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Knowledge mandates in the state-profession dynamic: A study of the British insolvency profession

Abstract¹

At the beginning of the 21st century, the British Government was faced with significant policy decisions to make in the field of corporate insolvency. The impact of the American rescue culture and the acceptability of failure, the development of international insolvency laws within the European Union and localized problems inherent in current insolvency practice provided the impetus for legal reform. Using the work of Halliday (1985, 1987), this paper seeks to understand how professional knowledge and authority impact upon the state-profession relationship and the development and deployment of state policy. The British Government reacted to the global and local pressures with a shift to codification and prescription, greater enforcement of the legal system and an attempt to control and institutionalize insolvency practitioners' moral authority. However in spite of radical reforms, insolvency practitioners' services were retained and their private, expert knowledge systems and authority valorized over corporate management. Insolvency practitioners' localized knowledge, the capacity to disguise moral authority as technical expertise and their networks and coalitions with senior members of Parliament and capital providers, resulted in an interpretation and implementation of legislation that has not seen the dramatic shift in practice that the reforms had envisaged. Despite the reforms being triggered within the global institutional sphere of corporate failure, the institutional sphere of corporate failure, at least in Scotland, retains a local definition, with business rescue packages derived from professionals' social intelligence, their daily micro practices and localized networks.

Keywords: Insolvency, knowledge, moral authority, profession, state

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1. Introduction

Critical studies of the accounting profession and professionalization projects have come to define much accounting research since the late 1970s. In adopting this approach, the profession, its technologies and outputs are explored within a wider economic and socio-political context, taking account of the structure of underlying power relationships (Larson, 1977; Willmott, 1986, p559). Inevitably, the role of the state and state agencies becomes an integral part of understanding the processes of professionalization and in particular how “the interests and strategies of professional elites are constrained or enabled by wider, societal institutions such as state agencies and rules of property ownership” (Chua and Poullaos, 1993, p693). The state can intervene in professional life especially where the activities of a profession impact upon the public interest or the general welfare of its citizens, which typically occurs in complicated fields (Mills and Young, 1999). Studies of the state-profession dynamic may therefore usefully highlight social and political issues, the distribution of power in society and the state’s position in adjudicating on competing interests (Yee, 2012).

Some early writers recognised that governments may employ professions or professional ideology as a legitimate means of rectifying perceived or actual deficiencies in the economy (Carr-Saunders and Wilson, 1933). Indeed as states have become overburdened, they have sought out alternative ways to manage the competing demands placed upon them (Halliday, 1987). In the case of the accountancy profession, legitimacy may be sought by the state through the ideological discourses of the ‘public interest’ (Cooper et al, 1994), through the aura of independence (Sikka and Willmott, 1995b; Halliday and Carruthers, 1996), or through accounting techniques and practices (such as external auditing) in the regulation and governance of organizations (Arnold and Sikka, 2001). Underpinning state dependency is the profession’s claims to superior and technical knowledge (Sikka and Willmott, 1995a; Sikka, 2008; Jones, 2010). Thus, professions, “in contrast to government workers offer the appearance of expert knowledge and technical efficacy” (Halliday and Carruthers, 1996, p409). It is these claims that are the focus of the current study.

Within accounting literature, ‘knowledge’ has historically been studied as a ‘strategic resource’, primarily in the context of intra- and inter- professional battles over jurisdictional rights (Walker, 1988; Sugarman, 1995; Walker, 1995; Walker, 2004a; Walker, 2004b; Dyball et al, 2007). Covalleski et al (2003), Walker (2004a) and Evans and Honold (2007) utilize the work of Abbott (1988), who describes the necessity of maintaining and controlling an abstract system of knowledge in order to maintain and defend a professional jurisdiction and to penetrate other professional jurisdictions. Accounting techniques (of which knowledge is embedded), their mobilization and infiltration thus provide a means for claiming jurisdictions (Loft, 1986) and securing high economic rewards in exchange for specialist knowledge.

Some commentators have recognised the limitations of earlier studies of the profession in not considering *how* professions act upon the state to achieve closure and indeed the *effectiveness* of closure achieved (Chua and Poullaos, 1993, p692, *italics added*). Thus they suggest that Weberian studies suffer from a predisposition towards intra and inter

professional competition and collaboration (thereby marginalizing the role of the state) and neo Marxist research presupposes a given distribution of interests, failing to adequately account for change in economic and social structures and how state policies are structured by the context in which they are developed (Chua and Poullaos, 1993, p692-693; Flood, 1995). Thus the two constituents “mutually influence, help create and are shaped by each other” (Chua and Poullaos, 1993, p695). Sugarman (1995, p227) suggests an approach to professional studies that is more sensitive to cultural and political factors. Thus even jurisdiction focused studies might usefully encompass struggles between professions over ideas and ideologies, conceptions of society and the influence of professions upon the state and civil society.

Halliday (1987) asserts that professional studies have become one dimensional by allowing professions to pursue only the macrosociological role of legitimation of monopoly and the “abnegation of public responsibility for private gain” (p3). The effect is an incomplete or mischaracterization of professions’ contemporary significance for the state. An understanding of how professionals (as the principal repositories of knowledge) participate in the political sphere is essential to understanding both the state-profession dynamic and the state’s capacity to rule (Halliday, 1987, p19). As professions move from the formative to the established stage of professionalization, the preoccupation with monopoly diminishes and in its place, the profession recognises its potential to contribute to the management of tensions faced by democratic states (Halliday, 1987, p345). The knowledge mandate of a profession becomes of central importance in determining the optimal relation between knowledge and power in modern democracies (Carr-Saunders and Wilson, 1933, cited by Halliday, 1987; Halliday, 1985). According to Halliday (1987, p19), “the call for professional commitment to government may mean either a refinement of representative government or its circumvention”.

The following study recognises the close coupling of professional knowledge and power. In doing so, the paper contributes to the literature by addressing the ambiguity surrounding ‘knowledge’ in the professionalization literature, both in terms of the state’s valuation of expert knowledge and, as highlighted by Chua and Poullaos (1998), the underlying scepticism with regard to the functional properties of the accounting profession. Thus the research recognises the need for further enquiries on the role of knowledge and authority in defining the state-profession relationship and further their impact upon society and civil matters. This leads to the following research questions: Firstly, how do professional knowledge and professional authority influence the (re)construction of state-profession relationships and secondly, in what ways do professional knowledge and authority come to bear upon the development and deployment of state policy.

Whilst prior studies of the accounting profession have addressed accounting regulations (Cooper and Robson, 2006), the audit function (Carpenter and Dirsmith, 1993; Power, 1997) (including auditor independence (Robson et al, 1994) and the internal audit market (Covaleski et al, 2003) and more recently, the market for corporate taxation (Hasseldine et al, 2011), there is a dearth of research on the insolvency field (see Flood and Skordaki, 1995; Flood et al, 1995; Walker, 1995; Halliday and Carruthers, 1996; Walker, 2004a, 2004b; Cooper and Joyce, 2013). Accordingly, the empirical focus of this paper is upon the British

insolvency profession. The insolvency field is an important specialized sub-field of accountancy. The insolvency industry is categorized by the Office of National Statistics as part of 'accountancy services', contributing £562 million directly to national Gross Domestic Product (GDP) and £177 million indirectly in 2008². There are fewer than 2,000 insolvency practitioners (IPs) in the UK and the majority of these are regulated by an accountancy professional body³. IPs are licensed by their recognised professional body and therefore certified to act in formal insolvency appointments. By virtue of their relationship with the State, formalized through licensing and certification, insolvency practitioners have successfully established a position from which they may exert enormous influence over significant matters of public interest. In this way, the state fulfils the role of mediator and regulator of accountants' symbolic capital (Willmott, 1986; Perera et al, 2001; Dyball et al, 2007; Cooper and Joyce, 2013).

The insolvency field presents rich, virgin terrain not only for expanding upon our understanding of the diverse accounting profession but also the concepts of professional knowledge and authority. Particularly in the domain of formal insolvency, the insolvency system is a regulatory institution⁴, where the field is structured by law, primarily but not exclusively insolvency legislation. Other branches of law also exert influence over the field, including company law, employment law and the law of property rights. Thus state control of the market may be exercised not only through additional demands on professional bodies or through licensing arrangements, but also directly through the legislation, which codifies the knowledge base and the status of insolvency professionals⁵. Thus insolvency practitioners may hold a monopoly of practice but within the confines of law. As Sugarman (1995, p234) reflects, "the language of the law is central to accountancy and the formation of professional subjectivities". New legal knowledge may also be generated through the articulation of case law (Morris and Empson, 1998, p615). Finally, the field is shaped by the insolvency profession itself, through the development of best practice standards⁶, codes of ethics and significantly through the professionals' interpretation of the legislation as knowledge brokers within a knowledge market (Hasseldine et al, 2011).

For Halliday (1987, p27), the primary empirical task of studies of the macrosociology of professions is to determine the balance in different locations and times between professional expert authority and representational authority as embodied in the electoral system. Further, the dynamics of law making and the role of professions as agents of reform remain underexplored research areas (Carruthers and Halliday, 1998, p45-47). Accordingly, in order to address the research questions posed by this paper, a recent period of legislative change in the UK is studied. In 2002, the British Government commenced Parliamentary discussions on the Enterprise Bill. The proposed corporate insolvency reforms represented the first major overhaul of insolvency since the 1986 Insolvency Act was passed. The

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http://www.r3.org.uk/media/documents/policy/policy_papers/insolvency_industry/R3_Value_of_Industry_Summary_Report_16th_April.pdf

³ Office of Fair Trading, Annexes, June 2010, 'The market for corporate insolvency practitioners'.

⁴ Gracia and Oats (2012, p306) similarly describe the tax system as a regulatory institution.

⁵ Morris and Empson (1998, p614) refer to taxation knowledge as "codified knowledge", as it is grounded in "well organised systems of information with a set of generalisable principles".

⁶ These are known as Statements of Insolvency Practice (SIPs).

Enterprise Bill received its Royal Assent on 7 November 2002, becoming the Enterprise Act 2002⁷. At least on the face of things, the reforms to corporate insolvency were radical. The institution of receivership was abolished and a streamlined administration process encouraged in its place. A hierarchy of statutory objectives was created, with the underlying principle of corporate rescue. The role of the insolvency practitioner was to be significantly re-defined.

The remainder of the paper is structured as follows. Section two explains the theoretical framework for understanding the power of professional knowledge, drawing upon the work of Halliday (1985, 1987). Halliday's framework offers a conceptualization of knowledge mandates, the collective influence of professions on the state and the manner in which knowledge may be converted into authority, with varying degrees of legitimacy. Section three describes the British insolvency profession, briefly outlining the historical development of the profession. The fourth section discusses methods. Section five analyses the research findings. Section six offers concluding remarks.

2. Theorizing knowledge

It is not surprising that studies of accounting and knowledge are often implicated with power (Napier, 2006). Dezalay (1995, p343), using the work of Bourdieu, describes the "field of knowledge and expertise" as the site for reproducing social capital and hence power relations. Other work emphasises the technologies of accounting and how seemingly neutral practices of accounting become implicated in wider political contexts (Hoskin and Macve, 1986; Willmott, 1990; Miller and Power, 1995; Young, 1995; Ezzamel et al, 2007). Parker (1994, p512) suggests that "professional authority", which is defined in terms of technical knowledge and professional service ideals, is part of the accountant's repertoire for securing private or economic interests⁸. Professional authority becomes a source of power, used to subordinate others, sometimes through intimidation (Parker, 1994). This in turn results in a reversal of the technocratic ideological relation, in that rather than expertise and knowledge driving professional power and status, "power and privilege tend to become automatic warrants of superior competence" (Larson, 1977, p243). Indeed, so deep is the relation between knowledge and power, that some have suggested it may be more fruitful to consider how forms of power both constrain and enable the dissemination of knowledge rather than attempt to separate the political power aspects from knowledge (Mitchell et al, 2001, p527).

Halliday (1985, p422) describes the knowledge mandates of a profession as the "... capacity to exert influence in virtue of the substance, form, transmission, efficacy, mobilization, objects and legitimacy of its cognitive core. It is an epistemological warrant for public influence mediated by occupational and organizational politics". A knowledge mandate is a convincing claim to knowing something socially useful and applying knowledge for the social good (Krislov, 1991). Thus "...the significance of professions for the state and society cannot

⁷ The Enterprise Act came into force on the 15th September 2003.

⁸ In this way, ethical codes become part of the tools deployed by accountants to sustain professional authority. Even high educational standards may hold symbolic value rather than practical value (Evans and Honold, 2007).

be exhausted with economic foci or ideological functions in the service of economic ends” (Halliday, 1985, p443). An emancipatory approach to studies of the profession demands a shift beyond financial compensation and collective upward mobility to recognise the “immense possibilities” (Halliday, 1985, p443) that epistemology may endow on a profession. Thus Halliday’s (1987, p3) position is an acknowledgement of the tensions between monopoly and narcissism on one hand and professional civility and altruism on the other.

Halliday (1987, p370) does not contend that professions are not swayed by self interests, but he asserts that it is implausible to consider that economic gain is the only motivating force at work on the professions. For Halliday (1987), professions have emerged as political groups in response to the ungovernability of Western governments and consequently have become powerful agents in the management of crises. More specifically, the state-profession relation, particularly for established professions, is a ‘contributory relation’, whereby weakened states can call on professional expertise to assist with the strains and demands placed on them (Halliday, 1987, p353). However, “an excess of knowledge, particularly if it is monopolized by small, elite occupations, disenfranchises effective political participation; an excess of participation, particularly if it is uninformed by technical expertise and “social intelligence”, deprives the state of effectiveness” (Halliday, 1987, p27).

In seeking to understand the ability of a profession to successfully bring concerted pressure on the state and in matters of public interest, Halliday (1985) presents an emancipatory means of exploring the professions through a consideration of the inter-relations between epistemological foundations, authority, institutional loci of work and organizational structure. Each of these four axes bear upon the ability of the profession to infiltrate matters of public interest through collective influence upon the state and in turn to move the study of professions beyond a simple framework focused upon economic compensation and monopolization of practice (Halliday, 1985, p443). The ability to influence, which is seen as a subspecies of power, varies in ‘scope’ and ‘intensity’. ‘Scope’ refers to the breadth of action or the number of domains that the profession may exert influence over. ‘Intensity’ refers to the force of action and hence the ability to make an impact. Halliday (1985, p422) suggests that professions are typically high in one type of influence (scope or intensity) but rarely both. As discussed within the following sub-sections, Halliday aligns scope of influence predominantly with epistemology (and hence also authority and institutional loci). Intensity of influence is aligned predominantly with the axis of institutional organization.

2.1. Epistemological bases of professional knowledge

Halliday’s (1985) consideration of epistemological bases extends beyond the scientific-normative differentiation or science versus morality dichotomy. At this level, Halliday asserts that scientific professions enjoy greater legitimacy as their knowledge base is founded on natural and biological facts. Normative professions suffer from diminished legitimacy as their knowledge base is grounded in value statements and morality-based principles. Beyond this level, the epistemological origins of a profession are conveyed to the public through the profession’s manipulation of the knowledge to which it claims exclusivity (Halliday, 1985, p425). Thus professions undertake “boundary work” to enhance their

authority over specified knowledge and to convince others that their knowledge is useful to society (Halliday, 1985, p425). Although this may culminate in the production of codified bodies of knowledge, when challenged, the profession must retreat to the cognitive foundations of the knowledge to which it stakes a claim. The greater the legitimacy of the cognitive foundations, the greater the collective influence exerted by the profession.

However, influence may be constrained in terms of scope. Thus scientific professions (such as medicine and engineering) have a greater cognitive legitimacy (being based on judgements of fact) but their scope of influence is more limited, due to a narrower spectrum of issues they may become involved with. This is because their normative contributions are more visible or transparent. Normative professions (such as law and accountancy) have less cognitive legitimacy (being based on judgements of value) but potential to infiltrate a broader spectrum of issues. A syncretic profession⁹ (such as the military and academia) should therefore have the greatest influence, given that its knowledge base is partly scientific (giving legitimacy) and partly normative (enabling scope). Halliday however asserts that the military and academia do not have the impact this logic would suggest and accordingly further dimensions of knowledge must be explored.

2.2. Technical and moral forms of professional authority

Halliday (1985) distinguishes between technical and moral forms of professional authority, which may be exercised by a profession regardless of its epistemological foundations. Technical authority refers to an expert authority exercised by a profession and is of a restricted nature. Thus technical authority may be associated with the professional training program and mastery of specific skills. For example, lawyers mastering the skills to draft contracts or the mastering of surgical procedures by a doctor. Halliday suggests that the world has become more complex, requiring greater levels of technical expertise, thus professions which have mastered complex technical functions will increase the scope of their influence. 'Moral authority', on the other hand, is defined as occurring "when a profession exceeds narrow technical activities to intervene in more general ethical areas" or in public interest matters (Halliday, 1985, p429). If a profession can also exert moral authority, it will significantly broaden its scope of influence. Thus moral authority refers to the authoritative application of technical knowledge to public policy decisions and to everyday practice, where moral and ethical issues assume as much importance as the technical facts (Halliday, 1987, p37).

Scope of influence in Halliday's framework is further amplified through the almost invisible transfer of legitimacy from technical authority into moral authority (Halliday, 1985, p430). Thus although technical and moral forms of authority may be separately identified, they are intertwined in practice. The ability of a profession to disguise moral authority as technical expertise enables the profession to increase its scope of influence. This in turn is a function of epistemology. Scientific professions display a clearer distinction between technical expertise and moral authority, originating from their cognitive foundation, and hence have a narrower scope of influence. The more normative a profession is, the greater its potential to exercise moral authority and infiltrate society because the line between technical and

⁹ A syncretic profession is one which claims both scientific and normative knowledge.

moral authority becomes hazier, so that normative professions may “smuggle in moral orientations under the cloak of technical complexity.....[T]he more a profession can dress its normative contributions in technical clothes, the more legitimacy, and the greater effect, it will secure” (p430 and p434). Law professionals, for example, seek legitimacy through a normative source which is re-contextualised as a technical expertise, thus “.....lawyers point to the law-finding of judges and the law-making of legislatures” (Halliday, 1985, p426). The legal profession thus occupies a unique position, in that it exercises a high degree of technical authority within a normative system (Halliday, 1987, p41).

2.3. Primary and secondary institutional spheres

The third dimension of Halliday’s (1985) framework distinguishes between primary and secondary institutional spheres. A primary institutional sphere “is that institution and the organisations which comprise it, in which most of a profession’s work is undertaken and in which therefore, it is thought to have a legitimate and particular interest” (Halliday, 1985, p431). Primary institutional spheres comprise a complex of organizations, for example, hospitals for doctors or army bases for the military (Halliday, 1987, p42). Institutional spheres are defined by two criteria. An objective criterion, defined by the principal institutional locus of practice, and a subjective criterion, defined by what professionals and the public consider to be a legitimate domain of activity.

Where a profession moves beyond their core areas, they occupy a secondary institutional sphere, where practice is limited and they have a “circumscribed legitimacy” (Halliday, 1985, p431). Professions vary in the extent of practice and degree of legitimacy they have in secondary institutional spheres. Thus for example, the medical profession has a clear primary institutional sphere in terms of patient care, but their authority is lessened slightly in aspects encompassing the legal system such as environmental health issues and diminished even further in religious and educational institutions (Halliday, 1985, p432). In contrast, the primary institutional sphere of law is the legal system, but this then extends to an “almost all-encompassing secondary sphere” (Halliday, 1985, p432). Halliday (1987, p219) suggests that where a profession can bring influence to a secondary sphere, this demonstrates the capacity of the profession to bring knowledge to the service of power. Thus in describing the secondary institutional spheres of the American legal profession, Halliday (1987, p283) refers to such broad institutions of the economy, the education system, the social organization of urban areas and even moving into the political system to influence economic policy and State revenue. The academic profession also has considerable reach. Much social science is pertinent to social problems and institutions of all kinds. Thus the secondary institutional sphere of academia encompasses political affairs (Halliday, 1987, p44).

Institutional spheres are important to the legitimacy of expert and moral authority as illustrated in Table 1. Thus whilst expert authority enjoys complete legitimacy in the primary sphere, moral authority is contingent in that the state and the public may yet question the legitimacy of the professional’s actions and decisions. Here the profession is attempting to affect policy by recommending policy options, but the profession is not granted a “blank cheque” with respect to its interpretation of policy (Halliday, 1987, p46). Halliday (1985)

states that the primary institutional sphere of one profession is a secondary institutional sphere of another. Thus expert authority has only contested legitimacy here and marginal moral legitimacy given that the profession has moved out with its core area and is attempting to shape policy within secondary institutions.

[Insert Table 1 here]

Collective influence depends upon the ability to convert or disguise moral authority as expert authority. Within a primary institutional sphere this transforms legitimacy from contingent to complete. However, collective influence also depends on the ability to extend either or both forms of authority from primary institutional spheres into secondary spheres. Scientific knowledge impedes the translation of technical into moral authority and confines the scientific profession largely to a primary institutional sphere. In contrast, normative cognitive foundations facilitate the translation of technical into moral authority *and* facilitate an infiltration into secondary spheres.

2.4. The organization of collective action

Professional organizations are seen as “intervening links in a logic of action extending from epistemology to power” (Halliday, 1985, p436). Although the link to epistemology is weaker for this axis (as we shall see), the axis is significant through the realization that epistemology may take generations to change whereas the collective organization of a profession is far more adaptable (Halliday, 1985, p443). Halliday identifies three components of ‘organization’: national professional integration, professional mobilization and coalition formation. Organizational factors may act to constrain knowledge mandates. Epistemology endows contradictory effects on professional bodies in terms of coalition formation and mobilization and is independent in the case of national professional integration (Halliday, 1985, p440).

Professions may obtain “political authority” (Halliday, 1985, p436) through the establishment of a representative national association. Halliday (1987, p138) contends that as specialists are included within the organization, expertise becomes concentrated and multiplied; ideas and knowledge can be exchanged and “practitioners can speak and develop their private languages”. In studies of professions, collective mobility is often framed in terms of the ability of professionals to effectively mobilize and form a powerful collegial institution. This is consequently aligned with monopolization of a service and hence economic reward. For example, both normative and scientific professions, such as law and medicine, have been hugely successful at least in the limited domain of monopoly.

However problems exist in the internal decision making of national professional bodies due to the heterogeneity of its membership. For example, the American legal profession has been sliced into two hemispheres: the corporate hemisphere (where lawyers serve large corporate clients) and the personal plight hemisphere (where the client is the individual) (Heinz and Laumann, 1982, cited by Halliday, 1985). With increasing heterogeneity within the profession, mobilization becomes cumbersome. However as professional organizations become more inclusive of the profession, the profession gains a compositional mandate to

represent themselves, gaining broader social networks and manpower resources (Halliday, 1987, p119).

Epistemology is not completely independent of the organizational axis. Halliday suggests that the more normative a profession, the less easily it can mobilize and engage in the political arena. This follows from a normative profession's involvement in a greater number of areas (moral and technical authority in primary and secondary institutional spheres). Thus achieving consensus is more difficult.

The final component of professional organization is coalition formation, whereby the profession engages with other organizations (including voluntary and political associations). Halliday (1985, p440) argues that normative professions enjoy greater exposure to a wider range of other organizations and external networks and therefore there is greater scope for influence in secondary spheres through coalition formation.

The following section now offers a brief review of the development of the British insolvency profession, with an emphasis upon knowledge accumulation and deployment.

3. The British insolvency profession

British accountants' intimate relationship with insolvency practice has a long history. Insolvency work played a crucial role in the attempts of early Scottish and English accountants to form societies of accountants in the 19th century (Macdonald, 1984; Walker, 1988; Lee, 1995; Sikka and Willmott, 1995b; Walker, 2004a). In particular, early accountants sought to categorize their domains of work through an association with the 'respectability' and stature of lawyers (see Macdonald, 1984; Walker, 1988, Maltby, 1999). Furthermore, the formation of the early professional institutes of accountants was facilitated by the legal system. Particularly in Scotland, the legal system was more conducive to allowing accountants to assume a prominent role not only in accounting and book-keeping but also in bankruptcies and insolvency and to enjoy a close relationship with the judicial system (Brown, 1968, Walker, 1995)¹⁰.

Early characterisations of accountants not only point to an association with the judicial field, but also reveal a close proximity to trade and business matters (Brown, 1968, Maltby, 1999)¹¹. Accounting, certainly in the commercial cities, developed as a response to business demands. It facilitated a means of maintaining order over increasingly complex business transactions and increasing world trade. Accountants' proximity to trade and eagerness to become involved in mercantile business were significant contributors to the established dominance of accountants in insolvency activities. The accountant as an active player in managing businesses and enjoying a proximity to their clients' business was described as a

¹⁰ Thus by the beginning of the 19th century, Scottish accountants had firmly established themselves in the traditionally legal field of bankruptcy work. In England, where the establishment of a formal society of accountants only commenced in Liverpool in 1870, court officials and commissioners often dealt with accounting work (Brown, 1968) while solicitors often undertook book keeping duties as part of their role of managing land estates (Sugarman, 1995).

¹¹ Thus in Scotland, it was not uncommon for a businessman to be designated 'Merchant and Accomptant' (Brown, 1968, p198).

“hungry street-fighter, closer to the coal face, who could and would be able to run a business” (Sugarman, 1995, p233).

In contrast, British lawyers struggled with the accountancy examinations within their professional training and their less adaptive training in practice meant that they failed to keep up with the business needs of the 19th century (Sugarman, 1995). This deficit of technical knowledge on the part of lawyers relative to accountants particularly in subjects relating to taxation, company law and general business matters negated the lawyers’ ability to retain any hold over insolvency work by the mid 20th century (Sugarman, 1995)¹². Lawyers also made a conscious effort to disassociate themselves from ‘dirty’ debt collection work (Flood and Skordaki, 1995; Sikka and Willmott, 1995b; Sugarman, 1995). Flood and Skordaki (1995, p9-10) comment that “insolvency work, with its emphasis on commercial skills, was not particularly relevant to the average lawyer” and so bankruptcy became a “professional success for accountants”.

The early involvement of accountants in debt collection work and management of bankruptcies also points to an attachment with matters highly visible in the public arena and matters lending themselves to controversy and conflict. Thus in the early professionalization project, accountants portrayed themselves as responsible, trustworthy people who were in a position to restore control and order over financial crises. The allocation of property rights and estate ownership inherent in bankruptcy presented itself to the emerging accounting profession as an area to establish expertise in (Armstrong, 1987). As early as 1793 in Scotland, Brown (1968) recounts a large number of bankruptcies, with accountants fulfilling the role of official trustee. One such bankruptcy was the Glasgow Arms Bank, where the accountant/official trustee was successful in satisfying the creditors and facilitating the continuation of the bank (Brown, 1968). Thus as early as the 18th century, accountants were establishing a reputation for property allocation, business rescue and in matters invoking a strong degree of trust.

Given the aims of this paper, the objective of this section is not to provide another historical account of the development of the accountancy profession, but rather to emphasise the possibilities of professional studies arising from a closer look at knowledge, authority and trust. Cooper and Robson (2006, p418) suggest that some accounting historians have failed to make clear the implications of their work, such as that the formation attempts of the accounting profession “continue to have resonance for understanding the continuing evolution of these institutions in the 21st century”. Accountants’ close positioning to trade and commerce, their intimate knowledge of law and the high visibility of financial distress are themes which are returned to later in this paper.

3.1. The modern insolvency profession

The official formation of the ‘modern insolvency profession’ is often associated with the passing of the Insolvency Act (1986) (Flood and Skordaki, 1995). At the time the 86’ legislation was winding its way through Parliament, the economic landscape was scarred by

¹² This was more the case for provincial law firms. Larger city law firms and specialist firms did engage with ‘business’ (Sugarman, 1995).

recession, corporate scandals, directors' misconduct and fraud. Halliday and Carruthers (1996) and Carruthers and Halliday (1998) explain the strategies employed by the State in their attempts to restore morality to and legitimize the market. Alongside the new legislation on managing insolvent organizations and their delinquent directors, the State required human capital to apply and simultaneously legitimize their new policies. The existing mass of specialist insolvency professionals were well poised and keen to take on this charge. The monopolization of insolvency work was consequently granted to the emerging insolvency profession, with the State sanctioning rights to self regulation and licensing of practitioners.

Since 1986, all IPs must be licensed by a Recognised Professional Body (RPB) or the Department for Business, Innovation and Skills (BIS) or the Department of Enterprise Trade and Investment (DETI) in Northern Ireland. The RPBs comprise all the major accountancy professional bodies, the law societies and the Insolvency Practitioners Association (IPA), which is a membership body recognised for the purposes of licensing IPs¹³. Only licensed IPs can take appointments as administrative receivers, Scottish receivers, administrators, or liquidators¹⁴. Cases are always taken in the name of the individual IP, who then assumes personal responsibility for the case and for the actions of everyone else working on that case. Before applying for a licence, individuals must have passed the Joint Insolvency Examination Board (JIEB) examination and satisfy either one of the RPBs, the BIS or the DETI that they have the necessary practical experience. Licences can always be revoked if the individual ceases to be 'fit and proper' to act as an IP.

In the UK, there are fewer than 2000 licensed insolvency practitioners¹⁵. Given the small number of practitioners and the competition for new appointments, reputational capital is important within the field (Cooper and Joyce, 2013). As Table 2 illustrates, approximately 57% of IPs are regulated by an accountancy professional body. Insolvency practitioners regulated by the accountancy professional bodies or law societies tend to be qualified accountants or lawyers respectively, but it is possible to belong to neither professional group. IP status is typically considered secondary to the individual's primary qualification as accountant or lawyer (Flood and Skordaki, 1995, p6; Halliday and Carruthers, 1996, p404). The insolvency profession therefore represents a post qualification specialism for qualified accountants.

[Insert Table 2 here]

Lawyer-IPs tend to assume an advisory role. As Flood and Skordaki (1995) comment, "accountants act, lawyers advise" (p20). Following the Insolvency Act of 1986, lawyers did not engage in inter-professional jurisdictional contests with accountants over insolvency work, partly due to the considerable start up costs and the boom in corporate failures in the 1980s provided sufficient work for lawyers specializing in insolvency (Halliday and Carruthers, 1996). Thus competition is found between accountant and accountant and

¹³ The IPA is the only one of the recognised bodies solely involved in insolvency (<http://www.insolvency-practitioners.org.uk>).

¹⁴ As well as trustees in personal bankruptcy or sequestration.

¹⁵ http://www.r3.org.uk/media/documents/publications/professional/Making_a_Career_Brochure_V2.pdf

between lawyer and lawyer, but seldom between the two professions (Flood and Skordaki, 1995, p ii).

4. Methods

Halliday's (1985, 1987) theoretical framework centralizes knowledge and authority in the state-profession dynamic. As such, the knowledge-power relationship becomes the empirical focus of studies concerned with the macrosociology of the professions. Understanding the balance between knowledge and power reveals the nature of professional political power, the capacity of the state to rule and the structure of state-profession relations. The professional field chosen for this study is the British insolvency profession and the most recent legislative reforms, which took place in 2002. This study seeks to understand how knowledge and authority influence the (re)construction of state-profession relations and relatedly how knowledge and authority come to bear upon the development and deployment of state policy.

Halliday (1985, 1987) acknowledges that institutional spheres may be relatively narrowly defined in terms of the education or medical systems or more broadly defined in terms of the legal system, the economy or political system. Categorization of spheres is therefore researcher dependent. Flood et al (1995, pi), using the 'hemispheres' model, describe the fragmentation of the corporate insolvency market in terms of the personal plight hemisphere and the corporate hemisphere. Within the personal plight hemisphere, the IP's client is a small business, typically owner-managed. Within the corporate hemisphere, the IP's client is the large corporations and this sphere is mainly occupied by the 'Big' accountancy firms. In this analysis, the institutional sphere of corporate failure (or financial distress or insolvency) is identified, comprising the distressed organizations themselves, other companies and entities affected, banks, state agencies (including HM Revenue & Customs (HM R&C, the Government's tax collecting body) and the Insolvency Service¹⁶), the RPBs, 'R3' (the insolvency profession's representative trade body¹⁷) and the courts.

The institutional sphere of corporate failure is also a regulatory institution, significantly framed by insolvency legislation. Thus wider institutional spheres intersect and encompass the institutional sphere of corporate failure, in particular the legal system and the political system. Therefore in order to address the research questions posed by this paper, the study adopts multiple research methods, amalgamating evidence from the political and legal institutions and the institutional sphere of corporate failure.

In particular, a latent content analysis of archival documents was performed, including Hansard House of Commons and House of Lords Parliamentary debates over the proposed Enterprise Act 2002 reforms as well as other governmental documentation, produced by the

¹⁶ The Insolvency Service is the Governmental agency with responsibility for insolvency regulation in the UK. The Insolvency Service reports to the Secretary of State in the Department of Business, Innovation and Skills.

¹⁷ R3 (rescue, recovery, renewal) is the leading trade body of Business Recovery Professionals operating as the most authoritative body for the sector and representing over 97% of all licensed insolvency practitioners, business recovery and turnaround professionals working within the UK (<https://www.r3.org.uk/uploads/documents/R3%20Members%20info.pdf>).

Insolvency Service (including a report on productivity and enterprise and a post Enterprise Act Evaluation Report). Case law was also reviewed for select cases which have involved an IP post Enterprise Act 2002. A latent content analysis was performed on privately sourced and publically available documents and periodicals published by R3 and the Institute of Chartered Accountants of Scotland's (ICAS) insolvency periodical, 'Impecunias'. A detailed reading and interpretation of the reforms and their subsequent impact was performed in order to try and understand the logic behind state reform, the role of knowledge and power in shaping political reform, and how knowledge and authority come to bear upon the deployment of legislation.

A study of the relationship between the profession and the State and the role of knowledge-power would however not be complete without considering how the professionals themselves view the legislative changes and their position relative to the state. Indeed, how practitioners come to see themselves impacts upon how regulations are interpreted and enacted (Cooper and Robson, 2006) and hence on the deployment of state policy. Cooper and Robson (2006) urge researchers to move beyond the professional bodies and associations, standard setters and the state and to consider the institutions and sites of professionalization projects. Accordingly, interview data was also collected from highly experienced insolvency professionals that currently work in the Scottish insolvency market. The interview data provides evidence on the structure of the institutional sphere of corporate failure, the complex nature of professional knowledge, how the professionals position themselves vis-a-vis the state and how professionals acquire, deploy, manipulate and categorize technical and moral authority.

The corporate insolvency market is fragmented, with a division of labour existing between the different insolvency processes. At one end of the market are smaller, general practices which focus upon liquidation work and at the other end, are larger accountancy practices and some specialist insolvency/ restructuring practices that also participate in the liquidation market but additionally undertake administrations and receiverships. The Enterprise Act 2002 reforms to corporate insolvency impacted directly upon the processes of receivership and administration. Accordingly, the target firms selected were mid to Big 4 accountancy firms and specialist restructuring practices. According to Halliday (1985, 1987), institutional spheres are defined in terms of 'locus of practice' and what is considered by the profession and the public to be a legitimate domain of activity. Certainly in terms of the empirical focus of this paper (on administrations and receiverships), the institution and organizations represent the principal locus of activity for mid – Big 4 accountant-IPs and due to the requirement of licensing for formal appointments, it also represents a legitimate domain for them.

A total of ten interviews were conducted, of which nine were with licensed Insolvency Practitioners¹⁸. The tenth is JIEB qualified and an Assistant Director in a Big 4 accountancy firm¹⁹. The interviewees were from a range of size of practice, including two 'Big 4' firms.

¹⁸ Nine of the interviewees were qualified Chartered Accountants, who had chosen to specialize in insolvency.

¹⁹ Direct quotes provided by interviewees are referenced as IP 1 (Insolvency Professional 1), IP 2 (Insolvency Professional 2) and so on. For the avoidance of doubt, references to 'IP 10' in Section 5 do not necessarily correspond to the 'tenth' interviewee described here.

Seven out of ten of the interviewees have almost thirty years of insolvency experience and all were working in the field at the time of the passage of the Enterprise Act 2002 reforms. The timing of the interviews therefore allows for retrospective sense-making of the event (Gendron and Spira, 2010, p276). Between the interviewees, their collective experience includes²⁰: representing ICAS on the Joint Insolvency Committee, membership of the ICAS Insolvency Permit Committee and the ICAS Insolvency Committee, former Chairman and membership of the Scottish technical committee of R3, lecturing for professional insolvency exams and for government agencies and provision of expert opinions in litigation cases.

The interviews were conducted at the professional's offices²¹ and with permission, they were recorded and subsequently fully transcribed. The interviews were semi-structured, with broad topics discussed, including the background to the reforms, the impact of the reforms on practice and more generally about how IPs go about their day-to-day business. A process of interpretation and reflection ensued to understand how the professionals see themselves and how their knowledge and position influence the state-profession relationship and the deployment of state policy. Abductive reasoning was employed with the researcher moving back and forth between data and theory in order to reveal a more enriched understanding of the institutional sphere of insolvency and financial distress and the practitioners who operate within this sphere (Ahrens and Chapman, 2006; Lambert and Pezet, 2010).

The following section presents the research findings with discussion.

5. Research findings and discussion

5.1. Setting the socio-political context of the reforms

The forces at play behind the Enterprise Act reforms were complex and global in nature. Around the time of the reforms, output per head in Britain was below that in the USA, Germany and France, with the productivity gap between Britain and the USA increasing since 1997²². Concerned with the nation's low productivity levels relative to their international neighbours, the British Government constructed its policy reforms around 'enterprise', hoping to attract more business into the UK and boost the nation's international competitiveness. Compounding the preoccupation with 'enterprise' was a comparison of attitudes towards corporate failure on both sides of the Atlantic. Shortly after the Labour Party was elected, Peter Mandelson (then Minister for Trade and Industry) took a trip to California. The professional periodical of R3, *Recovery*, notes that "*Mr Mandelson hit Silicon Valley just as the dotcom boom was gathering pace and what struck him was the prevailing American attitude that going bust was a disagreeable but necessary part of any businessman's education*"²³. The British Government perceived a successful economic climate in North America, which seemingly encouraged risk taking and entrepreneurial

²⁰ This is in order to preserve their anonymity.

²¹ With the exception of one, that was conducted at the annual ICAS insolvency conference, in November 2011.

²² Hansard, 10 Apr 2002: Col 60.

²³ *Recovery*, June 2002, p24.

behaviour. The American insolvency procedure of Chapter 11 came to symbolize to the British Government, a debtor friendly, rescue-centric system of insolvency, which held great possibilities for Britain.

The concept of 'rescue' within insolvency was certainly not new in Britain at the time the Enterprise Bill was progressing through Parliament. The Cork Report published in 1982 recommended rescuing businesses as going concerns and indeed this was the impetus behind the 'administration' and 'company voluntary arrangement' procedures enshrined in the 1986 Insolvency Act. However, the low take up of such 'rescue' procedures subsequent to the 1986 Act led the Government to conclude that they had been unsuccessful (Insolvency Service, 2001, p9). This was further compounded by the popularity of the 'receivership' process. In receivership, the receiver (an insolvency practitioner) is required by statute to maximize recoveries to the floating charge holder (typically a bank)²⁴. An attempt to rescue the company is not necessarily a primary duty for the receiver and if breaking up the business and selling off assets piecemeal maximizes the floating charge holder's recovery, then the company would essentially be wound up and eventually liquidated. Thus Government officials critical of receivership believed that potentially viable businesses were being prematurely dissolved (Insolvency Service, 2001). Such a procedure in the eyes of the Government was far from conducive to rescuing companies and encouraging enterprise.

Not only were there concerns that potentially viable companies were being forced to close down, but also that conflicts were manifest between junior and secured creditors²⁵. Due to the concentration of control in the hands of the bank and/or receiver, the criticisms levelled against receivership were the lack of transparency, neutrality and accountability to the full range of stakeholders. The process very clearly favoured the floating charge creditor and junior creditors were seen to be at a disadvantage. This also attracted problems in the international arena, which was increasing in importance. The European Insolvency Regulation (which provides a framework for cross-border insolvencies and recognition of proceedings amongst Member States of the European Union) would not recognise receivership as a collective insolvency rescue procedure, but would do so in the case of administration (Insolvency Service, 2001, p9).

With a shift in political goals and mounting international pressures, the Government was forced to take remedial action. The particularly unpalatable problems at a local level, including company closure with attendant job losses, deposit-paying customers failing to receive goods and large financial creditors receiving more than small trade suppliers, left the Labour Government with little choice but to directly intervene in the institutional sphere of financial distress. A review of company rescue and reconstruction procedures was set up in 1999 between the Chancellor of the Exchequer and the Secretary of State, with the objective of reviewing insolvency law and practice both in Britain and internationally. The review group's recommendations culminated in the reforms proposed in the Enterprise Bill

²⁴ After the floating charge holder and preferential creditors are paid, the receiver is under no duty to maximize the price on the remaining assets (Armour et al, 2006).

²⁵ Thus junior creditors may favour a prolonged recovery attempt while secured (including floating charge creditors) may favour an immediate break-up and sale of assets (Baird & Jackson, 1984, Armour et al, 2006).

2002. Parliamentary debate over the proposed reforms to Britain's insolvency legislation was long and taxing. Between the 26 March 2002 and 7 November 2002, the Enterprise Bill was laboriously debated through The House of Commons for three readings and a separate Committee and in The House of Lords for three readings, a Committee and Report²⁶. It extended to 277 clauses and 26 schedules and is described by the then Secretary of State, Patricia Hewitt, as "*radical and bold, but based on careful and extensive consultation*"²⁷.

As occupants of a highly visible and emotionally charged institutional sphere, the profession of insolvency practitioners must accept a greater level of government surveillance and a greater potential for government interference. Despite IPs holding a clear monopoly of practice in formal insolvency appointments, their institutional sphere is monitored, assessed and re-structured by the political system. The institution of financial distress is at least partly a regulatory institution and therefore boundaries are imposed through the legal system. Legislative reform was inevitable for IPs. However, the full extent of the reforms on insolvency practice and on the IP's statutory role was as yet unclear.

The following sub-sections explore the nature of the reforms, the insolvency profession's reaction to the reforms and their ex-post implementation in practice. Halliday's framework is deployed throughout the following discussion in order to ensure the centrality of the themes of knowledge, authority and influence.

5.2. The transformation of the institutional sphere of insolvency: from private to public

Having concluded that the British insolvency system was not particularly 'debtor friendly', the Government had to ensure that financially distressed companies "*do not go to the wall unnecessarily*"²⁸. Rather, insolvency law was to facilitate their quick turnaround and survival. Political reform was unlikely to be straightforward for the Government, partly due to a *lack of knowledge* on existing insolvency practices. According to Halliday (1985), social constructions are made of underlying epistemological differences. Professions manipulate their knowledge in its deployment, combining it with a "veneer of perceptions" (Halliday, 1985, p425). This is the boundary work undertaken by a profession to bolster its authoritative position, often culminating in the production of codified bodies of knowledge. However the private knowledges of the insolvency profession were a source of mystery to the Government. Receivership functions as essentially a private contract between the practitioner and his or her appointer²⁹. The IP (as receiver) is obliged to maximize returns to his appointer, but the manner in which this is achieved is not prescribed (codified) by statute or professional regulations. The operationalization of receivership and indeed the final outcomes were therefore relatively unknown to state officials. However, press coverage of corporate failures and public sentiment provided the justification for major reform. Baroness Miller of Chilthorne Domer³⁰ comments that:

²⁶ The reforms contained in the Enterprise Bill 2002 also dealt with competition and consumer protection issues, as well as corporate insolvency and personal bankruptcy.

²⁷ Hansard, 10 Apr 2002: Col 53.

²⁸ Patricia Hewitt, Hansard, 10 Apr 2002: Col 53.

²⁹ see Armour et al, 2006.

³⁰ A Liberal Democrat member of the House of Lords.

..... the current ethos of some lenders is that they are not interested in preserving the assets or saving the company. It seems to be a smash-and-grab raid; they go in and get what they can and that is the end of the poor company³¹.

In the case of the insolvency profession and the process of receivership, the boundary work and manipulation of knowledge referred to by Halliday (1985) would appear to be deficient or at least not directed towards creating a favourable public perception or towards informing those within the political sphere.

The Government's solution to the perceived 'problems' was simple: receivership was effectively abolished and a new streamlined administration procedure, complete with a statutory hierarchy of objectives, was introduced³². The state sought to control the insolvency process and the practitioners and provide greater clarity through more prescriptive legislation. The Enterprise Act reforms provided IPs with a new body of knowledge which was intended to prioritize corporate rescue. Under paragraph 3 of Schedule B1 of the Insolvency Act 1986, the administrator is now under a mandatory duty to perform his or her functions:

- (a) with the objective of rescuing the company; or
- (b) where it is not reasonably practicable to rescue the company, with the objective of achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
- (c) where it is not reasonably practicable to rescue the company or achieve the result mentioned in paragraph (b), with the objective of realising property in order to make a distribution to one or more secured or preferential creditors.

The administrator must work his or her way down the list and is accordingly obliged to explain and justify why a preceding objective is not attainable. According to Halliday (1985), the State does not grant the profession a blank cheque so they may implement their own conception of policy. The IPs' moral authority was categorized by the Government as 'contingent'; in this case contingent upon authority being aligned with political ideologies and public sentiment. The shift to codification is evidence of the British Government seeking to change the regulatory structure of the IPs' primary institutional sphere and prescribe how policy ought to be implemented. This stands in contrast to the relatively liberal process of receivership.

³¹ Lords Hansard, 2 July 2002: Col 147.

³² Receivership has not been completely abolished. In particular, the right to appoint a receiver has been retained for certain capital market arrangements and further, where a floating charge was granted pre 15 September 2003, the charge holder retains the right to appoint a receiver. Hence receivership in this paper is still described in the present tense, despite the significant decline in the use of this procedure. For example, in 2002/03, the number of receiverships in Britain was 1,310 compared with 649 administrations. By 2005/06, the number of receiverships had fallen to 565 and the number of administrations had risen to 2,661 (see Insolvency Service, 2008, p17).

The contingent nature of moral authority was further demonstrated through the reconstruction of the IPs' authoritative position. The British Government made one further significant intervention into the insolvency arena – the dismantling of the strong relationship between the practitioners and the banks. Patricia Hewitt comments:

The Government's view is that, on the grounds of both equity and efficiency, the time has come to make changes which will tip the balance firmly in favour of collective insolvency proceedings – proceedings in which all creditors participate, under which a duty is owed to all creditors and in which all creditors may look to an office holder for an account of his dealings with the company's assets³³.

Accordingly the Government sought to impose a different relationship between practitioners (administrators) and the general body of creditors. Whilst receivership operates as a private contract, administration is a court procedure. Under receivership, the practitioner acts as an agent for the company and owes only a duty of care to the floating charge holder as their duly appointed receiver. With the reforms, the insolvency practitioner now finds himself a trusted officer of the court³⁴, owing a duty of care to all creditors. As such he falls under the jurisdiction of the court and must answer to the court if his conduct falls short of the required standard. Thus the reforms culminated in the transformation of IPs from private agents to public officers of the court, with the increased accountability and impartiality towards creditors that this entails. Arguably, by moving to public accountability, the moral authority of IPs is not so much *contingent* but rather *controlled*, through the judicial system.

Halliday (1987, p345) suggests that when nation states are under pressure from competing demands, their central task is to determine the optimal balance between efficiency and participation and between technical expertise and public accountability. The relationship between profession and state will be dependent upon their relative strengths at a particular point in time. In this case, political objectives were translated succinctly into statute, thereby suggesting that at the level of practice, IPs would have to make changes to how they operated. Their expert knowledge would now require to be oriented towards corporate rescue and continuation of the company in its existing form. At least on the face of things, the Enterprise Act reforms sought to enforce upon the IP how he must conduct the administration and simultaneously, render more visible the previously private knowledges of the profession. The reforms suggest a desire by the Government to re-politicize insolvency, bolster the accountability of the profession and to control more directly the process of formal insolvency. According to Halliday (1987, p356), when the legitimacy of a profession falls and the effectiveness of the state rises, then any contributory relation is more likely to be obviated or attenuated. Largely due to public sentiment and political developments elsewhere, the British Government was empowered to intervene in

³³ Productivity and enterprise. Insolvency – A second chance, 2001, p10.

³⁴ An administrator is an officer of the court, whether or not appointed under a court order. A new 'out-of-court' procedure was introduced by the Enterprise Act 2002 in order to ensure efficiency of process (Henderson, 2003).

the insolvency arena. The effectiveness of state intervention is explored in further subsections below.

5.3. The validation of practitioner expert authority over British corporate management

Having positioned corporate rescue at the top of a statutory hierarchy, the British Government sought to replicate the link between risk taking management and enterprise. The insolvency forum should be embraced by corporate management early on, the distressed company should be restructured and rescued and management should then continue in office. In the House of Lords, Lord McIntosh commented that:

the emphasis on company rescue will create more incentive for company management to take action promptly and use the administration procedure before the situation becomes terminal³⁵.

Integral to these reforms was the idea that it was acceptable for management to fail in business³⁶. The then Secretary of State, Patricia Hewitt, went so far as to say:

It is noticeable that, in the United States, there is much less fear of failure....Indeed it seems that if people do not have one or two failures under their belt in America, they are hardly regarded as serious entrepreneurs³⁷.

The impact of such reforms on the insolvency profession could have been monumental, potentially relegating IPs to a subordinate position in an inter-professional jurisdictional battle with corporate management. Under the American Chapter 11 procedure, directors remain in control of day-to-day management, possibly with the assistance of a newly appointed restructuring officer and a host of lawyers. In contrast, the British receivership and current administration procedures effectively resulted in the powers of management of an insolvent company being transferred to a licensed insolvency practitioner. As IP 2 comments:

Directors don't like administrations too much because they lose control - if someone appoints me administrator, I run their business for them.

Institutional spheres are negotiated sites. Competing professions must convince the state (and public) of the supremacy of their knowledge. In Halliday's (1985) framework, every primary institutional sphere for one profession is a secondary institutional sphere for another. Whilst management occupy the primary position in the institutional sphere of *solvent* organizational management, upon transformation of the sphere to insolvent, they are shifted into a secondary institutional sphere. For those professions in a secondary sphere of activity, their expert authority is contested and their moral authority is marginal,

³⁵ H.L., 29 Jul. 2002, col. 766.

³⁶ The Government also sought changes to personal bankruptcy by reducing the stigma attached to the process. This was to be achieved partly by differentiating between 'honest' bankrupts and those that were 'dishonest' or 'reckless'.

³⁷ Hansard, 10 Apr 2002: Col 50.

given that they are in competition with the 'primary' profession. Thus during parliamentary debate, concern was raised about the appropriateness of the underlying ideology the British Government was trying to cultivate. Mr Whittingdale, Conservative MP for Maldon, commented:

It is not possible to legislate to transplant an American-style entrepreneurial climate into the UK³⁸.

Mr Field (Cities of London and Westminster Conservative MP) elaborated upon the cultural differences:

We need to recognise that the stigma of insolvency is probably as strong as ever. It has been argued that, culturally, Britain is not sufficiently attuned to using insolvency to return a restructured company to the hands of its management. As a practical issue, that is as strong as ever³⁹.

Accordingly, and much to the relief of the insolvency profession, missing from the debate was the issue of fundamental importance to the insolvency profession: *who* would manage the distressed company. As the reforms made their way through Parliament, no reference was made to the possibility of removing IPs from the administration process or a reduced role for the IP. As Halliday (1987, p348) asserts, "the most secure and complete monopoly is one legitimized by the legal authority of the state and enforced by its coercive machinery". Despite the significant changes previously noted, the insolvency profession was to continue with its monopoly position over formal insolvency appointments.

According to Halliday (1985, p425), professions develop ideologies of self description to advance their interests. In this case, central to the State's revering of the insolvency profession is the rhetoric of knowledge. Evidence to support this was provided in the Parliamentary debates, with the Government acknowledging the professional expertise and judgement of insolvency practitioners. As Lord McIntosh acknowledged:

The Government remain of the view that the administrator is best placed to judge whether a particular objective is reasonably practicable, in the light of his experience and professional judgement. In the light of concerns expressed during the debate, we have made it clear that what the administrator thinks should determine which objective is followed⁴⁰.

Mr Waterson (Conservative MP) backs this up by stating that:

.....what matters at the end of the day is a judgement based on the professional knowledge and experience of the insolvency practitioner⁴¹.

³⁸ Hansard, 10 Apr 2002: Col 57.

³⁹ Hansard, 10 Apr 2002: Col 105.

⁴⁰ Lords Hansard, 21 Oct 2002: Col 1102.

⁴¹ Hansard, 17 June 2002: Col. 62.

Evidence from insolvency practitioners suggests that a 'rescue culture' may not be palatable with the British public and that if a company has failed, management should not be given a second chance. As one IP commented about the enterprise culture:

That was an Americanism, where at the time, we swallowed all this American stuff about how they're entrepreneurial and how we're not..... course' we roll forward a few years and their economy's fallen apart, probably to a greater extent than even ours. If you speak to Americans about the American bankruptcy system, they hate it because what it does is it promotes a badly run company to survive against a well run company.....The American system promotes the incumbent management (IP 4)⁴².

Another IP felt that the reforms had moved Britain as close as it can to the American procedure:

In Chapter 11, it's the same people running the business. No – that's a step too far I think for here (IP 1)⁴³.

Indeed a core theme emerging from the practitioners interviewed was the 'benefit' of British insolvency proceedings over the American Chapter 11 proceeding in terms of *changing* management. IP 4 commented:

So if you are trying to be debtor friendly towards the incumbent management team, what about all the poor souls who have lost all that money? And it's just all about getting that balance right.

Thus despite the open acknowledgement of the American Chapter 11 process, the British Government stopped short of a complete replication. The American culture of active court participation, debtor in possession insolvency and reliance on existing management was not to be fully embraced by the British government. State reliance upon the insolvency profession's knowledge credentials resulted in the maintenance of the IPs' monopoly position. Underlying the reforms and the marginalization of British corporate management was the rhetoric of 'existing management – incompetent, insolvency practitioner – competent'. The basis of the IPs' competence is explored further below.

Thus, despite the transparency issues noted in the prior sub section, the boundary work undertaken by IPs would appear to be highly successful in at least marginalizing those

⁴² The inherent cultural disharmony between America and Britain had been previously highlighted in the administration of Maxwell Communications Corporation, a British company with global operations. As Flood and Skordaki (1995) reported, the British insolvency practitioners 'abhorred the disruptive forces of Chapter 11 which would, from their viewpoint, leave in place the very managers who ought to be usurped' (p32).

⁴³ Further evidence of the desire to replace existing management is found in the very low utilization of the company voluntary arrangement procedure. In a CVA, existing management continue to manage the company, whilst a Supervisor (who is typically an IP) oversees the arrangement. The low utilization of this procedure perhaps reflects an aversion towards retaining existing management and the cultural problems of attempting to import an American Chapter 11 proceeding. Two interviewees suggested that IPs had not given CVAs a reasonable try, partially due to their scepticism towards retaining existing management.

occupations that may pose a threat to the established profession. The perceived problems with receivership were not attributed to the insolvency profession, but rather to the banks as secured lenders and the insolvency legislation as it currently stood. Thus consistent with Halliday (1985), IPs' expert authority was assumed to be complete within their primary institutional sphere. To maintain control over their primary institutional sphere, the profession must convince policy makers of the superiority of their expert knowledge over others. From the perspective of the State, IPs were valorized over existing corporate management. They would unproblematically implement the new hierarchy and their translation of law into practice would coincide with governmental thinking.

5.4. The organization of collective action and influence in a secondary institution

Halliday's (1985) axis of organization suggests that national bodies may achieve a political authority. Furthermore, the more normative professions enjoy a greater array of inter-organizational linkages and greater opportunities to form coalitions and networks, which can be mobilized for action (Halliday, 1985, p440). R3, as the insolvency profession's national trade body, was particularly vocal about both the nature of the reforms and how they went about their active campaign of lobbying. R3 employs its own public relations agents, one of their tasks being to monitor parliamentary activity in connection with insolvency matters. R3's response to the reforms was accordingly well structured and co-ordinated, with informal discussions held with members of the House of Lords on how best to influence the Bill as it made its way through Parliament.

R3's *Recovery* periodical notes that:

Last November [2001] two MPs and a member of the House of Lords attended the annual dinner at the Guildhall. All three offered assistance in promoting the views of the business recovery profession. Following the dinner, Lord Hunt of the Wirral, an Opposition peer, hosted a lunch for a small team from R3 to explore ways in which R3 could improve its communication and increase its influence with Parliament⁴⁴.

Briefing meetings were held with Lord Hunt who was leading the Conservative opposition in the Lords and his counterpart for the Liberal Democrats, Lord Sharman, a former senior partner of KPMG. Thus R3 enjoyed access to a very well connected and well positioned network, with former senior accountants and Lordships.

Halliday (1985, p430) comments that professions have been successful in influencing public policy under the cloak of technical expertise or where the profession has disguised its normative contributions in technical clothes and hence secured greater legitimacy. R3's briefing note on the Bill was sent to all MPs who spoke at the second reading, together with all members of the standing committee. In addition, senior members of R3 met with the minister, Melanie Johnson (then Parliamentary Secretary), to highlight R3's views. According

⁴⁴ *Recovery*, June, 2002, p10.

to R3, their best forum for debate and for influencing the Bill was to be the House of Lords. As reported in *Recovery*,

the traditional avenues for lobbying ministers and the officials who advise them were not very receptive to further attempts to influence their approach. With the Government's large majority in the Commons, the scope for securing changes to the Bill there was very limited. Moreover, the highly 'political nature' of the lower house requires MPs to focus on issues that will score points with their constituents and the media. This meant that the focus in any real lobbying effort had to be in the House of Lords. In many ways the Lords was much better suited to dealing with the changes that R3 sought. The nature of debate in the Lords allows for more detailed consideration of technical points in the spirit of the Lords' role as a true revising chamber⁴⁵.

R3's lobbying efforts were focused on the practical difficulties with implementing the proposed legislation. According to *Recovery*, R3 broadly supported the Government's overall objectives. However,

...a number of the measures proposed looked impractical and unworkable and, unless amended, would undermine the Government's overall objectives⁴⁶.

Halliday (1987) urges researchers to demonstrate how arcane knowledge can be mobilized for political action in contemporary democracies. In this case, the profession of IPs sought to convince policy makers that the issues at stake were technical matters and to remind policy makers that it would be IPs that were ultimately responsible for implementing policy in their institutional sphere. As such, the complete legitimacy of their technical authority in their primary sphere was embedded in the efforts of R3 in their political mobilization.

The majority of interviewees could recall the discussions at the time of the reforms. Insolvency practitioners held strong views that policy makers failed to understand the practice of insolvency:

There hasn't been a decent piece of legislation passed since 86 that's made one bit of difference. Politicians understanding about what we do is virtually nil (IP 4).

IP 4 went on to say that if politicians want to promote a rescue culture, then their policy measures ought to be geared towards "*education*", not "*legislation*" (IP 4).

However, as the insolvency profession enters the institutional sphere of political reform, they enter a secondary institutional sphere, where the practice of professionals is limited and they have a circumscribed legitimacy. Here, the scope of professional authority is severely limited (Halliday, 1985, p431). Hence in the secondary sphere, even technical expertise has contested legitimacy. The insolvency profession shares the secondary

⁴⁵ *Recovery*, Summer, 2003, p16.

⁴⁶ *Recovery*, Summer, 2003, p16.

institutional sphere of the political system with other powerful groups, each with different resources to bring to bear on policy makers. According to R3, the Government strongly resisted R3's suggestions as well as other parties seeking to influence the Bill, including the Confederation of British Industry, the British Bankers Association and the City of London Law Society:

The ministers considered that the Government had consulted at length and that its formula was the right one for the promotion of the 'rescue culture'⁴⁷.

One matter that R3 expressed concern over was the Government fixation on company rescue, which may not maximize returns to creditors. In private documents obtained from R3, R3 comments:

Why is it better to keep the company intact at the expense of the business and pay creditors 20 pence in the pound than to sell the business, preserve jobs and pay the creditors 60 pence in the pound?⁴⁸

R3 argued that it was not clear why the Government had focused on corporate rescue when there had been no extensive public debate on the matter. When a profession attempts to influence public policy on the substance of law, the profession acts prescriptively or as a normative authority. Technical issues become political issues and the profession becomes public moralist (Halliday, 1987, p39).

According to R3, the most common form of rescue in the context of administrations and receiverships is a sale of the business and assets as a going concern. The rescue of the company itself is

less often the objective.... The existing procedures have worked well over the years, and insolvency practitioners have achieved a considerable degree of success in using them to rescue viable businesses and preserve jobs.

As noted, there were very strong views from all the interviewees that the essence of the reforms reflected a political manoeuvre, with the British Government seeking to bolster an association with a perceived entrepreneurial economy. According to IPs, the actual reforms reflected a strong misconception about the actual practice of insolvency and more broadly, the nature of corporate financial distress. Halliday (1987, p261) contends that professional associations can engage in considerable activity outside their primary institutional sphere. R3's arguments were couched in terms of technical expertise: R3 described the 'practical difficulties' in applying the Government's intended policy reforms and the 'unworkability' of the proposals. However, moral authority was also deployed to argue and expose, in R3's opinion, the Government's 'errors' in fixating on corporate rescue.

Partly as a consequence of R3's extensive lobbying and well connected network, the Government amended its proposed reforms by adding that if lower ranking objectives

⁴⁷ Recovery, Summer, 2003, p17.

⁴⁸ R3 Briefing Note, 28 June 2002, p5.

achieved a better return for creditors as a whole, then the administrator may depart from the objective of company rescue. R3's successful campaign consequently shaped Governmental ideas relating to the 'enterprise culture'. In Halliday's framework (1985, 1987), professions are capable of bringing knowledge to the service of power where they can effectively participate in secondary spheres. According to Halliday, professions have only marginal moral authority in secondary spheres. However, clearly where professional organization is well developed, there is tremendous scope to increase the legitimacy of moral authority and hence to impact upon public interest matters.

The stage is now set to explore how the reforms have come to be enacted in practice.

5.5. Understanding practitioner expert knowledge

Modern states have a strong, persistent demand for expertise and, in professions, the state will find the "densest concentration of technical competence in civil society" (Halliday, 1987, p356). Halliday (1987, p *xix*, emphasis added) suggests therefore that it is important to study how professions *acquire* resources and *construct* the authority upon which their macroeconomic role rests. This sub-section reveals the complex nature of the insolvency practitioner's knowledge.

IPs were unanimous about the broad range of skills they possess to perform their jobs competently. IPs' knowledge of insolvency, corporate, tax and employment laws is clearly a significant component of their knowledge base. The mastery of insolvency law in particular requires high levels of technical expertise, evidenced by success at exams. Indeed success at exams was viewed as a means of professional differentiation and a sign that the person could be trusted and relied upon (IP 2). However, 'knowledge' extends beyond knowledge of the law, to further encompass a mixture of accounting, business and broad management knowledges. IP 9 suggested that:

We're actually essentially businessmen. We're good accountants.....we can go through a balance sheet in half an hour and tear it to shreds.

IP 2 also commented:

If you want to take corporate appointments then you tend to find people that work in that side of business should be doing some kind of accountancy training because it lends itself to doing that kind of work because you're kind of out there, interrogating company's books and records and projections.

IP 5 noted that:

You become the chief executive effectively of the company and you can get in there and you can control it.

IP 3 commented that:

We're not surveyors, we're not builders, we're not engineers.....but you can effectively be the managing director and direct. It's really a case of....learning to deal with management coupled with the particular complexities of being in insolvency and knowing those rules.

Whilst much of this knowledge may be acquired through periods of study and success at examinations, much knowledge is acquired from prolonged occupation of the 'shop floor' and "getting to the nitty gritty of things" (IP 9). IP 10 suggested

You have to work with the directors because when we go in there, I do this every day of my life. Some of them are only seeing it once in their lives....so it's very difficult for them to deal with.

As one IP described, the job is more about

.....management and about being in insolvency and having that knowledge. You have to know your insolvency procedures and then it is about managing people in a difficult situation because they may lose their jobs. How do you get that skill? By experience. Until you've had to lay off people..... until you've done it, it's difficult to know how you would learn how to do it (IP 3).

Technical authority refers to a high degree of facility in the manipulation of professional knowledge (Halliday, 1987, p38). IPs prided themselves on their ability to transcend different organizations. Although industry sector specialism was seen as an advantage in securing work in some cases, IPs felt equipped to take their package of skills across any different organization. The broad and complex mix of knowledges is considered transferable.

An important part of knowledge creation and formation, is the close relationship between IPs and banks (secured creditors). It is common practice, for IPs (particularly from Big 4 accountancy firms) to go on secondment to the major banks. During this period (which could be as long as six months), extensive knowledge sharing takes place and networks are established between IPs and the most powerful financial creditors. The knowledge sharing has evolved over the years and is a two-way exchange. As IP 4 remarked,

Twenty-eight years ago when I started doing this, there was no sophistication attached to it. The banks had no sophisticated people and they didn't have an understanding for it....As we've progressed over the last few years they want people to work with them that can go in there and help them through the process.

Equally, the IPs' interpretation of the 'rescue culture' will be heavily conditioned by their exposure to senior bankers' thinking and rationalization of the problems. As one IP remarked about secondments, it's about "sitting on the other side of the fence" (IP 7) and bringing back experience to the firm.

Professions act as mediators between state policy and its implementation (Halliday (1987). For IPs, communication of knowledge and the ability to manage the communications with differentially qualified and knowledgeable stakeholders are integral parts of their mediator role. IPs are required to deal with a range of stakeholders, including directors, employees, creditors and other members of the public. IP 8 noted:

You have to be able to talk to Jimmy on the shop floor as well as the MD [managing director] and the bank guy and all sorts of people.

Even the courts have subsequently confirmed the significance of expert communication. In one case, the judge commented:

I felt I could safely rely on Mr Long's [the IP's] evidence. He was an impressive witness, a professional, who was dealing with a matter that fell within the scope of his professional expertise. He was able to explain to me clearly and cogently the strategy adopted by the administrators and the thinking behind it⁴⁹.

Indeed although supported by directors, managers, senior and administrative staff, it is the IP who has come to symbolize the knowledge expert, to occupy the position of trust. Being at the 'coal face' imparts both valuable knowledge (how to apply legal knowledges and other regulations and the implications of complex knowledge interactions) and significantly trust. IP 10 commented

People tend to leave it up to the IPs to make their decision because you're the professional and you're the one who's got the licence and you've got personal liability at the end of the day so you have to make the correct decision (IP 10).

IP 5 pointed out that historically,

You weren't allowed to take cases unless you were a partner.....and it's because you have to trust the partners. It's the position of ultimate trust as far as we're concerned.

The parallels between IP 5's reference to trust and accountants' historical involvement in bankruptcy matters in the late 18th century is apparent. The concept of trust or moral authority in its current form is explored further in the following two sub-sections, considering firstly the challenges to moral authority from creditors and secondly, judicial perspectives on the IPs' moral authority in action.

5.6. Abuse, technical rationality and the management of moral authority

According to Halliday (1985), moral authority is exercised when the profession engages in more general ethical areas and further, the moral authority of a profession is contingent within their primary sphere; thus the public are not unquestioning or undemanding of the professional's decision making. Given the disparate range of stakeholders affected by

⁴⁹ Case no: 3656 M2008, High Court of Justice, Chancery division, Companies Court, 26 October 2010.

insolvency and the financial loss suffered by participants, IPs' moral authority is exploited and questioned in different ways. This will often depend upon the relative knowledge or expertise of the stakeholders involved and the extent of their financial loss. Unsecured creditors are often sole traders or owner-managed businesses; individuals who have lost substantial sums of money and who are relatively less well informed, compared with banks. Banks are often secured and capable of absorbing the loss.

The IP practices within the institutional sphere of corporate insolvency and financial distress, but in doing so, he also enters the personal spheres of those affected by the failure. Although not the cause of the financial distress, the entrance of the IP (an outsider) symbolizes the formalities of insolvency and the transformation of the sphere from solvent to insolvent. Accordingly the IP is located in a highly charged and emotionally fraught environment. Thus IPs find themselves subject to the "most unbelievable abuse" (IP 1). IP 5 commented upon the profession's perception as a "bunch of bandits". IP 2 summarized the situation as:

.....somebody opens the door and there's a man standing there with blood on his hands and a body. The obvious conclusion is he's murdered him but in fact he's the doctor trying to save the patient.

IP 5 commented that

Accountants generally don't have a particularly good name and they are not high up there on the 'happy list' with the public, unless you're saving them tax.... Insolvency practitioners are just seen as a necessary evil when a business goes bust.

From the IPs' perspective, the abuse arises due to a lack of understanding of the insolvency process and from the inevitable financial pain suffered by many individual participants. Thus moral authority is contingent on the pay-offs received by creditors.

Halliday (1985, p431) asserts that the distinction between technical and moral authority at best is blurred and opaque and that quite often, even the professionals' may be only semi-conscious of the value ramifications implicit in their expert representations. Further, the ability to disguise moral authority as technical expertise enhances legitimacy. Challenging the legitimacy of the IP's knowledge is problematic in the sense of distinguishing between the two forms of authority. Depending on how well the creditors are informed, the IP's decisions face different degrees of challenge. In the case of smaller, unsecured creditors, the challenges appear to be more easily managed by the IP. IP 5 remarked, "frankly I've seen it all and I don't get hassled about it. I just think 'right, this is what we've got to do'".

On the other hand, challenges from more sophisticated stakeholders present greater problems for IPs in terms of demonstrating their technical and moral authority. One interviewee referred to a case where he was being challenged by a major bank:

The position I took was I am not prepared to let that affect my judgement, therefore since then I've had problems with that bank. And to me that is complete nonsense because what they are doing is casting aspersions on my reputation and my judgement by saying we don't think that was the best deal you could have done and we don't trust your judgement (IP 2).

In this case, the challenge was not centred on a breach of particular statutory rules, but rather the commercial judgement of the IP in his application of the rules.

Arguably the reconstruction of their role from private agents to public officers of the court allows practitioners to distance themselves from the bank and therefore gives the IP more credibility in the eyes of the other creditors. IP 2 commented:

I'm an officer of the court – they [the banks] shouldn't be telling me what to do. The IP should be saying we should be trading this business or we shouldn't be trading this business. It's not up to the bank to make that decision.

The Enterprise Act reforms effectively enhanced the legitimacy of their authority. Thus on one hand, the formalization of moral authority embodied in the 'officer of the court' role represents an intrusion into the private professional's life. On the other hand however, the State increased the moral legitimacy of the private practitioners.

As Halliday asserts (1985), when the legitimacy of a profession is challenged, the profession retreats to its cognitive foundations. In spite of its normative nature, the insolvency profession has not lost the "authority of science" (Halliday, 1985, p428). In his study of the American law profession, Halliday (1987, p41) contends that lawyers are in the unique position of exercising technical authority within a normative system. Further due to the blurring between the technical and the normative, lawyers exercise moral authority in much of their everyday interactions. Similarly, the insolvency profession's knowledge base is structured around legislation and case law. Legal knowledge adopts a scientific status, conferring legitimacy on those capable of its interpretation and application.

IPs held very strong convictions that they do a 'good job'. They assert that they comply with all relevant regulations, they endeavour to save the business and they preserve trading relations and employment. Thus the disconnect between their technical expertise and the verbal and sometimes physical abuse they suffer is rationalized as a 'lack of knowledge' by others and the financial pain suffered. Despite the hostile nature of financial distress and insolvency, IPs have learnt to 'manage' their authority. The IP's conviction in his technical expertise facilitates the deployment of legislation. In these often ugly confrontations with aggrieved stakeholders, the IPs frequently refer to the law as a codified, authoritative point of reference, highlighting compliance with the law as a defence against pitiful returns to creditors. Thus although they may appear to have less than complete moral legitimacy at the level of practice, the IPs themselves do not see it this way. As technical rationalists, with justification of practice grounded in knowledge of the law, and a strong moral conviction in the decisions they make, IPs accept the seeming doubts about their legitimacy, processing them daily in a similar way to other transactions undertaken as part of his role.

Having said that, the fine judgement calls to be made now by the IP (for example in deciding upon the approach and timing of a business sale and in managing tensions between the different classes of creditors) have left the IP open to greater legal challenges. The institutional sphere of financial distress is not only occupied by the profession of IPs, but as was historically the case, insolvency-specialist solicitors have retained an advisory role. As a consequence of being structured by the legal system, the institutional sphere of financial distress post-reform has provided significant opportunities for solicitors to expand their role. Interviewees remarked upon how in such an advisory capacity, solicitors were kept busy and well remunerated. One IP commented that “I think they [the lawyers] would hope to get a lot of work from insolvency practitioners” (IP 2).

Whilst some solicitors will act in defence of their practicing-IP brethren, other roles have also emerged. The periodicals of R3 make reference to the greater degree of the exercise of professional judgement and the heightened potential for the IP to be sued⁵⁰. Significantly, unsecured creditors have been given enhanced rights to sue the administrators. The Recovery periodicals⁵¹ highlight a lowered threshold for creditors to intervene in an administrator’s actions⁵² and the ability of a creditor to bring misfeasance proceedings against an administrator, potentially requiring the administrator to compensate the estate (p6)⁵³. Where the moral authority of a profession is contingent in the primary sphere, other occupational groups, such as insolvency-specialist barristers representing the creditor population have also been provided with opportunities to enhance their economic returns. This has been amplified further by the new court-centric process of administration.

5.7. Moral authority and judicial sanction

The excess and incompatible demands placed on Western governments has led to the problem of ‘ungovernability’ and the emergence of professional groups as powerful, political agents offering potential solutions to overburdened governments (Halliday, 1987). For Halliday (1987), however, an excess of knowledge, especially where it is monopolized by an elite occupation, disenfranchises effective political participation, potentially resulting in the circumvention of state policy. The IPs interviewed were rather dismissive of the impact of the reforms on their day to day actions and despite the Government’s intended radical overhaul of corporate insolvency, IPs believe that the reforms have had little impact on how they go about their daily activities:

I think we are doing the same job we always did. We try and maximize the value of the assets, save as many jobs as we can, do our best for creditors and I don’t really think the legislation in itself has changed what we do (IP 1).

⁵⁰ Arguably, the enhanced role for the legal profession was circumscribed by the Government’s redefinition of the IP’s role from private agent to ‘officer of the court’.

⁵¹ Recovery, June, 2002, p6.

⁵² The existing test of ‘unfair prejudice’ has been replaced with the lower test of ‘unfair harm to the interests of the applicant’.

⁵³ The unsecured creditor must show that the administrator ‘breached a fiduciary or other duty in relation to the company’, or ‘has been guilty of misfeasance’.

In the process of knowledge implementation, commercial knowledges and the law as a body of knowledge interchange. In some cases, they may be compatible and in others they may be conflictual. Where they are in conflict, the interpretation of legislation will be partly conditioned by the IPs' diverse knowledges and by their exercise of moral authority. IPs felt rather strongly that the objective of company rescue was misguided and the legislation was written by people who "don't understand the real world and the insolvency world" (IP 1). The political system is seen as far removed from the 'real insolvency world'. One IP described the reforms as "utter nonsense", having made "not one iota of difference to the survival rates of businesses" (IP 4). IP 6 commented:

There's what you legislate for and then there's the commercial reality and in my experience, from all these years in insolvency, they legislate for something that the markets have already adapted to. Legislation comes after rather than before.

Thus in recounting particular cases, practitioners were plagued by frustrations and in some cases despondency:

So what happens is you're appointed administrator. After your appointment you put the business up for sale. You tell your customers and suppliers stick with us. We're in this strait, but don't worry about it. We are really confident we'll get a sale. You tell all your staff don't worry there will be a job for you at the end of it. Can't guarantee it but I'm sure it will be all right, don't worry about it. And you go through the whole compliance and procedures of doing the sales memorandum and then you get a great offer for the business, and you accept it, there is a dividend for the creditors, jobs are saved and everyone is happy. Well, unfortunately that's just fiction. That's a fairy tale. Because as I said to you what really happens is day one your best staff are away looking for other jobs, your customers are all away..... (IP 1).

Another IP commented:

We told Des Flynn at the DTI⁵⁴ that administrations would work as receiverships but in another name. He didn't believe it. It's exactly what's happened. It was always going to happen (IP 9).

Indeed statistics reported by the Insolvency Service confirm the IPs' concerns. The Evaluation Report notes that the "evidence to date does not suggest an increase in the frequency of rescue through administration" (Insolvency Service, 2008, p28) and further that the "the outcomes from administration and administrative receiverships as a whole are clearly very similar" (Insolvency Service, 2008, p92).

⁵⁴ The BIS was formerly known as the DTI (The Department of Trade and Industry). Des Flynn was then Chief Executive of the DTI.

In the case of financial distress, the knowledge gap between politicians and practitioners has provided opportunities for IPs to exert considerable moral power. The push and pull effects between professional expert authority and representational authority are visible. In moving down through the hierarchy of statutory objectives, the IP must justify his reason for not pursuing the higher ranked objective. R3 had expressed some concern over how it would be decided whether an objective is reasonably practical or not. Situations may arise where the secured creditors wish to push for a rapid sell-off of assets⁵⁵, while junior creditors may favour a prolonged recovery attempt⁵⁶. The administrator must then decide upon the best course of action for the creditors as a whole, but quite often, there may be a fine line between the available options. The decision on how to rescue a company exemplifies the demonstration of technical authority but the decision on whether it *should* be rescued exemplifies the demonstration of moral authority. R3 argued that, “the decision on what is ‘reasonably practicable’ can only be a subjective judgement by the administrator himself”⁵⁷. Lord Hoffman recognised the subjectivity inherent in this process:

What this amendment does, however, is to put the whole matter, even as to the future, into the hands of the opinion of the administrator. The amendment therefore precludes interested parties from coming to the court....These amendments seem to take that power out of the hands of the court entirely and leave everything to the opinion of the administrator (Lord Hoffman, 2002)⁵⁸.

According to Halliday (1985, p429), moral authority is exerted when technical issues shade into political issues. Furthermore, the legitimacy it is granted for one type of authority is almost imperceptibly transferred to the other, at least in the zones of conceptual transition (Halliday, 1985, p430). Thus R3’s concerns were redundant. Lord Hoffman subsequently went on to say,

In my experience as a judge, the greatest respect has always been paid to the opinion of the administrator. He was the man who was in touch with the facts and who had to make the practical day-to-day decisions. It would be rare indeed for a judge to say, ‘No, we think that you are doing it the wrong way’. If, with hindsight, one were looking at any criticism of something that the administrator has done, it would be virtually impossible to hold any administrator liable for something that he had done in good faith on the footing that the judge thought that it would have been better to take some other course. (Lord Hoffman, 2002)⁵⁹.

Thus despite administration being a court procedure, the courts were poised to take a back seat and defer to the expertise of the practitioner. The deferment of the courts and the legal system to insolvency practitioners is once again evident.

⁵⁵ Consistent with objective b) or c).

⁵⁶ Consistent with objective a).

⁵⁷ R3 Briefing Note, 28 June 2002, p5.

⁵⁸ Lords Hansard, 21 Oct 2002: Col 1103.

⁵⁹ Lords Hansard, 21 Oct 2002: Col 1103.

Other members of Parliament concurred with Lord Hoffman:

I am informed by one insolvency adviser that, in the court process, judges rarely, if ever review the insolvency accounts, because they are not accountants. In most cases, they take a view on what the insolvency practitioner puts in front of them (Djanogly, 9 May 2002),

and

The administrator is the person on the ground who is in possession of all the facts and is best placed to determine whether a particular course of action is reasonably practicable or not on the basis of his or her experience and professional judgment. It is not the courts' practice to second-guess administrators' commercial judgment in such cases..... (Johnson, 2002)⁶⁰.

In this way, and over time, the interpretation of the hierarchical statutory objectives by those on the ground will determine its practical application and the outcome for financially distressed organizations. This is borne out further in the final subsection, which reports one particularly contentious example of current insolvency practice. It demonstrates the ability of insolvency professionals to manoeuvre within the statutory rule book and in so doing create new solutions to (and knowledge of) business problems.

5.8. Knowledge mandates and the management of an economic crisis

Halliday's (1985) institutional spheres are defined by an objective and subjective criterion. The objective criterion is represented by the principal institutional locus of practice and the subjective criterion is defined in terms of what professionals and their public regard as legitimate domains of practice. Whilst earlier sections have considered formal insolvency appointments, this final sub-section explores the practice of 'pre-packaged administration'. Pre-packaged administrations or 'pre-packs' are pre-arranged transactions, whereby the company is placed into administration and then almost immediately the business is sold, quite often back to existing management⁶¹. In these transactions, the bulk of negotiations are conducted *pre* formal insolvency, typically between the IPs, the bank and corporate management.

In the context of formal appointments, IPs' technical authority is confirmed as complete (as earlier sections have revealed) and symbolized through practitioner licensing. Arguably in the context of informal restructuring work, IPs are in competition with other professional groups, notably insolvency specialist lawyers, turnaround doctors and other reorganization experts, for whom financial distress may also constitute their primary sphere. However, their monopoly position of formal insolvency enables IPs to exploit the market through a subtle enmeshing of informal and formal corporate work.

⁶⁰ Hansard, 17 June 2002: Col 64.

⁶¹ Frisby (2007, p11) defines a pre-pack as "essentially defined by the characteristic of pre-determination". Thus the sale of the insolvent company's business is pre-negotiated and completed almost immediately following the appointment of the administrator.

IPs consider ‘pre-packing’ to be a legitimate domain of activity for them due to their expertise and knowledge in dealing with financially distressed organizations and significantly their ability to take the transaction through to its formal conclusion. Pre-packs have thus emerged as a carefully crafted hybrid of informal and formal restructuring. Indeed, interviewees commented upon how their work patterns had shifted in recent years, with a greater proportion of their time spent outside of official or statutory procedures.

The case of DKLL solicitors provides insights into the Court’s position on pre-packs and their reliance upon IPs’ technical competence⁶². In this particular case, the firm of solicitors (DKLL) was “hopelessly insolvent”. Two of the firm’s partners sought to place the firm into administration, with a view to effecting a pre-pack sale of the business. HM R&C, the majority creditor, opposed the administration order and sought instead to liquidate the company. The Court was ultimately asked to approve the pre-packed administration or agree to the liquidation of the company. In reaching its decision, the Court placed considerable emphasis upon the information provided by the IP, confirming the practice as falling within the insolvency profession’s primary institutional sphere. There were three short paragraphs describing the IP’s qualifications, experience and employment. The IP then went on to report on realizable values for debtors, work in progress and fixed assets and the offer amount. The Judge in this case commented that:

In applications of this nature, the court places great reliance on the expertise and experience of impartial insolvency practitioners, even though, of course, it is ultimately for the court to decide if the threshold conditions are satisfied⁶³.

In reaching his decision, the Judge was particularly influenced by the commercial necessity of the pre-pack to save jobs, ensure ongoing cases were dealt with and returns to creditors were maximized. Accordingly in this case, the Court found in favour of the pre-pack.

Halliday (1985) comments that normative professionals are practitioners in normative discourse, where the technical and moral are easily fused. The conjunction of technical and moral authority is captured by IP 9, who commented that pre-packs “are just a common sense response, because we’ve all got a nuance about what’s right and what’s wrong” (IP 9). Consistent with the findings from sub-section 5.7, the blurring between technical and moral expertise is approved by the courts. Through court approval, the profession engages in knowledge manipulation or boundary work and enhances its authority for the future.

In spite of reconstructing less formalized boundaries around their institutional sphere, pre-packs have received greater attention recently both in Parliament and in the press. The insolvency profession has expressed some degree of frustration at the negative reaction to pre-packs. In the Scottish insolvency profession’s periodical, *Impecunias*, the managing partner of a medium sized accountancy practice comments thus:

⁶² DKLL Solicitors v Revenue and Customs [2007] EWHC 2067 (ch) (06 March 2007).

⁶³ Andrew Simmonds Q.C., DKLL Solicitors v Revenue and Customs [2007] EWHC 2067 (ch) (06 March 2007), para 10.

...it seems ironic that the Government gave us the legislation to introduce an improved rescue culture, then various MPs, showing a distinct lack of knowledge, criticise us for using the tools which they gave us to help save jobs and businesses in the first place!⁶⁴.

In the following description of a pre-pack orchestrated by IP 1, the combination of technical and moral authority is quite explicit, yet the transaction was challenged by the solicitors of those who felt they had lost out financially (consistent with the empirical findings reported in sub-section 5.6). In this particular case, the company (a high street retailer operating in a number of stores across the UK) was experiencing a downturn in demand and its financial results were quickly deteriorating. After a failed attempt to renegotiate rental payments with the company's landlords, the company was forced to consider an insolvency procedure and existing management were in a position to buy the business. The pre-pack was completed after going through the necessary compliance procedures. In IP 1's opinion this pre-pack was considered a 'success', on the basis that over half of the employees were retained, half the stores remained open, suppliers had continuity of supply and customers had somewhere to shop. However the landlords whose stores were closed down were less than happy. IP 1 picks up the story:

Now those premises would've been empty whether it was a pre-pack or not. If they had just closed down and did an administration, they would still have been empty. They were empty because the company was insolvent not because there was a pre-pack.....But that's the kind of emotion and reaction and it's all financial pain because that landlord is saying..... this is absolutely outrageous, we were never consulted, how can we be left with an empty property, how can anybody do that to us? They were going to have an empty property anyway (IP 1).

The insolvency profession has responded to this negativity through the introduction of 'best practice' regulations, in an attempt to codify procedure and demonstrate to outsiders the transparent and highly regulated structure of pre-pack transactions⁶⁵. However according to some interviewees, the profession has over-reacted, resulting in regulations and compliance procedures that are "absolutely horrendous" (IP1) and a "hassle" (IP2).

The relation between professionals (as knowledge experts) and government becomes an important link in the government's ability to rule and in the structure of government itself (Halliday, 1987). Professionals become powerful agents during times of crisis. Further, when the capacity of the state is low and the legitimacy and resources of a profession are high, a contributory relation has a higher probability of emerging (Halliday, 1987, p356). Earlier sections have revealed the insolvency profession's views towards the reforms. However, IPs are acutely aware of their responsibility "for implementing [the law], dealing with it and making it work" (IP 6). The Enterprise Act objectified governmental ideals of 'enterprise' and 'rescue'. However objectives are subjected to interpretation against a dynamic social and economic landscape. This can become problematic, especially during times of crisis.

⁶⁴ Impecunias, Nov 2009, issue 74, pp2-3, Bryan Jackson, managing partner with PKF (UK) LLP.

⁶⁵ The relevant standard is Statement of Insolvency Practice (SIP) 16.

In the midst of the most recent economic recession, IPs have encountered fewer willing buyers and less finance available, consequently resulting in the pre-pack option gaining in popularity. Professions are in a powerful position to broaden their scope of influence in an increasingly complex social environment, which requires a high degree of technical knowledge (Halliday, 1987, p40). Through the pre-pack, IPs construct complex 'rescue packages', demonstrating their technical creativity and their power and influence in interpreting and implementing state policy, particularly during times when a weakened British Government is faced with significant economic challenges and resource difficulties. Against this harsh economic backdrop, interviewees described how they endeavoured to honour the underlying governmental objective of 'rescue' and simultaneously ensure compliance with the law. In their view, pre-packs offer a rescue solution, which represents the best deal for creditors, employees and society, through business preservation.

Halliday (1987) acknowledges the tensions between narcissistic and altruistic tendencies within a profession; the tensions between professional monopolization and professional civility. Such tensions are evident both in the context of pre-packs and the reforms in general. Thus it has been noted that "pre-packs are invisible in the insolvency legislation and this invisibility can feed into a perception of lack of objectivity on the part of the office-holder" (Insolvency Service, 2008, p147). Lord Phillips also alludes to the potential for professional self interests:

As has already been said, the Bill is a charter for lawyers and accountants. They have largely driven it and will be the main and only certain beneficiaries of it. Indeed, big business will be a beneficiary as only big business can afford the lawyers and accountants to cope with it.....I have no confidence in the ability of a few accountants, however well read or well bred to deal with the non-economic consequences of the matters covered by the Bill. What do I mean by non-economic consequences? We all know that free-market economics is rather like the Ritz.....If one has no money, one has no protection⁶⁶.

On the other hand, the practitioners interviewed were very clear on their professional responsibilities and statutory duties. Thus there was a strong sense of insolvency practitioners belonging to a professional community, with an overriding objective of trying to maximize returns to creditors and preserve the business where possible⁶⁷. IP 10 commented:

I think probably the inference is you negotiate a price just to get the bank out and not be concerned but that's not the case at all. You have to negotiate it at its best and full price and you have valuations on file in order to show that's the

⁶⁶ H.L., 2 Jul. 2002, col. 169. Lord Phillips of Sudbury was the Liberal Democrat spokesperson at the time.

⁶⁷ According to research conducted by ComRes (a leading market research agency, specialising in public policy and reputation research), IPs were responsible for saving almost two million jobs in companies experiencing insolvency and rescuing just under 6,000 businesses during 2009.

http://www.r3.org.uk/media/documents/policy/research_reports/insolvency_industry/R3%20Value%20of%20the%20industry_March%2015th.pdf

case....The bank will always end up being the biggest creditor but they don't influence the process.

As one IP responded with regard to his responsibilities as administrator,

I don't think you will find any insolvency practitioner that takes that lightly. It is a huge responsibility. And there is always the fear that if you really muck up that you can be [made] personally [liable]. And you are a professional. (IP 5)

IP 2 concurred:

I'm justifiably proud of being a CA and being a member of ICAS and I think all members would feel the same – that they would pride themselves on their ethics.

6. Concluding remarks

The objective of this study was to understand how professional knowledge and authority influence the (re)construction of state-profession relationships and further in what ways do professional knowledge and authority come to bear upon the development and deployment of state policy. The significance of these research questions lies in revealing the balance of power and control between the state and the profession and the ways in which this power relation are constructed and reconstructed by expert knowledge, moral authority and professional organization. As Halliday (1987) emphasises, the capacity of professionals to shape public policy provides important insights into the power of the profession and the state's capacity to rule. Thus the knowledge-power relationship central to Halliday's framework is a critical determinant of either the satisfactory implementation of government policy or its circumvention.

Despite its simplicity, the application of Halliday's (1985, 1987) four axis framework has provided a useful explanatory tool for understanding the powerful effects of insolvency practitioner knowledge and authority. The empirical work of this study reveals how individual IPs are knowledge experts, experts in normative discourse and technical rationalists. In some ways, their new role as officers of the court has blurred the distinction between technical and moral authority in the self identity of the IPs themselves and in their personal constructions of moral authority. Knowledge and authority become embedded in the IP's dual role as trusted officer of the court and professional, demonstrating the immense power of the insolvency profession over organizations and societies. This study also reveals how technical and moral authority was deployed to infiltrate the economic system. Thus in deciding on the most appropriate course of action for a distressed organization, in accepting offers and negotiating sales, IPs have a direct bearing on returns to Governmental creditors (HM R&C), on redundancy payments and other welfare benefits. In bringing knowledge to crises faced by modern liberal states, the profession of IPs is able to influence the revenue base and the economic foundations of the State itself.

Halliday (1987) encourages researchers to consider how knowledge is accumulated and deployed. In this study, private, expert knowledge systems, social intelligence, localized knowledge and even a lack of knowledge have been revealed as significant factors in the development and deployment of UK insolvency law. The empirical evidence from this study highlights complex knowledge interchanges and the manner in which knowledge is conditioned by local, daily, micro practices and networks. The commercialized nature of IPs' knowledge is driven by their close relationships with senior bank officials (despite the abolition of the floating charge – receiver relationship). Financial dependency and expediency force the IP to develop new commercial practices which are compatible with major capital providers.

Both state policy and professional knowledge are structured by changing economic and social institutions. Whilst political agendas may be rather more sensitive to global economic pressures, professionals develop conceptions of society which are driven by their day-to-day interactions. To the extent that these interactions are local, so too will be the professional solutions that are developed. The findings of this study show how local, commercial knowledge (the knowledge required to preserve trading at a firm) is mixed with other systems of knowledge (statutes) to deliver a rescue package for distressed organizations. Knowledge and authority become critical components of governance mechanisms, such that the UK culture of governance promotes management change, market solutions and commercial expediency. The success of global political initiatives is thus dependent upon local professional knowledge.

Whilst the focal site for this study was Scotland, future research might also be undertaken into the differences that exist within countries and the regional variations in approaches to restructuring. The interviewees in this study revealed how their knowledge of the local Scottish market was utilized to effect pre-packaged restructurings. In contrast, Flood et al (1995) describe the 'London Approach - an informal rescue procedure used for major British companies in financial distress. Studying the differences in expert knowledge and authority between practitioners involved in different sizes and profiles of case may provide insights into how knowledge systems evolve and the sensitivity of knowledge to local economic conditions and firm size.

This study also reveals the tensions that may exist between individual practitioners and their professional body. Thus professional bodies must demonstrate the legitimacy of their authority to the Government and to the public whilst still ensuring workable rules for practitioners. As a normative profession, this is likely to result in the production of codified bodies of knowledge (Halliday, 1985). In this case, the production of insolvency standards resulted in aggrieved practitioners and frustrations within accounting firms. Such tensions may exist in other accounting functions and future research may usefully consider the impact of collective professional codification or prescription of rules on the working practices and habits of accountants.

Underpinning Halliday's theoretical framework is the definition of 'institutional spheres'. Indeed the legitimacy of technical and moral authority is dependent upon the sphere in which they are exercised. Institutional spheres are almost taken for granted in Halliday's

framework and rather obvious. However, in practice spheres are not clearly demarcated zones and their definition may be rather more complex. According to Halliday, institutional spheres are loosely defined, legitimate domains of practice. In the case of IPs, their right to practice is granted through the political system and their daily practices are conducted against a legal framework. Halliday (1987, p42-43) recognises the power of law in defining relations between the state and the economy, between the state and the individual, between consumers and producers, and even between parents and children, churches and schools. Thus it becomes impossible to disentangle the institutional sphere of corporate failure from the legal sphere. Indeed the empirical work of this paper highlights a process of naturalization, where the legal sphere becomes an embedded part of the IPs primary sphere. The application of moral authority in navigating the statutory hierarchy, the daily application and explanation of law and the deferment of the courts to IPs' expert opinions illustrate this process.

Although the focus of this paper is upon the relationship between the British insolvency profession and the British Government, the impact of global pressures on political reforms was evident. In particular the concepts of rehabilitation and rescue, emanating from the US and developments within the European Union, supporting collective insolvency proceedings, underpinned political reform in Britain. In Scotland the vast majority of companies that suffer financial distress are small and medium sized. The effects of globalization on such companies are therefore likely to be minimal, with most trading conducted locally and their accountants and financial advisors being local organizations. Furthermore, as already noted, the expert authority developed by IPs in this study is heavily conditioned by knowledge of local practices and local networks.

Therefore although the politics of enactment – the manner in which global scripts are incorporated into national law (Carruthers and Halliday, 2006, p531) – may appear to structure the institutional sphere of financial distress, the expert and moral authority of the men and women 'on the ground' and the sensitivity of organizations to globalization are more influential in terms of defining institutional spheres. Carruthers and Halliday (2006) and Halliday and Carruthers (2007) suggest that the globalization of law is dependent upon the role of intermediaries and local professionals. They suggest that the politics of implementation – the gap between formal enacted laws and their everyday application by professionals – occur at a truly local level (Carruthers and Halliday, 2006, p532-534). The empirical findings of this study support this assertion.

Thus whilst UK law appears harmonious with global developments, practice on the ground is rather different. Resistance may therefore occur between institutional spheres according to the profession's knowledge systems. Thus the *global* institutional sphere of financial distress and insolvency, as structured by global ideologies and norms, is distinct from the *local* institutional sphere and the local organizations that comprise it. The institutional sphere of corporate failure, at least in Scotland, adopts a local definition, despite the reforms being triggered within the global institutional sphere of corporate failure. Studying the processes of naturalization and resistance of institutional spheres, the duration of these processes and the presence of knowledge barriers and knowledge deficits that exist between spheres may

provide areas for future research within the insolvency profession as well as other branches of the accounting profession.

The relevance of Halliday's theory when applied to the institutional sphere of political reform might also be questioned. In this case, the study of political reform provided an opportunity to study professional action in a secondary institutional sphere. As the reforms made their way through Parliament, the profession of IPs mobilized (through R3) in order to have maximum impact on their development. The findings of this paper would seem to contradict Halliday's categorization of authority in a secondary institution. For IPs in the political system, their technical authority was complete (as evidenced through successful changes to the Bill) and their moral authority, although it appeared to be marginalized by the State, enjoyed a far higher level of legitimacy than Halliday's theory would suggest. Heterogeneous professions mobilise less effectively through their professional body according to Halliday's theory, due to problems with internal decision making and reaching a consensus. However again, the findings of this study would seem to contradict this aspect of the framework. R3 fully exploited its diverse membership base and extensive coalitions with key players in the upper echelons of the Government to secure major changes to the insolvency legislation, ultimately re-directing the objectives of law towards creditor wealth maximization. Within a secondary sphere, the changes secured by R3 reflect their enormous scope of power, the ability of professional bodies to operate highly effectively as political agents of reform and the deployment of knowledge in the service of power (Halliday, 1987).

Furthermore, the institutional sphere of the political system is occupied by multiple players, including professionals, the banking industry, unions, government and civil service departments, corporate directors and business associations (Carruthers and Halliday, 1998, p61). The usefulness of Halliday's primary/ secondary distinction rests upon the assumption that all participants within a sphere (including political actors) behave like professionals and further that they may be classified between primary *and* secondary. The relevance of Halliday's legitimacy matrix accordingly diminishes where there is no clear primary professional occupant of a sphere, as is the case with the political system, where arguably ministers and officials occupy the primary position.

Multiple professions may also occupy the primary or secondary position of an institutional sphere. In this study, the primary institutional sphere of insolvency is occupied by both accountant-IPs and insolvency specialist solicitors and law firms. As noted above, IPs share the secondary institutional sphere of the political system with other interest groups and professions. Halliday's theoretical framework is silent in these situations about the ranking of authority between professions. Furthermore, intra-professional variations exist, which may require the institutional sphere to be sub-divided. The 'institutional sphere of financial distress' may be carved up in multiple ways, including: administrations v other corporate procedures (such as liquidations), corporate v personal, practice v law on the books, formal v informal, private v public and local v global.

With such potential for multiple definitions and interpretations of spheres, the primary/ secondary distinction is rendered less useful as it becomes more difficult to identify secondary occupants for more narrowly defined institutional spheres and the classifications

of expert and moral authority according to Table 1 are unlikely to hold in all scenarios. For example, in this study, mid to Big 4 accounting firm IPs who specialize in administrations spend less of their time on liquidations, personal bankruptcy and debt advisory activities. These domains then become primary spheres for other insolvency professionals, namely IPs within smaller firms. According to Halliday, the 'small firm IP' would enjoy a higher level of legitimacy than the 'large firm IP' over such domains, which may not be the case. Halliday's framework is silent about intra-professional ranking of authority, the variations in the ways in which expert and moral authority are constructed and conditioned within a profession by firm size and how such variations may lead to the creation of new domains of work. Future research may wish to address these matters.

For Halliday (1987), it is an understanding of the tensions between monopoly and narcissism and professional civility and altruism that reveals the complex state-profession dynamic and the efficacy of state ruling. A critical research approach recognises that individuals are subject to social and political specificities and as such their actions and ability to act 'morally' are shaped by the social and governmental environment in which they function (Stein, 2008). It has been suggested that individual members of the accounting profession may make a positive contribution to society (Cowton, 2009, p179). Cowton (2009, p187) defines the profession as a "moral community", suggesting that the "profession is a valuable technical and ethical endeavour and therefore deserves its considerable rewards". Sikka (2008), on the other hand, suggests that the 'enterprise culture' may have encouraged accountancy firms to engage in "questionable practices" (p269) and notions of ethics or morality have not constrained their activities (p290). Accordingly he urges future research to explore the "anti-social aspects of the enterprise culture" (Sikka, 2008, p291).

Institutional spheres are negotiated sites, where professions must convince others of the social benefits that may accrue from the application of their expert and moral authority. As interviewees for a research study, the IPs enter the institutional sphere of academia. In so doing, the professionals will seek to broaden their scope of influence and raise awareness of the nature of their work. This study has revealed a particular measure of 'successful insolvency outcome'. Interviewees frequently made a linkage between successful cases and the social benefits of short term business rescue, creditor wealth maximization and job preservation. Through the continual repetition of these social benefits and the linkage made by interviewees between IP licensed status and trust, the profession attempts to naturalize its ethical decisions, both within the institutional sphere of corporate failure and within the academic institution.

Arguably an alternative definition of social good might have prevailed (with different implications for creditors, other stakeholders, the wider community and importantly the insolvency profession itself) had R3 lobbied less extensively or along different lines or had IPs or the courts applied an alternative interpretation. The insolvency profession elected to continue with their current practice (arguing that this offers workable legislation and recognises financial constraints and market conditions) and were dismissive of alternative approaches to corporate insolvency. 'Professional civility' is of course subject to interpretation. The insolvency profession has successfully constructed its own definition of 'professional civility' and simultaneously convinced themselves (IPs firmly believe that their

actions are best for creditors), the State and the judicial system of the socially valuable work that they do. Whilst this study highlights the possibility of altruistic behaviour and the capacity of the profession to contribute to the social welfare of a community, it also reveals the immense power of insolvency professionals to structure and shape those policies that elected governments have sought to implement and to play a significant role in determining the economic and non-economic consequences for the wide cross section of society affected by corporate failure.

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Table 1

Bases of legitimacy for collective professional action

	Primary institutional sphere	Secondary institutional sphere
Expert authority	Complete legitimacy	Contested legitimacy
Moral authority	Contingent legitimacy	Marginal legitimacy

Source: Halliday, 1985, p434

Table 2

Total number of insolvency practitioners in Britain as at 1 January 2013⁶⁸.

RPB⁶⁹	No.	%
ICAEW	701	40%
ACCA	161	9%
ICAS	96	6%
CAI	39	2%
IPA	530	30%
LS	133	8%
LSS	11	1%
Secretary of State	<u>64</u>	4%
Total	1,735	

⁶⁸ Insolvency Service (2013, p13).

⁶⁹ Recognised Professional Bodies (RPBs) are: ICAEW – Institute of Chartered Accountants of England and Wales, ACCA – Association of Chartered Certified Accountants, ICAS – Institute of Chartered Accountants of Scotland, CAI – Chartered Accountants Ireland, IPA – Insolvency Practitioners Association, LS – Law Society, LSS – Law Society Scotland.