

Professional authority and state power

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Professional authority in the United States today is undergoing an unprecedented transformation. This is more true for the classic professions of law and medicine than it is for other professions and even “semi-professions” like social work and nursing.¹ While less prestigious professions still struggle to establish their authority on the grounds of expert knowledge and special training, the authority of the legal and medical professions is being undermined by the commodification of legal and medical services. How these new market relations affect the legitimacy of professional authority and, indirectly, the political legitimacy of the state is the subject of this essay.²

Arguments about legitimation dominated political theory for almost a decade after the events of the late 1960s.³ While less mechanical than earlier Marxist crisis theory, they never moved beyond an abstract systems theoretic approach. This is unfortunate because the legitimacy of the modern state should be at the center of political theory.⁴ I hope to revive the legitimation crisis thesis by focusing on the current transformation of professional authority. When read in the context of this transformation, some of the central claims of Jürgen Habermas and Claus Offe in particular become more plausible.⁵

I begin with the importance of professional authority for Habermas’s and Offe’s theories generally. These preliminary remarks only serve to link professional authority and their analysis of state power through the concept of needs. By themselves, they do not strengthen Habermas’s and Offe’s legitimation crisis theses, which I will hereafter refer to as a single thesis with complementary parts. To expand and strengthen this thesis, I will then work my way through the current transformation of professional authority and finally return to Habermas and Offe in more detail

to show how the deconstitution of professional authority may threaten the legitimacy of the state.

Legitimacy and needs

According to Habermas and Offe, the “scientization” of politics is the underlying cause of the legitimation crisis in capitalist democracies today. It has both a theoretical and practical dimension. The singlemindedly scientific study of politics distorts the unavoidably hermeneutic dimension of political thought. The scientific practice of politics strips it of its democratic content. Politics, in theory and practice, has become a rationalized technocratic activity and an invitation to authoritarianism. At the center of the scientization of politics is the state, the primary agent of organization and administration, which is increasingly closed to popular participation. As such, the state can command neither moral respect nor political loyalty. Its objective and subjective legitimacy is potentially called into question.

However, there is no guarantee that this will happen. The legitimation crisis of the state is only a possible product of several tendencies and counter-tendencies. As the state has intervened more deeply in crisis-ridden capitalist economies, its ability to act on behalf of capital while maintaining an adequate level of popular acquiescence has periodically faltered. This, in turn, has led to forays into more traditionally private spheres of life like the family and the school in order to rebuild a minimum level of popular acquiescence. However, the state’s presence in these private spheres has triggered new political impulses (“new social movements,” which include the women’s movement, the ecology movement, the peace and antinuclear movement, and the movement for local autonomy) that resist state action. These movements have created a political space outside existing political institutions and formulated a rudimentary moral discourse separate from the narrow technocratic rationality of state-centered politics. Thus, while the scientization of politics is marked by a general antidemocratic depoliticization of the public sphere, it has also kindled a repoliticization outside established political institutions and skepticism about the legitimacy of state power. This, at least, is the direction in which Habermas and Offe believe things are going.

It is this particular hypothesis about a legitimation crisis brought on by repoliticization that an analysis of professional authority eventually can

make more plausible. But first, in order to demonstrate the relevance of the current transformation of professional authority to this hypothesis, we must introduce the concept of human needs. The concept of needs is a crucial bridge in my argument. It is implicit in the general legitimation crisis thesis, although Habermas and Offe don't pay enough attention to it. It is also closely related to the current transformation of professional authority. Once these separate connections are nailed down, it will be possible to see how the concept of needs serves to bridge the transformation of professional authority and the repoliticization hypothesis in Habermas's and Offe's legitimation crisis thesis. Admittedly, this is a very abstract way to begin my argument, but in time it will be filled in with enough concrete details to support at least its own weight and, I hope, more.

According to Habermas and Offe, one thing that is lacking in an age of scientization is a language to discuss critically the origins and scope of human needs. Where needs come from and how reflection on them can alter them was a central concern of much of traditional political theory from Plato to Marx. Modern politics, in theory as utilitarianism and in practice as public-policy analysis and public administration, simply assumed the existence of some nonproblematic array of needs (a set of indifference curves or a single-peaked monotonic preference curve). This empiricist assumption about human needs is itself a political problem that implicitly bears on the legitimation crisis thesis for the following reason.

If needs are social as well as natural determinations, and if they play an important role in motivating human conduct, then a critical theory of society like Habermas's and Offe's should include a theory of needs. It must be able to identify accurately their origins and evaluate their impact. Secondly, and more to the point, to the extent that state action is involved in the selective recognition, encouragement, and endorsement of human needs, an analysis of the legitimacy of the state should be part of such a critical theory. When the state is (partially) responsible for the proliferation of, say, trivial or divisive needs, its objective legitimacy may be questioned. When the state is (partially) responsible for needs that make rational reflection on it impossible, its subjective legitimacy may also be suspect.

Unfortunately, neither Habermas nor Offe have developed a theory of needs or needs interpretation. This is a serious incompleteness in their theories in light of the inadequacy of available theories of needs. A criti-

cal theory of society like theirs must include a theory of needs that doesn't simply posit true and false needs in order to bolster its own internal coherence.⁶ At the same time, it must avoid collapsing needs and wants as the empiricists do. The only alternative, as far as I can see, is a pragmatic theory of needs interpretation that rests on the value of needs interpretation for informed democratic participation, and that also seems perfectly consistent with Habermas's theory of communicative action and Offe's account of democratic social movements. A pragmatic theory of needs interpretation would hold that (1) the tentative approval of some wants as needs would be one of the aims of democratic participation and (2) the test of these provisional needs would be the effect their recognition and satisfaction would have in practice on the openness and fairness of democratic political life. Such a theory obviously requires balancing the value of democracy against other values and requires a strong Millian belief in the educative effects of political participation.⁷ However, only a theory of this sort is consistent with the larger critical aspirations of Habermas and Offe. Although there is no room here to elaborate and defend such a theory, I illustrate below how it might be applied in particular cases. The important thing for the moment is the theory provides a positive sense of how the legitimation crisis thesis should be connected to the concept of needs.

Now, what is professional authority's connection to the concept of needs? While the dominant public-policy orientation toward needs and wants in the United States is noninterpretivist and empiricist, there is one area in which needs interpretation has operated. Until recently, if needs were questioned at all, they were questioned by professional authorities in the context of intimate client and patient relationships. Doctors helped patients assess their mental and physical needs. Lawyers helped clients assess their more material familial needs – how much it is wise to save and spend – which in many cases included their corporate holdings. Clergy members addressed these same secular needs for those too poor to afford their own private doctors and lawyers, but as medical and legal services for the poor and elderly have expanded, the clergy have become even more anachronistic so that now they function like any other interest group. Again, until recently the classic professions enjoyed a particular kind of authority that allowed individuals to consult them, not just to see how to satisfy existing needs, but to see how to evaluate and possibly alter them. What some societies have done politically, Americans did in the intimacy of these private professional relationships.

The current transformation of professional authority has left the profes-

sions unable to fill this political gap. Instead of a critical analysis of needs, doctors and lawyers submit to a technocratic language of their own that substitutes risk and liability assessment for an interpretation of needs. The fixation on malpractice insurance, for example, is of a piece with a larger corporate trend toward greater reliance on political-risk analysis, pollution-risk analysis, and the like. To date, the proliferation of risk and liability assessment in public-policy analysis, oftentimes in close cooperation with private corporate planning, despite its inconclusiveness, has not led to any greater questioning of the legitimacy of the state. In fact, this new line of snake oil seems to have enhanced the reputation of the state as a careful planner while quietly redistributing the costs of failed policies and investments to those least able to bear them. This may change as the state encourages and pushes the classic professions further in this new direction.

Therefore, what I show in this article is how the decline of professional authority has left many citizens with no professional or institutional place to go to discuss critically the origins and scope of their human needs, and also what the political consequences of this may be. Both the classic professions and established political institutions are preoccupied with risk management and liability. If consumers of medical and legal services are denied the opportunity to discuss the origins and merits of their health and legal needs, the potential for new social movements committed to the pragmatic and democratic interpretation of needs may indeed increase.

In other words, the missing piece in Habermas's and Offe's account of new social movements that makes the claim of potential repoliticization more plausible is the demand for extra-institutional democratic needs interpretation. It is not, as Habermas and Offe seem to believe, the mere intervention of the state into previously self-legitimizing private spheres that is likely to trigger new social movements. In fact, oftentimes new social movements rely on the state to enforce laws that they support. The ecology movement is a good example. What is distinctive about new social movements is the way that they problematize needs. The women's movement has made the desire for an elective abortion a contested need and a political issue. Similarly, the ecology movement has made the desire for the preservation of other species a contested need and a political issue. When established political institutions (e.g., regulatory agencies and administrative law courts) have attempted to recast these issues in technocratic terms, they have often recharged these movements.

Authority and power

One more preliminary point remains before we can sketch out the details of the transformation of legal and medical services and the decline of professional authority. It involves the general concepts of authority and power. Authority and power as a theoretical pair have their philological roots in Roman thought,⁸ and much of the subsequent history of political thought can be read as a debate over the meaning and interrelationship of these two famous words.⁹ Contemporary analytic political philosophy has been only slightly less preoccupied with the problem of authority.¹⁰ There is no reason to rehearse all the core concepts and alternative conceptions that have been developed in order properly to distinguish the two. For the most part, reconstructing political discourse as a conflict between two concepts runs the risk of detaching them from social and political conflicts and invites a search for final solutions and ultimate truths. The conflict between the concepts of power and authority, like the conflict between liberty and equality, too often is posed in ahistorical terms that mask the prescriptions embedded in philosophical analysis. Pragmatic goals fitted to particular contexts are more appropriate and less misleading when examining these terms, and the best way to ensure this is to be clear about the relevant context within which these terms have clashed and also to specify what kinds of power and authority are in question.

Let me say a word about the context first. In the United States today, what makes the relation between power and authority bedeviling is not their overlapping grammar (which is to be expected) but the peculiarly truncated way in which they have been juxtaposed against one another. Any analysis of power and authority in America, professional or otherwise, must begin with a twofold problem: historically there has been an obeisance to authority coupled with mutually reinforcing skeptical attitude toward power as an instrument epitomized by repressive state action.

Tocqueville picked out the former disposition when he identified the place of public opinion in American democratic culture.¹¹ Americans, he argued, are more than willing to accept a multiplicity of social authorities. This conformity has continued in the form of an uncritical acceptance of the views of religious leaders and media personalities. Of course, it has been challenged periodically. But the challenges have failed to grasp the necessary, although not sufficient, political preconditions that make the authority of these persons and institutions possible. When

authority of this sort has been challenged, it has usually been on the charge of fraud or abuse: those in authority have misrepresented themselves or preyed on those who have trusted them. The larger political question – What kind of political society must exist in order for these authorities to hold sway? – is rarely asked. This is precisely the question Tocqueville sought to answer. He argued that the providential idea of democratic equality as it is embodied in American politics and society is responsible for the authority of public opinion.

Leaving aside the merits of Tocqueville's case against equality (that it breeds mediocrity and a servile conformity), this distinctively American attitude toward authority is, as I have said, coupled with an equally strong aversion to power. Obeisance to authority remains entrenched, and one reason for this is that authority in its various forms enjoys in the public mind a privileged position outside of politics. Authorities appear less threatening and more politically benign because we think of them as originating on apolitical terrain. Admittedly, they may have to be politically licensed and controlled, but they are not thought to be tainted by power at conception. This means that to understand public opinion, conformity, and social authority in America we must also understand the narrow way in which power is viewed. Since the framing of the Constitution, the dominant view has been that power is an instrumental force epitomized by the state. State power does have to be divided, limited, and representative, but whether it is controlled by a "majority faction," an elite, or the bureaucracy, it remains the ability to coerce and prevail, and its exercise does not stand in need of additional legitimation based on claims of expertise or virtue. Even the concept of bureaucratic expertise borders on the oxymoronic in our culture. There is no authoritative source of political knowledge, no ship's captain, in the United States. When critics of the legitimation crisis thesis argue that, whether from the left or the right, it is just another jeremiad, what they have noticed are the purely formal and procedural conditions that state power has to meet in order to be legitimate in the United States.¹²

This historical tension between power and authority has become dichotomized and exaggerated in ordinary language. Authority is a quality possessed by people by virtue of their expertise and credentials; power is a measure of their relative capacity to determine or codetermine outcomes and decisions. Authority influences; power determines. Authority can be deferred to; power is obeyed. Authority can be ignored; power must be resisted. Those in authority can explain themselves although they don't always have to; those in power don't have to and often can't.

Those in authority discredit themselves when they use force; those in power have to make the threat of force credible once in a while. Americans seem to be anxious to assent to, defer to, and go along with social authorities; at the same time they have remained hostile, almost allergic to instrumental power, preferring instead to set it up in hopes that it will somehow manage on its own. The two views feed on each other. The more you see power as a repressive instrument of mute, sometimes brutal control, the more willing you are to accept uncritically authorities whose origins appear relatively independent of this instrumental power. Such wishful thinking is doubly mistaken. Authority is not politically benign and state power may require further legitimation as its relation to other forms of authority changes.

Of course, such a simple dichotomy hardly does justice to a scholarly literature in which the political biases of expert authorities, the legislation needed to license professional autonomy, and collusion between public power and private authorities have been examined in great detail. But these more sophisticated empirical studies share the premise with popular usage that no matter how dependent authority is upon political power for its license and mandate and no matter how illicitly private authorities pay public power back for their privileges, the social bases of authority remain separate from coercive power and the legitimacy of state power does not rest on the authority of political knowledge claims.

Even the most careful critics of the professions in America make this twofold assumption in analyzing the relation between power and authority. For example, in 1970 Eliot Freidson, following the lead of Everett C. Hughes, described what makes the medical profession an autonomous occupation in the United States and why patients obey doctors. The autonomy of doctors rests on their dominant institutional position within the informally organized provision of health care itself and not just the legal license and mandate they enjoy from the state. Separate from this, their authority over patients rests on a mixture of expertise, status, and quasi-bureaucratic prerogatives to withhold drugs and medical services. However, despite this careful analysis (which I will suggest below is now incomplete), Freidson still yearns for old-fashioned professional authority. He distinguishes between the state-granted monopoly powers of the professions and the legitimate authority that real expertise merits and reliable credentials betoken. Professionals, he argues, should have enough autonomy to do their work but they shouldn't be able to use their autonomy to accumulate power on top of their deserved authority through excessive non-competitive practices. Freidson's view

strikes us as sensible precisely because it rests on a dichotomous premise. He recognizes the abuses that Anglo-American professions are prone to when autonomy is used to enhance legitimate authority. The trick, he seems to be saying, is to find some way to draw the line without destroying autonomy entirely. The professions need to be sheltered from the market by the state and protected from the state by public recognition of their nonpolitical foundations. Only then, Freidson implies, will they be able to contribute to advanced industrial society within its complex division of labor.¹³

Professional autonomy and authority have indeed depended upon state power and the internal organization of the professions. What has changed recently is the subtle way that state-disciplined market relations have supplanted the traditional guild-like autonomy of the classic professions to undermine professional authority. I will call this the deconstitution of professional authority.

The constitution problem

Today we ordinarily think of constituting secular power, not authority, as a process of assembling and agreeing to the form and scope of political institutions. According to the conventional wisdom, contemporary authorities are not usually formed in this way, especially professional authorities. Persons in authority may derive their authority from the private or bureaucratic offices or positions they occupy. Alternatively, persons with authority have their authority because of who they are, what they know, or both.¹⁴ But to speak of them as constituted authorities again seems odd.

Let me suggest one way to think about the constitution of professional authority that may not be so odd. The constitution of professional authority, where it is successful, can be construed as a continuing process. This is because professional authority needs to be reinterpreted and justified anew for each succeeding wave of clients and patients. It doesn't have the longevity of traditional forms of authority. Furthermore, unlike scientific authority, professional authority is authority over clients and patients, not among peers,¹⁵ and so expertise can't speak for itself in some unmediated way. Diplomas on the wall don't impress patients and clients the way being footnoted impresses colleagues. Family photos on the consulting desk are more effective, but even they are of limited reassuring value. In order for professional authority to be reworked so that

it is intelligible and needed by new clients and patients, clients and patients must be organized and oriented toward it in the right way.

In order to be receptive to professional authority, clients and patients have to have certain kinds of needs. It is not enough that professionals have limited monopoly power and organize to boycott and exclude those they consider pretenders. Simply giving clients and patients nowhere else to go is not enough. Political autonomy does not guarantee authority over patients and clients. Each new generation of patients and clients must be oriented toward professional authority, and because no two generations' circumstances are exactly the same, professionals must be flexible enough to meet their clients and patients partway.

This conception of professional authority has to be qualified in two respects. First, although professional authority may not have the longevity of traditional authority, there may be elements of traditional authority associated with it. This may be especially true for groups who once relied upon the local clergy for consultative advice but now have access to medical and legal services for the poor. Their previous deference to the traditional authority of the clergy may carry over and reinforce the professional authority of doctors and lawyers. Second, the constitution of professional authority should not be construed in naturalistic terms. Its decay and reconstitution is not a natural generational process, but rather a social process dependent upon several contingent factors, which I'll now describe.¹⁶

The needs of patients and clients are determined in part by the power relations in which they are enmeshed outside the professional relation, and in part they are determined by the interpretations that professionals offer to make their expert advice intelligible. For example, take the occupational health needs of an auto worker. They are the product of the structure and vicissitudes of the workplace, the state regulated rules of third-party insurers, the laws governing occupational health and safety and collective bargaining, the assessment of acceptable risks and normal aging that the worker's physician makes, and the response of the worker to these constraints and interpretations. It is through this dialectical interplay of non-professional power relations, professional interpretations of risks, needs, and expectations, and the responses of clients and patients that professional authority is constituted.¹⁷

But this is an easy case, and it obscures the problematic nature of needs interpretation for the classic professions. Consider the health needs of

a pregnant, single woman in the secondary labor market. Her maternity leave, if there is any, is likely to be inadequate. Her insurance coverage will be minimal. Interpretations of her health needs that simply review the risks and strains associated with abortion, adoption, and raising the child herself may well strike her as inadequate. She may want to know why daycare won't be available at her place of work or fully subsidized by the state. She may want to know why child support is inadequate and delinquents go unpunished. In short, her pregnancy today, more so than a shopfloor injury to the auto worker, is likely to be the beginning of her political education. Conventional professional interpretations of her health needs that ignore this discredit themselves in her eyes. At least, they are much more likely to than those offered to the hypothetical auto worker.

The constitution of professional authority revolves around the interpretation of needs but obviously varies dramatically from occupation to occupation and sector to sector. In addition, I now want to argue, we should ask what is happening inside the professions themselves that makes them unresponsive to the political issues engulfing medical and legal needs.

The deconstitution of professional authority

Some credit scandalous and irresponsible behavior, greed, and stupidity for souring trust in and tightening public controls over the classic professions. Some argue that the professions haven't fully recovered and may never recover from the cultural assaults on expertise by community activists, feminists, environmentalists, and consumer advocates in the late sixties and seventies. While quite a bit has been written about Watergate, medicaid mills, diploma mills, community medicine, and public-interest law, the changes that they have ushered in and represent are fairly marginal. That is not to say that they haven't been important to those directly involved. However, the overall structure of the legal and medical professions hasn't changed significantly because of them. Legal and medical ethics have become more visible, and certainly this has benefited philosophers and religionists. Co-ops, communes, and collectives have come and, for the most part, gone leaving vivid memories behind for those professionals who joined them. But beyond these personal effects, it is not clear how else medicine and the law have changed as a result of these movements. Even the humanistic changes in medical and legal education and the recruitment of women and minorities, arguably the most

pervasive changes in this period, may have only changed who practices law and medicine, not how they practice it; and even this may not last too long.¹⁸

More important than these moral and cultural assaults on the classic professions from the margins, I believe, have been internal changes in actual medical and legal practice. These changes are usually described in terms of the bureaucratization and proletarianization of professional work, and they are offered as explanations for the loss of professional autonomy, not necessarily professional authority. Let me summarize these two theories before moving on to material more relevant to the problem of constituting authority.

On one side, observers have claimed that large bureaucratically organized law firms and hospitals create a rule-governed environment and mentality that substitutes allegiance to the organization for the sanctity of the patient-doctor and lawyer-client relationship. As firms and hospitals inevitably grow, they rationalize their organizational structure and the personal autonomy that attracts professionals and is a precondition for the exercise of expertise is eliminated. Bureaucratization, according to this theory, undermines professional values and makes professional autonomy impossible.¹⁹

In partial opposition to this view, some Marxists have argued that more important than bureaucratic allegiance is the fact that professionals now must give up control over their knowledge in return for a salary. They are in only slightly better shape than alienated wage-laborers. And they suffer in their own way because they have an ego ideal that is a continual torment to them as they struggle for low salaries under working conditions in which the traditional perquisites are fast disappearing. As associate partners and emergency room physicians, they punch a clock, work overtime, and deal with routine and sometimes impossible cases that their superiors would rather not handle.²⁰ Other Marxists have tried to carve out a new class position for this "professional-managerial class," which traces their alienation not to the proletarianization of work but to the guilt-ridden feelings professionals have as mediators between dominant and subordinate classes in late capitalist societies.²¹

While professional work has indeed become more bureaucratically organized for many, professional labor more alienating, and the class structure more complex, these observations are incomplete as explanations for the decline in professional authority. It is not clear why profes-

sional authority can't be maintained despite bureaucratization and alienation. In fact, Freidson has argued that professional authority bears a stronger family resemblance to bureaucratic authority than to scientific authority. To get to the crux of the problem, the deconstitution of authority, the obstacles to persuasive interpretations of risks, needs, and expectations by professionals have to be etched out.

Medicine is being radically reorganized. The rise of health maintenance organizations is to date the most notable change, but it is only the most well-known aspect of a larger transformation.²² A new medical-industrial complex headed by large corporations and doctor entrepreneurs is also emerging, made up of for-profit hospitals, nursing homes, diagnostic labs, home care and emergency services, and centers for hemodialysis, weight control, and industrial health screening.²³ The demands of patients, third-party insurers, and politicians to cut costs are beginning to force traditional fee-for-service physicians either into more efficient HMOs or out into the marketplace as doctor entrepreneurs. Those who remain at the bedside are faced with hospital requirements such as billing according to DRGs (diagnosis-related groups) that force them to pay closer attention to costs and profit margins. According to one observer, "If your hospital isn't already using sophisticated computer software that tells whether you're creating a profit or a loss when you treat patients under diagnosis-related groups, it's probably scrambling to do so . . . The next step will be to weed out the big spenders."²⁴ And after that, the services that are the most expensive may have to go. The traditional fee-for-service private doctor may soon be the exception not the rule as doctors turn to HMOs, small "emergicenters," and private corporations for regular, salaried work in this more competitive environment.

What is the significance of these related developments for professional authority? The most obvious thing is that medicine is becoming, as Paul Starr predicted not long ago,²⁵ privately regulated by for-profit corporations on the basis of cost-effectiveness criteria. Physicians are not simply working for bureaucratic hospitals. Their work is being monitored more closely. While this sometimes gets in the way of traditional consultative methods, the problem is deeper. Even in nonprofit HMOs the distinction between medical advice and an opinion on insurance coverage, for example, can reverberate through the doctor-patient relationship obscuring any interpretation of needs with defensive risk-talk.

Consider the HMO patient who requests information about coverage for

an emergency procedure at a time when he or she is not in the vicinity of the HMO. Does telling the patient that the procedure is not covered represent the physician's medical opinion that it really isn't an emergency, or is it simply a notification that if the patient chooses to have the "emergency" procedure, he or she will have to pay for it in some other way? Given how health insurance coverage affects the way people understand their own health and take care of themselves, the notification of coverage limitations is an ambiguous and unpersuasive medical opinion distorted by the rules governing insurance coverage.²⁶

Changes in the authority of the legal profession can be traced to similar developments. Again, the immediate problem is economic: old-style law firms can't make ends meet and they are being squeezed by a surplus of new lawyers willing to adapt to a new form of legal practice that is more cost-conscious and business oriented. Despite the massive surplus of new lawyers,²⁷ established law firms have become self-proclaimed "prisoners of overhead" due to already set high salaries and other fixed costs. They are also finding that their traditional clients are now dividing up their business among firms that can specialize more effectively.²⁸ Even more importantly, corporations are expanding their own in-house legal staffs to handle mergers, transactions, and litigation rather than pay a law firm much more for the same service. As one conservative observer has noted, "Surely, the days of large, stratified law firms charging major corporations and similar institutions huge fees for meticulously executed, high volume, routine work are numbered. . . . Law firms would like to think they have a kind of distance, judgment and almost academic posture toward the law which allows them to serve clients particularly well. Much of this is self-serving fantasy."²⁹

The other side of the growth of in-house legal staffs is the growth of advertising by hard-pressed law firms. According to the American Bar Association, 14 percent of U.S. lawyers now advertise. This started with the 1977 U.S. Supreme Court decision striking down state laws banning advertising by lawyers. Since then, state courts have followed suit, and the U.S. Department of Justice and the Federal Trade Commission are monitoring lawyers' compliance with antitrust and consumer-protection laws.³⁰ Law firms advertise most often in the business pages of major newspapers, and they hire public-relations firms who view their clients as "prospects."³¹

The growth of corporate in-house legal staffs and the competition among law firms that advertising fuels are having the same effect on the

authority of the legal profession as the rise of corporate medicine is having on the medical profession. In-house lawyers are happy to make the switch to management and view their legal work in business terms.³² Law firms advertising against one another in a much tighter and more competitive market are, obviously for different reasons, taking a more business oriented approach to their work.

How does this new business orientation affect the lawyer's authority over the client? As in the case of the HMO doctor whose "emergency" advice becomes self-conscious and confusingly ambiguous, the new lawyer's relationship to the client no longer has the clarity of purpose it once had, in a way that damages professional authority. The lawyer is no longer the scholarly friend who cautions against haste and short-run decision making. The new lawyer is more like a "free-lance bureaucrat" who can shield the client within a highly bureaucratic and procedural society.³³ As a "free-lance bureaucrat" the new lawyer drops any pretense of scholarly thoughtfulness or friendship. As a bureaucrat for hire, the lawyer can sell his or her office in a way the full-fledged bureaucrat can't. At the same time, the "free-lance bureaucrat" has more autonomy than the traditional bureaucrat. Although this ambiguity seems to provide the new lawyer with the best of both worlds, it thoroughly baffles and discourages the client who never knows what the terms of dependence on the "free-lance bureaucrat" are. Is it just a market-exchange relation which the client can terminate under agreed upon conditions, or is there a much greater dependence because without the "free-lance bureaucrat" access to the bureaucratic political process is greatly reduced? When the free-lance bureaucrat says to a client, "This is my advice, take it or leave it," it may not be that simple for the client. The more the lawyer uncritically accepts the role of the "free-lance bureaucrat" and is oblivious to the client's legitimate confusion, the less authority the lawyer has in the client's eyes.

To repeat, although the immediate problems of doctors and lawyers are economic, the implications of these problems involve authority as well as occupational autonomy. As employees of for-profit medical corporations and private companies doing their own legal work, doctors and lawyers are being watched much more closely. Even those who strike out on their own, whether they are doctor entrepreneurs or lawyers, have to advertise, economize, and stay one step ahead of the next market trend. This commodification of medical and legal services spells the end of professional autonomy as we've known it, and, on closer examination, explains why the medical and legal professions are presently unable to

reconstitute persuasively their authority. They can no longer speak in a clear and persuasive voice about the issue that is most salient to their patients and clients: needs.

Commodification reveals how dependent professional interpretations of needs are on the political and economic relations surrounding and constraining the delivery of professional services. In the current context traditional bedside manners are a form of bad faith. Doctors cannot complacently ignore the maze of alternative coverages and rules that constrain patients if they want their business, and yet it becomes increasingly difficult to separate attention to these matters from medical advice. Patients, in return, perceive doctors as mere “conduits.” The two, in Edward Shorter’s words, are in a “tug-of-war” in which professional authority bears little resemblance to what it was only twenty-five years ago.³⁴ Lawyers are no better off. Their clients have no time, and neither do they, for consultation and advice. Lawyers must be able to act as “free-lance bureaucrats” who can decode rules and demand fair hearings for a good price. They no longer attempt to be advocates concerned with long-run well-being.

Doctors and lawyers must still take their bearings from those empowered to grant exemptions, distribute benefits, impose penalties, forgive loans, determine liability, extend credit, and sell insurance. But they have much less autonomy in navigating in these waters and much less freedom to interpret their work as the product of special expertise. The old problem professionals once had of keeping their clients or patients at a respectful distance has been replaced by the problem of convincing clients or patients that they are getting medical and legal advice rather than an assessment of the risks and liabilities attached to alternative service delivery rules.

Commodification and state power

Thus far I have concentrated on how the commodification of legal and medical services has affected the constitution of professional authority. It is certainly possible to see this as a good thing. Speaking of lawyers, Charles Fried looks forward to the “. . . reorganization of delivery systems and a smashing of anti-competitive, guild-like practices perpetrated in the name of professionalism. . .”³⁵

Another way to approach this transformation is to ask what is likely to

happen next and what implications these future changes have for the larger question of the political legitimacy of the state. As I've said, this can be done by using the current transformation of the professional authority to take the hypothesis about repoliticization Habermas and Offe have formulated one step further. I now want to return to their work, paying special attention to the phenomenon of commodification.

Offe has used the concept of commodification to describe some of the key weaknesses of welfare capitalism. He doesn't apply it directly to the professions, although he thinks it is consistent with Foucault's work.³⁶ When we apply his analysis of the commodity form to the deconstitution of medical and legal authority a sharper image of what may happen next emerges.

In its simplest form Offe's argument runs like this. To cope with social and economic crises, the capitalist welfare state has decommodified certain goods and services. That is, the state has taken them off the market and provided them, in one way or another, to consumers. This has solved some problems but exacerbated others, especially the fiscal crisis of the state. Several responses to the problems generated by decommodification are available. One is "administrative recommodification." The state, using a variety of strategies, can create conditions under which some labor and capital can "continue to function as commodities." On the labor side, for example, vocational-training programs and programs increasing labor mobility can be developed. On the capital side, new public programs in research and development and the integration of labor and capital markets can help companies stay in the market. This process of administrative recommodification, argues Offe, is the current way in which welfare capitalist states are coping with the strains of decommodification.

But, of course, there are problems. Administrative recommodification is expensive, and somebody has to pay for it. It also creates a larger and larger segment of workers outside commodity exchange relations whose job it is to keep the commodity form alive and well. These workers often have interests that conflict with the workers and capitalists whom they indirectly service. Teachers' and nurses' strikes are good examples of this conflict. In summary, the contradictions in the commodity form have led to decommodification by the welfare state, and contradictions within the structure of the welfare state have led to administrative recommodification with its own contradictions. The system, says Offe, doesn't seem to be able to handle the problems that it poses for itself without creating equally insoluble problems.³⁷

Thus far, the commodification of medical and legal services has been marked by privatization, not heavier state intervention. However, things may soon change. Despite the deconstitution of professional authority we have already seen, many doctors and lawyers are not flocking into the marketplace. Some are secure enough to resist. Many choose their professions precisely because they want to stay out of the market, and so if being a lawyer or doctor means commodifying their services, they decide they'd rather not be one anymore. Also, some (faced with a tighter labor market) who must work in rural areas or the criminal courts give it up. To deal with this resistance, the state could do several things. The most effective would be changes in tax laws making HMOs more attractive to physicians. More indirectly, the federal government already has enabled some Medicare patients to enroll in HMOs on a demonstration trial basis. The resistance here has primarily been from older patients, not doctors, but if the doctors switch, so may the patients.³⁸ Also the state could fund new medical school curricula emphasizing teaching and primary care in smaller communities rather than the traditional research oriented programs in large metropolitan hospitals. There is some evidence that the medical profession is ready to accept such a change.³⁹ Similar changes in law school curricula could be developed with state aid to replace the case method with more practical courses, thereby steering students away from older firms and older forms of practice.⁴⁰ Perhaps the most likely area of immediate state action will be in the further regulation of professional liability. Here, doctors and lawyers are at each other's throat, and one casualty has been patient service in specialties in which malpractice insurance rates are increasing. Many states are now considering limitations on jury awards and caps on insurance premiums. In addition, the entrepreneurial work of doctors who make a living as expert witnesses testifying against other doctors in malpractice cases and the filing of so-called trivial suits are also areas that the state may become more involved in, helping define professional liability and responsibility.

Many of these changes obviously would face certain resistance by the old guard, which fashions itself part of an intellectual elite and views changes of this sort as an insult to doctor-patient and lawyer-client relationships. This part of the process of commodification will only occur when the state puts its weight behind it. Pushing professionals into the market will be harder than bringing capitalists and workers back into it. However, the deconstitution of professional authority is softening up some doctors and lawyers in an unprecedented way while creating new openings for the state. The next step, administrative commodification,

may not be that hard for most of them to take. What Offe describes as the administrative recommodification of labor and capital may be a foreshadowing of the administrative commodification of legal and medical services.

Like Offe, Habermas believes that a key element in the legitimation crisis of contemporary democratic capitalist societies is the way the commodity form has been sustained by the state. His argument on this point is that when the state becomes implicated in a system of commodity exchange on the scale it has and that system leads to great inequalities in wealth and power, the legitimacy of the state may suffer. Economic conflicts may be displaced into other spheres, one of them politics, and unless something is done, a legitimation crisis rather than an economic crisis may lead to instability of one form or another. The specific connections between the legitimacy of the state and the other “sub-systems” are complicated and not always clear in Habermas’s theory. So are the various ways in which the legitimacy of the state can be preserved despite its role as a steering mechanism for the economy. But as I have noted, the rationalization of the state has undermined its ability to steer the economy with adequate popular acquiescence. To repeat, the relevant part of Habermas’s analysis is his claim that as the state administratively intervenes in areas of society and culture traditionally considered apolitical, its own legitimacy becomes more of a public issue.

The “expansion of state activity produces the side effect of a disproportionate increase in the need for legitimation.” The state’s involvement in, say, educational planning, health planning, and planning for legal services for the poor “produces a universal pressure for legitimation in a sphere that was once distinguished precisely for its power of self-legitimation.”⁴¹ This is more than the problem of “big government.” What Habermas means is that as traditional self-legitimizing authorities fall under administrative control, the need to legitimate them *and* the state that envelops them can only be met through political discourse. As the administrative state encompasses previously self-legitimated authorities, its own legitimacy is more likely to find a place on the public agenda.

This claim about the relation between what I’ve termed the administrative commodification of professional authority and Habermas’s account of the legitimacy of the democratic capitalist state has some merit if we recall the historical relation between power and authority in the United States. The view of power modeled on the Federalist conception of the

limited state is in part propped up by the reassurance that social and cultural authorities do exist in society that are legitimate and can be relied upon for social and moral guidance. Among these are the professions, and they don't owe their legitimacy to state power according to this traditional view. But once professional services are administratively commodified and their authority more fully deconstituted, their old and new ties to political and economic power will be more difficult to deny. This will not only signal the demotion of professional work to a business, it puts state power in general in a new light. The power of the administrative state is more likely to be viewed as requiring much greater legitimation once its role in the commodification of professional services and the deconstitution of professional authority is evident.

However, left at this level of abstraction the legitimation crisis thesis is still too mechanical. To repeat, what is missing is an account of exactly who is likely to feel this way and why. This is where the concept of needs interpretation has come in to make Habermas's and Offe's qualified hope for the success of new social movements, especially the latter's, more plausible.⁴² That the state is getting involved in regulating and disciplining professional service delivery doesn't mean that people will question its legitimacy. What is driving some people individually, as consumers of professional services, and collectively, as participants in sometimes very restrained social movements, to question both professional authority and traditional political institutions is the unavailability of settings for the critical discussion of medical and legal needs. Doctors and lawyers have shortsightedly replaced consultation and advocacy with risk and liability assessment. The state has intervened to control the more blatant abuses in this new commodity market. It is this unprecedented closing off of critical discussions of needs in a historically already narrow arena that makes the prospects for pragmatic extra-institutional needs interpretation more likely. Of course, there is no assurance that needs interpretation will be of the pragmatic and democratic sort I defined earlier. But even though there are still plenty of theoretical advocates of the doctrine of true and false needs around, they seem to be less prevalent in the new social movements of the late seventies and eighties than they were in the New Left and counterculture of the late sixties and early seventies.⁴³

Conclusion

The relation between professional authority and state power is not to be

found in the political clout of the A.M.A. or the A.B.A. nor in the fact that lawyers work at every level of government and doctors often occupy key policy making positions. The relation between state power and professional authority that I have tried to underline is more diffuse and embedded in the very work doctors and lawyers do. But even this claim can be misleading, because what's at issue here is not how doctors and lawyers use their expert authority to extract consent from and normalize patients and clients. In fact, it is the erosion or deconstitution, as I have called it, of this authority by the commodification of legal and medical services that has brought out more subtle problems and more revealing ties to state power.

The HMO doctor who has to advise a patient about emergency service coverage is a good example of the way in which medical service, state administrative power, and economic interests are visibly intertwined in the actual provision of medical care at the ground level. When we take this one step further, the role of the state in the crisis of the professions begins to emerge. State licensing laws and insurance regulations are restructuring the already fragile relations among patient, doctor, HMO, and insurer. The patient in this example, outraged by pseudo-medical advice on emergency coverage, may soon recognize that it is not only the doctor who is incapable of assessing his or her medical needs. The political domain itself is becoming a maze of tort laws and tort reform proposals.

What difference does all of this make? Right now, for the professions it may mean slightly more competition among practitioners and, for some, a loss of status. For the state it means a new kind of oversight and intervention. Instead of licensing professional autonomy, state power is now being used to stabilize the process of commodification by encouraging backsliders and disciplining those who would go too far. One reason unethical behavior is drawing closer state scrutiny is its high economic costs.⁴⁴ Although these are obviously important consequences, I have tried to emphasize a more theoretical one. At the same time the state is being drawn into the commodification of professional services, the professions are losing their ability to interpret persuasively the origins and scope of human needs. This means that the repoliticization Habermas and Offe anticipate makes even more sense. Not only is the state's role in previously private matters subject to criticism, it seems unable to provide a forum for critical needs interpretation of the pragmatic sort at a time in which the professions are seen as derelict in their traditional duty of needs interpretation.

This point can be made more precise by distinguishing two ways in which my analysis of professional authority is related to Habermas's and Offe's work. I have not analyzed professional authority in general, but medical and legal professional authority in the United States in particular. One implication of this study is that the prospects for democratic social movements in the United States along the lines Habermas and Offe sketch may depend upon the commodification of professional services more than simply the general intervention of the state into private economic, educational, and family affairs. This peculiar feature of a strong American social movement would be the result of the traditional popular dichotomy between authority and power, the historical role of the professions in needs interpretation in the United States, and the current radical deconstitution of medical and legal authority. Habermas and Offe seem more concerned with the more mature European social movements than with events in the United States. My analysis applies and amends their legitimation crisis thesis, and the repoliticization hypothesis especially, in the U.S. case.

But, like a good case study, it also suggests a way in which the general theoretical framework that guided it in turn can be revised. In my analysis it is the concept of needs interpretation that has general theoretical significance for the legitimation crisis thesis. One problem critics have noted in the legitimation crisis thesis is its inadequate account of what motivates or will motivate such as crisis. Habermas's own treatment of the difference between a legitimation crisis and a motivational crisis is notably weak.⁴⁵ The case of the deconstitution of professional authority suggests that the motivational basis for a legitimation crisis cannot be deduced from greater state intervention in private domains but that it nonetheless may have its roots in basic changes in the political economy. The commodification of medical and legal services is part of a larger transformation in capitalist political economies that I have not been able to describe here. Although I have called this commodification an "internal" process, it most certainly reflects larger trends and changes, both domestically and internationally. What the deconstitution of professional authority suggests is that 1) it may be possible to gain greater clarity about the motivational basis of a potential legitimation crisis through the concept of needs interpretation, 2) this motivational basis is not a simple function of the macroeconomy, but still 3) how effective professional and political needs interpretation are will depend upon the pace and range of commodification.⁴⁶

Notes

1. For a review of the various levels of professionalization see *The Semi-Professions*, ed. Amitai Etzioni (New York: Free Press, 1969) and *Professionalization*, ed. Howard M. Vollmer and Donald L. Mills, (Englewood Cliffs, New Jersey: Prentice Hall, 1966). Social work's ordeal as a profession is thoughtfully reviewed in John H. Ehrenreich, *The Altruistic Imagination: A History of Social Work and Social Policy in the United States*, (Ithaca, N.Y.: Cornell University Press, 1985). For a brief historical comparison of the public perceptions of the three classic professions, see J. Duffy, "The Field H. Garrison Lecture. American Perceptions of the Medical, Legal, and Theological Professions," *Bulletin of the History of Medicine*, Vol. 58, Spring 1984, 1–15. On the medical profession more generally, see Eliot Friedson, *Professional Dominance: The Social Structure of Medical Care*, (New York: Atherton, 1970); Paul Starr, *The Social Transformation of American Medicine*, (New York: Basic Books, 1982); and Roy Porter, "The Patient's View," *Theory and Society*, March 1985, 14(2): 175–188. On the law see, J. W. Hurst, *The Growth of American Law: The Law Makers*, (Boston: Little, Brown, 1950); Jerold Auerbach, *Unequal Justice*, (New York: Oxford University Press, 1976); John P. Heinz and Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar*, (New York and Chicago: Russell Sage foundation and American Bar Foundation, 1983); Marc Galanter, "Mega-Law and Mega-Lawyering in the Contemporary United States" in *The Sociology of the Professions*, ed. Robert Dingwall and Philip Lewis, (London: MacMillan, 1983) 152–176; and Eve Spangler, *Lawyers for Hire*, (New Haven and London: Yale University Press, 1986). For a recent uncritical reaffirmation of professional authority, see "The Professions," *Daedalus*, ed. Kenneth Lynn, Fall 1963.
2. For a denial of professional expertise on objectivistic grounds see Ivan Illich, *A Celebration of Awareness: A Call for Institutional Revolution*, (Garden City, N.Y.: Doubleday, 1970) and *Disabling Professions*, (London: Marion Boyars, 1977). Less categorical is Jethro Lieberman, *The Tyranny of Expertise*, (New York: Walker and Company, 1970).
3. I am referring to new left, neo-Marxist, and populist arguments; not neoconservative arguments about "ungovernability." Although there are important parallels, especially the rejection of bureaucratic statist intervention in education, the family, and other "private" realms, I have restricted myself to the problem of legitimation as the left, not the right, has understood it.
4. See generally, *Legitimacy and the State*, ed. William Connolly, (New York: New York University Press, 1984). On the larger question of modernity, see Hans Blumenberg, *The Legitimacy of the Modern Age*, trans. Robert M. Wallace, (Cambridge: MIT Press, 1983). I am primarily concerned with the narrower question of the legitimacy of the modern state. However, my argument depends upon the relevance of wider cultural phenomena, and so it would be incorrect to separate the two a priori.
5. The following summary is taken from Jürgen Habermas, *Toward a Rational Society*, trans. Jeremy J. Shapiro, (Boston: Beacon Press, 1970); *Legitimation Crisis*, trans. Thomas McCarthy, (Boston: Beacon Press, 1973); *Communication and the Evolution of Society*, trans. Thomas McCarthy, (Boston: Beacon Press, 1979); *The Theory of Communicative Action*, Vol. 1, trans. Thomas McCarthy, (Boston: Beacon Press, 1984); and Claus Offe, *Contradictions of the Welfare State*, ed. John Keane, (Cambridge: MIT Press, 1984); *Disorganized Capitalism*, ed. John Keane, (Cambridge: MIT Press, 1985).
6. See Patricia Springborg, *The Problem of Human Needs and the Critique of Civiliza-*

- tion, (London: George Allen & Unwin, 1981) and *Human Needs and Politics*, ed. Ross Fitzgerald, (Sydney: Pergamon, 1977).
7. William J. Meyer, "Democracy: Needs over Wants," *Political Theory*, May 1974, 2(2): 197–214.
 8. E. D. Watt, *Authority*, (New York: St. Martin's, 1982) 11–18. Also, Hannah Arendt, "What is Authority?" in *Between Past and Future*, (New York: Viking, 1968) 91–141. Arendt's views on the relation between power and authority are historical in a way, and she also argues that there is an important interdependence between power and authority when they are constituted correctly. This has been a problem in the modern world because save for the American Founding, authority has been entirely lacking. Her "monumental" history does in what otherwise promises to be a very nuanced account of these ideas. See Hannah Arendt, *On Revolution*, (New York: Penguin, 1984), especially chapters 4 and 5. But also, Judith Shklar, "Rethinking the Past," *Social Research*, Spring 1977, 44(1): 80–90.
 9. Steven Lukes, "Power and Authority" in *A History of Sociological Analysis*, ed. Tom Bottomore and Robert Nisbet, (New York: Basic Books, 1978) 633–676.
 10. See *Nomos I: Authority*, ed. Carl J. Friedrich, (Cambridge, Mass.: Harvard University Press, 1958); *Authority: A Philosophical Analysis*, ed. R. Baine Harris, (University, Alabama: University of Alabama Press, 1976); and Richard T. DeGeorge, *The Nature and Limits of Authority*, (Lawrence, Kansas: Kansas University Press, 1985).
 11. See John P. Diggins, "The Three Faces of Authority in America" in *The Problem of Authority in America*, ed. John P. Diggins and Mark E. Kann, (Philadelphia: Temple University Press, 1981) 17–40 for this interpretation of Tocqueville.
 12. In addition to Diggins, "The Three Faces of Authority," also see Norman Jacobson, "Knowledge, Tradition, and Authority: A Note on the American Experience" in *Nomos I: Authority*, ed. Friedrich, 113–125, John H. Schaar, "Legitimacy in the Modern State," and George Kateb, "On the 'Legitimation Crisis'" in *Legitimacy and the State*, ed. William Connolly, 104–133, 180–200.
 13. Freidson's earlier position is to be found in *Professional Dominance*, and also *Profession of Medicine*, (New York: Dodd-Mead, 1970) and "The Theory of Professions: State of the Art" in *The Sociology of the Professions*, ed. Dingwall and Lewis, 19–37. Also see Everett C. Hughes, *Men and Their Work*, (Glencoe, Ill.: Free Press, 1958). Freidson's more recent overview can be found in Eliot Freidson, "Are Professions Necessary?" in *The Authority of Experts*, ed. Thomas C. Haskell, (Bloomington, Indiana: Indiana University Press, 1984) 3–27 and more generally, Eliot Freidson, *Professional Powers*, (Chicago and London: University of Chicago Press, 1986).
 14. See Richard E. Flathman, *The Practice of Political Authority*, (Chicago and London: University of Chicago Press, 1980) for an analysis of the distinction between "in authority" and "an authority," which begins from very different premises from this article.
 15. Most recently, Dietrich Rueschemeyer, "Professional Autonomy and the Social Control of Expertise" in *The Sociology of the Professions*, ed. Dingwall and Lewis, 38–58.
 16. I am indebted to Cynthia Negrey for clarification on this point.
 17. This account of the reconstitution of professional authority is both more dialectical and more sensitive to the role of the state than that of Foucault and his followers. For an interpretation of Foucault that underlines this weakness in his concept of normalization, see Mark Cousins and Athar Hussain, *Michel Foucault*, (New York: St. Martin's, 1984) 225–251. For a recent application of his work to professional authority, see Magali Sarfatti-Larson, "The Production of Expertise and the Constitution of Ex-

- pert Power” in *The Authority of Experts*, ed. Haskell, 28–80. An equally flawed conceptualization of the professional – client/patient relationship in contractarian terms is Donald Schon, *The Reflective Practitioner*, (New York: Basic Books, 1983). Also see Michael T. Taussig, “Reification and the Consciousness of the Patient,” *Social Science and Medicine*, 1980, 148: 3–13.
18. For a prescient and thorough analysis see Barrie Thorne, “Professional Education in Medicine” and “Professional Education in Law” in *Education for the Professions of Medicine, Law, Theology, and Social Welfare*, (New York: McGraw-Hill, 1973) 17–99, 101–168. Also, *Co-ops, Communes, and Collectives*, ed. John Case and Rosemary C. R. Taylor, (New York: Pantheon, 1979). More recently, Judith Lorber, “More Women Physicians: Will It Mean More Humane Health Care?” *Social Policy*, Summer 1985, 16(1): 50–54.
 19. *Professionals as Workers*, ed. Charles Derber, (Boston: G. K. Hall, 1982) and Celia Davies, “Professionals in Bureaucracies: The Conflict Thesis Revisited” in *The Sociology of the Professions*, ed. Dingwall and Lewis, 177–194.
 20. See Marie Haug, “Deprofessionalization of the Professions” and Martin Oppenheimer, “The Proletarianization of the Professions” in *Professionalism and Social Change*, ed. Paul Halmos, *The Sociological Review Monograph* 20, University of Keele, December 1973. For more subtle analysis, see Magali Sarfatti-Larson, *The Rise of Professionalism*, (Berkeley: University of California Press, 1977) and Paul Wilding, *Professional Power and Social Welfare*, (London: Routledge & Kegan Paul, 1982).
 21. See Barbara Ehrenreich and John Ehrenreich, “The Professional-Managerial Class” in *Between Labor and Capital*, ed. Pat Walker, (Boston: South End Press, 1979) and responses to it in the same volume.
 22. The literature on HMOs and related changes is immense. Here is a small sample from inside the profession. M. D. Bromberg, “The medical-industrial complex: Our national defense,” *New England Journal of Medicine*, 309: 1314–1315, 1983; B. J. Culliton, “University Hospitals for Sale,” *Science*, 223: 909–911, 1984; E. Ginzberg, “The Grand Illusion of competition in health care,” *Journal of the American Medical Association*, 249: 1857–1859, 1983; A. S. Relman, “Investor-owned hospitals and health care costs,” *New England Journal of Medicine*, 309: 370–372, 1983; and Larry Frederick, “Why Medicare’s HMO Express Jumped the Tracks,” *Medical Economics*, March 4, 1985, 29–35. The best overview of the changes within the medical profession is David Mechanic’s *From Advocacy to Allocation: The Evolving American Health Care System*, (New York: The Free Press, 1986).
 23. Mark Holoweiko, “Doctor Entrepreneurs,” *Medical Economics*, August 20, 1984, 116–133.
 24. Janis Long, “What Will You Be Worth To Your Hospital Under DRG?” *Medical Economics*, January 7, 1985, 141–151.
 25. Starr, *The Social Transformation of American Medicine*, 420–449.
 26. I am indebted to Howard Brody for this example.
 27. The scholarly literature on the transformation of the American legal profession is just emerging. Three useful articles are Richard L. Abel, “The Transformation of the American Legal Profession,” *Law and Society Review*, 1986, 20(1): 7–17; Barbara A. Curran, “American Lawyers in the 1980s: A Profession in Transition,” *Law and Society Review*, 1986, 20(1): 19–51; and Terence C. Halliday, “Six Score and Ten: Demographic Transitions in the American Legal Profession, 1850–1980,” *Law and Society Review*, 1986, 20(1): 53–78. A summary of the surplus of lawyers in particular can be found in “A Glut of Lawyers – Impact on U.S.,” *U.S. News and World Report*, December 12, 1983, 95(25): 59–61.

28. "The Blue-chip Lawyers Discover Marketing," *Business Week*, April 25, 1983, 2787: 89–94.
29. Charles Fried, "The Trouble with Lawyers," *New York Times Magazine*, February 12, 1984, 61. Also, Antonia H. Chayes, Bruce C. Greenwald, and Maxine P. Winig, "Managing Your Lawyers," *Harvard Business Review*, January–February, 1983, 61: 84–91.
30. "A Glut of Lawyers – Impact on U.S." *U.S. News and World Report*.
31. "Blue-chip Lawyers Discover Marketing," *Business Week*.
32. Fried, "The Trouble with Lawyers," *New York Times Magazine*.
33. The phrase "free-lance bureaucrat" is Edward Dauer's and Arthur Leff's. See Charles Fried, "The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation," *Yale Law Journal*, 1976, 85: 1060, and Edward A. Dauer and Arthur A. Leff, "Correspondence," *Yale Law Journal*, 1977, 86: 581.
34. Edward Shorter, *Bedside Manners: The Troubled History of Doctors and Patients*, (New York: Simon & Schuster, 1985) and Jay Katz, *The Silent World of Doctors and Patients*, (New York: Free Press, 1984).
35. Fried, "The Trouble with Lawyers," *New York Times Magazine*.
36. Claus Offe, "Reflections on the Welfare State and the Future of Socialism: An Interview" in *Contradictions of the Welfare State*, ed. John Keane (Cambridge, Mass.: MIT Press, 1984) 278.
37. Offe, "Theses on the Theory of the State" in *Contradictions of the Welfare State*, ed. Keane, 119–129.
38. Frederick, "Why Medicare's HMO Express Jumped the Tracks."
39. I am indebted to Peter Vinten-Johansen for this idea and his very helpful comments on the Association of American Medical College's 1985 Report, *Physicians for the Twenty-First Century*.
40. I am indebted to Steve Botein for this idea.
41. Jürgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy, (Boston: Beacon Press, 1973) 71. For a thoughtful critique of Habermas's notion of legitimation see David Held, "Crisis Tendencies, Legitimation, and the State" in *Habermas: Critical Debates*, ed. John B. Thompson and David Held, (Cambridge, Mass.: MIT Press, 1982) 181–195.
42. Offe, "New Social Movements"; Jürgen Habermas, "New Social Movements," *Telos*, Fall 1981, 49: 33–37.
43. Jean L. Cohen, "Strategy or Identity: New Theoretical Paradigms and Contemporary Social Movements," *Social Research*, Winter 1985, 52(4): 669, and "Rethinking Social Movements," *Berkeley Journal of Sociology*, 1983, 28: 97–113.
44. Joel Brinkley, "Medical Discipline Laws," *New York Times*, September 2, 1985, 1, 18.
45. David Held, "Crisis Tendencies, Legitimation and the State," 187–189.
46. An earlier version of this article was delivered at the Annual Meeting of the American Political Science Association in New Orleans, Louisiana, August 29–September 1, 1985. I am grateful to Cynthia Negrey, Jay Budziszewski, Mark Kann, and especially Richard Peterson for helpful suggestions. I am also grateful to the Editors of *Theory & Society* for suggesting revisions in the original argument.