are drawn from the pool of practising lawyers, together with whom they constitute a tightly-knit court community. Maltese judges are keen to uphold their independence in the face of possible government interference. They are therefore disinclined to rigidly apply administrative reforms which could antagonize lawyers, especially if these reforms appear to raise problems of professional ethics. These attitudes seem also to have contributed to widespread non-compliance with the rule that all evidence be produced in one court sitting and to a notable lack of enthusiasm for the new option of compiling most of the evidence by means of affidavits.

Through their resistance, Maltese lawyers have managed to safeguard their understanding of their professional role in the face of administrative reforms which threatened to define it differently. However there is also a negative side to these assertions of professionalism. By leading lawyers to avoid taking responsibility for the 'facts' and to insist that these must be proved by clients in the courtroom, they create room for various strategies through which the process of the production of evidence is made more elaborate and time consuming. These strategies depend for their success on the increased time it takes to produce oral, as opposed to written, evidence in court. Written affidavits also take less time to read and make it easier to establish the points of contrast and similarity between the versions of the different parties and their witnesses. Conversely, if the 'facts' are orally produced, then it becomes possible to:

i. Produce irrelevant testimony or contest all the evidence presented by one's opponent in litigation. This is because the relevant 'facts in issue' remain unclear for a longer time.
ii. Summon many witnesses to testify to the same 'facts'.
iii. Conceal valuable evidence from the opposing party in litigation, until it becomes strategically appropriate to disclose it.

The effect of these strategies is to produce what could be termed the 'problematization' of evidence. By referring to 'problematization', I want to highlight how difficult and problematic the process of compilation of evidence can be made and to suggest that such an outcome may sometimes be actively intended. After all, it can be in the interest of both lawyers and their clients to create delays. In this way, lawyers can gain more control over the evolution of litigated cases and acquire more space to manœuvre in the interests of their clients. Moreover, a client who looks set to lose a case may benefit from such delays. It seems, in brief, that professional interests may easily fuse with professional ideals in a powerful combination which explains the perseverance with which lawyers have resisted attempts to reform the system by which evidence is compiled.

Conclusion

The implications of this research appear in sharper relief if it is placed in a comparative perspective. A touchstone is provided by Merry's (1990) study of the legal consciousness of

[28] So as to explore this issue, I examined the first fifty law-suits filed in February 1997. There were only three instances in which the 'declaration of facts' filed by the plaintiff was substantially different from the 'ċitazzjoni', the statement of the plaintiff's legal claims; containing additional details which were not mentioned in it.

working class American clients. She showed how these clients often view court proceedings as a way to escape the close and constricting communities in which they are embedded. Litigation offers the possibility of socially distancing oneself by asserting one's rights as a citizen of a bureaucratically organized nation-state. By comparison, the present study focuses on the other side of the coin, by showing how lawyers try to socially distance themselves from their clients and invoke professional ideals for this purpose. Yet this professional detachment cannot always be maintained. Maltese lawyers cannot afford to excessively discourage their clients and must therefore walk the tightrope between patronage and professionalism. Paradoxically, this may create a situation where the professional ideals of lawyers are themselves utilized to service their patronage relationships with their clients; since they allow lawyers to create delays by 'problematizing' the compilation of evidence.

To sum up, this research confirms the original argument that the actual social context of implementation of professional ideals needs to be examined very thoroughly. The way Maltese lawyers have interpreted their professional role appears highly influenced by the social pressures their clients place on them. At the same time, the social effects of these ideals have been shown to be potentially negative, since they favour the 'problematization' of evidence which creates court delays.

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