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**The Dynamics of Institutional and Professional Change:
The Reform of the Scottish Civil Justice System**

Ilay Hicret Ozturk Kayalak

**This thesis has been submitted in order to fulfil the requirements for
the degree of Doctor of Philosophy**

**The University of Edinburgh
September 2019**

Declaration

In accordance with the University of Edinburgh regulations, I declare that:

- (a) the thesis has been composed by myself except where explicit reference to other sources provided
- (b) it is the author's original work
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Peer-reviewed manuscripts:

- Ozturk, I. H., & Amis, J. M. (2017). The Role of Professions in Institutional Change Processes. In *Academy of Management Proceedings* (Vol. 2017, No. 1, p. 17227). Briarcliff Manor, NY 10510: Academy of Management.
- Ozturk, I. H., Amis, J & Greenwood, R, 2017, "*The Role of Professions in Broader Institutional Environments*" Presented in European Group for Organisation Studies (EGOS) 2017, July 6-8, Copenhagen, Denmark
- Ozturk, I. H., Amis, J & Greenwood, R, 2016, "*Power and intra-professional status hierarchies during institutional change: The Scottish civil justice reforms*". Presented in European Group for Organisation Studies (EGOS) 2016, July 7-9, Naples, Italy
- Ozturk, I. H., Amis, J.M., & Greenwood, R. (2016). Intra-professional status, maintenance failure, and the reformation of the Scottish civil justice system. *Research in the Sociology of Organizations, 48B*(How Institutions Matter!), 207–234
- Ozturk, I. H., Amis, J & Greenwood, R 2015 "*Institutional resettlement and the (re)construction of identity: Reforming the Scottish legal system*". Presented in European Group for Organisation Studies (EGOS) 2015, July 2-4, Athens, Greece



September 2019

Ilay Hicret Ozturk Kayalak

Abstract

This dissertation focuses on the institutional change that occurred to the Scottish civil justice system after the introduction and implementation of the Courts Reform (Scotland) Act in 2014. In this process, the Scottish civil justice system went through its most significant transformation in over 150 years. This reformation has created new judicial bodies, changed the jurisdictional reach of courts, significantly altered the allocations of the civil cases within the justice system. By conducting a qualitative case study, this dissertation explores how change unfolds in a highly institutionalised and potentially contested setting with multiple groups of actors. Theoretically, I draw on institutional theory and the sociology of professions, and it is to these theories that my study aims to contribute. My dissertation is comprised of three interrelated papers that appear in chapters three, four and five.

Chapter Three examines the unsettlement caused by reforms due to the pronounced threats to the status of different groups of actors in the field. This paper focuses on the impact of these threats, and the varying responses among groups of professional actors. In so doing, it examines how intra-professional status differences and uncertainty hinder attempts to maintain threatened institutions.

Chapter Four examines the lack of institutional disruption, and in particular asked why such pronounced change within the judicial system did not cause the expected disruption within the professional field that occupied it. This paper presents mechanisms of persistence that keep field disruption at bay and maintain the internal cohesiveness of the profession. These mechanisms are *jurisdictional contentment* and *lack of a career bridge*.

Chapter Five focuses on the theorisation efforts of the change agents in the Scottish civil justice system and explains why these failed. In so doing, this paper provides a revised theory of theorisation that incorporates emotions.

Lay Summary

This study examines the concept of institutional change. It particularly focuses on a change that occurred to the Scottish civil justice system after the introduction and implementation of the Courts Reform (Scotland) Act in 2014. The Courts Reform (Scotland) Act is designed to bring pronounced change to a legal system that has been in place for 150 years. By studying these reforms, this study explored how institutional change unfolded in a highly institutionalised settings and potentially contested fields, and with multiple groups of actors, such as solicitors and advocates.

The reforms caused pronounced threats to the status of different groups of actors in the field. This dissertation examined the impact of these threats, and the varying responses among groups of professional actors. This study found that how the existing status differences within the legal profession and the uncertainty created by the change hindered attempts to maintain threatened institutions.

Moreover, this study examined the lack of change within the legal profession. In particular, it is asked why such pronounced change within the judicial system did not cause the expected disruption within the professional field that occupied it. In so doing, this study found two mechanisms explaining how the legal profession could continue its day-to-day arrangements, routines and established relationships without any disruption caused by the reforms.

In addition, this dissertation focused on the importance of emotions during the change processes. Particularly, how important change recipients' emotions for an institutional change to successfully take place. The emotion of self-confidence was especially important for the change recipients to undertake the new roles and responsibilities that were required by the change.

Acknowledgement

I owe many thanks to many people.

First and foremost, I would like to thank my supervisors, John Amis and Royston Greenwood, for guiding me all along my PhD journey. I particularly thank John Amis for being such a supporting, understanding and kind supervisor. He handled my ups and downs compassionately for years. He was an outstanding mentor who taught me what is a good research and what is better and how to tell the difference. I am forever in his debt.

I would also like to thank my second supervisor, Royston Greenwood, for being an inspiration and sharing his experience and knowledge with me. I am grateful to him for hosting me at the University of Alberta and the great help he provided for shaping my thesis.

I would also like to thank all the members of the Scottish legal profession who participated in my research. Without their help and insights, I could not have written this dissertation. Furthermore, I am grateful to all the staff of the University of Edinburgh Business School, and particularly to Susan Keatinge for always being very kind and helpful. I also thank the Ministry of National Education of the Republic of Turkey for financial support and all the staff of the Ministry for always being very cooperative and kind.

I am grateful to my dear friends and my fellow PhD colleagues at the University of Edinburgh for all their support and inspiration. Particularly, I would like to thank Najmeh Hafezieh for her wonderful friendship and the support she provided me during my PhD as a true friend and colleague. Without your help and support, Najmeh, I could not have come this far. Edwina Yida Zhu, thank you for always being lovely, helpful and kind. I will always remember the times we spent together in our office until very late hours, chatting and laughing together, and our fun times in those short trips to conferences. Melike Senturk, I am very lucky to have met you in Edinburgh and had the chance to know you. Thank you very much for all the great talks and your support, help and friendship. Veselina Stayanova and Betul Gultekin, you were both a complete

joy to me. Thank you for bringing a piece of home to my loneliness, all the great times we had together and your friendship.

Thanks also go to my friends beyond the university. Tugba Ucar, thank you for always being there in times of need. Ozgu Karakulak, thank you for your generosity and feedback on my work. Hasibe Aysan, I greatly appreciate your support and encouragement. Hasan Turan Aydar and Shariqua Rahman, thank you for all of your help during the PhD application process. If you weren't there to help me, I would not have been able to start my PhD journey. Abhishek Subhedar, thank you for always being there for me and dreaming with me.

Last, but surely not least, I would like to thank my dear family. To my parents, Nedret and Tuncer Ozturk, thank you for always being there, making sure that I am loved and cared for, letting me know that I am not alone and that nothing could make me a failure in your eyes. I cannot thank you enough for all the things you have done for me. We have gone through some very difficult times together. Thank you for being resilient and full of love.

I thank my sister, Vuslat Ozturk, for being my best friend, loving and supporting me, and dragging me out of bed when the only thing I wanted was to disappear into a void by sleeping and forget that I had to write a dissertation. I am a lucky person to have you as a sister.

I am grateful to my grandparents, Ulver and Kerim Tutuncu, for taking care of me throughout the years with great dedication and sacrifice. I will never be able to pay my debt to them. I would also like to thank my uncle, Necati Albayrak, for his support, and Huseyin and Zeynep Tutuncu for trusting me.

Finally, I would like to thank my dear partner, Mehmet Kayalak, for always being there for me in difficult times. He waited patiently and loved compassionately. He held my hand and helped me grab life when I was sure that I was falling hard. Thank you, Mehmet, for always reassuring me that happiness can still be found in the darkest of times.

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List of Abbreviations

ASPIC: All Scotland Personal Injury Court

BBC: British Broadcasting Corporation

EC: Emotional Competence

GP: General Practitioner

MSP: Member of the Scottish Parliament

NGO: Non-governmental Organisation

QC: Queen's Counsel

SP: The Scottish Parliament

SYLA: Society of Young Lawyers

UK: United Kingdom

1 Chapter One: Introduction

“Scottish civil justice fails on many accounts. Its delays are notorious. It costs deter litigants whose claims may be well-founded. Its procedures cause frustration and obstruct rather than facilitate the achievement of justice. Unless there is major reform and soon, individual litigants will be prevented from securing their rights, commercial litigants will continue to look elsewhere for a forum for their claims, public confidence in the judicial system will be further eroded, Scotland’s economic development will be hindered, and Scots law will atrophy as an independent legal system. The conclusions of our review are as stark as that.” (An excerpt from Lord Gill’s speech to the Law Society of Scotland in 2009)

In 2007, the Scottish Government was faced with the fact that Scottish multinational corporations do not litigate their commercial cases in Scotland; they routinely preferred using the legal system of the eternal rival, England. To understand the underlying problems causing this situation, the Scottish Government asked Lord Gill, as the Lord Justice Clerk at the time, to meticulously review the Civil Justice System which had already been criticised for having notorious delays, being archaic and expensive.

In his review, Gill (2009a) concluded that there were major problems with the justice system that were causing serious problems resulting not just in commercial cases going to England but for the public in accessing justice. Without reform, he concluded, by constantly perpetrating injustice, Scotland had to face losing the independence of Scottish law and the confidence of the public in the legal system. Following Gill’s report and recommendations, the Scottish Parliament passed The Courts Reform (Scotland) Act in 2014. Lord Gill, the most senior judge in the country’s legal field as the Lord President at the time, became the main figure who initiated the reforms, designed them and oversaw the implementation process. As a result, The Courts Reform Scotland (Act) 2014, also referred to as the Gill Reforms, brought such a profound and radical change to the legal system in Scotland that they were considered by many as the most significant transformation of the Scottish civil justice system in almost two centuries. Most notably: new judicial courts were established, new tiers of judiciary created, and regional sheriff courts, which previously could only hear civil

claims up to a value of £5000, now had a threshold of £100,000. This last point is particularly significant as it meant that higher value, more complex, cases previously handled by barristers, known as advocates in Scotland, in the higher courts could now be solely contested by solicitors in the lower level sheriff courts.

My study is centred on this profound transformation of a core societal institution. By utilising this empirical setting, the overarching aim of this study is to explore how institutional change unfolds in a highly institutionalised setting and the professional field that is embedded within it.

1.1 Empirical and Theoretical Motivation

My motivation to study this empirical setting lies in the fact that it provided an empirical opportunity to observe a radical comprehensive institutional change of a core societal institution, the justice system, in real time, and to explore an extreme case of institutional persistence - the Scottish legal profession. The upcoming reforms had aimed to radically transform the justice system with its major institutional structures and processes largely unchanged over two centuries. The importance of understanding such changes, or lack of changes for that matter, in professional settings, such as the law, has been described as particularly important because professions and professionals play an increasingly significant role in our societies. Professions, as a macro institution of society, hold economic and social significance because professionals, as institutional agents (Scott, 2008) are the creators, protectors, and changers of societies' major institutions, such as markets, business practices, organizations, and religions (Brint, 1994). Furthermore, professions are themselves institutions that have experienced various profound changes over time (Abbott, 1988). They influence and are influenced by various technological, social, economic, political, and legal forces and thus hold great importance in understanding how society functions. They are "not only key mechanisms for, but also primary targets of, institutional change" (Muzio, Brock, & Suddaby, 2013: 700). That is, the behaviours of professionals and professional organizations have consequences for the broader surrounding institutions (Brock, Leblebici, & Muzio, 2014; Suddaby & Viale, 2011). Accordingly, there have been several calls for research for greater exploration of professions within the institutions in which they are embedded (Anteby, Chan, &

DiBenigno, 2016; Suddaby & Muzio, 2015; Zietsma, Groenewegen, Logue, & Hinings, 2017).

It is also useful to note that, while we have gained significant insights into the professions over recent years, they have often been considered to be homogenous entities in which members share a common identity, ideals and intentions. However, professions are not homogenous, but rather are stratified with intra-professional differences (Abbott, 1981, 1988; Currie, Lockett, Finn, Martin, & Waring, 2012; Ramirez, Stringfellow, & Maclean, 2015). However, little work has directly examined how these intra-professional dynamics develop and change over time. Therefore, calls for further study of ‘within-profession’ differences have also been widespread (Malhotra, Morris, & Hinings, 2006; Ramirez et al., 2015; Von Nordenflycht, 2010).

Institutional theory is the main theoretical lens of this dissertation. Institutional theory has been portrayed as one of the most powerful theoretical tools to interrogate complex societal phenomena, particularly in structured settings governed by extensive systems of rules and authority structures, such as professional fields (Greenwood, Oliver, Sahlin, & Suddaby, 2008). Also, the fact that professions are institutional orders, which are sources of “unique organizing principles, practices, and symbols that influence individual and organizational behaviour” (Thornton, Ocasio, & Lounsbury, 2012: 2) makes institutional theory a particularly effective theoretical lens for my study because it allows a researcher to explore the nestedness of institutions in a society and see the links among different institutions such as professions, markets, justice system, religion and so on.

Accordingly, this study is centred on two societal level macro institutional fields: the justice system and the legal profession. The justice system consists of the legal profession, other occupations such as police and several types of public servants, the government, the court system, public and private organizations, NGOs, laws and regulations, public, all the transactions among these actors and so on. The legal profession, however, largely refers to the professional boundaries and interactions of the members and organizations of the profession of law whose members are advocates, solicitors, solicitor advocates, judges and sheriff judges in Scotland. That is, the legal profession, while being an institution in its own right, inhabits the justice system. The

overarching theoretical motivation of this dissertation is to understand the institutional change and persistence processes with particular interest given to the emotions and behaviours of an affected profession and its intra-professional populations.

1.2 Overview of the Three Papers

This dissertation consists of three separate papers, presented in Chapters Three, Four and Five. These three papers are the product of a long and strenuous process of collecting data, understanding the justice system of Scotland and intra-professional dynamics of the Scottish legal profession. They all are based on the same data set that I collected between 2014 and 2019 and they explore the institutional change with different research objectives. Although they inevitably overlap in certain areas, these papers complement each other in several ways because they explain different aspects of the change and focus on different time frames within the institutional change process.

Chapter Three: Intra-Professional Status, Maintenance Failure, and the Reformation of the Scottish Civil Justice System

This paper attends to recent calls (e.g. Lawrence, Suddaby, & Leca, 2009; Micelotta & Washington, 2013; Scott, 2013) for the study of institutional maintenance. It is focused on why there was little effective maintenance work to maintain the status quo in the justice system even though the legal profession as a whole were highly critical of the reforms. This study contributes to the institutional maintenance literature and the professions literature by showing that institutional maintenance requires strong, coordinated action across the intra-professional populations. Also, it shows that while uncertainty provides opportunities for institutional change, it hinders institutional maintenance efforts.

Chapter Four: Mechanisms of Institutional Persistence

While examining the lack of institutional disruption and particularly asking why such a profound change in the justice system did not cause disruption within the professional field that occupied it, this paper contributes to the institutional persistence literature by answering recent calls (e.g. Greenwood, Oliver, Lawrence, & Meyer, 2017; Scott, 2013; Sminia, 2011; Weik, 2018) for research on the continuity of

institutions. It also contributes to the professions literature by answering calls (Ramirez et al., 2015) for research on the persistence and internal cohesiveness of professions. By presenting a new theory on persistence of professional fields, this paper identifies field mechanisms of persistence previously unidentified in the literature that make a professional field persist even in the face of exogenous shocks that radically reshape the landscape. These mechanisms explain new ways of understanding continuity within professional fields. A further contribution lies in identifying how these mechanisms not only keep the disruption of a field at bay, but also hold the segments of a profession together, hence maintaining its internal cohesiveness.

Chapter Five: Emotions and theorisation of institutional change

One important gap in our understanding of the relationship between emotions and institutional processes is the emotional underpinnings of ‘theorisation’. The notion of theorisation is portrayed as a very important stage of institutional change because it is the stage where change agents convince the recipients of the change to adopt new ideas and practices and make them see the merits of these new arrangements. Yet, we know little to nothing about the emotional dynamics of theorisation, particularly from the recipients’ point of view. In this respect, this paper aims to answer the question of ‘what role might emotions play in theorisation process of institutional change?’ This paper contributes to the institutional change and professions’ literatures by presenting a revised theory of theorisation that incorporates emotions.

The complementarity of the papers

Chapter Three focuses on the period after the reforms were introduced as an idea, but before they were largely implemented. It portrays the chaos and upheaval before the implementation where intra-professional populations, solicitors, solicitor advocates and advocates, within the legal profession felt threatened by the change and very concerned about the future. Yet, the profession could not maintain the status quo within the justice system. It shows how intra-professional differences were sharpened due to the turmoil and these differences affected the institutional maintenance. Subsequently, Chapter Four explores the period after the legislation had been passed. It focuses on what happened within the implementation period and afterwards - what changed and what was maintained in the legal profession. Its main focus was the

professional field, rather than the justice system. It did not focus on *intentional* maintenance work of actors to maintain the status quo, but it focused on the existing *within-the-field* mechanisms of persistence that hold the professional field together, particularly after the justice system has changed significantly.

Chapter Five shifts the focus to the theorisation of the change, as a relatively external factor to the field. In this respect, Chapter Five examines how theorisation failed because it did not address the emotions of professionals as the change recipients. Also, Chapter Five covers the periods before, during and after the implementation since it examined the theorisation process that encompasses all these time periods. Furthermore, Chapter Four and Five complement each other in explaining the lack of change within the professional field because while theorisation was necessary, it was not sufficient for change to take place. The field dynamics and conditions, the focus of Chapter Four, were also crucial for institutional change, and persistence.

Table 1-1 A summary of how the papers complement each other

Chapter Three	Chapter Four	Chapter Five
<ul style="list-style-type: none"> • Focuses on the period after the review was published and before the implementation had progressed • Explains ineffective maintenance process • Focus is on intra-professional dynamics. 	<ul style="list-style-type: none"> • Focuses on the period before and after implementation • Explains why the professional field stayed undisrupted although the justice system changed significantly • Focus is on the professional field dynamics as already existing mechanisms 	<ul style="list-style-type: none"> • Focuses on the period before the implementation, during the implementation and afterwards. • Explains how theorisation failed as a largely exogenous mechanism • Focus is on one particular intra-professional community and the emotions of its members from a macrostructural point of view.

1.3 Overview of the Dissertation Structure

With the three separate papers that draw on the same data, this dissertation explores the institutional change of a core societal institution, the justice system, and the institutional persistence of another major societal institution, the legal profession.

Table 1-2 outlines the structure of this dissertation.

Chapter One provides an introduction to my research. Chapter Two presents the common methodology behind the three papers. Next, three papers are presented in order in Chapter Three, Four and Five. Every paper has its own introduction, research

purpose, literature review, findings, discussion and conclusion section. The final chapter offers a conclusion for the dissertation.

Table 1-2 Overview of dissertation structure

Chapter One- Introduction		
Chapter Two Methodology		
<ul style="list-style-type: none"> • Introduction • Research Purposes • Research Philosophy • Research Design • The Case: The Scottish Civil Justice Reforms 	<ul style="list-style-type: none"> • Date Collection • Data analysis • Methodological Limitations • Research Ethics 	
Chapter Three	Chapter Four	Chapter Five
<ul style="list-style-type: none"> • Introduction • Theoretical Background • Findings • Discussion • Conclusion 	<ul style="list-style-type: none"> • Introduction • Theoretical Background • Findings • Discussion • Conclusion 	<ul style="list-style-type: none"> • Introduction • Theoretical Background • Data Analysis • Findings • Discussion • Conclusion
Chapter Six Conclusion		

2 Chapter Two: Research Methodology

2.1 Introduction

This dissertation is based on a research philosophy that is social constructivist. Aligned with that, I conducted a qualitative case study that is based on the Scottish Civil Justice System Reforms. Data were collected through qualitative methods that were semi-structured interviews, non-participant observation, speeches and documents. Thus, in this chapter, as basic parts of my research approach, I will explain my research purposes, research philosophy, research design, research methods and empirical context in detail.

2.2 Research Purpose

The main aim of this research is to have an in-depth understanding of how institutional change unfolds. *Table 2-1* presents the research objectives that will be addressed in the following three chapters. Usually, qualitative studies have circularity (Eriksson & Kovalainen, 2011). That means that they often start with a general idea which then is further developed by consulting the literature and turned into a research inquiry, which may also change during the research process. In other words, the researcher goes back and forth among the literature, data collection, data analysis and writing-up, and may redefine the research question along the way (Eriksson & Kovalainen, 2011; Saunders, Lewis, & Thornhill, 2007). My experience was also similar in regard to finalising my research questions in this study. I moved back and forth iteratively between the data and literature in different stages of my research, and built the research questions of Chapter Three and Four on mostly “what surprises and puzzles us on the basis of what we already know about the topic”; while questions of Chapter Five were mostly based on the gap in existing theory in regards to “what is common knowledge within the field and what seems to be unknown” (Eriksson & Kovalainen, 2011: 38).

Table 2-1 The research questions

Research Question	The paper addressing it
<p><i>Why do actors fail to maintain an institution?</i></p> <p>Sub-questions:</p> <p><i>What are the intra-professional dynamics that precipitate institutional change or stasis?</i></p> <p><i>How do intra-professional status and identity differences influence the success or failure of attempts at institutional maintenance?</i></p>	<p>Chapter Three</p>
<p><i>Why did a pronounced change within the judicial system not cause disruption within the professional field that occupied it?</i></p>	<p>Chapter Four</p>
<p><i>What role might emotions play in theorization process of an institutional change?</i></p>	<p>Chapter Five</p>

2.3 Research Philosophy

As an essential step, researchers should determine their philosophical assumptions so that they can design their research according to their worldviews (Creswell, 2014; Guba & Lincoln, 1994). The term ‘worldview’, sometimes referred to as a *paradigm* (Guba & Lincoln, 1994) is defined as “basic belief systems based on ontological, epistemological and methodological assumptions” (Guba & Lincoln, 1994: 107). Paradigms provide answers for researchers to decide “what falls within and outside the limits of legitimate inquiry” and have three fundamental questions to answer regarding ontology, epistemology and methodology (Guba & Lincoln, 1994: 108). Ontological questions involve the questions regarding “the form and nature of reality” (Guba & Lincoln, 1994: 108) and the opinions about the existence and action, and how these relate to people and society (Eriksson & Kovalainen, 2011). Epistemological questions involve questions regarding “the nature of the relationship between the knower and what can be known” (Guba & Lincoln, 1994: 108). In other words, epistemological assumptions answer “how knowledge can be produced, what kind of knowledge is available, and what the limits of that knowledge are” (Eriksson &

Kovalainen, 2011: 14). Finally, methodological questions address how researchers investigate what she/he believes can be known. In this regard, “methodological questions cannot be reduced to a question of methods, methods must be fitted to a predetermined methodology” (Guba & Lincoln, 1994: 108).

In terms of ontology, I believe that reality is a product of people’s social, emotional and cognitive processes. Therefore, there are varying realities since individuals or groups develop subjective realities based on their experiences and interpretations (Blaikie, 1993; Creswell, 2014). Regarding epistemology, I hold an interpretivist approach that asserts “knowledge and social action go together” (Eriksson & Kovalainen, 2011: 20). Consequently, the research paradigm that I built my study on is constructivism (Denzin & Lincoln, 1998; Guba & Lincoln, 1994).

Social constructivist researchers recognize the complexity of views and meanings available in the inquiry. They acknowledge that these meanings are socially constructed, negotiated and shared; and specific contexts matter in regard to construction of reality. Thus, they aim to understand the participants’ views of the issue at hand as much as possible and consider the specificities of the empirical context (Creswell, 2014). Social constructivist researchers also assume that language has a particular importance in social construction of reality (Berger & Luckmann, 1967a; Thomas, 1994). This is why they focus on both the empirical content and how the content is created (Eriksson & Kovalainen, 2011). Furthermore, while not predetermining dependent and independent variables, constructivist research recognises and studies the complex nature of human interpretations of reality as the situations unfold. Also, constructivist researchers recognise that their own historical, personal and social experiences influence and shape how they interpret their research context and data (Creswell, 2014). Thus, they assume and accept that there are multiple interpretations of the same data and all these different interpretations are meaningful (Eriksson & Kovalainen, 2011).

This worldview is very common in qualitative social science studies including business and management research (Creswell, 2014; Eriksson & Kovalainen, 2011) because constructivist research aims to understand “how the seemingly ‘objective’ features, such as industries, organizations and technologies, are constituted by

subjective meanings of individuals and intersubjective processes” (Eriksson & Kovalainen, 2011: 20). Moreover, for studies of institutional theory, a constructivist and interpretivist approach is a particularly good fit because this worldview opens taken-for-grantedness for discussion by acknowledging that the reality does not exist objectively (Burr, 1995; Eriksson & Kovalainen, 2011) but based on the subjective interpretations and constructions of people.

Constructivist research generally adopts case study research, ethnography, narrative research, grounded theory and phenomenological methodologies (Creswell, 2014; Saunders et al., 2007; Yin, 2009). A qualitative research approach is considered a very good match for these methodologies (Creswell, 2007a, 2007b) since constructionist researchers view the strong interaction between the researcher, the data and data sources as a critical aspect of their research (Denzin & Lincoln, 1998; Eriksson & Kovalainen, 2011). Aligned with this approach, this research is designed as a qualitative case study that will be further explained in the next section.

2.4 Research Design

I have adopted a qualitative case study approach to research different aspects of an institutional change in an in-depth manner by employing multiple qualitative data sources and collection methods. Case study research usually involves qualitative methodology in which “the investigator explores a bounded system or multiple bounded systems over time through detailed, in-depth data collection involving multiple sources of information and reports a case description and case-based themes” (Creswell, Hanson, Clark Plano, & Morales, 2007: 245). Thus, a case study is the “the process of actually carrying out the investigation” (Merriam, 2009: 46).

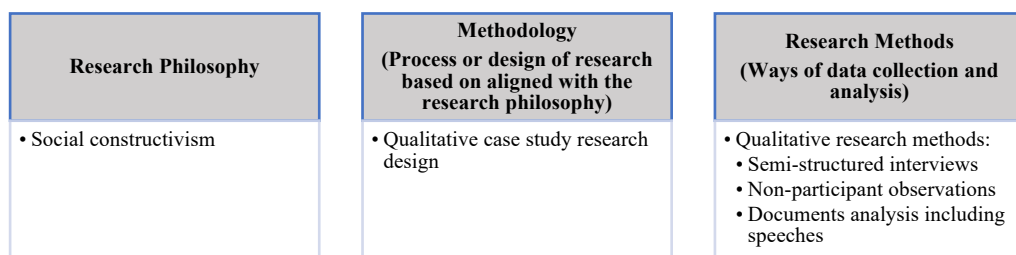
Qualitative case study is considered as a type of methodology that is particularly consistent with constructivist approach with interpretivist epistemology (Creswell, 2014; Denzin & Lincoln, 2005; Merriam, 2009; Yin, 2003) because qualitative research enables researchers to closely examine the actors in their natural setting and understand their experiences and interpretations of reality. Qualitative case studies also involve detailed and meaningful descriptions of the context so that researchers can interpret “the immediate behaviours in which people are engaged but also the

contextual and experiential understandings of those behaviours that render the event or action meaningful” (Dawson, 2010: 943).

I chose to utilise a case study research for several reasons. First, as Yin (1994: 9) argues, case studies are better suited to research that ask the “how” and “why” questions in my research. Also, according to Merriam (2009) researchers should select the cases based on their research purpose and consider the capacity of the selected case(s) to increase one’s understanding of the topic of interest or phenomena. In other words, as Yin (2003: 13) stated “you would use the case study method because you deliberately wanted to cover contextual conditions—believing that they might be highly pertinent to your phenomenon of study”. The contextual conditions hold a particular importance to me because they provided a case where a highly institutionalised setting gets disturbed. I wanted to understand more about the concept of institutional change, and the case study at hand, the reform of the Scottish civil justice system, provided an opportunity to study the phenomena that I was interested in. This case “offered an opportunity to learn” (Stake, 2005: 152) more about institutional change.

Also, this approach enabled me to explore the taken-for-granted meanings and interpretations of the participants. That is because case studies “get as close to the subject of interest as they possibly can, partly by means of direct observation in natural settings, partly by their access to subjective factors (thoughts, feelings, and desires) (Bromley, 1986: 23). This opportunity is particularly important for me because I utilise institutional theory where institutions are portrayed as “more-or-less taken-for-granted repetitive social behaviour that is underpinned by normative systems and cognitive understandings that give meaning to social exchange and thus enable self-reproducing social order” (Greenwood, Oliver, Sahlin, & Suddaby, 2008: 4–5).

Figure 2-1 Overview of the research approach



Furthermore, a case study approach enables me to develop an in-depth, contextual understanding of the phenomena of institutional change while providing an opportunity to employ multiple data sources (Creswell, 2014; Yin, 2003) rather than limiting the range of sources available as, for instance, in narrative research. Finally, Merriam (1998) argues that case studies are a particularly good fit for studies that aim to understand a process such as how a programme or treatment has been implemented and/or it how the effects of it unfolded. Similarly, in this research I also aim to understand the process of institutional change within the context of the implementation of the Scottish Civil Justice Reforms.

2.5 The Case: The Scottish Civil Justice System Reforms

This study focuses on the case of the Scottish Civil Justice Reforms that is also called as the Courts Reform (Scotland) Act 2014. After the introduction of the Act, the Scottish civil justice system went through one of the most significant changes in its history. The reforms came after an extensive review of the system led by one of the country's leading judge at the time, Lord Brian Gill.

In 2007, the Scottish Parliament asked Lord Gill, who was the Lord Justice Clerk at the time, to thoroughly assess the Scottish civil justice system. Lord Gill and his team completed the review in 2009. Gill's mandate was to "review the provision of civil justice by the courts in Scotland, including the structure, jurisdiction, procedures and working methods" (Gill, 2009a: 1) with "a view to improving access to justice in a manner which was effective, efficient and proportionate" (Bremner, Evans, & Harvie-Clark, 2014: 6). In his review, Gill criticised the system for being expensive, inefficient and slow. According to Lord Gill, the system was in such a bad shape that there was only one way to proceed, and that was to bring about a radical transformation to the civil justice system. He noted that, "We consider that minor modifications to the status quo are no longer an option. The court system has to be reformed both structurally and functionally" (Gill, 2009a: i). Gill expanded on his position in the prelude to his Report:

The structural and functional flaws in the working of the Scottish Civil Courts prevent the courts from delivering the quality of justice to which the public is entitled. The Scottish Civil Courts provide a service to the public that is slow, inefficient and expensive. Their procedures are antiquated and

the range of remedies that they can give is inadequate. In short, they are failing to deliver justice. Public confidence in our system is being eroded. The much-admired qualities of fairness, incorruptibility and expertise of our judicial system will have little significance if the system cannot deliver high quality justice within a reasonable time and at reasonable cost (Gill, 2009a: i).

As a solution to these problems, Lord Gill and his review team provided an exhaustive list of recommendations to reform the civil justice system in Scotland. In order to implement most of the recommendations in Lord Gill's review and thoroughly reform the civil justice system, the Scottish Government passed the Courts Reform (Scotland) Act on 7 October 2014. I believe that understanding the scope and scale of the reforms requires at least a broad understanding of the legal system and legal profession in Scotland. Therefore, the following section will summarise the key aspects of the Scottish legal field.

2.5.1 The Scottish Civil Justice System

The Scottish legal system is very different from the rest of the UK with its own history, legislation, professions, courts and procedures. The administration and regulation of the justice system is substantially devolved to the Scottish Parliament¹, with only a few aspects legislated by the UK² government (Harvie-Clark, 2014).

The justice system in Scotland is divided into two parts, criminal and civil. The criminal justice system deals with those who are suspected of engaging in criminal activity. The civil justice system is designed to enforce and protect people's legal rights and to regulate disputes regarding these rights between two or more parties (Harvie-Clark, 2014). As such, the civil justice system covers cases involving personal injury, human rights, asylum and immigration, education, health, social security, the creation and enforcement of contracts, divorce and separation, ownership disputes, wills and inheritance, enforcement of debt, commercial matters, and the like.

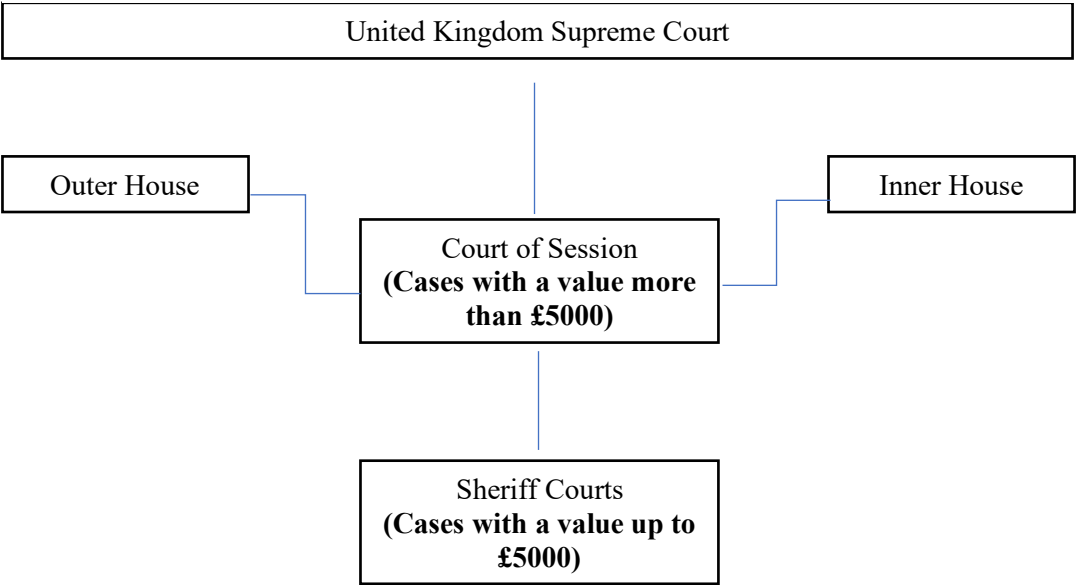
In Scotland, there is an established hierarchy of the courts where there are superior and an array of inferior courts (Pfander & Birk, 2011). As the highest civil court in the country, the Court of Session has traditionally dealt with all types of civil cases. It is

¹ With the Scotland Act 1998 (c 46).

² Matters regarding UK Supreme Courts, Employment Tribunals, EU and International Law

divided into two as the Outer House and the Inner House. The Outer House heard cases that have not previously been to court, and the Inner House was the appeal court, hearing civil appeals from both the Outer House and the lower-level sheriff courts. Appeals from the Inner House may subsequently go to the Supreme Court of the United Kingdom, located in London (“Court Structure,” 2015). The Scottish civil justice system, prior to the Reforms, long had the structure depicted in *Figure 2-2*.

Figure 2-2 Structure of the Scottish Civil Justice System Prior to the Reforms



While the Court of Session is Scotland's highest civil court and has traditionally dealt with all types of civil cases, sheriff courts are inferior (or regional) courts located in every city and many larger towns and have jurisdiction over a wide range of civil and criminal matters. In fact, sheriff courts deal with the greater part of civil court business (Harvie-Clark, 2014) and thus it has been claimed that “sheriff courts are the most important courts in Scotland” (Harvie-Clark, 2014; White & Willock, 2007: 97)

In Scotland, the jurisdiction of the Court of Session and the sheriff courts overlap significantly. However, there are proceedings that are to be heard only in the Court of Session, whilst some proceedings are not suitable for the highest civil court in the country. Before the reforms were implemented, the Court of Session had jurisdiction over civil matters that had a value of £5,000 or more; those with a value less than £5,000 were handled in the sheriff courts.

2.5.1.1 The Scottish Legal Profession

The legal profession in Scotland broadly consists of judges and lawyers.

Judges. There are three types of judges in Scotland's civil justice system: judges who sit in the supreme courts, sheriff principals and sheriff judges. Judges who sit in the supreme courts, such as the Court of Session, are officially called "Senators" or "Senators of the College of Justice". However, informally the term 'judge' is used to refer to the judges who sit in the supreme courts. Senators are known as having an excellent understanding of the law and legal procedures and they deal with the most important cases. Senators are appointed by the Queen having been proposed by the First Minister of Scotland. Advocates or solicitor advocates with sufficient experience can be appointed as senators. ("Roles and jurisdiction," 2019)

The most senior judge in Scotland is called the Lord President³ who is considered the leader of the legal field and official head of the judiciary. The second most senior judge is called the Lord Justice Clerk and serves as the deputy for the Lord President ("Roles and jurisdiction," 2019). Lord Gill was The Lord Justice Clerk when he wrote the review in 2007, and was appointed as the Lord President in 2012 ("The Right Hon Lord Gill," 2019). After Lord Gill's retirement, Lord Carloway, previously Lord Justice Clerk, was appointed as the Lord President.

Judges who sit in the sheriff courts are called "sheriff judges" or "sheriffs". Sheriffs deal with criminal cases and civil cases that have less value and complexity than the cases that are heard in the Court of Session. Sheriffs, including sheriff principals, are also appointed by the Queen based on the First Minister's proposal. Advocate, solicitor advocates and solicitors can be appointed sheriffs or sheriff principals ("Roles and jurisdiction," 2019).

Lawyers. In Scotland, legal cases are argued by lawyers. There are three types of lawyer in Scotland: solicitors, solicitor advocates and advocates. Advocates are lawyers who are self-employed and independent. They are the equivalent of barristers in England. After their experience as working solicitors, they go through special

³ Performs as both the Lord President of the Court of Session who is the chief judge of Scotland's supreme civil court and the Lord Justice General of the High Court of Justiciary as the chief judge for Scotland's supreme criminal court.

training, called ‘devilling’, and take examinations in order to be called to the Scottish Bar. Advocates are also referred to as ‘Counsel’ or ‘members of the Bar’. There are around 420 practising advocates in Scotland (“Find an advocate,” 2019). The professional association of advocates is an independent referral body called The Faculty of Advocates. All advocates are a part of the Faculty. The Faculty of Advocates is an ancient professional body that was founded in 1532 and regulates the professional conduct and practice of advocates, including their training (“Faculty of Advocates,” 2019).

Advocates wear different clothes than solicitors when appearing in court. Advocates have to wear a wig, a white bow, white stiff collar, a black tailcoat and black gown. If they do not dress in this particular way, they are considered as having inappropriate attire. These *badges of office* enable people to differentiate who is a solicitor and who is an advocate.

Solicitors are lawyers who are the first point of contact for clients. They almost always work in a law firm, but can also work in government offices, corporations and other organisations. They provide legal advice and support to clients in a wide range of civil and criminal business. If a client needs the services of an advocate, then their solicitor will ‘instruct’ the advocate; clients cannot contact the advocates themselves.

While solicitors represent their clients in the lower courts – the sheriff courts – they have always been excluded from the Court of Session. In other words, solicitors do not have the right of audience in the supreme courts. However, they have full rights of audience in all matters in the sheriff courts. When solicitors need to take a case to the Court of Session, they have to instruct an advocate. Advocates handle the case and represent the client in the supreme courts on behalf of the solicitor. On the other hand, advocates have traditionally enjoyed the right to appear in any Scottish court, with the only condition for them to appear in a sheriff court being that they are instructed by a solicitor or a professional body.

However, some solicitors do qualify as solicitor advocates, allowing them to represent clients in the higher court. Solicitor advocates officially are not considered as a different type of lawyer, but they are considered as solicitors with extended rights of audience. That means solicitor advocates, in fact, are solicitors with extra

qualifications and training allowing them to represent clients in the Court of Session. Solicitors and solicitor advocates must register as members with the Law Society of Scotland which is the professional body that regulates the solicitor branch of the profession. There are more than 11,500 solicitors in Scotland as of the end of 2018 (“Annual Report,” 2018).

In sheriff courts, solicitors do not have *automatic access to counsel* as they would do in the Court of Session. “Automatic access to counsel” is a common phrase in the legal field to state that solicitors do not need to do anything to get help from advocates in supreme court cases because they cannot appear there; therefore, access to advocates’ services is automatic. If a solicitor wants to instruct an advocate for a case which is to be heard in a sheriff court in a way that the legal fees of counsel are legally recovered by the losing party or the state as it is in the Court of Session, solicitors have to have *sanction granted* by the sheriff judge hearing the case. A sheriff judge’s granting sanction means that he or she gives permission for the employment of counsel (advocates) so that the cost of counsel can be recovered at the end. In other words, a solicitor can instruct an advocate for a sheriff court case without the sanction granted but then all the expenses of counsel have to be paid by the client or the solicitor’s firm. Therefore, in practice it rarely happens. Also, solicitors generally work based on a ‘no win no pay’ approach, particularly for personal injury cases. That means that if solicitors lose, they do not get paid by their clients. Even if they win, without sanction granted they have to cover counsel’s fees themselves. As explained by the Scottish Government in a briefing regarding the Gill Reforms⁴:

“In litigation, the general principle is that “expenses follow success”, i.e. the losing party pays the winning party’s legal expenses. Broadly speaking, without sanction for counsel’s fees from the court, it is not possible for a successful litigant to claim recovery of his or her counsel’s fees in accordance with this principle.” (Bremner et al., 2014: 11)

⁴ The Courts Reform Scotland (Act) has been variously termed the Gill Reforms, the Scottish Civil Justice Reforms, or simply the Reforms in official and media reports. These terms, therefore, are used interchangeably here.

2.5.1.2 History of the Legal Profession in Scotland

The early history of the Scottish legal profession and where its origins lie is not well documented. While it is certainly known that, by the 17th century, the Scottish legal profession had established itself as a recognised profession that was its members' main source of income (Carswell, 1967), it is known if the roots of the profession go further to the period of feudal system in Scotland.

In Scotland, the feudal system, where government and land occupancy were decentralised socially and economically, was established by the 12th century (Morais, 2017). As a consequence of this system, there were various institutions and offices established throughout the country such as royal officers, sheriffs, barons, bailies and justice general. These offices had different responsibilities. For example, while sheriffs were responsible for collecting revenue on behalf of the King, the justice-general was the King's delegate for administrative issues. This led to the creation of various court systems (Morais, 2017).

Consequently, there were a number of both ecclesiastical and lay courts that developed around the 12th century. These courts were considered as superior and inferior (higher and lower) courts and had their own distinctive histories, procedures and jurisdictions. For example, Guild Merchants and Burgh Courts dealt with disputes over buildings and streets; Barony and Regalty Courts presided over civil and criminal matters lead by Barons or his bailies; and sheriff courts lead by the sheriffs were with the jurisdiction of civil and criminal matters. The sheriffs were appointed amongst those who were influential local lords and the office was hereditary. They were the local representatives of the King in every matter, therefore their purpose was to dispense the justice and authority of the King, as well as maintain the King's power against the local lords (Morais, 2017).

By the 15th century, while the church courts as the superior courts were well organised with a hierarchy of appeal, lay courts as the inferior courts were tremendously disorganised (Carswell, 1967). The operation of the church court system was conducted by clerics and church officials; however, its business was handled by the support of notaries and writers to the signet, the origins of today's solicitors (Wilson, 1968).

In their extremely haphazard way of operation, lay court judges did not have any legal training in contrast to the judges who sat in the church courts. Also, there were not any professional procurators, or solicitors, appearing in these lower level courts. However, in the higher courts, advocates were already in place (Wilson, 1968). Advocates were recognised as a group for the first time in an Act of 1424, and developed through the 15th and 16th centuries with the establishment of legally required professional standards (Wilson, 1968).

As the highest civil court in the country the College of Justice, or Court of Session, was founded in 1532 and established a community that included judges, advocates, writers to the signet – solicitors - and their servants. However, in terms of appearing in the court for representing parties, professional advocates enjoyed a *de facto* monopoly in the Court of Session from its establishment in 1532 (Finlay, 2007).

The number of licenced advocates in Scotland increased slowly during the 16th century from over twenty to over fifty. The members had common financial interests, as well as a “unifying spirit” within the newly established Faculty of Advocates (Carswell, 1967: 46). We see that “from this point, the course of the Faculty of Advocates and its members, with the privilege of sole right of appearance in the Court of Session was fully established and can be traced directly to the present day” (Carswell, 1967: 46).

However, according to Carswell (1967) the Faculty was not held in as high esteem as it is today because the courts, including the highest ones, were corrupt and influenced by political and financial forces. However, by the 16th century, advocates started to gain high status and became more specialised leading to a clearer division of labour between solicitors and advocates, as Finlay (2007: 37) states:

“It was in the sixteenth century, as advocates grew in status and specialisation, that the more mechanical oversight of processes came to be the province of the writer, or law agent, with advocates restricting themselves to work of more intellectual consequence. By the eighteenth century the expressive term “doer” was often applied to an agent, while the advocate was often referred to colloquially simply as the ‘lawier’.”

Solicitors – or procurators, doers, notaries, agents, clerks and writers as they were variously known (Finlay, 2007) – were a small group doing advocacy in the lower courts. However, most of the agents and writers did not perform as procurators, rather they handled “the normal array of private client work that formed, and forms, the more

instrumental and ‘mechanical’ side of the law...Writers were involved in drafting deeds, such as securities, marriage contracts, and memorials for the opinion of counsel; ensuring the registration of bonds and instruments in the appropriate registers; and acting as trustees on sequestrated estates, working as curators and factors and assisting in reaching arbitrated settlements” (Finlay, 2007: 52)

In the 15th century, most of the Scottish population was illiterate. Therefore, the function of notaries, agents and writers was crucial for drafting written documents, recording debts and business transactions, handling contracts, and keeping various records. However, how representation started in the lower courts is not well known. It is documented that there were professionals appearing in the lower courts by the 16th century, albeit their numbers and how they conducted their practices is unknown. It is known that professionals who appeared in the lower courts were generally notaries or writers to the signet, not advocates. Notaries used to seal and check the authentication of the legal documents and deeds of people, as well as record these transactions. The most important legal documents that the notaries handled and recorded were regarding land transactions. We see that even today, one of the main areas that solicitors work on is buying and selling properties, including land, while the lawyers who appear in the lower courts are solicitors, not advocates.

According to Carswell (1967), there existed some form of legal representation during the 15th century and the word “procurator” that is the equivalent of today’s solicitor, had started to gain professional significance in certain courts. However, their professional status was very low compared to advocates. Finlay (2007: 31) states, referring to the state of the legal profession in the 14th and 15th centuries, “the lowly position of procurators belies their practical importance. In Scotland a division is not simply to be drawn between advocates and procurators but may be more appropriately made between practitioners who belonged to the College of Justice (a supreme court) and those who did not”. We see that in today’s Scotland the very same division continues with solicitors not having the right to appear in the supreme courts.

Solicitors have always been considered as the lowest status group within the legal profession (Abbott, 1988; Finlay, 2007; Warren, 1855). This was the case not only in Scotland, but across continental Europe. For instance even in the 16th century, French

humanist Doneau (as cited in Finlay, 2007: 32 1626) stated “the office of advocate is more praiseworthy, and has more dignity attached to it, than the office of procurator, which is worth little, so much so that the infamous are admitted to it, whereas an infamous person cannot become an advocate”.

Over time, formal measures were established by the supreme courts and the parliament in order to oversee the workings of the inferior courts. These local courts did not have as much business as the Court of Session in which advocates regularly appeared and writers to the signets handled the technical management of the cases. We see that from the very beginning, while members of the Faculty of Advocates had a right of audience in all courts and every level, procurators could only access some of them. Therefore, with the insufficient business in the local courts where procurators worked, the opportunity to be specialists was even more limited. With court business delivering insufficient income for a living, procurators had to become involved in practices that were semi-legal or non-legal in nature (Finlay, 2008). While the scope of notaries increased, they also gained significance within the circle of the Scottish Crown, as well as influential families. They started building networks and handling the private businesses of these families and the Crown. Then, finally the notaries became licensed in the 16th century. While it is not known when notaries started conducting these functions as a primary source of income, before the 17th century they were already established as a professional group. Further, by the 16th century, solicitors started opening places of business where they continued performing their established practices as notaries, writers and clerks similar to their current businesses (Finlay, 2007).

In the 18th century, the inferior courts of Scotland’s had been strongly regulated. Many regulations were designed and applied by inferior judges regarding the admission of procurators and how they should conduct themselves. Succeeding years brought the betterment of the lower branch of the profession, and by the end of the 18th century, solicitors were beginning to assert themselves (Finlay, 2007).

Almost from the moment that different branches of the profession were established, there was considerable inter-relation between them, however, it is known that the segments of the profession remained different and intentionally kept distinct. “In 1608,

for example, the Writers to the Signet Society disciplined its member, Harry Wilson, for occupying the same chamber as an advocate; he was required to find a writing booth for his own use or face expulsion” (Finlay, 2007: 42). Nonetheless, advocates, writers and agents kept a close working relationship. Advocates generally used to work at home or in chambers near to the courts; writers and agents had offices. If one wanted to reach an advocate, they generally had to reach to the writers as contacts. Finlay (2007: 43) also shares some real-life examples from the Faculty’s records of 1758:

“Those wishing to see the advocates Patrick Home or Sir John Stewart had to ‘apply to Thomas Cockburn senior writer’ or next to the name of the advocate Sir Archibald Grant is the phrase ‘Apply Mr Lockhart to send Lauchy Grant to see sir Archibald Grant.’”

The similar relationships between the segments of the profession still continues today. While solicitors are the first point of contact for the clients to reach an advocate, they still cannot use the facilities of advocates, such as the Advocate’s library, in the Faculty of Advocates.

The inequalities within the Scottish legal practice started to weaken by the early 19th century. Competent people had been admitted to the branches of the profession and the associations with the local universities began providing legal education with local nuances; a foreign education was not the stamp of a good advocate anymore.

Different professional associations of solicitors have appeared throughout history. However, the creation of the Law Society of Scotland in 1949 radically changed the formal structure of the solicitors’ branch of the profession by bringing together local professional associations which each had their own deans under the roof of a single organisation (Wilson, 1968). Regarding the relationship between the professional bodies of solicitors and advocates, Sir David Edward’s (1996: 56) anecdote is apposite:

“It was some time before it was recognised, even by solicitors, as speaking for the profession as a whole. Indeed, the idea that either branch of the profession needed to be "represented" by a professional body, whether internally or externally, was altogether novel. When I was elected Clerk of Faculty in July 1967, I paid a courtesy call on the Secretary of the Law Society, R. B. Lawrie, who later said he had been greatly surprised by this visit since he had had no previous contact with the Clerk of Faculty.”

To sum up, we see that the practices and relationships between the segments of the legal profession have not changed much over time. From the 15th century, “judges are

almost invariably selected from the ranks of counsel” (Wilson, 1896: 111); solicitors have been appearing in the inferior courts and excluded from superior courts; advocates have been enjoying the right of audience in every court in the land; solicitors’ professionally low status is long established; and the clothes of advocates with their wigs and gowns are a historic remnant that remains in place.

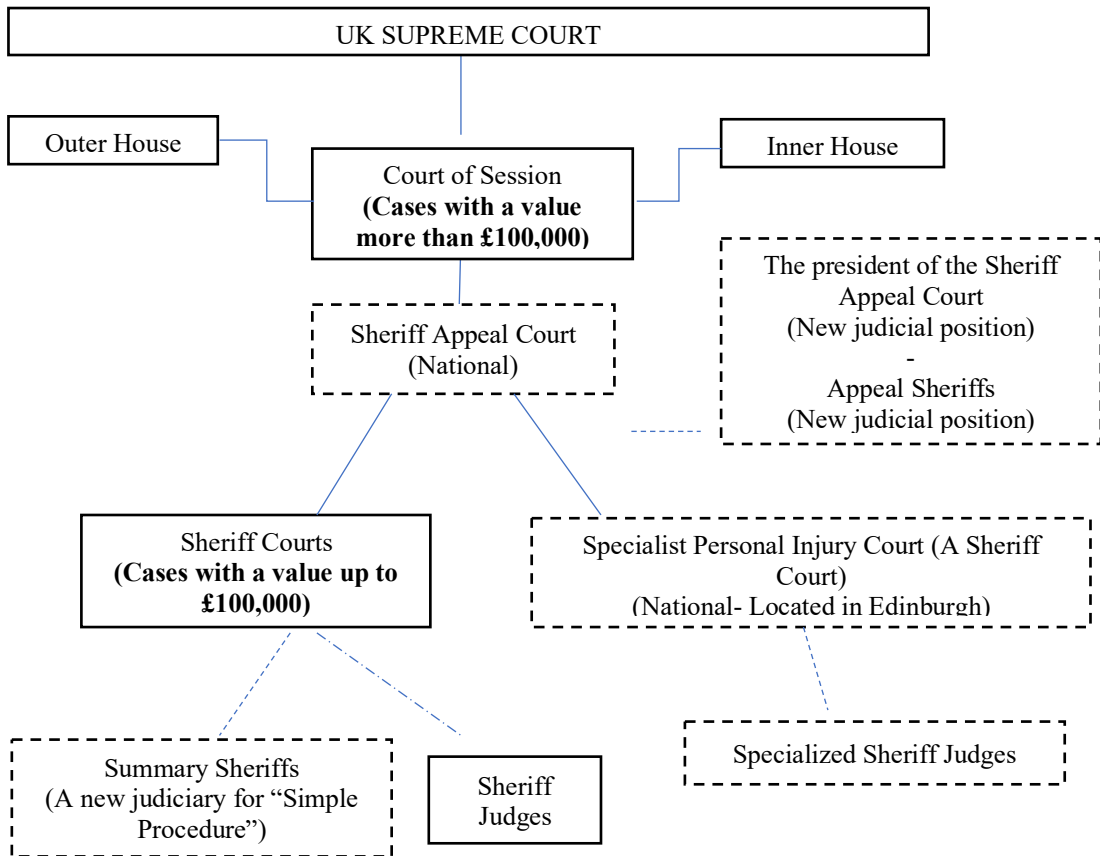
2.5.2 The Courts Reform (Scotland) Act 2014

According to the Gill Review (2009a), the excessive periods of time spent waiting for court hearings, the disproportionately high costs of litigation, and professional inefficiency across the legal system were the three major problems that were significantly disrupting accessing to justice. To address these, Gill (2009a) proposed holistic changes to the structure, jurisdiction, procedures and working methods of the judiciary. As a result, the following changes were introduced by the Courts Reform (Scotland) Act, 2014:

- The jurisdiction of the sheriff courts was changed. Rather than the previous £5000 limit, sheriff courts could now hear claims of up to £100,000. In place since 22 September 2015.
- A third tier of judges, summary sheriffs, was introduced in 1 April 2016. They deal with straightforward claims below £5000 in a process known as a “Simple Procedure”. Its first phase was implemented on 28 November 2016. The second phase is expected to be implemented in 2019.
- A specialist All Scotland Personal Injury Sheriff Court was created. There is no upper value limit in this court, however, sheriff court rules apply if a solicitor wishes to engage the services of an advocate. In place since 22 September 2015.
- A nationwide Sheriff Appeal Court was created. This hears appeals from cases decided at sheriff courts rather than having them heard at the Court of Session. In place since 1 January 2016.
- Support for party litigants aimed to be improved with more on-line information, better in-court advice services, and provision for “lay representation.”
- Court procedures were modernised. Use of information technology, such as conference calls and electronic evidence submissions were increased to improve efficiency.

As a consequence, the Scottish civil justice system changed from having the structure depicted in *Figure 2-2* to the significantly different structure shown in *Figure 2-3*.

Figure 2-3 The revised structure of the Scottish civil justice system.



Dotted lines indicate new judicial bodies

The reforms, with these changes, aimed to extend the jurisdiction of sheriffs and sheriff courts such that a large proportion of the civil cases heard in the country's highest civil court, the Court of Session, would go to the sheriff courts. Therefore, the demands on the Court of Session were expected to reduce with overall efficiency expected to increase.

With costs are higher in the Court of Session for the public and for the state than the Sheriff Courts, the reforms were intended to be more cost efficient. Furthermore, solicitors have automatic access to Counsel's services in the Court of Session. Thus, having a case in the Court of Session causes very high expenses for the public and the state, if legal aid is provided by the state. Since solicitors can appear in the sheriff

courts and do not need advocates' services there, this would reduce costs for the public significantly, while speeding up the process and increasing efficiency. Also, the legal fees of the Court of Session are higher than the sheriff courts. Members of the public would avoid higher costs by having a case heard in the sheriff courts rather than the Court of Session.

Further, by changing the threshold of sheriff courts, the reforms aimed to leave the high value, most complex and important cases to the best judges available in the land and leave the relatively less complex cases to the sheriff judges. Also, by shifting some higher value cases to sheriff courts was that solicitors would have an historical opportunity to take a professional leap and build their capacity to argue complex and important cases.

From medieval times, solicitors had handled the businesses of clients, but when they went into court, an advocate would argue the case. That was the traditional allocation of work. When the case was raised in the Court of Session, then a solicitor would be bound and obliged to instruct an advocate, since he/she could not appear in the Court of Session. Now that had significantly changed because there was now a choice as to whether or not to instruct an advocate. With the majority of work in the Court of Session now being pushed down into the sheriff courts, solicitors could do the advocacy themselves if they choose to do so. Thus, there was a possibility of changing assigned practices since the established division of labour was officially disturbed with the reforms changing the upper limits of the sheriff courts and providing a platform for solicitors to advocate in high value cases.

In sum, with the change of creating summary sheriffs and simple procedure, the reforms aimed to reduce the time and costs of raising a simple action through courts. This change was also expected save costs since summary sheriffs have a lower salary than regular sheriffs. Further, with the creation of an All Scotland Personal Injury Sheriff Court, the reforms aimed to reduce the volume of personal injury cases in both the sheriff courts and the Court of Session leading to a specialised sheriff court in personal injury and increased specialisation of sheriffs. In addition, the reforms aimed to reduce the amount of appeals going to the Court of Session from the sheriff courts so that the Court of Session and the judges who sit there would be less busy leading to

cost saving and efficiency with the change of having a new sheriff appeal court. Overall, the overarching aim was to increase access to justice by making the processes simpler, cheaper and faster, while saving cost.

2.6 Data Collection

A strength of the case study approach is that it enables the researcher to use multiple data sources and methods of data collection (Stake, 2005). Therefore, while benefiting from primary and secondary data sources, I collected data predominantly through three qualitative methods: interviews, non-participant observations, and documents including speeches. I chose these data collection methods carefully in order to secure the good data triangulation process. Also, the level of analysis in this research is macro level and considering the fact that macro institutional affects are strongly linked to micro actions, these data collections methods were particularly fitting for my research. In addition, as suggested by Miles and Huberman (1994) and Strauss and Corbin (1990) during the fieldwork process, I moved back and forth between data collection and data analysis, and the literature while simultaneously focusing on data, context, and theory. Therefore, I started collecting data in September 2014 and finished it in December 2018. That is, I started collecting data even before the passage of the bill that introduced the Scottish Civil Justice Reforms, continued through during the implementation of the reforms and after the implementation process.

Furthermore, since my background was not in the discipline of law and I never had experience in the Scottish Legal System, I did not have any previous knowledge regarding the context before starting the fieldwork. Therefore, in order to have a good understanding of the legal system in Scotland, the culture of the legal profession and day-to-day practices of law firms and professionals, I read countless published documents, internet blogs, and news articles before going into the field. These readings were not a part of the data analysis per se, but they built a foundation of my understanding of the context and helped to form a general direction regarding data collection.

Access to and sampling of participants. I accessed my first participant who was an advocate through personal connections. Studying the concept of institutional change within this context was just a raw idea at the time. After interviewing him regarding

the scope of the reforms, I was convinced that the case presented a rare opportunity to explore institutional change from different aspects. Later I designed the research and started reaching out to other participants.

Two sampling techniques were utilised in this research. First, I sent emails to the several names that were picked through ‘purposeful sampling’ (Lincoln & Guba, 1985; Morse, Barrett, Mayan, Olson, & Spiers, 2002). Some of these individuals were high-profile supreme court judges and Members of the Scottish Parliament who had significant roles in the initiation, design, and introduction of the reforms. I contacted them through very personalised e-mails depending on their position in the legal field and contribution to the reforms, and they were all willing to be a part of the research. Other individuals who were purposefully selected were those who had sent their opinions to the government during the consultation process and their letters were publicly available. I hoped that they would be more willing to talk about the reforms and they were, indeed, generally very keen to help. I contacted them through email, too. *Appendix 1* is a draft of the email I sent to them. I also contacted sheriffs that were interviewed by sending them letters via post. *Appendix 2* is a draft of the letters that were addressed to the sheriffs.

The second snowballing technique (Patton, 1990) was also utilised. That is, at the end of every interview, I asked the participant if they could recommend someone to talk to next. Based on their recommendations, I contacted the new individuals through email. In my email, without giving the name of the previous participant, I mentioned that they were recommended as someone I should talk to understand the reforms better and asked if they would be willing to do so. *Appendix 3* is the email that was sent to those who were recommended.

2.6.1 Data Sources

Data were collected through primary and secondary sources. The primary sources were interviews, non-participant observations, while the secondary sources were various documents including transcribed public speeches.

Interviews. In-depth interviews are particularly useful to understand the multiple interpretations, perspectives and meanings of participants (Johnson, 2001). According to Goffman (1989: 125), in-depth interviews have the aim of “subjecting yourself and

your own social situation, to the set of contingencies that play upon a set of individuals, so that you can physically and ecologically penetrate their circle of response to their social situation, their work situation, or their ethnic situation.” That is, interviews help the researcher to make sense of the actions of the participants and learn more about a world that he/she is an outsider (Johnson, 2001).

Accordingly, in this study, a total of 93 semi-structured in-depth interviews were conducted (one participant was interviewed twice). While the shortest of these face-to-face interviews lasted for 44 minutes, the longest was 143 minutes. Depending on the wish of the participant, I conducted the interviews either in one of the available syndicate rooms in the University of Edinburgh Business School, or the offices of the participants or neutral places like coffee shops. I recorded all of the interviews, except one during which I took extensive notes. The recorded interviews were transcribed either by me, or a professional transcription service approved by the University of Edinburgh Business School which signed a confidentiality agreement.

I aimed to interview a wide range of participants in terms of their professional background, and experience. I interviewed thirty solicitors, twenty solicitor advocates, twenty four advocates, eight sheriff judges (one retired but working as a part-time sheriff), four supreme courts judges, two Members of the Scottish Parliament, two consultants who worked with the team who designed the reforms, one clerk of court and one project manager who worked in the Faculty of Advocates. *Table 2-2* presents the list of the participants including their given pseudonyms.

I chose to conduct semi-structured interviews and pre-prepared a list of questions that guided me through the interviews. However, I did not strictly follow the questions and let the participants share their opinions and feelings, and elaborate their responses as much as they liked. I aimed to reach deeper meanings and interpretations by going with the flow as much as possible. This open approach helped me to see what was most important for the participants regarding the reforms changing their environment because participants often raised issues that I was not aware of or had not considered as important. However, I was also very careful in being sure that I covered all the germane issues.

Table 2-2 List of interviewees

No	Pseudonym for the participant	Profession/Segment	No	Pseudonym for the participant	Profession/Segment
INTW 1	Brandon	Advocate	INTW 47	Robson	Advocate
INTW 2	George	Advocate	INTW 48	Callum	Solicitor
INTW 3	James	Advocate	INTW 49	Nick	Solicitor Advocate
INTW 4	Charles	Advocate	INTW 50	Naomi	Solicitor
INTW 5	Aaron	Solicitor	INTW 51	Simon	Solicitor
INTW 6	Garret	Solicitor	INTW 52	Gabriel	Solicitor
INTW 7	Thomas	Solicitor	INTW 53	Ronald	Solicitor Advocate
INTW 8	Keene	MSP	INTW 54	Tony	Advocate
INTW 9	Scott	Solicitor Advocate	INTW 55	Matt	Advocate
INTW 10	Taylor	Solicitor Advocate	INTW 56	Sebastian	Solicitor Advocate
INTW 11	Phillip	Advocate	INTW 57	Ashley	Advocate
INTW 12	Samuel	Solicitor	INTW 58	Jane	Solicitor
INTW 13	Paul	Advocate	INTW 59	Ted	Solicitor Advocate
INTW 14	Nancy	Solicitor	INTW 60	Bill	Advocate
INTW 15	Sheriff Wilson	Sheriff Judge	INTW 61	Lucas	Solicitor
INTW 16	Sheriff Martin	Sheriff Judge	INTW 62	Carrie	Solicitor
INTW 17	Sheriff Parker	Sheriff Judge	INTW 63	Ronnie	Solicitor Advocate
INTW 18	Steven	Solicitor Advocate	INTW 64	Peter	Advocate
INTW 19	Kim	Solicitor	INTW 65	Doyle	Solicitor Advocate
INTW 20	Isaac	Solicitor Advocate	INTW 66	Nathan	Solicitor Advocate
INTW 21	Gary	Solicitor Advocate	INTW 67	Sheriff Barley	Sheriff Judge
INTW 22	Ian	Solicitor	INTW 68	Sheriff Samson	Sheriff Judge
INTW 23	Sarah	Solicitor	INTW 69	Terry	Advocate
INTW 24	James	Solicitor	INTW 70	Louis	Solicitor
INTW 25	Clark	Solicitor	INTW 71	Amy	Advocate

INTW 26	Cathy	Solicitor	INTW 72	Jayson	Solicitor Advocate
INTW 27	Susan	Solicitor	INTW 73	Harold	Solicitor Advocate
INTW 28	Jonathan	Advocate	INTW 74	Wendy	Solicitor Advocate
INTW 29	Sheriff Taylor	Sheriff Judge	INTW 75	L. X	Judge
INTW 30	Kevin	Solicitor	INTW 76	L. Y.	Judge
INTW 31	Percy	Solicitor	INTW 77	L. Z.	Judge
INTW 32	Claire	Solicitor Advocate	INTW 78	Rick	Consultant to the reform team
INTW 33	Gavin	Solicitor Advocate	INTW 79	Darren	Faculty project manager/IT
INTW 34	Adam	Solicitor	INTW 80	Tracy	Clerk of court
INTW 35	Liam	Solicitor	INTW 81	Benjamin	Consultant to the reform team
INTW 36	Jess	Solicitor Advocate	INTW 82	Charlize	MSP
INTW 37	Ali	Solicitor Advocate	INTW 83	Brian	Advocate
INTW 38	Randy	Solicitor	INTW 84	David	Advocate
INTW 39	Caroline	Solicitor	INTW 85	Lilly	Advocate
INTW 40	Dennis	Solicitor Advocate	INTW 86	Neville	Advocate
INTW 41	Scarlet	Solicitor	INTW 87	Ginny	Advocate
INTW 42	Michael	Solicitor	INTW 88	Emma	Advocate
INTW 43	Richard	Solicitor	INTW 89	Daniel	Advocate
INTW 44	William	Solicitor	INTW 90	Kyle	Advocate
INTW 45	Gordon	Advocate	INTW 91	Sheriff Jackson-retired	Part time sheriff
INTW 46	Sheriff Clive	Sheriff Judge	INTW 92	L.T	Judge

My interview questions evolved through the research process as my understanding of the reforms, and their progress, developed. In the interviews that took place before the implementation I was more focused on understanding the dynamics leading to the reforms, how the participants assessed the introduction of the reforms, how they positioned themselves regarding the reforms, if they resisted the change or accepted it and why, what they expected about the implementation and so on. In the interviews that took place during and after the implementation process, my questions were more

about the implementation process, what had changed, how the participants felt about change, what their expectations were, any discrepancy between their expectations and the implementation process, and so on. *Appendix 4* provides a sample of the interview questions.

Non-participant observations. Qualitative researchers usually use observations along with in-depth interviews in order to develop a better understanding of the various interpretations and perspectives within the context that they study on (Johnson, 2001). I conducted 24 hours of non-participant observation. These observations took place mainly in the Parliament Hall in the Faculty of Advocates, Edinburgh Sheriff Court, All Scotland Personal Injury Court and one law firm that is located in Edinburgh. During my observations, extensive notes were taken. I also recorded my thoughts during and after the observation to a recorder I brought to the field. These recordings were also transcribed by me on the same day of the recording.

Although sheriff courts and Parliament Hall are open to the public, permission to observe was granted by the Clerk of the Faculty and the sheriff judges hearing the cases. After the interview with the Clerk of the Faculty, he verbally approved my request for observation after consulting with the Dean of the Faculty. I also had the chance to make observations in parts of the Faculty of Advocates not open to public before and after interviews with advocates who preferred to meet in the Faculty. Some of the participants gave me a tour of the Faculty including the Advocates' Library and explained details regarding the history and traditions of the profession and the building. I extensively documented my observations whenever I attended meetings and interviews. These data included working practices, architectural design of buildings, and details pertaining to the activities and informal comments of those being interviewed.

Also, one particular sheriff judge, Sheriff Wilson⁵, was very helpful to me throughout my observations in the sheriff courts. He helped me to gain access to the court rooms of other sheriffs by contacting them personally, as well as helping me to understand

⁵ This is a pseudonym.

the things I could not at the time. In both sheriff courts I made 12 hours of non-participant observation spread across three weeks.

In regard to my observation in a law firm, the access was granted by a partner of the firm who acknowledged that he consulted his colleagues before accepting my request. It was a law firm which deals mainly with personal injury claims. I spent 8 hours of non-participant observation and conducted several interviews during my time in there. *Table 2-3* presents the details of my non-participant observation process. Overall, these observations helped me significantly to develop an understanding of the legal system and how it works, and the legal profession and its intra-professional dynamics.

Table 2-3 Details of non-participant observation

Observation Location	Dates and time spent
Edinburgh Sheriff Court and All Scotland Personal Injury Court (They are located in the same building sharing court rooms)	12 hours in total: 20 March 2017- 2 hours 23 March 2017- 4 hours 29 March 2017- 2 hours 11 April 2017- 4 hours
A Personal injury law firm in Edinburgh	8 hours in total: 5 May 2017- 4 hours 10 May 2017- 4 hours
Parliament House and the Faculty of Advocates	4 hours in total (and more during and after the interviews): 12 December 2016- 2 hours 2 May 2017- 2 hours
	Total: 24 hours

Speeches. I also analysed 21 public speeches given by the judicial office holders of the legal system between the years of 2013-2019 regarding the Courts Reform (Scotland) Act 2014. The total page number of the transcriptions of the speeches was 266. These speeches were addressed to either only solicitors or all of the legal professionals in Scotland. Transcriptions of these speeches were available to the public at the official websites of the Scottish Judiciary, the Law Society of Scotland and the Faculty of Advocates. I also had the opportunity to listen in person to one of the speeches given by Lord Gill. All of the speeches referenced the reforms to greater or

lesser degrees. *Table 2-4* presents the list and the details of the speeches that were analysed.

Table 2-4 List of speeches

No:	Speech Made By	Addressed To/ Location and Title of the Speech (if available)	Date	Number of Pages of Transcription
1	Lord Gill As the Lord Justice Clerk	Law Society of Scotland “‘Victorian’ Scots Justice System”	8 May 2009	9
2	Lord Gill As the Lord President	The Scottish Legal Profession Ceremony of installation of the Lord President and Lord Justice General	26 June 2012	3
3	Lord Gill As the Lord President	The Scottish legal profession Speech to the Opening of the Legal Year 2012”	24 September 2012	6
4	Lord Gill As the Lord President	The Scottish legal profession Speech to the Opening of the Legal Year 2013	26 September 2013	3
5	Lord Gill As the Lord President	Law Society of Scotland “Looking Over the Horizon: Life after the Courts Reform (Scotland) Bill”	4 April 2014	11
6	Mhairi Stephen Sheriff Principal of Lothian and Borders The President of the Sheriff Appeal Court	Society of Solicitors in The Supreme Courts, Society of Solicitor Advocates, And Scottish Young Lawyers' Association “Annual Christmas Lecture”	2 December 2014	9
7	Lord Gill As the Lord President	The Scottish Legal Profession “Speech to The Holyrood Conference”	28 January 2015	14
8	Lord Carloway As the Lord Justice Clerk	Commonwealth Association of Law Reform Agencies (Calras) Biennial Conference- Law Reform in A Fast-Changing World In Royal Society of Edinburgh The Scottish Legal Profession “To ‘Mend the Lawes, That Neids Mendment’: A	11 – 12 April 2015	29

		Scottish Perspective on Lawyers as Law Reformers”		
9	Lord Gill As the Lord President	The Scottish Legal Profession Speech to The Commonwealth Law Conference “Independence of The Judiciary and The Legal Profession”	13 April 2015	17
10	Lord Carloway As the Lord Justice Clerk	Faculty of Advocates Faculty of Advocates’ Conference “Aims of The Civil Courts Reforms”	18 September 2015	16
11	Lord Carloway As the Lord Justice Clerk	The Scottish Legal Profession Opening of The Legal Year 2015	22 September 2015	5
12	Lord Carloway As the Lord Justice Clerk	The Scottish Legal Profession Speech to 15 th Annual 21 st Century Bar Conference	4 December 2015	18
13	Lord Carloway As the Lord President	The Scottish Legal Profession In the Ceremony of The Installation of Lord President and The Lord Justice General	8 January 2016	5
14	Lord Carloway As the Lord President	Law Society Council “Redesigning the Court Room”	29 January 2016	14
15	Lord Carloway As the Lord President	The Scottish Legal Profession World Bar Conference “The Role of The Court in Ensuring Access to Justice: Two Themes”	14 April 2016	14
16	Lady Dorrian As the Lord Justice Clerk	Society of Young Lawyers (SYLA) Annual Lecture 2016 ‘The 21st Century Court’	27 October 2016	24
17	Lord Carloway As the Lord President	The Scottish Legal Profession Speech to Brexit Conference in the Faculty of Advocates	10 March 2017	18
18	Lord Carloway As the Lord President	Law Society of Scotland Law Society of Scotland Annual Conference Keynote Address “The Scottish Courts in the 21 st Century”	19 September 2017	20
19	Lord Carloway As the Lord President	The Scottish Legal Profession Speech to the Opening of The Legal Year 2017-18	25 September 2017	10

20	Lady Dorrian As the Lord Justice Clerk	The Scottish Legal Profession The 21 st Century Bar Conference “Current Issue: Modern Case Management”	8 December 2017	17
21	Lord Carloway As the Lord President	The Scottish Legal Profession Speech to Opening of the Legal Year 2018-19	24 September 2018	4

Documents. Atkinson and Coffey (1997) argue that written texts are fundamental for the functioning of social life and are often very relevant for qualitative research. Using documents in conjunction with the in-depth interviews is recommended for qualitative case studies (Yin, 2003). Using documents in addition to my other data sources also helped me to fill the blanks in my understanding of different perspectives and interpretations available in the data. As previously mentioned, along with the documents I analysed, I also read numerous documents including textbooks, journal articles, news articles, blogs, reports, historical accounts, court cases and so on that I did not include to my data analysis. However, through these documents I learned a lot about the legal field, the disciplines of law, and the history of the legal profession in Scotland.

In regard to the data sources that I used for analysis; I first assessed all 193 responses (letters) submitted to the Scottish Government by different stakeholders during the consultation process. These written submissions were made by various stakeholders – including advocates, solicitors, academics, judges, leaders of affected non-governmental organizations, and different professional bodies. The total number of transcription pages of these letters was 1587. *Appendix 5* presents the list of responses and the relevant details.

I also analysed 48 documents, with a total of 1941 pages, that were either published in print or made publicly accessible online by the Scottish Government. These documents include briefing reports, minutes of parliamentary committees, Lord Gill’s review on the civil justice system, reports of the different committees regarding the reforms, memorandums, the Courts Reform (Scotland) Act 2014, Courts Reform (Scotland) Bill, explanatory notes regarding the Bill and so on. *Table 2-5* presents the list of the published documents analysed.

Table 2-5 List of documents analysed

No	Name of the document and publishing date (if available)	Number of pages
1	Report of the Scottish Civil Justice System by Lord Gill, 2009	375
2	Courts Reform (Scotland) Act 2014	113
3	Bill (As Introduced) (SP Bill 46), 6 February 2014	98
4	Extract from the Minutes, Finance Committee, 26 March 2014	1
5	Extracts from the Minutes of the Justice Committee 18 February, 4 March, 18 March, 25 March, 1 April, 22 April, 29 April, 6 May 2014	2
6	Extract from the Minutes of the Parliament, 21 May 2014	1
7	Extract from the Minutes, Justice Committee, 10 June 2014	2
8	Extract from the Minutes, Justice Committee, 17 June 2014	2
9	Extract from the Minutes of the Parliament, 7 October 2014	2
10	Minutes of proceedings-Parliamentary Year 4, No. 05, Session 4 Meeting of the Parliament Wednesday 21 May 2014	8
11	Bill (As Amended at Stage 2) (SP Bill 46A)	108
12	Explanatory Notes (and other accompanying documents) (SP Bill 46-EN)	84
13	Revised Explanatory Notes (SP Bill 46A-EN)	52
14	2nd Grouping of Amendments for Stage 2 (SP Bill 46-G2)	3
15	2nd Marshalled List of Amendments for Stage 2 (SP Bill 46-ML2)	22
16	Correspondence from the Cabinet Secretary for Justice to the Justice Committee and Finance Committee updating financial information on the Bill, 24 September 2014	5
17	Written submissions and correspondence relating to the report of the Finance Committee, 26 March 2014	54
18	Scottish Courts and Tribunals Service -Annual Report & Accounts 2017-18	82
19	Scottish Courts and Tribunals Service -Annual Report & Accounts 2016-17	82
20	Delegated Powers and Law Reform Committee 29th Report, 2014 (Session 4) Courts Reform (Scotland) Bill published by the Scottish Parliament on 23 April 2014	23
21	Delegated Powers Memorandum (SP Bill 46-DPM)	24
22	Delegated Powers and Law Reform Committee Report, 7 October 2014	22
23	Delegated Powers and Law Reform Committee report, 20 May 2014	7

24	Supplementary Delegated Powers Memorandum (SP Bill46A-DPM)	9
25	Finance Committee Report- 26 March 2014	13
26	Analysis of Consultation Responses -13 September 2013	97
27	Business & Regulatory Impact Assessment - Courts Reform (Scotland) Bill- 5 March 2014	11
28	SPICe Briefing -Courts Reform (Scotland) Bill-13 March 2014	40
29	Making Justice Work – Courts Reform (Scotland) Bill- Consultation on the treatment of civil appeals from the Court of Session, May 2013	13
30	SPICe Briefing -The Scottish Civil Court System -13 February 2014	18
31	Official Report, Meeting of the Parliament, 7 October 2014	57
32	Official Report, Finance Committee, 26 March 2014	19
33	Official Report, Meeting of the Parliament, 21 May 2014	63
34	Official Report, Justice Committee, 10 June 2014	22
35	Official Report, Justice Committee, 17 June 2014	28
36	Policy Memorandum (SP Bill 46-PM)	58
37	1st Marshalled List of Amendments for Stage 2 (SP Bill 46-ML1)	7
38	Report on the Courts Reform (Scotland) Bill as amended at Stage 2, Delegated Powers and Law Reform Committee	6
39	Groupings of Amendments for Stage 3 (SP Bill 46A-G)	2
40	1st Groupings of Amendments for Stage 2 (SP Bill 46-G1)	2
41	Marshalled List of Amendments selected for Stage 3 (SP Bill 46A-ML)	17
42	Making Justice Work: Courts Reform (Scotland) Bill – A Consultation Paper-February 2013	48
43	Courts Reform (Scotland) Bill - analysis of consultation responses- 13 September 2013	1
44	SPICe Briefing-Courts Reform (Scotland) Bill: Stage 3- 25 September 2014	20
45	Scottish Government response to the Stage 1 Report, 2 June 2014	13
46	Oral evidence taken by the Justice Committee 18 March, 25 March, 1 April, 22 April, 29 April 2014	106
47	Making Justice Work – Courts Reform (Scotland) Bill- Consultation on the treatment of civil appeals from the Court of Session – analysis of responses, October 2013	22

48	Justice Committee Report, 9 May 2014	77
	Total	1941

Across the Papers. Data sources were more limited in Chapter Three than in the other two papers since the paper on Chapter Three is published as an article in the earlier stages of my research. *Table 2-6* summarises the details of data sources for every paper.

Table 2-6 Details of data sources analysed in the three papers

Paper	Data sources analysed
Chapter Three	<ul style="list-style-type: none"> • Twenty-one interviews: five advocates, a clerk of court, five solicitors, three solicitor advocates, a sheriff judge, a project manager working in the Faculty of Advocates, a consultant in the team designing the reforms, two Members of the Scottish Parliament, and two supreme courts judges. • Seventy-one written submissions to the Scottish Government. • Three public speeches. Two of these were addressed to solicitors and explained how the reforms would positively affect them. The third speech, to all members of the Scottish Justice System, explained the need for the reforms and revealed the timeline of their implementation
Chapter Four	<ul style="list-style-type: none"> • All of the collected data explained above: 93 interviews, 24 hours of non-participant observation, 21 public speeches, documents analysis of 48 documents, 193 submissions to government.
Chapter Five	<ul style="list-style-type: none"> • All of the collected data explained above: 93 interviews, 24 hours of non-participant observation, 21 public speeches, documents analysis of 48 documents, 193 submissions to government.

2.7 Data Analysis

The data used here have been coded and analysed in ways consistent with methods outlined by Miles and Huberman (1994) and Gioia, Corley and Hamilton (2013). I started the data analysis with open coding of the data from the interviews, speeches, documents and non-participant observation notes. These open codes were developed using *in vivo* codes without making any attempt to create categories. Instead, at this stage, I mainly used participants' own words, or coded in the way that they were

written in the documents. I mainly used NVivo qualitative analysis software to organise the coding process, however later, particularly during the writing up of the Chapter Five, I switched to using Microsoft Word and exported the data from NVivo to Microsoft Word.

Also, I open coded the data interview by interview, or document by document and organised in the same manner as well. That is, I made clear what interview that the open codes belong to. I also aimed to keep data sections as coherent pieces and created more than one open code for these coherent sections, such as a whole paragraph, or sentences that supported each other. That approach helped me in several ways, particularly in understanding the data. *Table 2-7* presents a sample of my open codes and their organization.

Table 2-7 Sample of open coding

Interviewee: INTW 13 Paul, Advocate Location: A coffee shop Date: 6 May 2016	
Quote	Open codes
<p><i>I think there are aspects of the legal system which are old-fashioned. But lawyers inherently just to do their job, look back in time because they have to look at previous decisions to see what has been done. So, in that way, the law always looks back and it's a quite conservative profession.</i></p> <p><i>But it has to be a conservative profession to a degree because continuity and stability and predictability in the law is important. If you change the law too much, nobody knows where they stand, so that's part of being a lawyer, that's part of the Court system.</i></p>	<ul style="list-style-type: none"> • Some parts of the legal system are old fashioned • Lawyer's job is to look back in time to see what has been done • Law is a quite conservative profession • Law needs to be conservative to secure continuity, stability and predictability • Changing law too much would cause nobody knows where they stand
<p><i>My own experience from working as a solicitor was that largely the system was able to take account of the demands of modern life. Not everywhere, it's not perfect, and there's always a need for reform.</i></p> <p><i>One area, for example, is in relation to information technology. I don't think the courts have kept up to date with developments in that area enough, but by and large I think it did pretty well...</i></p>	<ul style="list-style-type: none"> • The system before the reforms, was not perfect but good enough for the modern age. • The system required change in regard to technology

	<ul style="list-style-type: none"> • The system before the reforms, was not perfect but good enough for the modern age.
<p>Interviewee: INTW 14, Nancy, Solicitor Location: In her office Date: 28 May 2016</p>	
Quote	Open Codes
<p><i>I am an enthusiast for Lord Gill who I do think has been a highly influential figure in the Law of Scotland for all of his professional life but notably in his role as Lord Justice Clerk, the author of this Report and then his time as Lord President and I find his approach something that is beneficial.</i></p> <p><i>Yet, I have some misgivings about whether the outcomes that he designed necessarily were needed, I think he was given a political objective, there was an assumption that there was unmet need or hindrances in access to justice in Scotland and perhaps just because I am old and a dinosaur I am not entirely convinced that was right.</i></p>	<ul style="list-style-type: none"> • Lord Gill has been an influential figure in the Law of Scotland • Having misgivings about the outcomes that Lord Gill desired • Thinking that Lord Gill has a political agenda • Not convinced that there were hindrances in access to justice in Scotland
<p><i>I do have concerns that the lower courts may become overcrowded, over-busy</i></p> <p><i>And I am somewhat troubled that the introduction of the lower level of Judge, to a summary sheriff, maybe nothing more than a cost saving exercise.</i></p> <p><i>Summary sheriffs are being paid less than full-time sheriffs would have been, that in turn is going to mean that probably a number of the candidates will not be of the same calibre as those who would have applied for the better paid jobs and it may produce a reduced quality of judgement</i></p>	<ul style="list-style-type: none"> • Concerns regarding that reforms may create overcrowded, over-busy lower courts • Having concerns about the consequents of the introduction of summary sheriffs • Introduction of summary sheriffs just for cost-saving • Concerns regarding the possibility of summary sheriffs being less qualified than other sheriffs or judges • Concerns regarding the possibility of having reduced quality of justice in the sheriff courts

In the second stage of analysis, I re-categorised the open codes by considering the research questions of each paper. That is, before writing each paper, I went back to open codes and their attached quotes, assessed the codes one more time, searched for codes that could be grouped together as a higher-level category and iteratively collapsed them into a higher level of abstraction in order to produce second order codes for that particular paper.

In the final stage, I further organised the second orders into the aggregate dimensions. This, from the first stage of open coding until the end of the analysis, was a recursive process where I constantly compared codes, looked for similarities and differences among them, moved back and forth between codes and the raw data (Locke, 2001; Miles & Huberman, 1994; Pratt, Rockmann, & Kaufmann, 2006; Strauss & Corbin, 1990). I also moved back and forth between the data and literature particularly to reach the aggregate dimensions. By doing so, I linked the general themes that emerged from the data to more general constructs from the literature on institutions, inter-institutional areas, sociology of professions, sociology of emotions and institutional change. In this way, I was able to develop theoretical inferences from the emergent findings. For example, the aggregate dimensions of “specification of the failures of the existing system” and “justification of the new structures and practices” emerged particularly from comparing what emerged from the data with work on theorisation (Greenwood, Suddaby, & Hinings, 2002).

Furthermore, following the suggestion of Miles and Huberman (1994) I also utilised the practice of ‘memoing’ during the data analysis process. I took notes that were attached to interviews and codes. I followed this practice for the large part of the data analysis process. While using NVivo I used its ‘create memo’ option to attach the memos to interviews or to codes, and while using Microsoft Word I used the comment facility to add the memos. In these memos, I reflected back on the interview at hand based on my field notes and jotted my personal thoughts and interpretations regarding what had been said in the data. Sometimes I built links between other data pieces, interviews or theory. I also used the memos to remember the ideas that came to my mind during data analysis of that particular interview. These ideas were generally

about emergent patterns within the data or how the data relates to the existing theory and so on. *Table 2-8* is an excerpt from one of my memos on an interview script:

Table 2-8 An excerpt from one of the memos

Interviewee: INTW 4, Charles - Advocate Location: A meeting room in the Faculty of Advocates Date: 18 December 2014
It was clear that he considers handling the money or being the first contact for clients is beneath the role of advocates. He considers that these practices are a “tremendous burden” and are kind of dirty jobs. They don’t require intellectual resources to be employed, hence beneath advocates’ high level of intellectual ability and standards. That fits with other statements of advocates and solicitors, particularly official statements in the website of the Faculty of Advocates. Of course, this brings Abbott’s claims about professional purity and intra-professional status hierarchy to mind. Abbott states: “Professions tend to withdraw into themselves, away from the task for which they claim public jurisdiction. This pattern results from internal status rankings. The professionals who receive the highest status from their peers are those who work in the most purely professional environments. They are professionals’ professionals who do not sully their work with nonprofessional matters, consultants who receive referrals only from other professionals. Barristers and modern-day surgeons are examples. Such high-status professionals may have exceedingly high incomes and extensive professional education, but their distinguishing mark is their work in purely professional environments” (Abbott, 1988:118)

2.7.1 Data Analyses of the Three Papers

This dissertation includes three papers, presented in Chapter Three, Four and Five, in which different research questions were proposed. Although the main approach to data analysis was the same, the process of reaching the second orders and the aggregate dimensions by moving back and forth between data and the literature was different in each paper. That was because there were differences in regard to theoretical background of the papers, in addition to the differences in the research questions. The details regarding data structure of papers are explained within the papers, except Chapter Three. The paper on Chapter Three is a published paper and the data structure details were not included in the original manuscript. The below table presents the data structure for Chapter Three.

Table 2-9 Data structure for Chapter Three

First orders	Second orders	Aggregate dimensions
<ul style="list-style-type: none"> • Advocates' professional identity • Solicitors' professional identity • Elitism in the Bar • Status of advocates • Status of solicitors • Professional differences among segments 	Sharpened intra-professional differences	Maintenance failure
<ul style="list-style-type: none"> • Limited formal and informal interactions among the segments • Differing approaches regarding to resistance to change and not being able to have common way to do so 	Weak intra-professional communication	
<ul style="list-style-type: none"> • Uncertainty regarding the implementation • Uncertainty about the sanction process • Uncertainty about the solicitors' preference on instructing advocates in future • Paralyzing effect of uncertainty on professionals 	Uncertainty	

2.8 Methodological Limitations

One of the major criticisms regarding qualitative studies, and particularly case study research, is the generalisability and transferability of the findings. The question of how localised and idiosyncratic results, particularly ones based on single contexts, can be transferred and generalised to broader contexts maintains its pertinence especially for those who seek to apply positivistic validity and reliability measures to qualitative research.

Furthermore, in qualitative research, the skills, experience and personal biases and peculiarities of researcher may be excessively seen to effect the quality of the research (Fontana & Frey, 1994). For instance, researchers may be accused of asking leading questions to manipulate interviewees or might miss asking important follow-up

questions and so on. Also, the fact that the researcher is usually present during data collection can influence how participants respond or behave. What they say can be very selective depending on their relationship with the researcher or their impressions regarding the researcher.

However, generally these concerns are rooted in positivist philosophical assumptions (e.g. Yin 2003) and an underlying worldview of constructivist approach embraces the idiosyncrasies of qualitative case studies, as well as the deep involvement of the researcher in the process, to explore contexts deeply and provide thick descriptions of the context as well as the experience of the actors within these contexts. Creswell (2014: 204) even goes further and states “In fact, the value of qualitative research lies in the particular description and themes developed in context of a specific site. Particularity rather than generalisability is the hallmark of good qualitative research”.

I am also aware of that my case study presents inevitable idiosyncrasies. However, I believe every profession is stratified one way or another and has communities within communities. Almost every institution is strongly linked to professions and inhabited by one or more occupations or professions. Therefore, I aimed to discuss the findings in a way that they are theoretically relevant, and offer insights to a range of other issues related to other professions as well as the more general concepts of institutional change, persistence and maintenance. Nevertheless, I also agree with Scott (2013: 262) that idiosyncrasies are important for social science and we are not “seeking universal social law”, as it is beautifully put by Simonde de Sismondi (1837: iv):

I am convinced that one falls into serious error in wishing always to generalize everything connected with the social sciences. It is on the contrary essential to study human conditions in detail. One must get hold now of a period, now of a country, now of a profession, in order to see clearly what a man is and how institutions act upon him [sic].

2.9 Trustworthiness

There is no one particular way of determining the quality of qualitative research (Amis & Silk, 2008; O’Reilly & Parker, 2013). Along with aiming to uncover the complexity and multiplicity of social realities, the diversity in the ways that studies are conducted and the unique characteristics of contexts make it very hard to measure how rigorously a qualitative research is conducted. Therefore, the traditional positivist methods of

research assessments of validity and reliability are generally not considered as legitimate options to assess the quality of qualitative research.

In this regard, Lincoln and Guba (1985) promoted criteria of *trustworthiness* of the qualitative research as the *goodness* criteria for the work. In order to increase the trustworthiness of my research, I employed several strategies of triangulation (Creswell, 2014; Guba & Lincoln, 2005). First, I triangulated my methods by using different data collection methods such as interviews, non-participant observation, speeches and documents. Second, I triangulated my data sources by interviewing participants that belonged to different groups within the legal profession. In this regard, I also had a wide range of professionals who have different levels of experiences. Moreover, I analysed speeches belonged to different prominent figures and collected a wide array of documents including letters to government that belonged to an extensive list of stakeholders like NGOs, insurance companies, professional associations, individual professionals to retired sheriffs. At the end, I crosschecked the data coming from different sources to see if they all fit together and if there were any inconsistencies.

I also used triangulation of theory and frequently checked my interpretations of the data to see if it is consistent with related theories such as sociology of professions, sociology of emotions, organizational change, career studies and so on. Doing this helped me to increase trustworthiness particularly in Chapter Five. Studies located in different literatures suggest that women and men experience self-confidence differently and lack of self-confidence affects them differently (Cech, Rubineau, Silbey, & Seron, 2011; Perkins, 2018). Furthermore, studies showed women have a tendency to assess their professional abilities more harshly than men (e.g. Beyer, 1990; Beyer & Bowden, 1997). Women also suffer from a lack of self confidence in professions more than men (Perkins, 2018).

After my data analysis had indicated that solicitors felt a lack of self-confidence, I went back to the open codes of the interviews, and re-organized them based on gender, double checked if the majority of the emotion related quotes belonged to female participants. However, I saw that was not the case. I had interviewed 50 solicitors (including solicitor advocates) and 13 of them were female and a disproportionate

majority of the quotes regarding the emotions leading to the lack of self-confidence belonged to the male participants. Therefore, while analysing the data for Chapter Five, I took the gender of the interviewee into account and organized my analysis accordingly. I also made a particular effort to include male participants' quotes regarding emotions in the writing of the paper so that readers also could see that.

Along with usage of triangulation methods, I also 'member checked' my research (Lincoln & Guba, 1985). I discussed my data, interpretations and emerging themes with three of the participants (a sheriff judge, an advocate and a solicitor) at the various stages of my research to see if they thought the findings were accurate. Furthermore, I also employed 'peer examination' (Lincoln & Guba, 1985) by which the empirical material, the interpretations and conclusions drawn from the data have been crosschecked by another researcher.

Furthermore, in order to secure transparency of my research, I clearly presented the data collection methods and analysis process with sufficient detail in this dissertation. I provided rich descriptions of data and context, and shared quotes from the data in the findings sections as much as possible to allow the reader to clearly see my interpretation process.

2.10 Research Ethics

Designing ethical research is one of the main responsibilities of researchers. This study was designed by carefully considering the ethical aspects of my research. I also precisely followed the guidelines of the University of Edinburgh Business School.

The participants were made aware of this research by email and asked if they would be willing to give an interview. Before every interview, I carefully and fully explained my research and research purposes and presented an informed consent form to be signed by the participant. In this form I shared the details of the research, the contact details of the research team and highlighted that I offered confidentiality. I asked them their permission to record our interview and did so only if they acceded. *Appendix 6* presents the informed consent form that was used. Before and after every interview I verbally asked participants if they had any questions or concerns regarding the study. I aimed to be friendly and open so that they could raise their concerns. I also made sure that the participants understood that they could withdraw from the research at any

time. The transcription of each interview was sent to the participant who was asked if they were happy with it. This was an intentionally given opportunity to participants to raise their concerns one more time. As a result of this process, one of the participants stated that she did not want to be a part of the research. Then, I completely deleted her data.

In this study, pseudonyms for the names of participants and organizations were used. For convenience, I assigned names according to the gender of the participant. However, two of the participants were in such a unique professional position in which number of women was very limited that, in order to protect their identities, I named them with male names and was very careful not to use their quotes in ways that would reveal their identities.

I copied my data to computers and the cloud using these pseudonyms. The documents with the real names of the participants were stored in two separate external hard discs that were locked in a locker in one of the PhD offices in the University of Edinburgh Business School. By doing this I aimed to reduce the risk of data leakage. Since I used transcription services of a professional, I also got her to sign a confidentiality agreement.

3 Chapter Three: Intra-Professional Status, Maintenance Failure, and the Reformation of the Scottish Civil Justice System

This paper is previously published as:

Ozturk, I. H., Amis, J.M., & Greenwood, R. (2016). Intra-professional status, maintenance failure, and the reformation of the Scottish Civil Justice System. *Research in the Sociology of Organizations, 48B*(How Institutions Matter!), 207–234

In accordance to UEBS thesis guidelines, I confirm that I, as the author of this thesis, have carried out the majority of the work and am responsible approximately 75% for the writing of this manuscript and the processes of data collection and analysis.

The relevant details regarding the methodology of this manuscript is now in Chapter Two of this dissertation.

3.1 Introduction

In 2014, the Scottish Parliament passed legislation to thoroughly reform its civil justice system. The system had been criticised as being antiquated and of causing “erosion in public confidence” (Gill, 2009a: ii). The reforms came after an extensive review of the civil legal system led by one of the country’s leading judge, Lord Brian Gill.

The civil justice system in Scotland is a Victorian model that had survived by means of periodic piecemeal reforms. But in substance its structure and procedures are those of a century and a half ago. It is failing the litigant and it is failing society (Gill, 2009b).

The Courts Reform (Scotland) Act is designed to bring pronounced change to a legal system that has been in place for 150 years. Most notably, the reforms will introduce two new judicial courts (a Sheriff Appeal Court and a Special Personal Injury Court) and a new tier of judiciary, Summary Sheriffs. Further, regional Sheriff Courts, which previously could only hear civil claims up to a value of £5000, will now be able to hear cases of up to £100,000. This last change is particularly significant as it means that higher value, more complex, cases previously handled by advocates in the Scottish High Court can now be contested by solicitors in lower level courts.

The media have been consistent in their assessment of the magnitude of the changes, describing them as “sweeping reforms” (The Scotsman, 2014) that will “modernise” (BBC, 2014) “shakeup” (Brodies, 2009) and have “a massive impact on civil justice” (Inhouselawyer, 2010). Gill acknowledged the radical nature of the reforms while addressing the deeply rooted jurisdictional competition within the legal profession, stating:

Yes, it presents radical reform. But it has to be radical to ensure real change rather than piecemeal reform. What opportunity does it present? It throws open to every solicitor in Scotland a large tranche of work that hitherto has been the exclusive preserve of the Bar⁶ and of solicitors with rights of audience in the higher courts⁷. It gives to every solicitor in Scotland the opportunity to develop skill in appellate advocacy and to develop an expertise that has hitherto been seen as the exclusive preserve of the Bar. (Gill, 2014: 7)

⁶ When legal professionals complete a set amount of additional training and pass associated exams, they are “called to the Bar” as advocates.

⁷ So called ‘solicitor advocates’.

As Harel (2014) rightly emphasises, the legal system is important because it contours desirable outcomes, such as justice, security and prosperity. For Lord Gill (2009a) achieving these lofty goals in Scotland involved the creation of more effective decision-making processes, and a more democratic legal system. Hence, the Scottish civil justice reforms have been designed with the intent of generating wider, cheaper and quicker access to the legal system for members of the public.

The present paper is part of a larger study taking advantage of this empirical opportunity to observe in real time how major institutional changes unfold. The overarching motivation of the study is to understand the processes of institutional maintenance and change, with particular interest given to the political behaviours of affected professions. In the present paper, we report and discuss two early and surprising observations.

As might be expected, the legal profession is not homogenous but contains groups that have their own identities that are associated with differences of status (Currie et al., 2012; Ferlie, Fitzgerald, Wood, & Hawkins, 2005; Greenwood et al., 2002). Because status brings with it privileges and benefits, “status maintenance concerns are central” for those with higher status (Blader & Chen, 2011: 1041; see also Washington & Zajac, 2005). Changes that threaten to disrupt that status hierarchy, therefore, such as those intended for the Scottish civil justice system, can be expected to generate significant resistance. As Micelotta and Washington (2013) found in their study of Italian law firms, the legal profession is a powerful actor – even in its relationship with the state. In Italy the profession managed to “repair” a “broken” institutional order caused by new legislation even though “the law had already been passed and there was no room for negotiation” (Micelotta & Washington, 2013: 1149). Further, status hierarchies often remain entrenched in professions for long periods of time, reflecting the motivation and ability of high status actors to maintain their privileged positions, as Delmestri and Greenwood (2016: 8) illustrated:

‘Ivy League’ schools, a category of universities in the US, for example, have retained their prominence. So, too, have the ‘Magic Circle’ of UK law firms and the ‘Big Four’ international accounting firms. ‘Oxbridge’ and elite UK ‘public schools’ (such as Eton and Harrow), ... and the Grande Écoles, a category of higher education institutions in France, have similarly retained their privilege and prestige for centuries (Kodeih & Greenwood 2014). Malter (2014) notes that

the *grandes crus classés* of the Médoc, five growth classes of wine producers, have remained virtually unchanged for 150 years.

It might be expected, therefore, that those with high status within the legal profession in Scotland would be agents of resistance and maintenance, whereas those with lower status would be supportive of change. We thus expected to observe “institutional maintenance work” (Lawrence & Suddaby, 2006) from some members of the legal profession, but not others. In fact, this outcome was not found. Both high *and* low status groups within the legal profession were critical of the proposed changes and both preferred retention of existing arrangements. That is, the legal profession as a whole favoured institutional maintenance. That was the first of the two surprising observations that we discuss in this paper. The second was that, despite the lack of support for change, there was little effective ‘maintenance work’. Contrary to the portrayal of the professions as “Lords of the Dance” (Scott, 2008) and as highly motivated and effective in maintaining their privileges, resistance in our study was weak and ineffectual. These observations led us to consider the following research questions. First, rather than take external shocks and their consequent impact on institutional settlements for granted, what are the intra-professional dynamics that precipitate institutional change or stasis? Second, why do actors who have power, opportunity and resources to resist change, and in whose interests it is to maintain an institution, fail to do so? Third, how do intra-professional status and identity differences influence the success or failure of attempts at institutional maintenance?

In addressing these questions, we respond to calls for research about institutional maintenance (Lawrence et al., 2009) and in particular to investigating the importance of professions as institutional agents (Scott, 2008). Moreover, we draw upon the surprisingly thin literature on professional identity and offer insights on intra-professional segmentation and its consequences for institutional processes.

Our work makes several contributions to our understanding of institutions and professions. First, we show how professions are demarcated into communities with different levels of status that are grounded in pronounced bases of identity. As a consequence, institutional maintenance requires strong, coordinated action across these communities. Second, we reveal how status differences foment intra-professional rivalries that prevent coordinated action, even when there is universal

opposition to a proposed change. Third, we demonstrate that lower status groups do not automatically support change, even when it appears to be in their best interests to do so. Finally, we show that while uncertainty provides opportunities for institutional change, it hinders institutional maintenance efforts.

3.2 Theoretical Framework

3.2.1 Institutions, Institutional Change and Institutional Work

Institutions are complex self-reproducing social structures underpinned by regulative, normative and cultural-cognitive elements that give meaning to social exchange, provide stability, guide behavior, and create repetitive social behaviors (Greenwood et al., 2008; Scott, 2013). They constitute communities defined by common functional, relational and cognitive criteria (Mazza & Pedersen, 2004) and thus provide governance systems that deliver frames of reference that shape individuals' sensemaking, interpretation and decision-making processes (Thornton et al., 2012).

Recent work has portrayed institutions as sources of, and entrained to, different institutional logics, the “material practices and symbolic systems including assumptions, values, and beliefs by which individuals and organizations provide meaning to their daily activity, organize time and space, and reproduce their lives and experiences” (Thornton et al., 2012: 2). In other words, institutional logics prescribe an interpretation of reality, appropriate behavior and the definition of success in a given context (Friedland & Alford, 1991; Greenwood, Raynard, Kodeih, Micelotta, & Lounsbury, 2011). Logics act as guidelines for institutional actors for interpreting and functioning in social situations, including whether to resist or accept change (Scott, 2013).

Although institutions, by definition, are resistant to change because of the entrenched values, norms and routines that build over time, they do undergo change. Change can be caused by internal contradictions stemming from tensions among institutional logics (Reay & Hinings, 2005; Seo & Creed, 2002), emerge incrementally within the day-to-day activities of actors that subsequently get disseminated across a field (Smets, Morris, & Greenwood, 2012) or result from an exogenous shock, such as a regulatory change that disrupts a settled institution and requires the negotiation of a new

settlement (Clemens & Cook, 1999; Edelman, 1992; Micelotta & Washington, 2013; Rao & Kenny, 2008).

Considering the taken-for-granted, self-reproducing nature of institutions, it is not surprising that researchers have focused more on understanding the creation, disruption and transformation of institutions than upon maintenance processes. Yet, “the institutional work of maintaining institutions is both necessary and overlooked... Even powerful institutions require maintenance so that institutions remain relevant and effective” (Lawrence et al., 2009: 8). Hence, several recent attempts have been made to map maintenance work (e.g. Adamson, Manson, & Zakaria, 2015; Currie et al., 2012; Dacin, Munir, & Tracey, 2010; Lawrence et al., 2009; Lok & De Rond, 2013; Micelotta & Washington, 2013). These studies highlight how actors who benefit from existing arrangements respond to threats of change by trying to maintain the status quo. In particular, it has been shown that “individuals who belong to higher status social groups most often benefit from existing social arrangements” (Battilana, 2006: 663) and are thus especially likely to resist institutional change (Currie et al., 2012; Ferlie et al., 2005; Suddaby & Viale, 2011).

Nevertheless, it has been argued that we know far too little of who engages in maintenance work, and why and how they do so. These are still largely unanswered questions. Lawrence, Leca and Zilber (2013: 1025) however, offer “a prominent answer” to the first of these questions: “professionals and other actors associated with the professions.” The professions, they suggest, are a compelling starting point for studying maintenance work.

3.2.2 Professions and Institutional Maintenance

Institutional theory has long recognised that the professions are important institutions in their own right (Scott, 2008). Nevertheless, professions compete for status and power because of the significant privileges that they bring (Abbott, 1988). Therefore, although recent work has provided examples of change initiated by professional associations or as emerging from the practices of professionals (e.g. Greenwood et al., 2002; Smets et al., 2012), mature professions, such as law, accounting and medicine, are essentially conservative (Greenwood et al., 2002) and are continually engaged in

efforts to maintain their identity and thus their status (Currie et al., 2012; Micelotta & Washington, 2013; Scott, 2008).

Although the literature on identity per se is vast and growing (for a review, see Gioia, Patvardhan, Hamilton, & Corley, 2013) studies have focused predominantly on organisational or individual identity. Work on professional identity, by contrast, remains “sporadic” (Ashforth, Harrison, & Corley, 2008). The need for more research in this area has been widely acknowledged (e.g. Alvesson, Lee Ashcraft, & Thomas, 2008; Ashcraft, 2012; Barbour & Lammers, 2015; Kodeih & Greenwood, 2014; Pratt et al., 2006), yet insights into intra-professional identities and responses to professional identity threats have been notably lacking (Currie et al., 2012).

The fact that professions are institutions makes it problematic to directly transfer insights on organization identity to the professions. While a profession, as an institution, is a source of institutional logics that provides frames of reference for individual professionals to interpret their reality, define their values and interests, and provide justification for the question of “who am I?”, it is also a part of a broader institutional field that can be the source of several other institutional logics. This brings an underlying complexity that has yet to be examined.

Micelotta and Washington (2013: 1169), for example, show how Italian lawyers “refused the imposition of a professional model that does not reflect the actual identity and practices of the profession.” Other studies have similarly shown that whether a new institutional order is perceived as aligned or misaligned with identity will affect whether its implications are perceived as opportunities or threats and thus will shape the level of resistance (Creed, DeJordy, & Lok, 2010; Gioia, Patvardhan, et al., 2013). Professional identity, in other words, is central to the interests of a profession and any change perceived as threatening that identity can be expected to trigger maintenance work.

However, it is important to note that, despite the commonly held monolithic perception, professions are not homogenous (Abbott, 1981, 1988; Ramirez et al., 2015; Stringfellow & Thompson, 2014). Within most professions, status hierarchies specify and define intra-professional communities with their own identities, interests and privileges. How these intra-professional differences are invoked and affected during

processes of institutional change, and how they might shape responses to those changes, has largely been unexplored. Rather, most studies have considered professions to be homogenous entities in which members share a common identity, ideals and intentions. As such, it is implied that possible tensions caused by intra-professional status hierarchies and intra-professional identity differences are insignificant and can be discounted. This, as we show below, is problematic.

3.3 Findings

Following our data analyses, three main themes emerged as important in understanding the impact of the law reforms on the legal profession. First, it is very clear that, within the legal profession, there are communities with different status, and that these status differences along with associated professional identities heavily influenced the ways in which the reforms were perceived and enacted. Second, these intra-professional differences have resulted in different bases of opposition to the reforms. Surprisingly, given that the reforms were intended to provide more opportunities to solicitors, we found that opposition to the reforms was universal. Third, despite this overwhelming opposition, the legal profession was unable to mobilize a coherent program of maintenance work as has been possible in other similar highly institutionalized settings. Again, we found status and identity as highly salient in understanding the reasons for this. We next explain each of these emergent themes in more detail.

3.3.1 Different Status Communities

Contrary to much of the research that has viewed professions as homogeneous, we found significant intra-professional differences across the legal field. Here we focus predominantly on advocates and solicitors, the groups who practice law and were most affected by the law reforms. Almost all of the interviewees defined their roles, professional interests and status in terms of their specialised branches of the legal profession. We assess the different status communities and note how these differences influenced their perception of change.

Advocates. Advocates consistently stressed how their training, legal expertise, and their strong “professional traditions” set them apart from others in the legal profession. These characteristics also provided the bases for their perceived high status. Both

interview and document analyses revealed a strong belief in how advocates feel that their work is important, complicated and distinctive. Further, they almost always defined themselves in comparison to solicitors with extensive explicit and implicit references to their differing status, as in this description of the characteristics of advocates by Brandon⁸, an experienced advocate:

If an advocate, which is different to being a solicitor actually, if an advocate tells you something, generally speaking, you can rely on that, and trust what they say is accurate.... And honesty, I think, is the other one.... And a mutual respect, so that I would not denigrate a fellow Member of Faculty. And it's less aggressive [than being a solicitor], and sometimes solicitors can fall out with each other.

While explaining the consequences of working alone, George pointed out how advocates have higher status with the public:

So there are many pros and cons, but being self-employed as an advocate definitely carries kudos, if you like, in the public's mind.... I think people realize that it is quite an important role. Because you're advising the solicitor and you're advising the client, so, in that sense, you have to be confident in your own ability and your own advice, whereas if you're a solicitor, you can always go and ask a partner, and it's a collective thing.

Having professional training, dealing with very complex cases, and having expert skills and knowledge were repeatedly mentioned as important aspects of an advocate's professional identity. Further, advocates that we interviewed repeatedly reflected on their commitment to higher professional standards than solicitors. James, an advocate, explained:

If you're asked for a written opinion about something, you could spend a whole day on it. And frequently, when I'm drafting things, I rewrite them three or four times, and change them, and change them again. Now, I probably wouldn't have done that as a solicitor. It's because I know that my piece of work is going to get sent to the solicitor and sent to the client and probably to the court at some point if it's a court document. So it has to be absolutely as good as it can be.... Advocates are people who are on a completely higher level [than solicitors].

Another advocate, Charles, while giving an example of the negligence of a solicitor in a case, explained how advocates monitor themselves to meet professional standards, and how these standards are reproduced:

⁸ All names used in the paper are pseudonyms.

Now, most advocates would not [make that mistake].... The informal restrictions or pressures on the way in which we handle ourselves, are more concentrated on us because our training is more involved, and more intense... and because we, traditionally, have more contact with judges, and finally, because up until the present, all judges have been members of the Faculty of Advocates professionally before they went on to the Judicial Bench, or the Court of Session Bench. It's more of a step for us to fall beneath those professional standards.

He also explained how solicitors have to deal with clients and take responsibility for billing and payments, something considered beneath the role of an advocate:

We wouldn't want to [access clients directly]. We don't get direct access to clients, but also we don't have to handle their money, which is a tremendous ease of burden from our point.... That's all done for us by the solicitors.

The tradition and gravitas attached to the identity of advocates was also apparent in the way that the Faculty of Advocates defined itself in its submission to the Scottish Government during the consultation process before the Act was passed:

The Faculty of Advocates is Scotland's independent referral bar. It is also one of Scotland's great national institutions. Before and since 1707, the Faculty has been central in developing and preserving Scots law as an independent legal system. Its members (including Sir Walter Scott and Robert Louis Stevenson) have contributed significantly to the Scottish Enlightenment and to Scottish culture generally. It was thanks to the donation by the Faculty of some 750,000 books that the National Library of Scotland was established in 1925.

The Faculty proudly defined itself as an independent, distinctive, and national institution with a long history of contributing to the betterment of society. Our non-participant observation data confirmed that advocates are very proud of being part of the Faculty. For example, when we conducted interviews in the Law Chambers, we were always given a tour of the building and told stories about the ancient traditions that members still follow.

While advocates are proud of their status and traditions, members of other branches of the law profession emphasise, and resent, what is perceived as elitism. For example, solicitors that we interviewed emphasised to us that the Faculty of Advocates has traditionally been dominated by men with similar backgrounds. Aaron, a solicitor, explained:

The Bar has undoubtedly been privileged. It has been largely male, it has been largely private or very privileged public schools. It has been largely wealthy and it has been largely self-confident males with very good and expensive

educations. ... there are many more women now but their CVs mirror the men. But the Bar has had all these privileges.... As a solicitor, even as an inexperienced one, you are very aware of the fact that you can't go to Faculty of Advocates Library. You are not allowed to go in there, unless you have permission. You are just like any other member of the public.

Another solicitor, Garret, made similar observations:

In Scotland, it is not that long ago that we did not have any female judges. We have more [now], but...there is still a long way to go before we have anything like parity. And it is something which I think that, you know, probably fosters the view of elitism, because it is mostly men, mostly going to private schools, most have gone to certain universities, most have a certain social background.

Thomas, a solicitor, explained it this way:

That is something that I have been very aware of for the last twenty years or more that the Bar was so archaic in its structure. It did have excellence but it was so archaic: the clothes, the wigs, the traditions. The idea that if you were a training master and your advocate was such and such a person, you would be a kind of family, with all the other people who had been trained by that person... right up to the judge.... To me it's redolent of English private schools and elitism.

He went on to suggest that the elite status of advocates is now under threat.

These traditions will slowly wither.... Counsel⁹, with an effort to survive, will become more and more like solicitors who see the clients every day and answer their questions and try to simplify their explanations.

However, a Member of the Scottish Parliament, Keene, interpreted the possible impacts of the reforms on the profession in a different way:

Advocates are the stars, they are the elite. Advocates will always be the elite because they are the cream, they are the very best. I think what we will see is – after the reforms and over time – advocates will find niche work and they will always be there.... The Bar will [continue to] exist as an elite.

Solicitors. While advocates based their identity and status on tradition, legal expertise, and elitism, solicitors, by contrast, defined themselves by continually emphasising the importance of their clients. Garret, a solicitor, reflected that the defining characteristic of solicitor is, “Doing your best for the client. We have a duty to the court, we have a duty to the client.”

⁹ The terms advocate, barrister, counsel and Member of Faculty were used interchangeably in the interviews.

Solicitors also emphasised that they are the ones who have responsibility for meeting, communicating, and managing the relationship with their clients. Aaron, contrasting solicitors with advocates, used an analogy with the health profession:

In a jurisdiction, when you have a split legal profession, as in the UK including Scotland...a solicitor is a bit like a GP and an advocate is a bit like a specialist, medical consultant. Advocate, or barrister, is somebody that your GP sends you to.

He added how solicitors are better at explaining things than advocates:

When I have meetings with counsel, I am surprised still in 2015, sometimes to see that they are often hopeless for explaining things. They use jargon, Latin words, a number of counsel I have seen them say to a client 'Now Mrs. Smith your solatium is worth £10,000.' And she is immediately blank. She has no idea what solatium is. But she doesn't say. I immediately intervene and explain things. Why does not she or he be sensitive to the fact that the client won't know what it means? It is jargon as far as the client's concern. Why does he or she not know that? I still like the contact with the client even though it can be very infuriating sometimes.... I like engaging with the client at a basic level.

Thus, language is an important point of distinction, both functionally and symbolically. Advocates see technical, even arcane, language as a mark of their expertise while solicitors use more accessible language to retain a close proximity to their clients.

Solicitor Advocates. As with advocates and solicitors, solicitor advocates also define themselves by comparison to other branches of the legal profession. Here, however, perceived differences were not as starkly drawn. For example, one solicitor advocate told us:

I really don't see much difference between the various branches of the profession, duties to the court, duties to the client, it's pretty much all the same really. It's just that the jobs are a bit different, the functions are a bit different. I mean the Faculty of Advocates might argue that they've got different codes of practice that they have to have regard to different ethics. I don't there is much of a difference.

Clearly, though, there are some significant differences, notably in how work is obtained, and where it is carried out, as Scott, a solicitor advocate, explained to us:

Well, a solicitor advocate will be somebody usually, in fact almost always, who is working in a particular legal firm. And more often than not, the work they are being instructed in will come from within that firm. Whereas an advocate

is a lone gun who is out there for hire.... They don't have the benefit of being a member of a larger firm.

Solicitor advocates, similar to solicitors, thus defined themselves, and derived their status, from their membership of a particular firm, and the firm's values, as Taylor explained:

I'm thinking XYZ [firm name], we're seen as being a firm which tends to wear its heart on its sleeve a bit. We do act for all the major trade unions, bar a very tiny number. We believe that our clients should get their maximum damages in minimum time.

As we can see from the discussion above, the legal profession is not homogenous, but composed of distinct sub-communities. Though acknowledging their common membership of the legal profession, they differentiate themselves on the basis of tradition, legal expertise, and membership of an exclusive community (advocates), proximity to clients (solicitors), and membership of particular legal firms (solicitor advocates). This differentiation is exacerbated and enshrined in a status hierarchy that had significant implications for how the groups responded to the proposed reforms.

3.3.2 Bases for Opposition

Given the differences in status and privilege of the professional communities, it is not surprising that each group held different views on the reforms being introduced. However, they were united in opposing the charges, albeit for different reasons.

Advocates constitute the legal community under most obvious threat from the reforms. Indeed, Lord Gill (2014: 7) made it very clear that he expected the reforms to open to solicitors “a large tranche of work” that had previously been only available to advocates. This was clearly perceived as a direct threat to the status of advocates, most notably in terms of the business that they would in future be able to secure but also because it would allow more complex cases, previously the sole preserve of advocates in the Court of Session, to be contested by solicitors in lower sheriff courts. In line with Gill's reasoning, advocates consistently referred to their profession as under threat. Charles, an experienced advocate, stated:

There will be a disproportionate effect that will fall on the senior branch of the legal profession, which is mine. The use of counsel, use of advocates, barristers in cases will increasingly be seen as unnecessary, [an] additional expense.... That will... undermin[e] the quality of representation available to people.

Another advocate, George, addressed the possible impact of the reforms on the income of advocates and on the population of the profession:

A lot of my work is in higher value cases, fatal cases, medical negligence cases, so [the threshold change] wouldn't have the biggest impact on me. But some other people, it would have a huge impact.... In terms of income, it could reduce it by more than half.... Individual advocates are likely to have to leave the Bar. Scotland already has a small Bar relative to its population. That small Bar would become even smaller. This would diminish the choice and quality of representation available to litigants throughout Scotland.

Advocates were not the only ones pointing to the possible negative impacts of reforms on advocates. A solicitor, Garret, emphasised the need for advocates to change in order to survive:

I think advocates have to change the way they work. They will have to adapt and I don't think there will be enough work for the current number of advocates to be sustained.... I think, overall there may be an effect on skill sets, because relatively less advocates will be appearing in court and that has an impact on their developing their skills.

Another solicitor, Aaron, provided insight into why solicitors were unhappy with the reforms explaining that the change will increase the competition between solicitors and advocates, undermining a status quo in which advocates and solicitors each understand their roles in the legal system:

I supposed that inevitably the competition is going to mean that two branches of the profession will be similar. Whether they become equally good or whether they become equally bad could be argued. Advocates will have to struggle and fight more to find work.... Two branches of the profession are going to become more alike, and they are going to become much more in competition rather than solicitors feeding work to the counsel.

In their submission to the government during the consultation process, the Faculty of Advocates expressed an additional concern that the reforms would threaten the continued reproduction of skilled professionals:

There is an additional, potentially significant, long-term systemic effect for the future health of the Scottish legal profession. There are, today, far fewer opportunities for advocates to appear in court early in their careers than was formerly the case. One of the purposes of the Bill is to remove from the Court of Session "low value" cases of all classes. By the nature of things, it may be in relatively straightforward cases at the lower value end of the spectrum that advocates can obtain the experience early in their careers which equips them, as their careers develop, to undertake higher value complex litigation. Over the long

run, then, these proposals would prejudice the continuing ability of the system to produce the experienced and highly skilled advocates who are needed for those higher value and complex cases.

Unsurprisingly, all of the advocates that we interviewed vehemently opposed the reforms. Several also questioned the central tenet of the need for change, as exemplified here by Phillip:

In the context of what Lord Gill set out to do, his idea was improving access to justice. Most of us in the Faculty feel that that's laughable because it will mean that people will not have access to counsel, and the expertise that the Faculty provides, and will have to rely on solicitors who have much less experience, much less knowledge.

Similarly, a solicitor advocate, Taylor, bluntly suggested that, “The idea of increasing access to justice [through these reforms] to me seems like breath-taking hypocrisy.” Several of our interviewees held that the traditional civil justice system had worked well and that radical change was unnecessary. For example, Phillip, when asked about the key drivers of the reforms, stated, “I really don't know because the system actually works.... the system actually works really, really well.” Samuel, a solicitor, similarly opined, noting, “I wouldn't say it's perfect, it's not. But it works extremely well.”

In dismissing Lord Gill's claims of improving the civil justice system, solicitors and advocates also felt that the reforms were actually an attack on the status of some of their work. For example, Scott, a solicitor advocate dealing with personal injury cases felt that personal injury cases were not considered sufficiently important to be heard in the higher court:

I see a degree of elitism behind these reforms, which is pushing my clients out of the Court of Session into a potentially worse forum for them, in which they may recover less of the cost to obtain redress, and the result is that they end up having to pay more. I think where personal injury is concerned there was a view on the part of some judges that they didn't want to see personal injury work in the Court of Session anymore. They felt it was beneath the court.

George, an advocate also specialising in personal injury cases, provided a similar opinion:

I think the Lord President [Gill] doesn't think personal injury work is something that is particularly difficult and should be heard in the highest court in Scotland.... but personal injury work can be very difficult and complex.

3.3.3 Maintenance Failure

The profession was united in opposition to the reforms. Its members shared a lack of conviction that the reforms would increase access to justice; even solicitors, who apparently had most to gain from the reforms, felt that the changes were unnecessary, and in fact would diminish the standing of their work. However, there was a distinct absence of any concerted effort to coordinate a response across the legal profession. As one advocate explained: “There may have been some informal conversations, but there were too many different vested interests for advocates and solicitors to join together.”

Aaron, a solicitor, compared the ability of his branch of the profession to take collective action with advocates’ inability to do so.

Solicitors have been much, much better at campaigning, campaigning for public inquiries. Advocates cannot do that because they are in a collegiate structure where the Dean of Faculty speaks on behalf of all of them.... As a solicitor, good or bad, somebody like me when there is a Gill inquiry, or any other inquiry, we feel fairly free to write a letter as an individual. A solicitor says, ‘this is what I think’. No matter how good or bad, the views may be expressed. But advocates very rarely, even now, break the ranks, and send off their own individual views. If you look at the Gill responses, you can see a few that responded, not two hundred who could have. Even now when their professional future and livelihood has been threatened, they still did not break the ranks for one or two hundred of them to write individual letters to the Gill committee.

Phillip, an advocate explained this position:

So Faculty would be resisting it, but the Faculty is also mindful of its place in public life in Scotland, and those who are in control of the Faculty are very polite in what they say, and so they wouldn't be at the forefront of the resistance. Though they would be questioning about the object of reforms and how these were to be achieved.

Our findings also show that the slow implementation process created an uncertainty that resulted in professionals being unable to foresee the likely outcomes of the reforms. Several participants addressed this issue explicitly. For example, a solicitor advocate, Scott, told us, “We are left at the moment in a state of ignorance. We don't know what to expect. We don't know what the fees will be in the court. We are in the dark.” Garret, a solicitor also touched upon the uncertainty and its consequences, “I suppose you have to adapt as best you can. You have to try to anticipate what is likely to happen. There is a lot of concern about what is going to happen.”

Paul, an advocate, explained how hard it is to perform in uncertainty and deal with the changes: “We are in a position of deep uncertainty. So what's to be done with that? I don't know.” The result was a form of paralysis in which coordinated opposition to the reforms proved impossible.

In sum, therefore, advocates and solicitors, while they opposed change, lacked any coordinated action. There was no mechanism in place for a coherent, universal response; rather, voices from the legal profession were fragmented and thus could not carry the weight that was required to prevent the reforms being implemented.

3.4 Discussion

We contribute to the literature on institutional theory by offering insights into intra-professional segmentation and its consequences for institutional processes. In so doing we expose the role of status in intra-professional dynamics, uncover those factors that hinder institutional maintenance work, and highlight the importance of professions as institutional agents.

3.4.1 Intra-professional Status and Institutional Change

Our research indicates that the reforms disturbed not only the deeply entrenched institutional logics within the field, but also professional and organizational privileges, identities and the responsibilities of professional groups. The overt intent of the changes was to reduce costs, increase efficiency, and make the civil justice system more accessible to members of the public. It was also expected that the reforms would democratize the legal profession by providing opportunities for solicitors to develop expert knowledge and increase their domain of professional jurisdiction. However, in so doing, advocates have been threatened with the loss of their well-established privileges. Thus, for them, the reforms were profoundly undesirable. As members of a distinctive profession, this constituted a singular challenge to their professional identity. Given the threat to their status and privilege the dissatisfaction of advocates is not surprising. What was unanticipated was the inability of advocates to effectively carry out the type of maintenance work that has been characteristic of legal and other professionals in similar circumstances (Greenwood & Suddaby, 2006; Micelotta & Washington, 2013).

We were also surprised that solicitors were opposed to the reforms. For them, the changes are perceived as inconvenient, unnecessary and based on insufficient research. They interpreted the intentions behind the reforms as an attack on the field of personal injury because their cases would be heard in lower courts by less skilled judges. In other words, advocates and solicitors see the reforms as threatening their perceived expertise and thus constituting a challenge to their professional identity (Lamont & Nordberg, 2014). Following Petriglieri (2011: 644), the reforms were “appraised as indicating potential harm to the values, meanings, or enactment of an identity”. This was manifest in concerns about professional jurisdiction, values, future of their profession, income, and ability to reproduce traditions.

We found that these pronounced threats to the identity and status of different branches of the legal profession, and high levels of uncertainty, significantly sharpened intra-professional differences. Members of different groups defined their opposition by positively distinguishing themselves from other segments of the legal profession. Advocates, in particular, responded to the proposed change by differentiating themselves from solicitors and emphasising their distinctiveness, in function and status, at every opportunity. The Faculty of Advocates followed the same path in written submissions. Further, solicitors highlighted the difference between them and advocates, while resenting the intra-professional status differences and deeply rooted elitism among advocates.

The unsettling in the field was intended to disturb the status hierarchy within the legal profession by expanding opportunities for solicitors at the expense of advocates. Several of our interviewees commented that, indeed, the reforms will close the intra-professional status gap between advocates and solicitors. Therefore, the reforms, as a conduit for institutional change, are expected to increase competition between advocates and solicitors. This potentially strengthens the identity threats to advocates. Tajfel (1978) argues that groups are more prone to compare themselves with others when their identity is threatened. Ashforth and Mael (1989) similarly argued that established and affirmed high status groups are less likely to feel threatened and, therefore, less in need of positive distinctiveness. Our findings provide an example of low status (solicitors) *and* high status (advocates) groups seeking to retain the

distinctiveness of their positions. Interestingly, then, status threats are not restricted to just those at the elite end of the profession, leading to our first proposition:

P1: Lower status groups will not automatically seek change even when it appears to be in their professional interests to do so.

Theoretical and empirical exploration of the links between professions, identity and institutional change remain scarce. We address this lack of attention by demonstrating that identities within a profession are not homogenous as often assumed. Rather, there are significant differences that provide an important lens through which actors interpret institutional change and decide whether to accept or resist it.

Further, our findings demonstrate how intra-professional identities can emerge in response to status threats, something acknowledged as particularly lacking in the literature (Currie et al., 2012; Ramirez et al., 2015). In particular, we show that groups respond to such threats by critically defining themselves against competing groups. Thus, we propose:

P2: Externally enforced institutional change, and accompanying threats to status, can result in sub-groups of a profession emphasising intra-professional identity differences.

3.4.2 Uncertainty, Intra-Professional Differences and Institutional Maintenance Work

Institutional maintenance work requires substantial effort, especially during externally imposed institutional change. Yet despite the fact that, “the real mystery of institutions is how social structures can be made to be self-replicating and persist beyond the life-span of their creators” (Lawrence & Suddaby, 2006: 234), research on institutional work has predominantly focused on the creation, disruption or transformation of institutions with institutional maintenance work much less developed. Recent studies on maintenance work (e.g. Adamson et al., 2015; Currie et al., 2012; Dacin et al., 2010; Lawrence et al., 2009; Lok & De Rond, 2013; Micelotta & Washington, 2013) reveal that maintenance is not a process of straightforward replication as is often assumed in conventional representations of self-reproducing institutions. Particularly during times of externally imposed institutional change, maintenance work requires active and strategically coordinated resistance to change. Interestingly, however, in our case

resistance was weak, despite the different segments of the profession being less than convinced of the necessity of the change. Particularly surprising was the inability of advocates to mount a more effective maintenance strategy. The reasons for this constitute an important contribution of the paper.

Considering the essentially conservative and powerful nature of professions (Greenwood et al., 2002) and their continuous efforts to maintain the status quo to keep their jurisdictional power along with the associated social and financial privileges (Abbott, 1988; Larson, 1977), our findings present us with a paradox whereby very powerful and structured professional groups with opportunity and resources *failed* to mobilise effective resistance. Although the reforms were strongly opposed by advocates and solicitors, resistance was surprisingly mild. We found two underlying reasons for this failed institutional maintenance: intra-professional status differences and deep uncertainty created by slow implementation of the reforms and weak intra-professional communication.

Research that recognises the importance of collective and collaborative action in institutional work efforts (Lawrence, Hardy, & Phillips, 2002; Lounsbury & Crumley, 2007; Mair & Marti, 2009; Perkmann & Spicer, 2007; Wijen & Ansari, 2007) has generally focused on institutional entrepreneurship. The process and importance of “achieving sustained collaboration among numerous dispersed actors to create new institutions or transform existing ones” (Wijen & Ansari, 2007: 1079) is well-recognized in such processes of institutional change. Our study shows that institutional maintenance work also requires collective and collaborative intentional efforts, but that it may be difficult to accomplish even when there is a single dominant profession involved, because of intra-professional stratification. This leads to our third proposition:

P3: Institutional maintenance work requires strong, coordinated action across intra-professional groups if it is to be effective.

The different intra-professional groups could have united in resistance to the change and potentially maintained the status quo, as Micelotta and Washington (2013) found with professional groups in Italy. But the significant intra-professional status differences prevented effective maintenance work. Thus, we contend that there must

be some form of collective identity, even if only on a temporary basis, for maintenance to occur. Without this, organizing around a shared purpose (Cornelissen, Haslam, & Balmer, 2007), or constructing a plan of action (Gecas, 2000), will likely prove extremely difficult. However, in our case, status differences prevented even a temporary alliance, leading to our fourth proposition:

P4: Status differences that foment intra-professional rivalries are likely to prevent coordinated maintenance work, even when it is perceived as being in the best interests of all involved.

Further, we found that uncertainty hinders institutional maintenance work by creating a form of paralysis. Members of the Scottish legal profession could not perform maintenance work because of the lack of specific information regarding the implications of the reforms. This created an ambiguity of outcome that, when allied to the mistrust among different groups, prevented collective action. In the institutional work literature, uncertainty has been presented as enabling the creation of institutions because “the possibilities for strategic action are the greatest” in fields without any structure (Fligstein, 1997: 401), that is, when the degree of uncertainty is very high. Further, Phillips, Lawrence and Hardy (2000) suggest that unstructured or under-organized contexts likely spawn institutional entrepreneurship. Our work offers an extension of this line of theorizing. That is, while uncertainty is important for creating the ambiguity necessary for change to occur, it hinders the ability of actors to maintain or repair institutions because of their inability to foresee potential change outcomes. Therefore, we propose that:

P5: Uncertainty provides opportunities for institutional change, but hinders attempts at institutional maintenance.

3.5 Conclusion

Institutional logics in the Scottish Civil Justice System have been largely settled for over 150 years, with well-established institutions, interests, values, identities and expectations. The upcoming reforms are disturbing not only the deeply entrenched institutional logics within the field, but also professional identities and status hierarchies. In examining how these processes unfurl, we have offered three significant contributions. First, we demonstrate how identities and status within a profession are

not homogenous, as often assumed in the literature. There are significant differences that determine how interactions take place. Second, we show how identity differences are sharpened rather than dulled when an externally imposed change threatens different levels of status. Third, we unveil how intra-professional identity differences and high levels of uncertainty are two of the factors that hinder institutional maintenance work. These contributions, and the corresponding propositions above offer, we feel, a potentially fruitful and important, line of future research.

4 Chapter Four: Mechanisms of Institutional Persistence

4.1 Introduction

Institutional fields are vulnerable to change. Their portrayal of being impervious to change has been abandoned and “they are now treated as contested terrains contoured by variation, struggles, and relatively temporary truces or settlements” (Greenwood et al., 2008:19). That is, institutional scholars now consider institutional change as the norm rather than the exception because even in very established and mature fields, change is inevitable, and stability is only temporary (Greenwood et al., 2002; Hardy & Maguire, 2010; Hoffman, 1999; Munir, 2005; Rao & Kenny, 2008; Reay & Hinings, 2005; Sauder, 2008; Sminia, 2011; Zietsma et al., 2017). Indeed, “much of the institutional change literature starts with a description of a stable field that later changed because of the rise of new actors, new interests or exogenous shocks that changed power positions or unsettled logic prioritizations” (Zietsma et al., 2017: 32).

One particularly effective type of exogenous shock that institutional theory literature presents is the “legislative deus ex machina smacking into stable institutional arrangements and creating indeterminacy” (Clemens & Cook, 1999: 447). This type of shock can be so strong that it can break down a field “including what the purpose of the field is, what positions the actors occupy, what the rules of the game are, and how actors come to understand what others are doing” (Fligstein & McAdam, 2011:5). Similarly, Zietsma et al (2017) state that new legislation, such as government-led reforms, are a very common source of disruption and contestation within the established fields.

It is also apparent that what happens in one field affects other institutions and fields that are linked to it (Bourdieu, 1975, 1999; Fligstein & McAdam, 2011, 2012; Hinings et al., 2017; Scott, 2013; Suddaby & Viale, 2011) since every institution is embedded in a web of “countless proximate or distal fields, as well as states” (Fligstein & McAdam, 2011:3). That is, conflict and disruption in any field can also be triggered as a result of an issue arising from an adjacent institutional field, hence “stability of a field is largely a function of its relations to other fields” (Fligstein & McAdam, 2012:

19). The authors further elaborate that “a significant change in any given field is like a stone thrown in a still pond, sending ripples outward to all proximate fields” (Fligstein & McAdam, 2012: 19) and the changes happening in related fields are “the most common source of crisis in other fields” (Fligstein & McAdam, 2012: 100). These severe changes in proximate fields are also a type of exogenous shock to the field in question (Fligstein & McAdam, 2012).

In a similar vein, this study is shaped around two societal level macro institutional fields: the justice system and the legal profession. The justice system consists of the legal profession, other occupations such as police and several types of public servants, the government, the court system, public and private organizations, NGOs, laws and regulations, public, all the transactions among these actors and so on. The legal professional field, however, largely refers to the professional boundaries and interactions of the members and organizations of the profession of law whose members are lawyers and judges. In other words, the legal profession, which is an institution in its own right, inhabits another institution that is the justice system. In my research setting, both fields experienced a severe legislative shock - the Scottish Civil Justice Reforms. This massive shock changed the justice system tremendously, however, the legal profession in Scotland that sits within the justice system did not experience any disruption. Also, some aspects of this legislation were directly related to the practices of the legal profession in Scotland. That is, both the severe change in the justice system as well as the legislation itself were exogenous shocks that, on the face of it, should have massively disrupted the legal profession. Yet, the professional field did not get disturbed.

In line with conventional understanding, we would expect with this change taking place in the judicial system, there had to be change within the professional field, too. That is because this case had all the ingredients for the disruption and jurisdictional dispute to take place between major actors in the legal profession. The judicial system experienced a serious legislative shock that changed the system profoundly. This legislation aimed to change the allocation of resources within the profession. Also, some groups within the legal profession that inhabits the judicial system were offered significant opportunities and some were seriously threatened by this external shock. They also had the resources to disrupt the status quo or resist the change altogether.

The heterogeneity within the profession was high and jurisdictional boundaries and status hierarchies were seriously threatened by this external shock. Moreover, along with the legislative shock, there was also a skilful and powerful institutional entrepreneur working within the professional field in order to theorize change.

I therefore expected to find significant disruption with intense conflict, competition and struggle within the profession (Bourdieu, 1975; Greenwood et al., 2002; Wooten & Hoffman, 2008; Zietsma et al., 2017) since even during settled times, there is a constant jockeying in a field as actors strive to protect, and enhance, their interests (Fligstein & McAdam, 2011). Particularly, professions constantly compete over practices, economic and social status and jurisdiction internally and externally (Abbott, 1988; Anteby et al., 2016; Martin, Currie, & Finn, 2009). However, surprisingly, there was a distinct lack of disruption and dispute within the legal profession. As such, my anticipated story of institutional disruption and change became one of institutional persistence. As a result, although fundamental change had occurred to major institutional structures and processes within the judicial system, the profession did not experience any disruption, with its day-to-day practices, intra-professional relations and routines remaining almost completely intact.

Here, I differentiate institutional persistence and maintenance from each other because institutional maintenance usually refers to *intentionally* undertaken institutional work for maintaining status quo. However, in this paper, my focus is on the field mechanisms of persistence existing in professional fields that buttress institutional continuity of a field. Therefore, in this paper, I examine the lack of institutional disruption, and in particular asked why such pronounced change within the judicial system did not cause disruption within the professional field that occupied it. Doing so, I contribute to the institutional theory literature by answering calls for research on the persistence of institutions (Greenwood, Oliver, Lawrence, & Meyer, 2017; Lawrence, Suddaby, & Leca, 2009; Lawrence & Suddaby, 2006; Sminia, 2011; Weik, 2015, 2018) and also to the professions literature by answering calls for research on the persistence and internal cohesiveness of professions as one of the major institutions of society (Ramirez et al., 2015). By exploring an extreme case of institutional persistence in the Scottish legal profession, this study provides insight into those conditions in which institutional continuity takes place, even when existing theory

suggests that there would be disruption and a probable change in the field (e.g. Abbot, 1988; Fligstein & McAdam, 2011; Suddaby & Viale, 2011).

4.2 Theoretical Background

4.2.1 Institutions and Institutional Fields

Institutions are “more-or-less taken-for-granted repetitive social behaviours that are underpinned by normative systems and cognitive understandings that give meaning to social exchange and thus enable self-reproducing social order” (Greenwood, Oliver, Sahlin, & Suddaby, 2008: 5). Institutions exist at individual, organisational, field and societal levels. Societal institutions are the higher-level institutions that provide wider institutional environments where more specific lower level structures exist and function. Some of the higher level institutions are religion, science, the market economy, legal fields, professions and the state (Greenwood et al., 2008). Each of these has their own institutional infrastructures, web of actors and organisations with their own spheres of jurisdiction or action (Greenwood, Hinings, & Whetten, 2014; Scott, 2013; Thornton, Ocasio, & Lounsbury, 2012). Both higher level and lower level structures and the actors that are embedded within them change, reproduce, constrain and empower the structure and actions of each other (Scott, 2013).

Within this web of institutions, ‘fields’ have been portrayed as the ‘central construct’ of institutional theory (Wooten & Hoffman, 2008; Zietsma et al., 2017). The importance of fields comes from the fact that they “fulfil a vital role in connecting organization studies to wider, macro structures—sectoral, societal, and transnational” (Scott, 2013: 204). According to Zietsma et al. (2017:5) the core idea of institutional theory is that fields are “the predominant source of pressures for institutional conformity and site of institutional embeddedness”. They are the “local social orders” (Fligstein, 2001:107) where meanings are co-created and shared (Glynn & Abzug, 2002). That is, with their infrastructure serving as “the mechanism of social coordination”, fields are “the locations of many of the institutions that guide everyday behaviour” (Zietsma et al., 2017:5). In other words, fields are the places that institutions come to life and are enacted.

Fields have been operationalised by scholars in several different ways (Zietsma et al., 2017). For instance, while some are more established with highly institutionalised

structures (Greenwood & Suddaby, 2006; Greenwood et al., 2002; Purdy & Gray, 2009; Rao, Morrill, & Zald, 2000; Vaccaro & Palazzo, 2015), others can be emerging, contested and evolve around issues (Farjoun, 2002; Hoffman, 1999; Maguire, Hardy, & Lawrence, 2004; Patvardhan, Gioia, & Hamilton, 2015; Zietsma et al., 2017). In mature and highly institutionalised fields, as in my setting, the institutional infrastructure is very well developed and durable (Hinings, Logue, & Zietsma, 2017). These fields have been defined as mature, stable and settled fields (Greenwood et al., 2002; Zietsma et al., 2017) in which practices, identities, meanings, what is appropriate and what is not, and formal and informal mechanisms are clearly defined (Zietsma et al., 2017).

Aligned with that, institutions and institutional fields have been portrayed, particularly in the early and traditional studies of institutional theory as impervious to change. These studies highlighted how institutional pressures create uniformity, conformity and stability that are also buttressed by shared logics and common understandings (DiMaggio & Powell, 1991; Greenwood & Suddaby, 2006; Levy & Scully, 2007; Scott, 2013). However, it is clear that “that view is not supported by work of the past decade which suggests, at least in part, that there is less field stability than initially theorized” (Hinings et al., 2017: 181). That is because within the structured relationships around common meanings, in fields, not all actors are equal: there are status hierarchies, differences in power and influence, differences in access to resources and legitimacy, and differences in field positions (Compagni, Mele, & Ravasi, 2014; DiMaggio & Powell, 1983; Zietsma et al., 2017). Therefore, even in settled times, institutional fields are in flux with an ongoing contestation and contention causing constant threat to existing order, with competition over meanings, resources, boundaries, stakes, decision making authority, status and access (Bourdieu, 1975, 1999; Fligstein & McAdam, 2011; Oakes, Townley, & Cooper, 1998). As a consequence, change is inevitable and now scholars recognise change in institutions and institutional fields as the normal condition rather than the exception (Greenwood et al., 2017; Micelotta, Lounsbury, & Greenwood, 2017; Scott, 2013; Zietsma et al., 2017; Zucker, 1977).

4.2.2 Institutional Change

With the considerable effort given to exploring how and why change happens, institutional change has become a main research area in organisation theory over the last two decades. How and why institutions are “created, transformed and extinguished” (Dacin, Goodstein, & Scott, 2002: 45), as well as “who initiates and promulgates change” (Micelotta et al., 2017: 1886) and the consequences of the change (Greenwood et al., 2017; Thornton et al., 2012) have become significant concerns of researchers. According to the literature, institutional change can be triggered in three ways: by exogenous shocks or events, endogenous and agentic efforts (also known as institutional entrepreneurship), or improvisations in the day-to-day practices of actors (Micelotta et al., 2017). I will focus on institutional change that is triggered by exogenous shocks since this study is an example of a severe exogenous shock.

Exogenous Shocks or Jolts. Studies, particularly early ones, focusing on change caused by exogenous disturbances or ‘jolts’ (Meyer, 1982; Meyer, Brooks, & Goes, 1990), explored how external forces fundamentally change the institutional fields. Some examples included wars or revolutions (Allmendinger & Hackman, 1996), disruptive technological changes (Garud, Jain, & Kumaraswamy, 2002; Romanelli & Tushman, 1994), changes in political regimes (Clark & Soulsby, 1995; Whitley & Czabán, 1998), regulatory changes (Amis et al., 2004; Bacharach, Bamberger, & Sonnenstuhl, 1996; Lounsbury, 2002), changes in connected fields (Fligstein & McAdam, 2012) and competitive pressures (Thornton & Ocasio, 1999).

Macroenvironmental changes start a process of deinstitutionalisation and change the criteria for being ‘legitimate’ (Davis, Diekmann, & Tinsley, 1994), where survival of organisations, as well as the emergence of new ones, depend on their ability to adapt to the changes (Ahmadjian & Robinson, 2001; Lee & Pennings, 2002; Ruef & Scott, 1998). Studies showed that organizations could be capable of adaptation and successfully respond to disruptive changes by transforming their structures and strategies, albeit depending on some criteria such as organisational characteristics (Allmendinger & Hackman, 1996; Kriauciunas & Kale, 2006; Lamberg & Pajunen, 2010).

While internal dynamics and processes of an institutional field significantly influence the change or stability of it, a severe change in a connected field can also cause severe disruption in other fields. That is because fields are embedded in a “dense latticework of other fields” that include the state and other higher-level institutional orders such as professions or justice system (Fligstein & McAdam, 2012: 100). This connectedness and embeddedness may serve as a stability mechanism until a serious change happen in one of the connected fields. According to Fligstein and McAdam (2012: 100), a severe change happening in a connected field is the most common source of the crisis and disruption in other fields because they “disrupt the routine operation of the field in question”.

These exogenous factors, by creating issues and tensions, as well as forcing field members to act in a certain way, can destabilise fields. However, as a matter of fact, not all the changes in connected fields nor every exogenous shock hit fields hard enough to create change, particularly in established fields, such as many professional fields. Although, the mechanisms that hold a field together in the face of a strong exogenous shock is largely unexplored (Zietsma et al., 2017) institutional theory literature suggests several factors that make fields vulnerable in the face of exogenous disturbances. First of all, there needs to be strong trigger for change such as a regulatory shock (Clemens & Cook, 1999; Fligstein & McAdam, 2012; Greenwood et al., 2002; Zietsma et al., 2017). In this respect, directly imposed government mandates are considered as particularly effective (Fligstein & McAdam, 2012; Zietsma et al. 2017). Then, the shock needs to create opportunities or threats for certain sub-groups or populations within the fields (Fligstein & McAdam, 2012); without these opportunities or threats, established fields do not turn into contested issue fields experiencing change (Abbot, 1981,1988; Fligstein & McAdam, 2012; Zietsma et al. 2017). Then, these sub-groups or populations need to have enough resources to mobilize change if they wish to. That is because existence of opportunities or threats is not enough for experiencing disruption if parties do not have resources to benefit or avoid those (Fligstein & McAdam, 2012; Zietsma et al., 2017). Moreover, presence of an institutional entrepreneur with skills, power and resources can be very important for the change to take place (Maguire et al., 2004; Micelotta et al., 2017; Zietsma et al., 2017). In addition, if jurisdictional boundaries and status hierarchies get disturbed

by the external shock, it makes a field more vulnerable to change (Fligstein & McAdam, 2012; Ramirez et al., 2015; Zietsma et al., 2017). Also, the more heterogeneous a field is, the more fragile it becomes (Clemens & Cook, 1999). Furthermore, if the change has already been realised it is harder to reverse the process (Micelotta & Washington, 2013) and the vulnerability to change increases. Finally, if a “field is dependent on another for either the production of inputs or the consumption of output, then crisis in the proximate field will produce crisis in the field in question” (Fligstein & McAdam, 2012: 100).

4.2.3 Institutional Persistence

Unlike institutional change, institutional persistence has gained limited attention and is “an understudied phenomenon” (Scott, 2013: 178). Perhaps, it is because persistence of institutions, and taken for grantedness within institutions, has also been taken for granted by scholars. Scott (2013: 152) states “in my reading of the institutional literature, most institutional scholars accord little attention to the issue of institutional persistence”. Similarly, many scholars (Greenwood et al., 2017; Lawrence et al., 2009; Lawrence & Suddaby, 2006; Scott, 2013; Weik, 2015, 2018) have called for research on the continuity and persistence of institutions. For instance, Greenwood et al. (2017: 16) argued that institutional continuity still constitutes one of the most important research areas. That is because understanding institutional persistence can shed new light on “taken-for-granted understandings that defy change by their social invisibility in a time when some of our most central institutional structures - political bodies, public agencies, financial institutions, corporations - are viewed by growing numbers as either corrupt, ineffective or both”. So, there must be mechanisms that provide persistence and continuity to institutions and institutional fields and enable actors to engage with the same practices and structures.

Along with ‘institutional persistence’, researchers used the terms ‘institutional continuity’, ‘institutional durability’ and ‘institutional stability’ to describe similar phenomenon or used these terms interchangeably. In this regard, one of the main explanations of institutional continuity is that actors actively created institutions at a time in the past, but then how these institutions have been created is forgotten (Weik, 2018). New actors consider institutions as external entities and take them for granted.

They stop perceiving alternative ways of acting or thinking (Berger & Luckmann, 1967; Weik, 2015, 2018; Zucker, 1987). Complementary to this work, Scott (2013) takes an intermediate perspective that suggests there are institutional elements that are exogenous to individuals such as rules, norms, and beliefs; but they are also endogenous, therefore, self-reinforcing.

Furthermore, some researchers also highlighted that institutions help make sense of the world and construct identities (Berger & Luckmann, 1967; Clemens & Cook, 1999; Glynn, 2008; Powell & Colyvas, 2008; Weber & Glynn, 2006). Institutions provide input for bodies of knowledge (Maguire & Hardy, 2009), meaning for social categories (Lounsbury & Rao, 2004) and guidelines to act and interpret reality (Thornton et al., 2012). Therefore, institutional reproduction is vital so that “people do not go insane as it is institutions that form the backdrop against which sense and identity are constituted” (Weik, 2018:4)

It is also acknowledged that, by using routines and habits, actors save energy and simplify the complexities of the world (Berger & Luckmann, 1967; Douglas, 1987; Weik, 2015, 2018). This contributes to the persistence of institutions because it enables actors to avoid engaging in forms of action that require great amounts of effort, and also reduces the cognitive efforts required to cope with cognitive complexities (Weik, 2015, 2018). That is, institutions make things familiar for actors who seek to create “a stable world in which objects have recognizable shapes, are located in depth, and have permanence” (Douglas, 1966:45).

Another account to understand institutional continuity is derived from the concept of institutional work (Lawrence & Suddaby, 2006). Institutional work directed towards maintaining institutions involves “supporting, repairing or recreating the social mechanisms that ensure compliance” (Lawrence & Suddaby, 2006: 230). By surveying the empirical literature (e.g., Angus, 1993; Guler, Guillén, & Macpherson, 2002; Hargadon & Douglas, 2001; Holm, 1995; Leblebici et al., 1991; Russo, 2001; Townley, 1997; Zilber, 2002), Lawrence and Suddaby (2006) found six types of maintenance work: ‘enabling’, ‘policing’, ‘detering’, ‘valourizing/demonizing’, ‘mythologizing’ and ‘embedding and routinizing’. The first three maintain institutions “through ensuring adherence to rule systems” (Lawrence & Suddaby, 2006: 230). This

category comprises use of legitimate and regulative authority by establishing rules and standards; creating the processes enabling policing, control and enforcement; and realising deterrence strategies to prevent varying factors threatening the institution (Lawrence & Suddaby, 2006; Trank & Washington, 2009). The latter three “focus efforts to maintain institutions on reproducing existing norms and belief systems” (Lawrence & Suddaby, 2006: 230). This category is more about normative and cognitive aspects of institutions, rather than the regulative aspects. It involves valorising and demonising actors who reflect positive or negative aspects of the normative foundations of the institution; using stories effectively to create myths on the history of the institution; and infusing meaning into routines and day-to-day practices so that it would be hard to stop performing them (Lawrence & Suddaby, 2006; Trank & Washington, 2009). In addition, in their conceptualisation, Lawrence and Suddaby (2006) note that to achieve institutional maintenance, the contradictions inherent to institutions have to be concealed or repaired in some way or other since these contradictions are the endless source of conflict and change (Sminia, 2011).

A range of studies have explored institutional maintenance work of actors in different settings. For instance, (Zilber, 2009) studied symbolic aspects of institutional maintenance and the use of stories. She showed how well-institutionalised narratives at the societal level re-enacted in subordinate levels, and vice-versa, as maintenance work. She also touched on the political aspect of institutional maintenance. Dacin et al. (2010) also showed how societal institutions, the British class system in their case, can be maintained through micro-level practices that are social rituals. Lok and De Rond (2013) and Heaphy (2013) worked on how breaches of micro-practices are repaired and restored to maintain existing arrangements and role expectations.

In addition, some research has addressed the maintenance work aimed at professions or performed by professionals. For instance, studies have showed how professional bodies and professionals perform maintenance work, usually in order to maintain the knowledge base of their profession, institutionalised privileges, professional status and jurisdiction, by theorizing change and reframing professional identities (Greenwood et al., 2002), legitimizing the actions of professional bodies (Trank & Washington, 2009), developing new routines (Currie et al., 2012), controlling education and training

(Dunn & Jones, 2010; Goodrick & Reay, 2011), performing as gatekeepers to maintain their trade and the moral foundations of their practice (Anteby, 2010), and, the use of rhetorical and narrative strategies (Daudigeos, 2013; Kellogg, 2012). Further, Micelotta and Washington (2013) demonstrated how professionals can re-constitute institutional arrangements even after regulative disruption has taken place. Wright, Zammuto and Liesch (2017) showed how professionals maintain their values while interacting with each other and engaging in practices within their organisations. Their research also provided an empirical account for how emotions work as a triggering mechanism for individual and collective action for maintenance work. In a similar vein, Siebert, Wilson and Hamilton (2016) highlighted the emotional aspect of institutional maintenance in their research of the Faculty of Advocates in Scotland. The emotion was ‘enchantment’ in their study that was about how organisational spaces and professionals’ interactions with these spaces provide stability for institutions.

Some other studies also showed the relationship between emotions and institutional maintenance. For instance, Creed, Hudson, Okhuysen and Smith-Crowe (2014) connected the emotions of shame and pride to the reproduction of institutions and claimed that emotions are the key for maintaining institutions. Voronov and Vince (2012) similarly argued that without enough emotional investment actors would not engage in maintenance work. In addition, Delmestri and Goodrick (2016) found that control of emotions through denial can stabilize institutions because denial stops disruptive emotions from emerging and threatening the status quo.

Continuity could also be the result of routines and day-to-day activities (Feldman, 2000; Giddens, 1984; Lounsbury & Crumley, 2007; Schatzki, 2005; Sminia, 2011; Whittington, 2006). However, this also brings the problem of ‘intentionality’ into the discussion of institutional maintenance. Institutional maintenance work suggests a high degree of ‘intentionality’ behind the actions of actors since the original definition of the term included the phrase “purposive action” (Lawrence & Suddaby, 2006: 215). However, institutional continuity, or change, does not always arise from deliberate action (Feldman, 2000; Feldman & Rafaeli, 2002; Micelotta et al., 2017; Smets et al., 2017; Sminia, 2011). It can also occur as a result of day-to-day practices, routines and interactions (Giddens, 1984; Sminia, 2011). In this research, I did not particularly look

for purposeful actions aimed at maintaining the institution. I only aimed to uncover the mechanisms of persistence to explain why institutional continuity takes place in some conditions where theory would suggest otherwise.

In summary, institutional fields change, be it because of always-present tensions, inconsistencies, competition and contradictions (Dorado, 2005; Greenwood et al., 2002; Rao, Monin, & Durand, 2003; Seo & Creed, 2002; Sewell Jr, 1992; Zilber, 2002) or exogenous forces or changes in micro-practices. According to Holm (1995), boundaries are not fixed in institutions, and perfect reproduction is not possible by institutional structures. Contestations and contradictions emerging in fields can tear apart institutional fields (Clemens & Cook, 1999; Friedland & Alford, 1991; Hardy & Maguire, 2010; Hoffman, 1999; Seo & Creed, 2002). Thus, “the appearance of stability is probably misleading” (Greenwood et al., 2002: 59) and disorganization within the institutions leading to break down is the norm (Zucker, 1988). That is, with the exposure to external forces, as well as “contradiction and conflict being seen as so inherent to any institution, it seems to be virtually inevitable for institutional change to emerge, and the question of how institutional continuity is realized becomes even more compelling” (Sminia, 2011: 1561). In this regard, why institutional persistence takes place and a field does not get disrupted and contested even in the face of strong exogeneous shocks is largely unknown (Zietsma et al., 2017).

4.2.4 Professions and Professional Fields

In this research, professions are considered as macro institutions of society, as well as institutional agents and carriers (Scott, 2013). The economic and social significance of professions and professional organizations stems largely from their ability to shape, facilitate and enable the processes of higher level, core societal institutions, such as justice systems. Therefore, the behaviours of professionals and professional organizations have significant repercussions on the broader surrounding institutions (Brock et al., 2014; Suddaby & Viale, 2011).

Professions place great importance on being able to create and retain control over their expert and specialized knowledge, for it is this that allows professionals to secure and control their economic and social positions, as well as professional practices and boundaries (Zietsma et al., 2017). Because professions are strongly linked to different

levels of institutions and organizational fields, their professional projects resonate and influence the institutionalization projects of other adjacent entities, such as other professions, state, and transnational organizations (Suddaby & Viale, 2011; Suddaby & Muzio, 2015). In this regard, recently, scholars have called for more research on the role of the professions and professional service firms in institutional environments (Suddaby & Viale, 2011; Suddaby & Muzio, 2015; Zietsma et al., 2017), and the broader system of multi-level relationships in which professions are embedded (Anteby et al. 2016; Suddaby & Muzio, 2015; Zietsma et al., 2017).

Although professional fields are generally very well established with a single logic or a few relatively minor permutations (Zietsma et al., 2017), the politically conflicted portrayal of institutions is particularly noticeable in the professions literature. Previous studies highlighted areas of jurisdiction as the main cause of contestation among professions (Abbott, 1988; Bucher, Chreim, Langley, & Reay, 2016). Some other studies also emphasised the boundary disputes in the professional fields, such as between legal and accounting firms (Suddaby & Greenwood, 2005) and in the rearrangement of professional tasks in medical fields (Bucher et al., 2016; Dunn & Jones, 2010; Goodrick & Reay, 2011; Reay & Hinings, 2005). Furthermore, prior research has also demonstrated the existence of a high degree of intra-professional conflict and competition, and showed that all these jurisdictional battles also occur within a profession (Abbott, 1988; Currie et al., 2012; Galanter & Palay, 1991).

Many studies indicate that professions perform boundary work to maintain, change or broaden their jurisdiction, and that these boundaries are in regular flux and based on constant negotiations (Bucher et al., 2016; Gieryn, 1983; Suddaby & Viale, 2011; Thomas & Hewitt, 2011). Maintaining or broadening jurisdiction is seen as very important for the survival of a profession through the provision of access to material and non-material resources such as power, status and money (Abbott, 1988; Bucher et al., 2016). Scholars suggest that higher status professions tend to maintain their jurisdictions while lower status groups try to change them (Abbot, 1988; Battilana, 2011; Bucher et al., 2016; Greenwood & Suddaby, 2006; Lawrence, 2004; Suddaby & Greenwood, 2005).

A profession generally is not a cohesive or homogeneous entity, but rather an institutionalized compromise consisting of several segments or strata (Currie et al., 2012). Segments do not represent simple points of differentiation, but refer rather to organized identities, which are in constant flux as they adapt to their institutional, organizational and technical contexts. They engage in tactics to implement and defend their desired position relative to other segments, and to other professions. According to Freidson (1986), segments are based on the connection between the functional differentiation within a profession and the degree of specialization in professional knowledge. In Freidson's (1970) study, structural dominance, knowledge and power are the key factors in theorising the professions, as well as the institutional infrastructure. The justice system is a particularly good example based on Friedson's analysis, since it is characterized by a more significant internal differentiation than most professions.

Previous research shows that the higher the theoretical knowledge of a profession, the more specialised its professional members. In other words, internal stratification results from professional knowledge being increasingly abstract and specialized, leading to fragmentation, domination and the differential allocation of resources (Abbott, 1981; Freidson, 1984; Ramirez et al., 2015). Other than the division of labour, there are other bases for professional stratification, such as diversity of professional ideas (Becker, 1963), hierarchical differences that result from some segments having more power than others, and the social standing of constituent groups (Heinz & Laumann, 1982). Abbot (1988) considers the ability to control expertise as a vital factor for the survival of a profession. He contends that a profession's abstract knowledge delineates its domain of jurisdiction and social and economic status.

Considering that professions internally and externally compete over practices, economic and social status, and jurisdiction; professional stratification and competition raise the question of how segments are held together at all, something about which relatively little is known (Ramirez et al., 2015).

4.3 Findings

In this paper the main focus is on solicitors and advocates, since they were the professionals that were most affected by the reforms. Also, I focus on the professional

field of the legal profession in my analysis. In this research, solicitor advocates were considered as solicitors since they identify themselves as solicitors and their colleagues consider them as solicitors unless they were specifically asked about an aspect of solicitor advocates. The professional body of solicitors designate solicitor advocates as members of the solicitors' branch of the profession. Solicitor advocates are also legally considered and defined as solicitors. My primary and secondary data also showed that solicitor advocates should be classified as solicitors. However, when it was considered as helpful to get more insights on the context and data, whether a participant was a solicitor advocate is shared with the reader.

My data showed that the reforms have been implemented in the justice system without difficulty or causing contestation within the legal profession. Although there was weak resistance by the different professional groups before the Bill passed through parliament, the introduction of the Act and the implementation process was smooth. The data indicate that professionals were not deliberately resistant to reforms during and after the implementation. As one of the interviewees put it bluntly, "I don't think that there is any group who said, '[not] over my dead body'." Professionals did not try to sabotage the implementation process and they let a fundamental change occur to major institutional structures and processes of the legal field. Almost all of the participants acknowledged that the reforms had brought substantive change to the legal field. For example, a solicitor, Dennis, described the changes as:

A radical change...It will never go back to the kind of landscape that it was before. I mean the Gill Reform was a kind of earthquake, I don't think there is any doubt about that.

To this end, with the shift of a significant amount of civil business from the higher Court of Session to the lower Sheriff Courts and a new Personal Injury Sheriff Court, there existed a historical opportunity for solicitors to compete with advocates for professional expertise, recognition, status and income. However, the findings showed that there was no apparent contestation and conflict between solicitors and advocates in this realm.

The data also show that although the reforms have successfully been implemented while radically changing major institutional structures and processes of the judicial field, there has been much more modest change at the professions level, resulting in

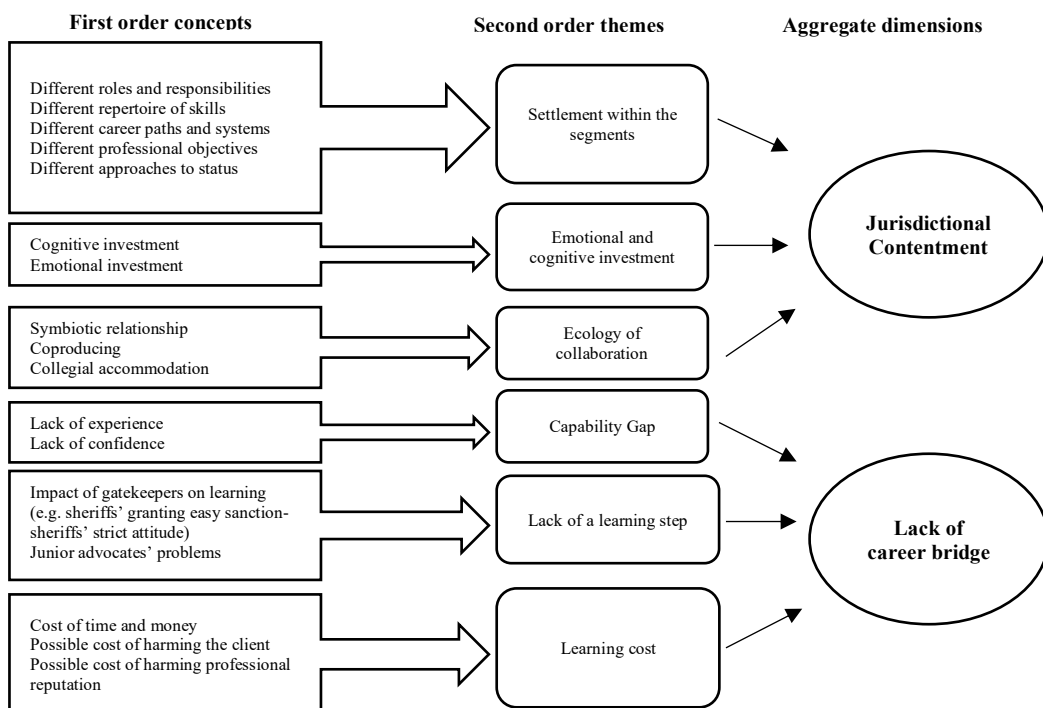
practices and routines of professionals and the structures and systems of professional services firms remaining almost completely intact. Professionals and professional service firms kept substantively engaging in the same practices that they engaged in prior to the reforms.

According to the participants, what they do during a day, the way that they do their work, whom they interact with, the way that interact with each other, their relations with clients, their individual and organizational routines, the procedures that they follow have almost remained the same. In other words, as Susan shared that “the core of what they do” did not change. Scarlet, also, told us:

It was a huge change but on the other hand actually in the way that it affects our work, it has made a bit of a difference, but it is not a massive change for us. We haven’t really changed our routines - I cannot say that we have [changed our practices and routines].

In summary, based on my interviews, observations and document analysis, I saw that after the reforms, the legal professional field stayed undisrupted, although the justice system changed significantly. As a response to my research purpose that aims to understand why the change in judicial system did not disrupt the professional field that occupied it, the following data structure emerged from my data:

Figure 4-1 Data structure



4.3.1 Jurisdictional Contentment

The first aggregate dimension emerged from data analysis is the ‘jurisdictional contentment’ within the legal profession. Three sub-themes emerged from the data analysis that I believe lead to a state of contentment within the professional field: settlements in the boundaries of segments, emotional and cognitive investments and ecology of collaboration. These three sub-themes with their own sub-categories are discussed below.

4.3.1.1 Settlements in the Boundaries of the Segments

The first key sub-theme of the findings that emerged was that different segments of the legal profession, such as advocates, solicitors, judges, and sheriff judges, have established settlements within the boundaries of their distinct ecologies. Though acknowledging their common membership of the profession, the segments are clearly differentiated. These segments have established their own roles, jurisdictions, labels, professional associations, career systems and so on. In other words, solicitors and advocates exist in their own ‘mini worlds’ that have evolved over time in different ways, despite the fact that all of the members define themselves as belonging to the ‘legal profession’. Several aspects of these bounded worlds emerged in the data.

Different roles and responsibilities. The Scottish legal profession historically was designed as a split profession, with different roles assigned to different segments of the profession. Almost all of the interviewees defined their roles and responsibilities in terms of their specialised branches of the legal profession. These roles and responsibilities consist of dealing with different practices. For example, on a basic level, solicitors defined their responsibilities as handling the everyday legal matters and affairs of their clients, including all types of communication, legal guidance, drafting documents, negotiating with other parties, instructing advocates on behalf of their clients, and contributing to the successful operation of a law firm. On the other hand, some of an advocate’s responsibilities were defined as to provide specialised legal expertise, assist and guide solicitors, and provide effective oral arguments in courts.

The different roles also show themselves in the labels and categories that are associated with different segments. For example, although, in theory and legally, solicitors,

solicitor advocates and advocates are all called *lawyers*, during the interviews when all of the participants used the word ‘lawyer’, they all meant only solicitors or solicitor advocates and they did not include advocates whom they referred as ‘counsel’, ‘members of the bar’, ‘advocates’ or ‘barristers’. Another example is that when the participants used the word ‘judge’ they only meant judges who sit in the high level courts such as the Court of Session and do not include sheriff judges; when referring to sheriff judges they used terms such as ‘sheriffs’ or ‘sheriff judges’. There are also labels and categories that are used within the segments. For example, solicitors and solicitor advocates almost always emphasised if they and their organisations act as either ‘pursuers’ or ‘defenders’ and how they are different from the ‘other side’.

According to the findings, the differences in the roles of the segments show in how they are professionally organised, also. For example, most of the segments have their own professional associations that represent them. These professional bodies serve as the gatekeepers to the profession, set and maintain professional standards, and provide training for their members.

Different repertoire of skills. Since all the responsibilities of the segments are different, they also require a different repertoire of skills. Considering that the solicitors are the first and only contact point for clients, they are expected to have the certain skills to manage the clients well. Some of the other frequently mentioned skills are being commercially aware, being good at teamwork and managing people, handling mundane tasks without losing motivation, and having strong communication skills. As a very experienced solicitor, Michael, explains:

The skills that I quite like to see in solicitors, and the skills that I like to think I have... Certainly should have them, after all these years, are being able to talk to people, take time with them, take detailed statements about exactly what the problem is, spend some time letting the client talk, and don't interrupt because you will get an impression of what kind of person he or she is, what kind of witness might they be.

However, these skills are not desirable for advocates since their established roles and responsibilities within the profession are different. My data showed that what is expected from advocates is to be detached from the client. Their distance from the client and being a sole practitioner without any links to a law firm are seen as ensuring that they can offer independent advice because “when you are a solicitor instructed for

a client there is much more identification with the client than there ever is at the Bar” as Ashley, an advocate, stated. The other skills of advocates that emerged in the data are quick thinking, very strong academic ability, stress and pressure management, time and project management, strong advocacy and presentation skills, and the ability to persuade and negotiate. Gavin, a solicitor of 31 years told us:

Why did I never become an advocate? Because I don't particularly visualize myself as being quick at argument on my feet. I see myself as being somebody who has to go away and think about things.

Different career paths and systems. Although all branches of the legal profession start their journey in the same way, their career paths unfold differently since they all have established different career systems. The legal professionals in Scotland usually go to the same or similar universities, most of them study the same degrees and they all have the same traineeship until a certain point in their career. After that point, however, the career systems are very well established and differentiated within the boundaries of the branches, although a shift among particular branches is possible as one's career progresses.

The career system of solicitors is centred on the fact that they always work in organizations, unlike the advocates who work independently. Solicitors can work as inhouse lawyers in different organisations or they can work in law firms. Working in law firms provides a variety of options for solicitors to progress their careers, including from being a salaried employee to an equity partner. According to the data hierarchical advancement within their firms, such as becoming a partner, matter very much to many solicitors as a career goal. There are also different types of firm that provide solicitors with different opportunities, ranging from, for example, large multinationals to small rural practices. I found that most solicitors aim to have positions in well-known, elite and big law firms. In addition, what is apparent in my findings is that the specialisation of the law firms, such as family law, personal injury or immigration, is also very important for solicitors' career paths. They may also choose to be a solicitor advocate if they want to appear in higher courts and keep working in an organisation.

Also, solicitors can move to be a sheriff judge during the course of their career if they wish. However, they cannot be a judge who sits in the high court because only advocates can be judges. If solicitors want to be a judge, they have to be an advocate

first. As it is a condition to work as a solicitor before being an advocate, solicitors also can choose to become an advocate if they pass the required exams and training. However, the data indicated that most solicitors do not see being an advocate as the next step in their careers. For example, Richard, a solicitor of 22 years, said:

We [he and his solicitor colleagues] don't like doing advocacy or we wouldn't be here. Some people don't like doing advocacy and some people [those who preferer joining the Scottish Bar] love it.

A senior partner of a big firm and a solicitor of 44 years, William, shared his opinion on developing a career path.

Advocacy is not something which is very attractive to most lawyers and it is worth keeping that in mind. It is perhaps no more than, I don't know and I am guessing, it might be 10% of lawyers who would ever actually want to stand on their feet and argue a case, most people, in terms of their personality, are not well suited to it.

Therefore, according to my data, solicitors do not always see being an advocate as a career step in their professional journey. Their careers usually evolve within the boundaries of their segment of the legal profession.

On the other hand, since advocates are sole practitioners, their career system is mainly based on their being independent of any organization or law firm. After going through “some of the best training you can ever get in litigation” as one of the solicitors described the devilling process of advocates, they build their career on litigation [active advocacy] while working independently. The data indicated that advocates want to establish a very good professional and individual reputation since they get instructed by solicitors based on their expertise and experience. Therefore, their livelihood depends on their professional reputation and capability. In their career path, they put a career goal to gain specialisation, expertise and seniority. When asked about an advocates' career path, Gordon an advocate himself explained:

Obviously, one of the first things is to get work in the first place, and the more established you are, the easier that is. Once you develop a reputation, then people will want to instruct you, but when you're first starting out, that's a big challenge. It's just getting the work in the first place, establishing yourself and proving yourself as being an able advocate. As you go on, Scotland is a small jurisdiction, so we all know each other. So, if somebody's any good, it tends to get known fairly quickly. Equally, if you do something bad, everyone will

know about it fairly quickly. You get known amongst the judges and your fellow advocates and the legal profession more generally.

As mentioned above, all advocates were solicitors once and all judges were advocates. That is, an advocate has the possibility of becoming a judge or a sheriff. They can also go back to being a solicitor, albeit it is a very rare move, and work in a firm.

Overall, in my data I saw that although certain shifts between segments of the legal profession are possible, the roles within the segments are clear and the career paths of these roles are very different. Sheriff Clive, who was a solicitor before sitting on the bench, explained how a sheriff leaves behind his or her past of being a solicitor or advocate after moving to a different branch of the profession:

As someone who is appointed to Judicial Office, we have taken an oath to do the job to the best of our ability and we will do that. I don't think that a sheriff who was a solicitor is less well disposed to advocates than a sheriff who was an advocate. I think once you are on the bench those sort of loyalties don't really count very much. We are all highly committed [to our current position] and just want to do a good job.

Different professional objectives. Strikingly, my findings suggest that different segments of the profession think that they all play a different game to each other with different professional objectives. These objectives were exposed during the interviews when professionals described how the reforms created a wave of fear over the possibility of disturbing well-established interests and privileges. The data suggested that different segments of the profession had different fears.

Prior to the reforms, advocates were very worried about losing income due to the possible decrease in the number of cases that they would receive. They frequently emphasised that if the sheriff judges would not grant sanction or if the solicitors preferred handling cases by themselves, advocates would suffer financially, especially the junior ones. Furthermore, advocates were very concerned about the future of their profession and the possibility of the segments of the profession becoming more similar, eventually leading to a fusion of them. A very experienced advocate, Robson, stated his concerns:

Back in my day, when I was called to the Faculty, I was one of 35 and this year there are four people who were called at the Bar. For only four people to be coming to the Scottish Bar is a real worry. Really if that continues, the Bar will not survive. Solicitors will replace the Bar. We'll end up with a fused profession.

If people aren't coming into the profession, the Faculty of Advocates will wither and die. I think it would be a great shame. The Faculty of Advocates has been here for 400 years for a reason. I do think it offers something different, and the independence is very important.

Here becoming similar also means that institutionalised intra-professional status hierarchies were being challenged by the reforms. The high status that advocates enjoyed is mostly based on their professional experience, expertise and specialisation, as well as distinctive professional traditions created and secured by their historical and influential professional body, the Faculty of Advocates. According to the data, the Faculty was afraid of the negative impacts of the reforms on the advocates and therefore they kept justifying their importance as an institution for Scotland during the submission process before the Act passed. In their submission letter, as well as their other publications regarding the reform, the Faculty kept focusing on proving why their existence matters. In the way they do so, the importance attached to the high status of the advocates was very apparent. That also implied that they were worried of losing their high status within the whole legal profession.

By contrast, solicitors, expressed an almost singular focus on the development of their businesses and profit margins. The findings showed that since the established business model and practices of solicitors traditionally did not require them to appear in court and work on each case thoroughly, they were worried about the financial and professional burden caused by the reforms. Although, solicitors were given an opportunity to improve their skills and expertise, and increase their jurisdictions, solicitors and their professional service firms almost entirely chose not to take advantage of this opportunity. Rather, there was evidence of a strong preference to continue to work with advocates in the same way as they had prior to the reforms. As one solicitor, Susan, told us:

Although Lord Gill thought that it was a great opportunity - in an ideal world, if you are not trying to run a business and make a lot of money, yes, it is nice to be able to go and be an advocate and stand up and so forth. But the reality is that you don't usually have that luxury and I am not sure if he quite understood you know how much time out of a solicitor's diary it takes to turn up and hang around court and then present a case and so forth. We're running a business, you know, that has to be competitive and profitable.

The differences in the business models of solicitors and advocates and how this affects their concerns and objectives was expressed by another solicitor, Callum:

We are a business, we are in a business and advocates are self-employed and this is their business and so we have to be a bit more business minded about how we go about things.

A solicitor advocate, Nick, who is a partner in a law firm also emphasised what really matters for himself and his firm:

You are responsible for the running of the business and all the people you employ, making sure there is enough work, it is done profitably, and everybody can benefit from that.

I have an overwhelming amount of data supporting the fact that different segments of the profession have different professional objectives. While for solicitors and professional service firms, this involved the continued pursuit of market power and profit, a major concern of advocates in general and the Faculty of Advocates' in particular, was to retain their income, high status, professional skills and jurisdiction.

Different Approaches to Status. According to the data, in the world of solicitors, being a partner in a law firm is one of the main sources of status. It is considered an indication of high status, success, hard work and high income. Several of those in the study clearly expressed that being a partner provides status within the organisation and in the eye of public. As one of the solicitors, Adam, put it succinctly:

There is something about being a partner in a law firm, even a small one, where you have business cards, and you have a status. And when people ask you what you do, you can say, "Oh I'm a partner in a law firm". There is a kind of social kudos about it.

Partners' status also derives from the fact that they are considered as the leaders of their organisation, as one partner told me very proudly: "We [partners] are the principal of the business, so we are the leaders of the business. So effectively, we are the managers, and we are the leaders of the organisation". Moreover, not all partners are at the same level on the status hierarchy. For example, salaried partners or junior partners are considered to have lower status than an equity partner who has an ownership stake in the firm.

The data also suggest that solicitors attach their professional status to the status of the firm that they work at. Several solicitors expressed to me their pride at working in

firms that have offices around the country or overseas. Some emphasised how they progressed through their career by switching to bigger and more successful firms with strong ties to powerful groups such as unions or large corporations. That is, working in the elite law firms is a source and symbol of status in the world of solicitors.

The data also suggest that solicitor advocates are considered as professionals who are relatively more prestigious and respected than solicitors. The fact that solicitor advocates have extra qualifications differentiates them from their solicitor colleagues. A solicitor advocate, Isaac, commented on the status elevation earned by transitioning from being a solicitor: “Certainly a lot of people go for the solicitor advocate qualification since it carries a certain kudos with it”. A very experienced in-house solicitor, Naomi, explained the position of solicitor advocates in her firm and within the profession:

We have just got a couple [of solicitor advocates] in the office and I think it is a good thing and I would encourage people to do it because I think it is something, it gives people a sense of worth and value and the people in our office who have done it have got a real sense, it gives them a really good sense of value and within our office they are well regarded and I think that is the case elsewhere as well. So, within the profession I think that solicitor advocates are well regarded.

My findings suggest that there is an established and deeply rooted professional status hierarchy within the legal profession where judges sit at the top followed by sheriff judges, advocates and solicitors. Although reforms presented an opportunity for solicitors to challenge the established order whereby advocates traditionally are considered to have higher status than solicitors, in the data, there was no indication of solicitors having bitterness in knowing that their status is lower than any other segment¹⁰. They do not think there is an issue in terms of status since the status of importance to them is inside their own segments in which status is conferred on the basis of becoming a partner or working in an elite firm. The data show that solicitors accept the established status hierarchy within the profession and do not dwell on the differences and almost do not care if they have lower status than advocates in the

¹⁰ However, they resent the elitism within the Scottish Bar – For more details please see Paper 1.

overarching environment. For example, a very experienced solicitor and a partner of a law firm, Simon, stated without any resentment:

I admire seeing skilful barristers presenting a case. And I'm in very little doubt that the very best of the Scottish counsel are professionally superior to solicitors.

Solicitors do not have the equal rights of audience with advocates in the Scottish courts, one of the reasons why they are lower in the status hierarchy than advocates. Another experienced solicitor, Adam, told me that he does not have any problem with this situation:

They [advocates] have the right to plead in the higher courts. But so what? And, at their best, they are better at that.

As mentioned previously, the career systems of the segments are also different in a way that professionals with different skill sets follows different career paths in the different segments of the profession. In this regard, the data also suggest that the high status of advocates within the profession coming from their having outstanding professional skills is accepted by solicitors. The data show that solicitors choose being a solicitor knowingly that certain people will be advocates and the rest will continue to develop in their own segment of solicitor branch of the profession. For example, Gabriel, a solicitor of 27 years, stated:

It's always been the best lawyers became an advocate, and so if you were interested in litigation, if you wanted to make your mark, if you wanted to become a sheriff ¹¹[sic] or a judge, you had to go to become an advocate.

A partner and solicitor advocate Ronald noted:

There are always going to be persons, particularly persons of outstanding ability who will want to become advocates, go to the Faculty of Advocates.

While solicitors pay attention to status ranking in their own world such as being a partner or working in an elite firm, according to the data, in the advocates' world status is generally portrayed as depending on certain factors such as having seniority or an area of specialisation. That is because being an expert in certain fields provides higher status than others for advocates. Also, having a reputation of being an expert in their field, consistently providing high quality work, 'taking silk' to become a Queen's

¹¹ A person who wants to be a sheriff does not necessarily have to be an advocate previously; solicitors can also become sheriffs. Gabriel was mistaken here.

counsel, or being an ‘excellent and independent’ advocate are other sources for status in the advocates’ world. For example, as a junior advocate, Tony, evaluated his position status wise as:

I think the status of being a junior advocate is a relatively low status, until you establish yourself, so I don’t feel that I have increased my status massively by coming from being a trainee solicitor to becoming a junior advocate.

Matt, an advocate of 10 years, explains how his speciality is considered as low status within the world of advocates:

I have managed to practice mainly in public law partly through having first done some immigration work, which for some reason has a fairly poor reputation in Scotland, I think because of fairly poor quality work that has been undertaken in that area, so it has an associated lowly status in the opinion of some practitioners and certainly judiciary.

Furthermore, in addition to capability of handling very complex cases, expert skills and knowledge that were recurrently portrayed as vital bases of an advocate’s professional status, the data show that advocates feel very proud of being a part of the Faculty of Advocates. They share and reflect the status of their professional association. That is, the long history of the Faculty as well as its contribution to the society and Scotland was another source of status for advocates. A quote from the letter that The Faculty of Advocates sent to the government during the consultation process of the reforms is indicative:

The Faculty of Advocates is Scotland’s independent referral bar. It is also one of Scotland’s great national institutions. Before and since 1707, the Faculty has been central in developing and preserving Scots law as an independent legal system. Its members (including Sir Walter Scott and Robert Louis Stevenson) have contributed significantly to the Scottish Enlightenment and to Scottish culture generally. It was thanks to the donation by the Faculty of some 750,000 books that the National Library of Scotland was established in 1925.

4.3.1.2 Emotional and Cognitive Investment in Their Segments

The data showed that different branches of the profession have strong emotional and cognitive investment in their segments and the practices within. As was mentioned, they have different career systems and training programmes where the professionals acquire knowledge and expertise. Over several years they gain depth of knowledge and experience in the particular areas that are mostly relevant to their own mini worlds.

Therefore, they develop a different repertoire of skills and speciality with their cognitive effort that is useful for them in their own mini worlds. The data show that although there are opportunities for solicitors to shift from one segment to another if they wish and could, many of them have been working in the same segment for years and therefore have established knowledge bases and experience. They are heavily invested in the practices they have been engaging within these segments.

This embeddedness and attachment also show itself in the daily struggles as well as the future plans of professionals. For example, a solicitor, Adam, shared with me his desire to found a law firm:

As it turns out, 40 years after I started studying law, I'm still a lawyer [solicitor]. And I'm trying to build up a small firm, but it's a struggle in 2015. It's a struggle. What keeps me doing this? There is something in, yes, conditioning, when you have done something since you were 18. It's difficult to give it up.

The data also show that other professionals, like Adam, are conditioned to act and think in certain ways depending on their segment of the profession. Different groups have established their own beliefs and assumptions with different discourses prioritised accordingly. The necessity to be profitable, different aspects of running a business, the necessity of being good at teamwork, the reduced and shared risk as a result of working in a firm as opposed to work individually like advocates, the skill of managing clients well, having counsel as a safety blanket were some of the common discourses that the solicitor participants used during the interviews. On the other hand, the importance of being independent, being trained to excellence, the importance of strict professional standards and work ethic and maintaining professional reputation and the importance of the Scottish Bar were some of the common refrains of advocates. However, professionals' investment in their branch of the profession is not only cognitive, but also emotional. The findings suggest that professionals attached to their segments emotionally, too. Their fears, anxieties and positive emotions are related to their mini worlds. Several solicitors emphasised that they like very much what they are doing and get a lot of satisfaction in what they do. Furthermore, the findings suggest that most of the professionals do not like engaging in the main practices of other segments. For example, while many solicitors mentioned that they 'hate' going

to court, something advocates do regularly, and 'do not like advocacy', an advocate explained why he loves his segment of the profession as:

I like the freedom. I like the independence. I think I would find it very difficult to go and work in a firm now [in the way that solicitors do].

Also, contrarily, I found that solicitors are very much invested in their firms. For example, when they were asked how their career evolved, some of them told me the story of the firm they work at instead of their individual career path; or when they were asked about their professional values most of them talked about the values of the firm they work at instead of talking about their own individual values. Furthermore, more often than not, solicitors preferred to use the word "we" instead of "I" while answering the questions. It was apparent that some of them are very ambitious and emotionally attached to the particular practices of their firm and ideology behind these practices. As Sebastian, who has been working in the same law firm for more than 25 years, explained:

What I'm loving very much about XYZ, we're seen as being a firm which tends to wear its heart on its sleeve a bit. We do act for all the major trade unions. We believe that our clients should get their maximum damages in minimum time. We don't like to see victims of accidents and industrial diseases being ripped off by large fees, and we're also a firm which has been deeply involved in campaigning on behalf of our clients and various pressure groups that we support over the years.

Moreover, the findings indicate that professionals are also emotionally invested in the social bonds that they have in their organisation. They frequently emphasised their fondness for their team or community. For example, one of the solicitor participants, Nancy, stated:

I got the job and thought well I will see how it goes, it was a temporary job to start with and then I just loved it so much that I stayed and I have never left because every day is a different question and it is very interesting to work here and the people I work with are really good to work with and so I have been here now for 32 years.

The fondness for the community is not exclusive to solicitors. According to the data, advocates too have strong emotional attachments to their community which is embodied under the Faculty of Advocates. Furthermore, I found that triggers of some emotions that professionals feel change depending on the branch of the profession that they are from. For example, while solicitors generally emphasised that being able to

care for clients and helping them in desperate situations gives them satisfaction and pride, advocates feel satisfied and proud when they ensure excellence in court, provide independent and fair advice with good judgement.

Also, it is apparent in the data that all professionals try to display the emotions that they consider appropriate and relevant. For example, since most of their clients are under enormous emotional pressure, solicitors emphasise they should display tender emotions and be sympathetic, kind, understanding and compassionate. A solicitor, Randy, explained:

You just need to make sure you do the best you can and treating people the right way. And also, particularly with what we do in, you should have compassion. People who've had some form of bad experience, whether it's an accident or a disease or divorce or whatever, and they require to be dealt with in a certain way, and that's something which as lawyers [solicitors], we need to bear in mind all the time, people don't choose to become involved in accidents or to be subjected to dangerous working conditions.

However, my findings also suggest that what is deemed to be appropriate emotion for solicitors is not considered as such for advocates. A considerable amount of data suggesting that advocates desire to be detached from the client as much as they can.

For instance, Ashley, noted:

When you are a solicitor instructed for a client, there is much more identification with the client than there ever is at the Bar. But we [advocates] have a sensible, always rational and emotionally detached way of engaging... The analysis and presentation of a case clearly, and free of emotional influence is best done by advocates.

4.3.1.3 Ecology of Collaboration

A third sub-theme of jurisdictional contentment dimension that emerged from the data was that both solicitors and advocates recognise the intra-professional differences and have created an ecology of collaboration. According to the data, the ecology of collaboration that parties are embedded has three pillars: a symbiotic relationship, coproduction and collegial accommodation.

Symbiotic relationship. The data suggest that in their ecology of collaboration solicitors and advocates established a relationship from which both parties benefit. Solicitors viewed appearing in the courts as causing unnecessary costs for them and their businesses. They also believed that they did not have enough time to spend on the preparation of cases. They considered working with advocates as an opportunity

to focus on their own businesses. On the other hand, advocates' main income source is derived from the instructions that they get from solicitors - more instruction means more income and experience. Therefore, there is a mutually beneficial relationship established within the profession. A solicitor advocate, Sam, who is also a partner in one of the biggest law firms in Scotland, explained his approach to the Scottish Bar.

The Bar is an excellent source for us to use. We will always have counsel. You have all these brains working on trying to get a resolution, which is great. There is not much incentive for us to develop advocacy because we are quite happy using the Bar. We will continue to use them because, economically, it does not make sense for us to appear in the court... for hours. We can instruct an advocate and they can appear on their own.

Coproduction. As a part of the ecology of collaboration, parties are embedded in a coproduction process where they all aim to serve the clients and represent them well in the courts. My data suggest that these segments have developed different repertoires of skills and these skills complement each other while working on a case. This aspect is succinctly summarised by one of the participants Ashley, an advocate as:

When you work together on a case, a solicitor has a very different role. They deal with the administration of the case, they deal with the clients, they are specialised in that area, whereas an advocate has a totally different skill set. We work very much as a team.

Many times, during the interviews, an advocate or solicitor would, in line with Ashley's comments above, refer to the way in which they formed a team. They frequently emphasised that they all have a common objective of doing the best for the client and to achieve this objective, they collaborate and co-produce the end result. A very experienced solicitor, Randy, stated:

The clients, the people who really matter, the injured people, will be best served by having somebody who knows what they are doing [an advocate] representing them and it is a great team [of solicitors and advocates].

Furthermore, the data suggest that solicitors recognise advocates as a group of professionals who have more skills and experience to deal with complex cases than they do. I see that in working towards the common objective of 'doing the best for client' and 'contributing to the institution of justice', solicitors want to benefit from the expertise of advocates and, hence, collaborate with them. Caroline, a solicitor, stated:

For clients, it can be helpful to have someone there who really knows what they are doing, not that I am saying I don't know what I am doing! That has the specialist knowledge and it is good to have, it is just somebody else involved in the case that you can rely on in terms of talking about how we should be proceeding with the case tactically whereas now, because it is all sheriff court cases, we don't have counsel to fall back on.

According to the data, another reason for parties to collaborate is to share the risk. The data suggest that solicitors consider advocates as 'a safety blanket' that is to be used when the cases get more complex or risky. A solicitor, Naomi, explained she prefers to instruct counsel when she does not want to take the whole responsibility of a complex case:

There are cases which are very complicated and where, as a solicitor, you might feel quite challenged about taking the whole responsibility for that yourself. It is good to have another set of eyes looking at it. Somebody else who can take a more detached view of it, because that is one of the benefits of counsel, I think, in that they are not actually meeting all of the witnesses and getting emotionally involved in the case, which we can often do. You become very invested in your cases.

Collegial accommodation. The data suggested that there is a support system within this ecology of collaboration that I term 'collegial accommodation'. An example of this collegiality among the segments can be easily seen in their training methods. The data indicate that although the training of solicitors and solicitor advocates are organised by Law Society of Scotland which is the professional body of solicitors, the training is usually delivered by advocates. The fact that advocates provide training for solicitors has been confirmed both by solicitors and advocates as well as several official documents. This shows that there is collaboration among the segments, rather than competition. A solicitor advocate, Isaac, stated:

We have training on advocacy which we do mainly in-house or we actually have counsel come to us to provide training which might seem a bit perverse but I think they will know that they will get complicated cases, the bigger cases, so we don't tend to, we have not had external trainers in.

Another solicitor advocate who is also a senior partner in an established law firm explained the reasoning behind getting training from the Scottish Bar and why advocates are willing to do it:

We have brought people in to do training from the Bar, for example, and they have been very helpful in doing that, to raise the standards [of solicitors]

generally. I think we are all agreed whatever branch of the profession we are in, whether we are judiciary, the Bar or solicitors, we are all agreed that we want to have the highest standards for the clients.

Moreover, the findings suggest that solicitors and advocates had several meetings to discuss how to reduce the negative impact of the reforms on the different segments of the profession to ensure that collaboration continued in a way that benefitted both parties. A solicitor, Susan, explained:

The advocates were worried about what was coming and we have had a number of meetings with them to try to reassure them that we will continue to use them, that we will continue to pay them. We recognise the benefit of counsel and we have always worked really well together.

4.3.2 Lack of Career Bridge

The second aggregate dimension that emerged from the data analysis is the lack of a career bridge within the legal profession. By the lack of a career bridge, I mean the lack of a career path that would provide solicitors with the jurisdictional growth and professional expertise to the extent of not needing advocates' help in courts. Three sub-themes emerged from the data analysis that I believe led to a lack of career bridge: capability gap, learning cost, and the lack of a learning step. These three sub-themes with their own sub-categories are discussed below.

4.3.2.1 Capability Gap

My data suggest that there is a perceived capability gap between solicitors and advocates. In the analysis, it was apparent that while solicitors recognise that the reforms offer opportunities to handle a greater number of cases as well as more complex ones without the help of advocates, they usually consider themselves professionally not capable of doing so. Their main concern is their lack of experience and confidence in appearing in court since that aspect of the job has been handled by advocates for centuries. The data suggest that both junior and senior solicitors do not feel confident in undertaking the responsibilities coming with the opportunities presented. For example, a very experienced partner in a firm of solicitors, Jane, explained:

I suppose for the older solicitors like me, and if you are thinking about change, the older solicitors in the office who have been practising for 20 years or more who are used to not appearing because they are used to counsel doing everything

in terms of appearance work in the Court of Session then it is challenging to have to suddenly get up and dust off your gown and go into court again and it can be quite frightening.

Another very experienced solicitor, Claire, explained how she feels herself about standing in the court room to advocate:

When you are out of practice of doing that, or you have just never had practice of doing that, it is quite difficult to imagine what it is like to run a proof and to have a sheriff say to you, but Mrs Daisy you don't have any evidence for that, you know, be challenged on things... And if you are always having counsel tell you what to do, which is often what counsel does, I want this information and I think you should go and take a statement from that witness and I need this document and so on...It is not easy to do it all by yourself.

Moreover, these concerns are not limited only to solicitors. The data suggest that most of the solicitor advocates also do not feel competent enough to handle complex cases since they usually use their extra qualifications for office jobs such as signing certain documents that a solicitor cannot, handling training of junior solicitors, and leading teams within their firms. The data suggest that solicitor advocates will pass complex cases to advocates. A solicitor advocate and a partner in a law firm, Nick, shared his decision process on whether to instruct counsel and, like many of the participants, he also clearly stated that he prefers using counsel when things are getting complicated, further pointing to a perceived capability gap.

If it is very complicated, I would get counsel in, if it is not so complicated then we weigh up the position where we have to make a decision, do we do this proof/trial ourselves or do we get counsel in.

A senior partner, as well as a solicitor advocate himself, Ted, stated that solicitor advocates in his law firm prefer not to appear in court despite having the qualifications required to do so.

But we don't use our solicitor advocates, they don't appear, they don't tend to appear, but I would say that is by no means unusual. Perhaps it is because I'm a partner [with many responsibilities], but I have two young colleagues who both sweated blood to do the solicitor advocate training and have not been to court to do sol-ad work since. They just don't want to appear.

According to the data, the reason why solicitor advocates do not want to appear in courts is explained by different participants, including solicitor advocates themselves,

because solicitor advocates do not want to handle relatively complex and difficult cases (as Isaac also stated above). An advocate, Bill, shared his observations:

A lot of solicitors I work with and who are solicitor advocates are happy to do easy procedural hearings but when the going gets rough they are happy to bring someone else.

Furthermore, my findings suggest that junior solicitors are also reluctant to handle complex cases. As one of the junior solicitor participants, Lucas, bluntly put it:

Am I going to be doing a proof of my own for a case that is more than £15,000? No, I definitely am not going to be doing that, unless it is extremely straightforward.

Furthermore, the capability gap between advocates and solicitors has been brought up by advocates many times particularly while discussing the differences among segments such as training and career paths. Advocates too consider solicitors relatively less capable of handling cases in the court room. Along with their perceived capability gap, solicitors consider the learning cost that is associated with the attempt to close this perceived capability gap as too high, something to which I now turn.

4.3.2.2 Learning Cost

My findings suggested that although the reforms presented an opportunity for solicitors to improve their skills, expertise and status, the cost of the learning required to do so was considered very high by the solicitors and their firms. In several interviews, solicitors emphasised how this is not a learning ground for them to improve skills by taking advantage of the opportunities that the reforms offered and they explicitly and implicitly pointed that there are costs involved in the learning processes. In the data, I found that solicitors consider three types of learning cost associated with the reforms.

Losing time and money. According to my findings, solicitors and their firms believe that as much as they engage with the opportunities that reforms offer for them, their workload increases accordingly, reducing time they can spend on their established practices. As briefly mentioned, solicitors see certain aspects of the reforms as a financial burden that challenges the profitability and competitive advantage of firms. According to solicitors, their established practices do not allow them to spend time to improve professional skills or gain experience or to do relevant preparations. They

constantly emphasised that appearing in court and doing advocacy requires rigorous preparation that takes time that they do not have. In addition, during the interviews, solicitors would often focus on how their overhead expenses are very high and spending extra time on preparation or waiting and appearing in court would lose them money. Solicitors kept reminding me that they run a business and it needs to be profitable, therefore even though reforms present opportunities for them, there are constraints, too. This situation is also clear to everyone in the field. For example, an advocate Ben, explained:

I don't think they'll have enough time to improve their skills and expertise.... That's time.... Time is the biggest thing. They've got clients fighting them off, they've got other solicitors fighting them off, whereas, I can sit there as an advocate and spend hours on a case, days at a time sometimes.

A solicitor, Adam, also supported the above point made by an advocate by explaining how the current business model makes it impossible to appear in court for economic reasons:

My own experience as a solicitor, it is actually quite difficult for solicitors to do regular court hearings work simply for economic reasons. We have much higher overheads. So, it's much more expensive for us to be in court all day than it is for the advocate. It's also more expensive for us to do the preparation properly. And so, solicitors who are interested in court hearings work generally became advocates because that allowed them to practice freed up from all of those heavy overheads.

A solicitor advocate shared her disappointment in how the current business model of the solicitors stop them from thriving and challenging the established orders:

It came [resistance to reforms] from particularly pursuers, solicitors' firms, whose business models were set up to involve their solicitors sitting at their desks rather than actually going to Court. So, I think it's been disappointing and so far there seems to be so little emphasis on solicitors actually handling the work. Their business model at the moment is geared up to dealing with cases by working from their desk, and if they were required to be in court for maybe three or four days at a time, then that's an on-cost to the business.

Another very experienced solicitor, Carrie, sums it all very clearly:

When you are involved in that [appearing in court and doing advocacy], you literally go home at night and you prepare for the next day and that can be quite challenging if you have got other things to do, whereas counsel [advocates] can just say that for the next four days that is what I am doing. What they will do is that they will clear their diary for that four days and say I am doing that proof

and so I cannot do anything else during those four days and then when their involvement is finished then that is it. Whereas you have still got to go and report with the client, discuss things with the client, sort things out with the witnesses, you know, your involvement does not sort of end there, and then you are 56 or whatever. And then you are part of a business, things should be done profitably. So, I would say that the opportunities are there, the constraints are still there.

Harming the client. My findings also suggest that another considered cost of learning for solicitors is to harm the client due to possible professional mistakes, lack of expertise, or inexperience while in the processes of learning new skills and gaining experience. In the findings, I saw that solicitors recognised the opportunities that reforms offered for them and usually accept that “in theory”, as several solicitors put it, they should have the ability to completely handle their cases in sheriff courts by themselves regardless of the complexity of cases. However, they frequently emphasised that trying to acquire and develop the necessary skills in the process might harm the clients. For example, a solicitor, Carrie, explains how the real-life cases are not a learning ground for solicitors:

It is one of these chicken and eggs situation. You have to be able to build up the skills, but obviously these claims are very important for clients and so it is not a learning ground for us. That is not the case.

Therefore, the possibility of harming the client is one of the reasons why law firms are reluctant to encourage their solicitors to learn relevant skills as soon as possible to appear in courts and handle cases alone. For example, a partner of a law firm, Nick, justified his decision:

But I am not certain I would be forcing them [solicitors] to go and appear in court because I don't think that it would be beneficial to the client.

Harming their professional reputation. In the data, I also found that, although solicitors might want to try to handle complex cases alone without instructing advocates and to develop their professional skills, they do not want to be faced with the cost of harming their professional reputation as a result of errors. This was raised repeatedly by the professionals who were interviewed, particularly by the senior solicitors. I have significant data suggesting that these professionals do not want to risk their well-established professional reputations as very experienced solicitors by failing embarrassingly during their efforts to appear in court and stand on their feet

and have oral arguments. Furthermore, they also consider the legal consequences of a possible failure due to a lack of experience or expertise. The data suggest that solicitors and particularly the law firms working with corporate businesses and big insurance companies are very wary of handling cases without advocates. Ronnie, a very experienced solicitor advocate and founding partner of a big law firm, clearly indicated this:

You don't need to have an advocate, but you have to wonder as a solicitor why would you want to [handle things alone] because all you would be doing, I think, is opening yourself up to a professional negligence allegation.

4.3.2.3 Lack of a Learning Step

The data analysis showed that, despite of all the learning costs mentioned above, for solicitors who still want to learn advocacy properly, gain experience and handle cases alone successfully, there remain two barriers: *Gatekeepers' impact on learning* and *junior advocates' learning step*. I explain these sub-themes below.

Gatekeepers' impact on learning. The data suggest that before the implementation of the reforms, the gravitas attached to the impact of the reforms on professional groups was very significant. The reforms clearly threatened the well-being of advocates by opening up their work opportunities to solicitors by moving the cases in the higher courts, where only advocates have the right of audience, down to the lower courts. Many members of the legal profession as well as the initiator of the reforms anticipated that while solicitors would increase their case load, advocates would lose some of their income and status. Therefore, advocates were worried and repeatedly raised their serious concerns regarding the future of their profession during the interviews that took place before the implementation; they also shared their concerns with the government during the consultation process.

However, it is found that after the implementation of the reforms, these worries have dissipated with things not significantly operationally changed. In addition to solicitors' willingness to compete for work with advocates, the impact of the reforms on the different branches of the profession was dependent on when and under what conditions the sheriffs would grant sanction for advocates to be instructed by solicitors. Not knowing how strict the sheriffs would be in granting sanction, advocates and many

solicitors were very unhappy with the ambiguity. Prior to implementation of the reforms, Peter, an advocate, shared his concerns with me:

What will happen as a result of these reforms is that solicitors will be obliged to appear in cases where they may not want to, because it will be harder to secure the services of counsel and there is the uncertainty about sanction. We will have to see, how this works out will depend how the sheriffs, what kind of cases the sheriffs grant sanction. And there's a great debate going on just now between my colleagues and solicitors as to how they should approach the issue of sanction, what should we be saying in order to get sanction?

For advocates, getting sanction meant survival, maintaining their income, status, and the core of their profession. A solicitor advocate, Doyle, put it succinctly:

The Faculty of Advocates, because they're the ones who stood in the old system, their livelihood depended upon getting instructions to appear in cases in the sheriff courts.

However, following the implementation, it was apparent that sheriffs were very sympathetic to advocates appearing in their courts. Although advocates were very worried before the reforms were implemented, the findings suggested that their worries lessened as evidence grew that sheriffs would grant sanction more easily than they expected. Solicitor advocate, Nathan, provided his interpretation of the situation:

Now the message which seems to have been clearly given [by the sheriffs], is that in cases which are maybe worth £25,000 or over, it's quite likely that sanction for counsel will be granted.

My interviews with sheriffs also indicated that they have a tendency to easily grant sanction for advocates to appear in sheriff courts. They regularly emphasised that they give sanction if it is “reasonable” to do so as it is laid down in the Act¹², yet whether it is reasonable “is left entirely to the sheriff’s discretion”, as Sheriff Parker stated. According to the sheriffs, they do not give sanction to “painfully obvious” cases, as Sheriff Samson put it, that are very simple. However, they confirmed that they are not strict about giving the sanction when it is demanded. For example, Sheriff Martin, explained:

I suppose I have probably taken a fairly relaxed attitude towards it [granting sanction] and I am not scrutinising it.

¹² Courts Reform (Scotland) Act- Section 108

In another interview Sheriff Barley suggested it is unimaginable for him not to give sanction if both parties, defenders and pursuers, agreed to ask for it.

If both parties are professionally represented are saying, yes we agree, then it is not going to be very often that I will turn round and say, well I don't care if you agree I am not granting [the sanction]. I can hardly even imagine that happening to be honest, that is a power that exists in theory but the reality is that I probably would not exercise it.

Furthermore, based on the data, one reason for sheriffs granting sanction easily is they think that advocates would provide a smoother process without the “frustrating mistakes” that, according to Sheriff Clive, are more frequent from solicitors. The other sheriffs who were interviewed also confirmed that they are not satisfied with the advocacy standards of solicitors. For example, Sheriff Parker suggested:

By and large the quality of the bar is quite good and so you don't usually sigh or groan when counsel appears but there are some solicitors where you might groan when they stood up.

Sheriff Samson was similarly sceptical of solicitors' performance in court, noting, “The people who are hopeless [in the court room] are probably solicitors.” This situation was also a common observation among other members of the legal professions as one solicitor, Anthony, explained:

They [sheriffs] are having to see solicitors more often [because of the reforms]. I think that the feedback from some of the sheriffs is that they don't have a good perception of the ability and competency of a lot of solicitors to appear and to properly do cases. I mean we have been basically told by one of the Sheriffs that they have a ‘heightened awareness’ of us [said with a sarcastic tone] I think they are probably seeing counsel more in dealing with cases and so I think they have probably got a greater perception of counsel's abilities.

The data also suggest that sheriffs desire and expect a high level of professional standards in their courts. They are very strict in following rules and most of the time their strict attitudes are not welcomed by solicitors or advocates. Ashley, an advocate, explains the situation as:

Sheriffs are trying to make sure that people adhere to the rules very strictly. They have been very strict on the rules. The letter of the rules and if you don't, if you miss a timescale or you put the wrong words in a document, the sheriffs make you turn up in court to explain yourself. A full explanation. Now that would never happen in the Court of Session.

The data suggest that the strict attitude of the sheriffs frighten many solicitors, particularly young ones, to appear in the court. It is found that sheriffs' strict attitude has been discouraging solicitors to engage with the court work which is something that they are already reluctant to do so. My participants shared with me their memories of getting severely 'scolded' and felt 'embarrassed' due to 'minor mistakes' or 'oversights'. For example, a young solicitor, Cathy, shared her feelings as:

I think that [sheriffs' strict attitude] is very intimidating for a person [like me] who isn't appearing in court regularly.

An experienced solicitor advocate, Isaac, also pointed out that solicitors are afraid of appearing in court and may try to avoid doing so because of the sheriffs.

I think the sheriffs have made life quite difficult for quite a few of us, particularly the younger solicitors. They tend to give them short-shrift and I think quite a lot of the young solicitors have been absolutely terrified to appear, which is not particularly good. And I think that they need to be careful that they don't drive the people out of the court.

Junior Advocates' Learning Step. The data suggest that the Court Reforms have put junior advocates' learning at risk. It is found that junior advocates have been having trouble in getting advocacy experience since the small value cases have been allocated down to sheriff courts where advocates are needed to be instructed by solicitors with a granted sanction. The data suggest that solicitors have been instructing senior advocates to deal with high value cases in the sheriff courts as well as in the Court of Session. Therefore, junior advocates suffer from the lack of opportunities to gain expertise, as well as work. As one of the junior advocates, Terry, explained:

As a junior counsel now, it is so much more difficult to get that experience because you cut your teeth on the small cases and that is where it is so important to build your expertise and so you are able to do the bigger cases. I am not sure that we are going to get that sort of experience because we are not going to get things started on these small cases anymore and so there is a real concern for the junior advocates.

Since the reforms caused a massive reduction in the number of cases in the Court of Session where only advocates can appear, there are not enough lower-value cases in which junior advocates can be involved in the Court of Session. Since the cases left in the Court of Session are very high value, this discourages solicitors from instructing

junior advocates. One of the advocates and a devilmaster¹³, Amy, shared her observations:

I think junior advocates are really suffering because they are finding it more difficult to get work. Because if you are newly qualified, if you are a new advocate, if the only cases in the Court of Session are very valuable then you are less likely to want to give that to someone who is just new. You are not going to take a chance on them, maybe you would want to go with someone you know, and you have worked with before and is more experienced. And so I think there is a dramatic impact on young members of the Bar. Last year there were only three devillings, this year there are six, when I was called there were about twenty.

As a result, junior advocates try appearing in sheriff courts. However, the data suggest that solicitors prefer instructing senior advocates over junior ones in the sheriff courts, too. This makes the situation difficult for junior advocates and reduces the attractiveness of the job. A young solicitor, Louis, explained the effects of this on him and some of his colleagues:

I think it [the reforms] has definitely made it more difficult [to join the Bar] and therefore people are not considering it. What if you go to the Bar and fail to make a decent enough practice out of it? In theory, you can come back to the solicitor profession and, again after you spent all your savings during the devilling, people would look at your CV and think that was ridiculous. Why would I do that?

Table 4-1 Supporting Data

Aggregate dimension: Jurisdictional Contentment	
Second order themes	First order illustrative quotes
Settlements in the boundaries of the segments	<ul style="list-style-type: none"> • <i>It depends on what your ambitions are. But if you were following what might have been described as a traditional mail course of ambition, I am trying to avoid making any judgement attached to that, but if you assume that your ambitions are related to income and status then it would probably make a difference if you felt that you were going to become a partner in this firm.</i> • <i>I would say becoming a partner, especially an equity partner of a big firm, is pretty much it [when asked what provides very high status for solicitors]</i> • <i>No, not really. I mean yes and no [when asked if advocates have higher status than solicitors]. Yes, advocates have higher status, but I don't want that. I want to be respected in this firm. Have an office to myself one day, then make a partner in 10 years, maybe in different firm, a smaller one.</i>

¹³ A devilmaster is a senior advocate who trains a junior advocate candidate during a year. This process is called “devilling” and the candidate is called a “devil”.

	<ul style="list-style-type: none"> • <i>Taking the silk has a great value for us. A great honour, I must say. It is the highest you can go as an advocate.</i> • <i>Advocates who have achieved distinction in Advocacy before the Supreme Courts of Scotland may be appointed Queens Counsel or 'QC'</i>
Ecology of collaboration	<ul style="list-style-type: none"> • <i>It's good for the Bar, because it keeps us working, it's good for solicitors, because they can keep their solicitors behind the desk earning, doing more profitable work, rather than being stuck in court for four days.</i> • <i>It is hard to manage clients, you know. Solicitors do that for us.</i> • <i>They [solicitors] handle financial transactions and all [not us].</i> • <i>Well, we train each other you know. The Faculty provides training for law firms and most of us were trained as solicitors before joining the Bar.</i> • <i>Our perspective as advocates, we can't deal directly with clients, so we are a referral Bar, so our business comes through solicitors. If solicitors don't send you cases, then you're not working.</i> • <i>There isn't much of a competition between the Faculty and the Society. They usually support each other, I mean, like, they lobby together, organise events, and train each other.</i> • <i>It is all about doing what is best for the client. It's a teamwork.</i>
Emotional and cognitive investment	<ul style="list-style-type: none"> • <i>I think being a solicitor of is quite important to me. I have thought about other things that I could do, and they don't interest me at all.</i> • <i>Where I am now [as an advocate], four years in, and I think I got my breakthrough immigration work and because it is also very interesting, and I love it.</i> • <i>There are more than 120 employees in this firm. As a partner, I need to think my employees. We need to make money, be profitable.</i> • <i>I am [as a solicitor] very interested in client psychology. I'll have my masters' in psychology from Edinburgh [the University of] at the end of November.</i> • <i>I love being a sole practitioner.</i> • <i>It is hard to leave the safety blanket of counsel behind.</i> • <i>My total time in the legal profession is now 15 years post university and as an advocate it has been eight and a bit years called plus a year of devilling before that.</i> • <i>At the end of the day the only thing is the risk with the bar is that obviously you are independent, you are self-employed, and you have to spend a year/nine months or so devilling and so there is a financial impact on that. Also, you don't have any pension.</i> • <i>The fact that they [advocates] have no contractual relationship with clients helps them to maintain a valuable extra degree of [emotional]detachment relative to all of the services which they provide.</i> • <i>After all these years, I learned to be more understanding and compassionate [towards clients], and put their best interests firsts, then I think about financial implications [as a partner solicitor].</i> • <i>There are more than 120 employees in this firm. As a partner, I need to think my employees.</i> • <i>The bar in Scotland is already very small and it will disappear if we don't do something about it.</i> • <i>I've always wanted to work in an urban law firm, perhaps a multinational one. I did my internship in a rural office, you know, dealing with contracts, leases and so on. Didn't like it, to be honest. Now in Glasgow I mainly work for clinical negligence cases.</i> • <i>At the end of the day the only thing is the risk with the bar is that obviously you are independent, you are self-employed, and you have to spend a year/nine months or so devilling and so there is a financial impact on that. Also, you don't have any pension.</i>

	<ul style="list-style-type: none"> • <i>There is no better way to become a Judge than being an advocate. So, you can have a fresh start even if you are 60.</i>
Aggregate Dimension: Lack of Career Bridge	
Second order themes	First order illustrative quotes
Capability gap	<ul style="list-style-type: none"> • <i>I think probably there is the perception that solicitors aren't quite as good as counsel but I think that is mainly from the fact that we don't get as much practice.</i> • <i>I would say, personally, and I think it's a complaint that's shared by a number of my colleagues, the quality of instruction that comes from solicitors these days, leaves a lot to be desired. And advocates spend a lot of their time telling people how to prepare cases, telling them to do things that 10 years ago you would never have needed to tell them, because the staff don't have the experience themselves.</i> • <i>Even with the straightforward personal injuries action, say, with a bit of complexity, like just involving a child, somehow many of us [solicitors] usually are not capable of running that, and sanction for counsel is required.</i>
Learning Cost	<ul style="list-style-type: none"> • <i>I think that these people [solicitors] are relatively inexperienced, low qualified, with too many cases, and they can't afford the time to spend in court, and insurance companies will know that. So, there will be an incentive for insurance companies, I think, to drive down the offers that they make, because they know that cases are less likely to go ahead.</i> • <i>These are sensitive, highly personal cases. You must instruct a specialist [counsel]. Otherwise, you put your client in a vulnerable position. Clients usually are very emotional, and they suffer very much in the process [of personal injury or clinical negligence cases].</i> • <i>You don't want to deal with it yourself. If it turns into a complete shambles, then obviously you are just going to be sitting here for ages hoping that people would forget about it.</i>
Lack of learning step	<ul style="list-style-type: none"> • <i>Anything you consider in all the circumstances of the case is reasonable to do so which gives the sheriffs a lot of leeway and I think when you are presented with someone who is potentially not going to be paid if they don't do it and the first thing on the other side is an insurance company who probably has, they know that they have got the money, you are going to have difficulties I think and certainly in the decisions that have come out the sheriff court have followed that line, although it is not as the insurance industry and no doubt the defender firms would have wanted it to be. I don't think it has worked out as well as they would have hoped.</i> • <i>Opportunities for young advocates to address the court and make legal arguments decreased. The reforms will exacerbate that, because if we're in the Sheriff Court, the opportunities, I think, for young advocates to appear will be greatly reduced.</i> • <i>But if you were a young advocate starting out now, or having recently started out, you would be desperate to work, and you would probably work on any terms on the basis that any kind of work is better than none. I know that a lot of my colleagues, you've obviously, you've spoken to advocates and that they've said pretty much the same thing as I'm saying to you.</i>

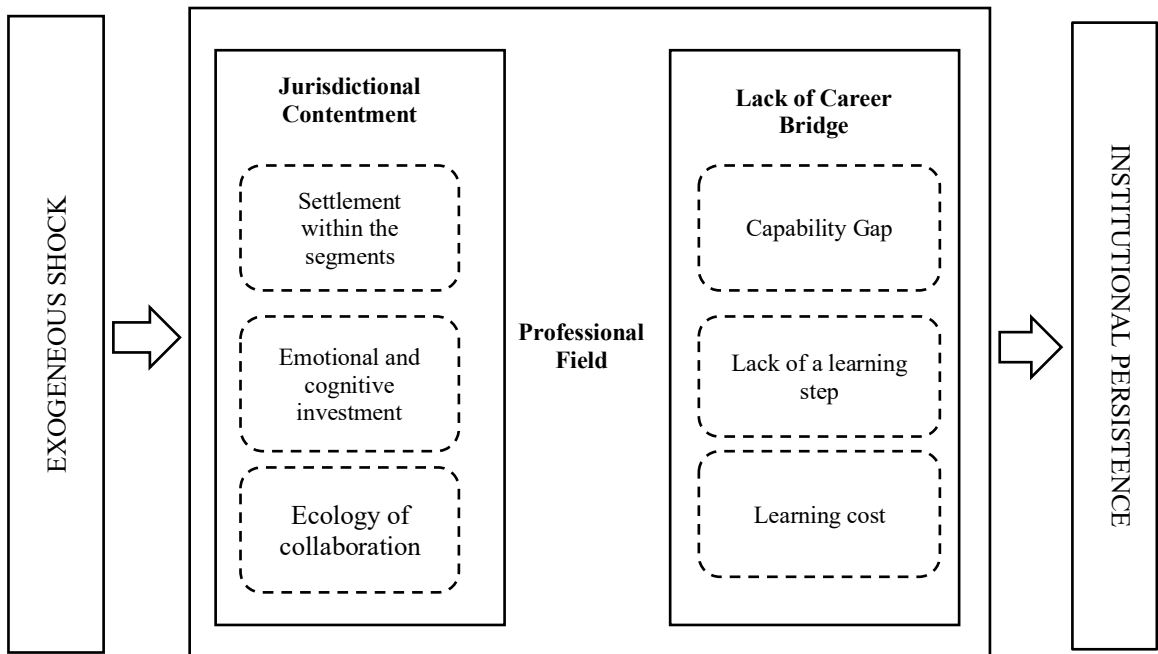
4.4 Discussion

The main purpose of this study was to better understand institutional field persistence, particularly in the face of severe exogenous shocks. In particular, I asked why such a pronounced change within the judicial system did not cause disruption within the professional field that occupied it. Suddaby and Viale (2011: 428) state that “because professions are so embedded in social institutions, however, any change in professional jurisdiction creates a concomitant change in institutional structure. As professions expand their jurisdiction, they also *reshape the landscape*” (emphasis added). Considering my research context, that made me question why the opposite situation is not true - that is when the landscape is radically reshaped by exogenous shocks, how can professional fields stay undisrupted without any dispute leading to an increase or decrease of jurisdictional reach of professional communities?

Therefore, the primary contribution of this paper is that I am proposing a new theory of institutional persistence and continuity of professional fields that explains persistence mechanisms that keep the professional field together in the face of exogenous shocks. Research on institutional fields suggest that fields are inherently contentious, and change is the norm. However, in my research setting, the legal professional field had all of the ingredients that made a field fragile in the face of a severe exogenous shock: it was heterogenous, dependent on other institutions such as the state and justice, facing severe legislative shock, and change in the institutional field that the profession was embedded. Yet, it persisted without any disruption or jurisdictional dispute. With the model of institutional persistence of a professional field that I created based on my findings, I present the mechanisms previously unidentified in the literature that make a professional field persist even in the face of exogenous shocks that reshape the landscape radically. These mechanisms develop new ways of understanding professional field continuity while explaining why institutional persistence takes place in some conditions where many studies (e.g. Abbott, 1988; Fligstein & McAdam, 2011, 2012; Suddaby & Viale, 2011; Zietsma et al., 2017) suggest contestation and disruption would take place. My contribution also lies in the fact that these mechanisms not only keep the disruption of a field at bay, but also hold the segments of a profession together, hence maintain its internal cohesiveness. These mechanisms can work together or separately, albeit one can be

weaker or stronger in effect than others. In my case, they work separately, but contributing to each other's existence. Figure 4-2 presents the model.

Figure 4-2 Institutional persistence in a professional field



4.4.1 Institutional Persistence Mechanisms of a Professional Field

Although it is the core issue of institutional theory, the explanation of institutional persistence and continuity has been neglected in the institutional theory literature (Greenwood et al., 2017; Scott, 2013; Sminia, 2011). While the literature on institutional maintenance has been burgeoning recently, it only focuses on what actors in the field *intentionally* do in order to maintain the status quo. However, with this research, I turn back to the roots of institutional theory and explain the field mechanisms that inherently existed in professional fields and support institutional persistence even though taken-for-grantedness is undermined through an external shock. I show how mechanisms in professional fields that keep contestation and change at bay and create very stable entities in contrast to “the well-established notion that professions exist as relatively unstable entities engaged in a constant dynamic struggle with other, adjacent entities” (Suddaby & Viale, 2011: 425).

Jurisdictional Contentment. We see in my findings that there existed a mechanism that I called ‘jurisdictional contentment’ in the professional field. By jurisdictional contentment, I refer to the state of a professional field where the intra-professional populations, in other words segments or branches of a profession, are content with their own position within the profession. In this state of a field, I argue based on my findings, an implicit settlement is in place that buffers the impact of exogenous shocks that may create jurisdictional contestation and disruption within a professional field. That is, different populations within the same profession are contentedly living in their own world, or sub-fields, and happy with their own status, jurisdiction and practice boundaries.

In contrast to many studies that suggest fields are contested and there is constant jockeying among actors on who gets what particularly during institutional change, I extend our understanding on professional fields by showing that professional fields can be more peaceful places than the literature suggested. One reason for that is that ‘jurisdictional contentment’ works as a mechanism that makes professional populations reluctant to go into a jurisdictional dispute and change the arrangements in the professional fields, even in the face of presented choice and opportunities to broaden the status and jurisdiction. The reflexivity of actors on their field position increased because reforms offered historical opportunities for solicitors to change the established arrangements and compete with advocates over status and jurisdiction. Yet, the professional field persisted without disruption. Consequently, by uncovering this mechanism, this research contributes to our understanding of taken-for-grantedness by showing that professional field persistence can occur even during times of great disturbance if actors experience jurisdictional contentment within the institutional field.

As a result, the mechanism of jurisdictional contentment prevents segments from being drawn into a jurisdictional war and it lessens the impact of an external jolt to precipitate institutional disruption. As we see in the model, jurisdictional contentment consists of status settlements within subfields, an ecology of collaboration within the professional field and actors’ emotional and cognitive investment in subfields. Regarding status settlements, I recognise that status tends to be self-reinforcing especially in highly institutionalised settings. Once a status hierarchy is established, “even those

individuals and groups who stand the most to gain by disrupting hierarchy have some reason to forego any attempt to change the existing rank order” (Magee & Galinsky, 2008: 365). Individuals have hierarchy enhancing beliefs and behaviours justifying the positions of others while legitimising and reinforcing the current status arrangement.

Further, the well-known concept of ‘middle-status conformity’ suggests that middle-status actors have a tendency to conform with the existing conventional practices and avoid from deviation with survival concerns and a fear of being subject to penalties (Phillips & Zuckerman, 2001; Wright & Zammuto, 2013). However, it has been acknowledged that an *external force or shock*, such as a radical regulatory change, can lead to hierarchical change (Bendersky & Pai, 2018; Magee & Galinsky, 2008). The research supporting a low-status group’s reluctance to challenge a status hierarchy centres on the *perceived lack of an opportunity for change*. The *possibility of changing the status dynamic* presents itself as a key mechanism that fuels the competition for status (Bendersky & Pai, 2018; Hays & Bendersky, 2015). Yet, contrary to the literature, I show that, firstly, even though there are opportunities presented for competition for status and change and the possibility of changing the established hierarchy is there, the intra-professional communities will not necessarily decide to climb the status hierarchy. Secondly, and as a primary point, the reason for professionals’ reluctance to do so is not the fear of deviation from the conventional practices as the literature on status conformity suggested, but they *do not care* about their status within the whole profession.

Consequently, the notion of settlement is in place where different populations do not resent the fact that others have higher status within the whole profession. Rather, the status concerns of populations tend to centre on their own subfield where the source of status is different. In other words, contrary to the status literature, lower-status groups presented with a significant opportunity for change will not necessarily act on it if jurisdictional contentment was in place with segments’ different understanding of status. The fact that my findings suggest that professions experience status concerns within the boundaries of their population subfields, in other words within their segments, is the basis of my primary contribution regarding our understanding of field stability and status concerns. I extend our understanding on status hierarchies and field stability by showing that professional populations with lower status do not take their

current position within the profession as low status per se, but they value a different type of status. The status world of importance to them is inside their segment. That is, I argue that they are invested in their *local* status rather than their *global* status, yet, they are part of the same profession and they are all ‘local’ in theory. This leads to no latent contestation on status and jurisdiction, each part of a profession can be happy with what they are doing and their position within the profession. One of the contributions of this paper is to show that the professions experience status settlements in the solidly established boundaries of their segments and they experience status differently.

The second sub-mechanism of field persistence that contributes to the ‘jurisdictional contentment’ within the professional field is the ‘ecology of collaboration’. Building collaborations in order *to* maintain or change the institution is acknowledged in the literature (Empson, Cleaver, & Allen, 2013; Hampel, Lawrence, & Tracey, 2017; Sminia, 2011). However, my contribution extends this work by showing how an *existing* collaborative ecology works as an institutional field persistence mechanism and holds things together within a profession and field. In my case, actors did not collaborate *to maintain* the status quo. The fact that they were already living in an ecology of collaboration served as a mechanism of persistence.

I found that, in professional fields, the existing strong collaborative intra-professional bonds among the segments are buttressed by a symbiotic relationship that parties benefit from professionally. Moreover, all segments work as a team with complementary skills and expertise. They have a strong sense of collegial accommodation. In my research, these collaborative bonds were so strong that radical transformation could not break them. The strength of the exogenous shock was not enough to break the bonds. In addition, even an institutional entrepreneur with resources and skills who also was an insider as a member of the profession, could not foresee the strength of these bonds. Therefore, in the face of exogenous shocks, these bonds support the robustness of a field.

Furthermore, as something that was previously unidentified in the literature, I showed that different segments, or populations in other words, are emotionally and cognitively invested in their subfield of the profession rather than the whole profession per se and

develop emotional competency differently. In this respect, populations' emotional and cognitive investment in their own subfield prevents competition and conflict and protects the field from disruption and turning into a contested field. This was the third sub-mechanism of persistence that contributed to the mechanism of 'jurisdictional contentment'.

Cognitive investment is considered as a precondition for entering a field since "the act of entering" requires the belief that "the game is worth playing" (Voronov & Vince, 2012: 65). Yet, although being the same profession, I argue that members of different populations think that they all play a different game than each other. They are cognitively invested in their own segments with their different training, career systems, knowledge, expertise, experience, beliefs, and discourses. Their intellectual engagement and rational interests have been shaped differently, as have the practices in which they engage on a daily basis.

Moreover, the segments are emotionally invested in their own worlds. Their desires and fears are all related to their branch of the profession. Voronov and Weber (2016: 457) argued that being a competent institutional actor requires "the ability to experience and display emotions that are deemed appropriate for an actor role within the institutional order". I suggest that even in the same profession, different professional populations might develop emotional competence differently since their segments require different emotional experiences and displays. That is, I argue what is deemed to be appropriate emotions for segments are different and different segments of a profession develop an emotional and cognitive "capacity to belong to and inhabit" (Voronov & Weber, 2016: 457) that particular segment of the institutional order of a profession (Thornton et al., 2012), rather than the whole profession. Consequently, this sub-mechanism contributes to the state of jurisdictional contentment that holds the segments together within the profession without competition over jurisdiction and conflict during turbulent times as well as buttresses institutional persistence of the profession and its field.

In summary, existing theory would predict that professional segments in an empirical setting like mine would be in jurisdictional competition with each other, particularly in the face of the external shocks, leaving the professional field very vulnerable to

change. Yet, I argue if the mechanism of *jurisdictional contentment* is in place, depending on the strength of it, the possibility of a jurisdictional war would be less than expected. That is because being in a state of jurisdictional contentment provides robustness for a professional field in the face of an exogenous shock and creates no motivation for the intra-professional populations to start a jurisdictional dispute.

Lack of Career Bridge. The second main mechanism of persistence that I uncovered based on my findings is ‘the lack of a career bridge’ within a professional field. By ‘the career bridge’, I refer to an effective process that provides a passage for professionals to move from one segment to another within a profession as a part of their career transition or increase their professional capacities to compete with other segments in a jurisdictional realm. I argue that the absence of such bridge works as a mechanism that maintains the status quo by inhibiting career transition in two ways: either by allowing little room for the intra-professional populations to shift from one segment to another, or by curtailing their capacity to increase their jurisdiction over the other segments within the same profession; even in the cases where significant opportunities to broaden the jurisdictional boundaries are offered through external shocks. For example, in this regard, the career bridge in my context could have led in two directions: either staying in the solicitors’ branch of the profession and becoming competent and confident enough to argue cases without the need for an advocate; or becoming an advocate. In either case, the bridge would have led to a point where solicitors have enough expertise and experience to successfully defend a complex case. In other words, the bridge would enable the jurisdictional migration within the profession. However, there was no such career bridge available, which served as a field persistence mechanism that helped keeping disruption of the professional field at bay and suppressing any dispute over jurisdiction.

“Careers are far from central in contemporary theorizing about institutions, and largely absent from theory about institutional change” (Nigam & Dokko, 2018: 2) and “only a few institutional scholars use careers as a lens to illuminate institutional change and stability” (Jones & Dunn, 2007: 438). Therefore, in this regard, this research makes an important contribution to our understanding of institutional change and persistence by theorising the concept of the career bridge in a way that it explains institutional continuity regarding the robustness of a professional field in the face of

exogenous shocks. I argue that the more difficult it is to access a career bridge that would allow segments within a profession to transition to another subfield, the lower the possibility of a professional field experiencing disruption.

My conceptualisation of the lack of career bridge is strongly connected to the relationship between structure and agency since “careers represent actors’ movements through a social structure over time” (Iellatchitch, Mayrhofer, & Meyer, 2003: 730; see also Barley, 1989; Becker & Strauss, 1956). My findings extend our understanding on the limiting power of structure on actors’ career mobility by showing the mechanisms that closes the bridge of jurisdictional migration within a profession. That is, highly institutionalised structures and practices of professionals and their organisations constrain professionals from trying, learning and closing the capability gap between the intra-professional segments. It also prevents practice-driven change by not allowing segments to incorporate the new practices into their everyday routines

The lack of a career bridge as an institutional persistence mechanism is particularly important when the mechanism of jurisdictional contentment is not in place or relatively weak. In this case, some professional groups may be out of the zone of jurisdictional contentment in a way that they are open to challenge the status quo by benefitting from the opportunities that external shocks provide or they can be open to manoeuvre in the field with an increase reflexivity caused by the change. Yet, I argue, even if these professionals have intention, increased reflexivity and opportunities offered by external shock, the lack of a career bridge that that would take them to a new professional status would constrain their mobility.

Furthermore, with this research, I also contribute to the careers literature in three ways. First of all, “careers researchers rarely connect their studies on individuals’ careers to their effects on organizations, occupations, or fields” (Jones & Dunn, 2007: 446). In contrast, I show how intra-professional career structure affects field stability in the face of exogenous shocks. Also, there have been calls (e.g. Duberley, Cohen, & Mallon, 2006; Garbe & Duberley, 2019; Gunz, Mayrhofer, & Tolbert, 2011; Iellatchitch et al., 2003) for linking social context and career mobility and I extend our understanding of this link by showing how career mobility can be recursively linked to the institutional change happening in a field. Second, career studies, more often than

not, focus on individual career paths and largely ignore the interplay between institutional context and the career patterns of larger groups (Gunz et al., 2011). With this research, I empirically shed additional light on the career movements, or lack thereof, of larger intra-professional groups. Third, this research also attends the calls for more research on the boundaries of careers and barriers of career mobility (Inkson, Gunz, Ganesh, & Roper, 2012), specifically on intra-professional career boundaries and barriers. I particularly contribute to theory on career boundaries and their permeability by empirically uncovering underlying factors that affect the assessment of professionals to undertake new roles that belonged to another group of professionals or shift to a different segment as work transition.

Gunz, Peiperlr and Tzabbar (2007: 484) suggest that the permeability of a career depends on three facets: “an *awareness* that a given work role transition actually exists as a possibility, an assessment of the *achievability* of making the work role transition, and the *attractiveness* of the work role transition”. My research extends this argument by uncovering further bases for these three facets in an empirical context. My research suggests that the sub-mechanisms of the lack of a career bridge, a *capability gap*, *lack of learning opportunities* and *cost of learning*, diminish the perceived achievability of the career transition. Also, the existence of jurisdictional contentment will reduce the attractiveness of a career transition. My research further contributes to the careers permeability literature, by linking the career permeability of intra-professional segments to the persistence of a profession and professional field.

4.4.2 Internal Cohesiveness of a Profession

Consistent with the discussion above, another way of looking at the field persistence is to focus on internal cohesiveness of a profession. Professions consist of different sub-populations, or segments, in contrast to the homogenous portrayal of professions in many studies (e.g., Suddaby & Viale, 2011; Ziezsma et al., 2017). My findings suggest that the heterogeneity of the legal profession is manifested as a mosaic of very elaborate practices and roles. These practices and roles connect “broader cultural belief systems and social structures to individual and organizational action” (Lounsbury & Beckman, 2015: 299). These roles and practices, as well as status hierarchies, are deeply rooted within the profession and link the different segments of the profession

together. Considering this level of diversity and hierarchy that is built on a very complex balance of many factors such as coexistence of multiple logics, interests, limited resources and so on, one wonders “how segments hold together as a profession” (Ramirez et al., 2015: 1347).

According to Ramirez et al. (2015: 1343) this is something that is largely unexplored and the “mechanics of cohesiveness” is largely unknown. The literature suggests that these segments are “more or less delicately held together” (Bucher & Strauss, 1961: 326) and the settlements among segments are very vulnerable to change (Ramirez et al., 2015). Yet, we see that professions can keep their internal structure and segments together, sometimes for centuries and even in the face of severe exogenous shocks, as was the case with this research. I therefore also contribute to this particular gap in our understanding of the professions and the cohesiveness of intra-professional segments by showing how the field persistence mechanisms were also sources of internal cohesiveness of a profession in regard to division of labour and established intra-professional hierarchies.

These mechanisms glue the segments together within a profession by not creating any motivation to challenge the established status quo of intra-professional arrangements and hierarchies. For instance, within the jurisdictional contentment mechanism, we see that different segments develop different professional objectives that do not overlap. Their status concerns are different. This difference in professional objectives and status understanding allows the segments to collaborate without challenging the established diversity and hierarchy within the profession. Also, the fact that segments are emotionally and cognitively invested in their own worlds, with the collaborative environment that they have, creates strong bonds between each segment. These bonds are not as delicate as the literature suggests. The strength of these bonds is buttressed with the jurisdictional contentment mechanism. Furthermore, even when jurisdictional contentment is not in place or weakens for some reason, the lack of a career bridge can prevent segments from becoming similar and eventually creating a professional fusion, or from competing against each other to an extent that the integrity of a profession breaks down. That is, the lack of a career bridge within a profession holds segments in position.

A consequence of focusing on the heterogeneity of professions may help us to understand institutional change and continuity from a different perspective because “institutional theory has not taken the variety of actors seriously” (Zietsma et al., 2017: 421) even though “that multiple populations and subfields inhabit a field enables us to understand better the potential for contradictions within the field” (Zietsma et al., 2017: 409). Accordingly, my research explains a remarkable lack of contestation and contradiction within a very heterogenous and established field. While explaining the institutional persistence mechanisms of a professional field, my research also contributes to our understanding of how professions retain their integrity and cohesiveness during turbulent times by shedding light on how intra-professional dynamics become entrenched, and why they are retained over time.

4.5 Conclusion

Under the overarching question of why institutional continuity takes place in a context that extant theory would predict that it would not, this paper specifically examines why a pronounced change within an overarching institution, the judicial system, did not cause disruption within the professional field that occupied it. By proposing new theory on professional field persistence, this paper contributes to our understanding of institutional persistence by uncovering two field mechanisms of persistence that enable fields to stay robust in the face of exogenous shocks and glue the different segments of a profession together.

5 Chapter Five: Emotions and Theorisation of Institutional Change

5.1 Introduction

The role of emotions in institutional processes has been increasingly recognised (Lok, Creed, DeJordy, & Voronov, 2017). Researchers have studied how emotions affect institutional work (Creed et al., 2014; Friedland, Mohr, Roose, & Gardinali, 2014; Gill & Burrow, 2018; Wright et al., 2017), institutional disruption (Zietsma & Toubiana, 2018), the creation of new institutional logics (Fan & Zietsma, 2017), institutional control (DeJordy & Barrett, 2014; Delmestri & Goodrick, 2016; Gabbioneta, Greenwood, Mazzola, & Minoja, 2013; Jarvis, 2017) and the relationship between institutional logics and power (Jakob-Sadeh & Zilber, 2018). Yet, despite these recent developments, Greenwood, Oliver, Lawrence and Meyer (2017: 14) have underlined that “we have much to learn” regarding emotions; without further insight, “our knowledge remains incomplete and disjointed in many respects” (Wharton, 2014: 336). As a result, there have been consistent calls for more research on the role of emotions in institutional processes (Greenwood et al., 2017; Lok et al., 2017; Voronov, 2014; Voronov & Yorks, 2015; Voronov & Weber, 2016; Zietsma & Toubiana, 2018; Moisander et al., 2016).

One important gap in our understanding of how emotions play a role in institutional processes is the emotional component of institutional theorisation. Theorisation, a term coined by Strang and Meyer (1993), is acknowledged as an important step of institutional change (Greenwood, Suddaby, & Hinings, 2002) where change agents “render ideas into understandable and compelling formats” to convince people toward change and adopt new practices and roles (Battilana, Leca, & Boxenbaum, 2009; Greenwood et al., 2002: 75; Mena & Suddaby, 2016; Strang & Meyer, 1993; Suddaby & Greenwood, 2005). So far, theorisation has been conceptualised as a cognitive process. Given the task of theorisation is to convince and motivate people to adopt new ideas and act accordingly (Greenwood et al., 2002; Strang & Meyer, 1993;

Voronov, 2014), the inattention to emotions in theorisation studies is particularly surprising since emotions “accompany all social actions, providing both motivation and goals” (Jasper, 1998: 397). In this regard, Voronov (2014: 185) noted that “research on theorisation can advance further by explicitly attending to the role of emotions. Whereas researchers have attended to how theorisations are produced...It is important to understand whether and how they are in fact received by audiences”. Therefore, with a particular focus on the reception of theorisation, the purpose of this chapter is to examine what role emotions play in the theorisation process.

In this research, I draw on Barbalet’s (1993) macrostructural theory of self-confidence as a social emotion that is fundamental for action and agency. According to Barbalet (2001:90), “all action is ultimately founded on the actor’s feeling of confidence in their capacities and the effectiveness of those capacities. The actor’s confidence¹⁴ is a necessary source of action; without it, action simply would not occur”. Echoing Zietsma and Toubiana (2018), I believe that the way we experience emotions and express them are socially conditioned, even though we experience them individually. I also believe that emotions are not only intra-individual processes, but can be intersubjective and collective experiences (Goodwin & Pfaff, 2001).

This study offers two main contributions to institutional theory. First, it develops a revised theory of theorisation that incorporates emotions. In so doing, this paper shifts the attention from the extant theorisation literature’s traditional emphasis on cognitive processes towards emotional processes that are required for successful theorisation. Second, this study identifies self-confidence as a social emotion, something almost completely overlooked in the institutional literature, and shows how it is critical for realizing institutional change.

5.2 Theoretical Background

5.2.1 Theorisation

Institutional change requires the adoption of proposed new structures and practices. This requires a successful ‘theorisation’ of new ideas (Greenwood et al., 2002; Strang & Meyer, 1993). Therefore, the concept of theorisation is an integral part of

¹⁴ In this paper, ‘confidence’ and ‘self-confidence’ is used interchangeably.

institutional change. It is the process whereby new ideas are “abstracted into comprehensive and compelling theoretical models that foster institutional change and the subsequent diffusion of those roles and practices” (Mena & Suddaby, 2016: 1670). That is, theorisation is “the task of establishing why new ideas should be adopted” by “the rendering of ideas into understandable and compelling formats” (Greenwood et al., 2002: 75).

Building on Tolbert and Zucker (1996), Greenwood et al. (2002) argue that successful theorisation consists of two major tasks: specification of the failures of the existing system and justifications of the new ideas. That is, theorisation is the stage of an institutional change where failings regarding the existing system are clearly laid out, while potential solutions to those failures are offered and also convincingly indicated (Greenwood et al., 2002; Strang & Meyer, 1993). That is why “diffusion occurs only if new ideas are compellingly presented as more appropriate than existing practices” (Greenwood et al., 2002: 60).

In its core, theorisation is linked to the notion of legitimacy because new ideas should be legitimate to be accepted by the actors within the institution (Suchman, 1995). Legitimation may emerge through the means of mimicry where actors follow the exemplary and successful others and expect economic gains (Scott, 2013). However, without new ideas being diffused and adopted by at least some successful actors in the field, legitimacy of those new practices cannot be achieved. Therefore, legitimacy should be mostly achieved by theorising the new ideas before the diffusion stage. In this regard, Greenwood et al. (2002: 61) argue that in many settings, particularly in normative, highly institutionalized and mature ones, such as professional settings, “legitimacy is unlikely to be based exclusively, perhaps not even primarily, on anticipated economic returns. Instead, new ideas may also have to be justified by aligning them with normative prescriptions prior to their diffusion (in the theorisation stage)”. Therefore, a successful theorisation includes “nesting and aligning new ideas within prevailing normative prescriptions, thus giving them ‘moral’ legitimacy and/or by asserting their functional superiority, or ‘pragmatic’ legitimacy” (Greenwood et al., 2002: 60).

Mena and Suddaby (2016: 1672) argue that there are “two key components of theorisation”, theorisation of new practices/structures and theorisation of roles. In theorisation of practices and structures, the focus of theorisation efforts is on ensuring the adoption of the new practices and/or structures. For example, Greenwood et al. (2002) showed how the professional association for accountants in Canada theorised and legitimated change by engaging a discourse that reshaped the boundaries of what the profession does. Theorisation in their case involved portraying the problem in the existing system and offering a solution as that profession was under threat unless they extended their services in a multidisciplinary way. Justification of these new practices were linked to the values of the profession, rather than their functional superiority. At the end, the practices of the accountancy profession and the structure of the professional service firms were changed.

In the theorisation of new roles, theorisation efforts focus on the roles of the actors to foster the new practices in a way that actors with their new roles and positions would engage in the new practices. For example, Rao et al. (2003) showed how activists theorised the new roles of chefs in French gastronomy. As a consequence of their theorisation of the new roles, chefs adopted the new practices and meanings associated with them, leading to institutionalisation of these practices. In this regard, Suddaby and Greenwood (2005) also showed that the role identities of lawyers and accountants were re-defined and re-established by different groups using competitive rhetorical strategies in the theorisation process of a profound institutional change.

Theorisation strategies may differ depending on the context and field (Delmestri & Greenwood, 2016). For example, in highly established fields, those who promote change usually try to integrate the new practices into old ones. That is, after they specify the failings of the existing system, they present the new ideas in a way that does not necessarily portray them as the most effective or efficient way of things, but as the most harmonious and compatible ones with the existing structures, practices and roles (David, Sine, & Haveman, 2013; Delmestri & Greenwood, 2016). For example, In Greenwood et al.’s (2002) study, professional associations, acting as institutional entrepreneurs, emphasised that the change was well matched with the values and previous practices of the profession. In Reay, Golden-Biddle and Germann’s (2006) study, change agents, who wanted to create a new professional role of the nurse

practitioner, 'hooked' this role into existed professional practices and procedures. In Lounsbury and Crumley's (2007) study, actors who wanted to bring new practices to the field emphasised that new financial practices and old ones could go together smoothly.

However, in emerging fields theorisation may differ. For example, in David, Sine and Haveman's (2013) study on the emergence of the consulting field, in order to theorise the change, institutional entrepreneurs used cultural and social logics that were externally available to the emerging field, built the links with high status actors and external authority figures, acted collectively, and highlighted how the new practices and structures would benefit the society in general. Furthermore, Maguire, Hardy and Lawrence (2004) found that in the emerging field of HIV/AIDS advocacy involving pharmaceutical companies and community organizations, theorisation included making sure that diverse stakeholders' interests were comprised in the arguments; establishing coalitions with those stakeholders thorough political means like negotiation, bargaining and compromise; and linking the new practices and structures to stakeholders' existed practices, procedures and values.

As a discursive process, the use of language has been crucial in theorisation processes, since it has to specify the problems about the existing practices and structures, offer and justify the innovations, and provide motivation to act for change to take place, diffuse and institutionalise (Battilana et al., 2009; Leca, Battilana, & Boxenbaum, 2006). To be able to do so, it is known that theorists used different rhetorical strategies (Suddaby & Greenwood, 2005) in their theorisation such as storytelling (Morrill & Owen-Smith, 2002; Zilber, 2007) and frames (Creed, Scully, & Austin, 2002).

The better and more successful the theorisation is, the faster the diffusion of new ideas is expected to be (Delmestri & Greenwood, 2016; Höllerer, 2012; Rao et al., 2003). Strang and Meyer (1993: 499) further suggested that "theorisation itself is the diffusion mechanism." Furthermore, according to Höllerer (2012: 85), "theorisation is an ongoing, never ending process" that occurs before, during and after the diffusion of new practices. In addition, Building on Green (2004), Gondo and Amis (2013: 236) argued that "for a practice to become accepted, it must first make sense". That is,

participants should be compelled that new practices and roles have value (Birkinshaw, Hamel, & Mol, 2008). Such persuasion requires justification of new practices as solutions to existing problems or better options than the old ones - that is almost always a deliberate effort. Thus, theorisation is a constant process of convincing and motivating others to accept acting in desired new ways.

Although all of the above studies enhance our understanding of theorisation of institutional change and its diffusion, but “for the most part, our understanding of theorisation remains overly general” (Delmestri & Greenwood, 2016: 514). Particularly, as an “important concept in institutional theory, theorisation still has a very cognitive connotation, yet social change is often associated with strong emotions” (Lok, Creed, Dejorjy, & Voronov, 2017: 611). In this regard, Voronov (2014:185) pointed out that “because theorisation is believed to motivate people toward change, it must have an ... emotive component”. This is something I take seriously here by explicitly attending to the role of emotions in the theorisation process.

5.2.2 Emotions and Institutions

Although early institutional theorists (Berger & Luckmann, 1967; Jaeger & Selznick, 1964; Parsons, 1960; Selznick, 1951, 1957) suggested their importance, emotions have been largely overlooked by scholars. However, recently, there has been a concerted effort to discover the links between emotions and institutional dynamics. In these recent studies, emotions have been acknowledged and portrayed as “a critical link between macro institutional arrangements and people’s participation in institutional processes” (Delmestri & Goodrick, 2016: 236). Through emotions, people are connected to institutions that they inhabit (Zietsma & Toubiana, 2018). In addition to the technical conveniences institutions provide (Selznick, 1957), people care about institutions and have a deeper and visceral connection with them (Bourdieu, 2000; Friedland, 2018; Voronov & Weber, 2016; Zietsma & Toubiana, 2018). Emotions have been portrayed as the heart of the institutions because while they constitute institutions, institutions also constitute emotions (Voronov & Weber, 2016). Therefore, institutional theory views emotions as socially constructed. That is, while actors’ experience and expression of emotions are conditioned by the institution that

they inhabit, their emotions also shape the very same institution. In this study, emotions are also considered as inherently social.

There has been a particular interest in understanding how emotions affect the reproduction and change of institutions. For instance, Voronov and Vince (2012) argued the importance of emotional processes for understanding institutional work. In their paper, they developed a framework explaining emotional underpinnings of institutional maintenance, disruption and creation. They argued that individuals are emotionally and cognitively connected to the institutions that they are embedded in. They suggested that these connections, emotional and cognitive investments in another words, determine if an actor would be willing to change, maintain or disrupt a field. Voronov and Vince (2012) claimed that cognitive disinvestment from an institutional order may not be enough to engage in activities aiming change; or cognitive investment in an existing institutional order may not be enough to motivate actors to maintain the status quo. Therefore, they suggested that the level of emotional investment in the existing order, or disinvestment for that matter, would determine an actor's institutional work involvement, more than the cognitive investment/disinvestment.

According to Scott (2013:66) certain emotions are a “powerful inducement to comply with the prevailing norms” because, he suggests, people feel shame and disgrace when they violate norms of the institutions that they are embedded in; or feel pride and honour when they perform exemplary behaviour. In this respect, studies showed that institutions have a power of employing emotions as self-disciplinary and self-regulative mechanisms (Lok et al., 2017). For instance, Creed, Hudson, Okhuysen and Smith-Crowe, (2014) argued how motivation to engage in institutional work of creating, disrupting and maintaining activities are strongly linked to actors' experience of shame in different conditions. Jarvis (2016) also showed how institutionalised shame reinforced the institutions that constitute the collective identity of actors, physicians in his case, and how field level actors participated in shaming to control institutional change and its effects. Moreover, Gabbioneta, Greenwood, Mazzola and Minoja (2013: 499) indicated how analysts who questioned the corrupt activities of a company were shamed and “ridiculed” into silence by their peers. In a similar vein, Delmestri and Goodrick (2016: 246) argued that institutional reproduction was not

achieved by only continuing support of appropriate emotions, but also by “the suppression of the upsurge of disruptive emotions”. Similarly, Gill and Burrow (2018) presented a case where fear maintained institutional values, guiding and mobilising particular behaviours while serving as a form of discipline and control.

On the other hand, negative emotions similar to shame and fear are not the only ones that affect institutional maintenance and stability. For instance, Siebert and colleagues (2016: 1627) showed how people’s enhancement with the spaces, their feeling of awe, “may have a stabilizing effect on institutions”. Align with that, emotions are also presented as an important aspect of people’s experiencing institutions (Creed et al., 2014; Lok et al., 2017; Voronov, 2014; Voronov & Weber, 2016). Voronov and Yorks (2015: 17) state “in order to understand why people perform some forms of institutional work and not others, we need to understand how people experience the institutional arrangements that not only shape the resources available to them but also make their lives meaningful and prime how they think and feel”. According to Voronov (2014), institutions prescribe which emotions people are expected to display under different conditions, as well as which emotions they actually feel privately under what circumstances. Voronov (2014: 186) argues institutional logics are not only sources of cognitive schemas and identities, but also “prescribe and proscribe certain emotions”. For example, while market logic is associated with greed, pride could be associated with the nation state (Friedland, 2018). In this regard, Toubiana and Zietsma (2017: 944) coined the term emotional register which referred to “the rules for the legitimate use and expression of emotions within that logic”. That is, institutions prescribe what actors should feel, under what conditions and how to display it.

Aligned with the idea of an emotional register of institutional logics, Voronov and Weber (2016: 457) developed the notion of emotional competence (EC) which means “the ability to experience and display emotions that are deemed appropriate for an actor role in an institutional order”. They positioned emotions at the core of institutions since Voronov and Weber argued that emotions form people as competent actors, create a reality for them and cause passionate identifications with institutions. In other words, “EC describes a capacity to belong to and inhabit an institutional order... and enables people to take up emotionally prescribed roles in a competent manner” (Voronov & Weber, 2016: 457). They also contributed the conversation on the

question of how people experience institutions and incorporated their conceptualisation of emotional competence into the concept of ‘inhabited institutions’ (Hallett & Ventresca, 2006) by depicting emotions as “central to the very constitution of people as institutional actors that hold a personal stake in an institution” (Voronov & Weber, 2016: 456).

Friedland (2012: 593) states “institutions depend, both in their formation and their core, on a passionate identification” and “we cleave to institutional ways of doing because of the way they make us feel; indeed we are the way they make us feel. Institutions are not only ways of doing, but of being” (Friedland, 2018: 8). That is, there is a strong link between identity of actors and institutions. Actors passionately identify themselves with the institutionalised meanings and values. Thus, a change in the institutional arrangements that provide meaning for actors’ lives may be ‘distressing, anxiety provoking, anger inducing, or even terrifying’ (Voronov & Yorks, 2015: 567). For example, while studying the importance of institutional context in the experience of stress at war, De Rond and Lok (2016: 1980) showed how war surgeons lost the institutionalised sense of “the meaningful, the good and the normal” and, as a result, they experienced “senselessness, futility, and surreality” because they identified themselves with the institutions that they were embedded and values and meanings attached to those institutions. Furthermore, Wright, Zammuto, and Liesch (2017) showed that violation of the values of professionals triggered moral emotions and these emotions motivated institutional maintenance work during the periods of conflict that was caused by the contradiction in values of different actors.

Voronov and Vince (2012: 64) argue that actors in the field “attempt to reconcile their private emotional experiences with the demands of their position in the field”. In this regard, the contradictions between what actors really feel privately and the institutionally demanded emotion can also trigger institutional change. For example, Creed, DeJordy and Lok (2010) showed how emotions of actors, ministers with marginalised LGBT identities, who experienced salient institutional contradiction between their role and the institution that they are embedded in converted them into change agents. Regarding experiencing contradictions and institutional change and stability, Voronov and Yorks (2015) studied how people apprehend institutional contradictions as they are usually considered as the triggers of institutional change.

They argued people differ in their capacity to apprehend institutional contradictions because actors experience the contradictions differently depending on their emotional identification with institutional logics and participation of institutional projects and processes. However, Wijaya and Heugens (2018) showed how emotions could sometimes be limited as the mobilisers of institutional work even though people apprehend the contradictions and feel uncomfortable. In their study, Wijaya and Heugens (2018) showed that even if actors become morally perturbed with the actions of institutional leaders and are willing to change the institution that they are embedded in, they may not be able to mobilize to change because of their emotional ties with the existing arrangements.

Recent studies have also showed how emotions energize and motivate actors for institutional creation such as creating new fields, increase field participation or creating new logics (Fan & Zietsma, 2017; Grodal & Granqvist, 2014), as well as bonding social groups and institutions (Lawrence, 2017). For instance, Fan and Zietsma (2017) showed that how actors that were embedded in different fields with different logics overcame the limitations of their own logics to create a new and shared logic by mobilizing three emotional facilitators: moral emotions, social emotions and emotional energy. Furthermore, Grodal and Granqvist (2014) studied how emotional responses to discourses play a role in decisions to participate to an emerging field. In their study on an emerging nano-technology field, they found that discourses, participants' expectations regarding the future of the field, participants' emotional responses to discourses and the decision to be a part of the emerging field were mutually constituted.

Moreover, drawing on a study on building a supervised injection site for illegal drugs users in Vancouver, Canada; Lawrence (2017) revealed the role of emotions in institutional translation of practices taking place in high-stake settings. In his study, he showed that triggering institutional translation required intense emotions such as pain, anger and suffering, as well as the public expression of these emotions. The emotionally triggered translation process later unfolded further by the motivation created by the emotion of empathy when people started to understand drug users' and their families' pain and suffering. Lawrence also showed how emotions, particularly

empathy and anger, served as a connecting mechanism that brought people and organizations together to follow a common aim.

In addition, focusing on the role of reflexivity in institutional work, Ruebottom and Auster (2018) showed how emotions changed actors' understandings of their selves and worldview and facilitated new structural arrangements. They argued that emotions are crucial for generating reflexivity that is required for institutional work. In their case study of an interstitial event aiming to stimulate agency among young people, Ruebottom and Auster (2018) found that emotions could be used to make actors reflect on their social position, then disembed them from these positions and re-embed them into a new social order. In their study, organisers of the event focused on creating emotional energy to make the young people to feel like to be a part of the new social order and re-embed them to the new structural arrangements.

As the studies above show, emotions are not intra-individual, but constitutive of and by institutions (Lok et al., 2017). This approach to exploring institutions involves the study of social emotions (Creed et al., 2014; Lok et al., 2017) since they are the "reactions to our perceptions of our social standing and that of others relative to norms and standards within social structures" (Creed et al., 2014: 279). Social emotions are especially important for understanding institutional processes because they are "are implicated in the ways people make sense of and participate in the interactions that underpin the shared enactment of institutional arrangements"(Creed et al., 2014: 279). Therefore, there have been calls for studying social emotions in relation to specific institutional contexts (Creed et al., 2014; Lok et al., 2017). While being positive or negative, social emotions can be other-directed like trust, respect, anger or self-directed like guilt, pride, embarrassment and shame (Barbalet, 1996; Creed et al., 2014). There is one particular self-directed social emotion that has been overlooked in both the sociology of emotions literature and the institutional theory literature, although it appears to be fundamental for action and agency: self-confidence.

5.2.3 Self-confidence

In this study, I particularly draw on Barbalet's (1993) macrostructural theory of confidence where he argues that self-confidence as an emotion that can be distributed across macrostructures such as social classes and can be felt collectively by segments

of society. He conceptualises the emotion of self-confidence as a basic social emotion that is fundamental to action and agency. According to Barbalet (2001: 90) “all action is ultimately founded on the actor’s feeling of confidence in their capacities and the effectiveness of those capacities. The actor’s confidence is a necessary source of action; without it, action simply would not occur”.

Self-confidence has attracted the attention of scholars from different fields such as education and learning, marketing, sports management, leadership, organizational behaviour, law, medicine, nursing and health. There are also studies focusing on related concepts such as self-efficacy, self-esteem, hubris, pride, and narcissism. However, these studies are of limited utility for my study because they either take self-confidence as a purely cognitive concept and assess it exclusively from a psychological point of view and/or they conduct laboratory experiments to measure and understand the self-confidence of actors, ignoring the importance of social context. I approach self-confidence from a macrostructural perspective and consider it as a social emotion. Nevertheless, none of the studies above draw a consensus on the definition and the conceptualisation of self-confidence (Perkins, 2018). I define it in terms of opposites, as Barbalet (1993, 1996; 2001) suggested, as I explain below.

According to many scholars, confidence is considered as an emotion that is at the opposite end of the spectrum to anxiety, despair, depression, insecurity, fear, nervousness, shyness, shame, embarrassment, and doubt (Aristotle, 1926; Barbalet, 1993, 1996, 2001; Briñol, Petty, Valle, Rucker, & Becerra, 2007; Collins, 1981, 2004; Darwin, 1872; Kemper, 1978, 2006; Kidwell, Hardesty, & Childers, 2007; Kleres & Wettergren, 2017; Poder, 2010; Summers-Effler, 2002; Turner & Stets, 2005; Whittier, 2001). These emotions are considered as the emotions of low spirit or low energy that make people want to be motionless (Barbalet, 2001; Collins, 1981, 2004; Darwin, 1872). These emotions can be paralyzing (Jasper, 2006; Kleres & Wettergren, 2017), making people “tongue-tied” (Collins, 1981: 1004), leading to uncertainty (Barbalet, 1993), limiting the opportunities and resources for action (Barbalet, 2001; Collins, 2004; Kemper, 1978, 2006). However, “confidence stands in sharp contrast” to these emotions since it is “an emotion of assured expectation which is not only the basis of, but a positive encouragement to action” (Barbalet, 1993: 263). Furthermore, emotions such as shame and shyness, are the emotions of social control and conformity

and they limit the range of action by self-censure and shaming (Barbalet, 2001; Creed et al., 2014; Darwin, 1872; Jarvis, 2016; Kish-Gephart, Detert, Treviño, & Edmondson, 2009). However, as a completely opposite emotional state, confidence “is the feeling which encourages one to go one’s own way” (Barbalet, 2001: 86). Furthermore, Aristotle (1926), in his *Art of Rhetoric*, presents confidence as one of the ten emotions that is fundamental to human nature. While portraying confidence as a ‘courageous emotion’, he states that “confidence is the opposite of fear, and what causes it is the opposite of what causes fear” (Aristotle, 1926: 225).

Confidence is a future oriented emotion since it involves projection of self in future with an assured expectation of success (Barbalet, 1993, 1996, 2001). According to Poder (2010: 113), “both self-projection and assured expectation are essential to human agency, which is possible only in so far as the individual is able to project his or her capacities into the future.” Therefore, since information regarding the future is never fully available and the future is essentially unknown; one’s feeling self-confident generates a sense of security regarding the future, connects the future into the present, and serves as a foundation for non-conformism that allows one to follow one’s own path (Barbalet, 1996, 2001).

Barbalet (1993: 230) goes further to explain why self-confidence is an emotion:

There is widespread agreement that emotion typically includes a subjective component of feelings, a physiological component of arousal or bodily sensation and an impulsive or motor component of expressive gesture. Each of these obtain for the experience of confidence. The feeling of confidence has characteristic content and tone which is both experienced subjectively (one knows when one feels confident) and expressed behaviourally (others can see that one is confident). Those who feel confident are likely also to report bodily sensations of muscular control, deep and even breathing and other sensations of well-being.

However, self-confidence is not an intra-individually experienced emotion. It is a social emotion that is relational and dependent on “the social gaze of the other” (Scott, 2018: 5) as well as others’ acceptance and recognition. The greater the acceptance and recognition, the higher the actors’ feeling self-confidence (Barbalet, 2001). In a similar vein, the emotion of self-confidence is strongly related to Collins’ (2004) notion of

emotional energy. Collins (1981: 1001,1002) argues that emotional energy is manifest itself when an actor “successfully accepted into interaction” as a result feels “confidence, warmth and enthusiasm”. He defines emotional energy as “a feeling of confidence, courage to take action or boldness in taking initiative” (Collins, 2004: 34). This approach is also aligned with studies that suggest that how positive emotions like confidence also widen people’s outlook on the future, encourage them to secure resources for future action and encourage them to act (Fredrickson, 2001; Poder, 2010). Positive organizational scholarship also suggests that an actor’s capacity for action increases through positive emotions and energy (Dutton & Glynn, 2008; Quinn, 2007), “rather than merely assuming that agency will flourish either as a result of cognitive perceptions of self-efficacy (Poder, 2010, p. 115). Confidence is also portrayed as a positive emotion, which is a blend of some other positive emotions such as hope and optimism (Stajkovic, 2006).

Like other emotions, self-confidence has cognitive components. The concept of self-efficacy is presented as the cognitive component of self-confidence (Perkins, 2018; Stajkovic, 2006). Although the terms self-confidence and self-efficacy are usually used interchangeably in many studies, they are in fact is different. Self-efficacy is “the conviction that one can successfully execute the behaviour required to produce particular outcomes” (Bandura, 1977: 193). Therefore, self-efficacy is a belief. It is “a cognitive evaluation” of abilities and past experiences while self-confidence is an emotional experience (Quinn, 2007: 75). Therefore, self-efficacy is not the same concept as self-confidence because “how people cognitively perceive themselves is not necessarily reflected in how they feel” (Poder, 2010: 110). One might think that they are competent to perform a task without actually feeling that they are. For instance, a medical doctor may know and believe that he/she has the abilities to perform an operation successfully but does not feel confident in the operating room. Therefore, while self-efficacy is not the same as self-confidence, it is a cognitive building block of it and there is strong relationship with feeling self-efficacious and self-confident (Perkins, 2018; Poder, 2010; Stajkovic, 2006).

One’s access to relevant resources for future action is another key factor for one to feel self-confident (Barbalet, 2001). The access to resources is crucial not for the immediate need, but their availability for the future (Barbalet, 1996). One cannot keep

feeling confident on being able to act in an unknowable future without secured future access to resources (Barbalet, 1993, 1996, 2001; Poder, 2010). Therefore, self-confidence is not only dependent on social acceptance, but also admission to relevant resources; as Poder (2010: 113) nicely puts it “self-confidence is a genuinely social emotion, since the way we experience it, and whether we experience it, depends on the social context of relevant resources in which the person concerned is inevitably enmeshed”.

Drawing on Barbalet (2001), Voronov and Weber (2016: 457) state “emotions are central to lived experience and the self and, hence, to action formation and an expanded understanding of actorhood”. That is, emotions are crucial to understand the relationship between action, agency and structure. Self-confidence is particularly important because it is “essential to any action aimed at going beyond mere routine actions” (Poder, 2010: 112). However, as a social emotion that is so fundamental for action and agency, self-confidence, or self-efficacy as its cognitive component for that matter, is almost completely ignored in the institutional theory literature. Therefore, in this research, I address this lack of attention by studying self-confidence of professionals during an institutional change.

5.3 Data Analysis

For this paper, my research aim was to see how emotions play a role in theorisation of institutional change and in its reception by the recipients of the change. Therefore, I needed to uncover the theorisation process first in my data analysis. I aimed to present the theorisation process of the change agents in my case study as it was by laying out all aspects of the theorisation process.

In the data analysis, I looked at three sources of theorisation: Lord Gill as the institutional entrepreneur, the Scottish Government as the actor who presented the reforms to the parliament, and other official judicial office holders who were occupying the key management positions of the judiciary during the introduction and implementation of the reforms. These officials were the Lord Carloway as the Lord President succeeding Lord Gill, Lady Dorrian as the Lord Justice Clerk, and Mhairi Stephen as the Sheriff President of the newly established Sheriff Appeal Court. Accordingly, first, I looked at theorisation of the change initiator Lord Gill. Table 5-1

presents my data structure regarding the theorisation of Lord Gill. Second, I aimed to uncover the theorisation efforts of other judicial office holders and the Scottish Government. Table 5-2 shows the data structure for the theorisation of the judicial office holders between the years of 2013-2019 and the Scottish Government that presented the reforms as a bill to the Scottish Parliament that introduced the reforms by passing the bill.

Table 5-1 Data structure for Lord Gill's theorisation

First Orders	Second Orders	Aggregate Dimensions
<ul style="list-style-type: none"> • Expensiveness • Lack of confidence in the justice system • Inefficiency • Victorian/antiquated system • Problems with the court hierarchy • Problems regarding professional inefficiency 	Specification of the failures of the existing system	Theorisation of Lord Gill
<ul style="list-style-type: none"> • Immediate need for change • Historical opportunity for change 	Creating a sense of urgency for change	
<ul style="list-style-type: none"> • Missing the chance of change causing missing it for good • The reforms are historical opportunity/once in a generation opportunity 		
<ul style="list-style-type: none"> • Giving the reforms moral legitimacy • Giving the reforms pragmatic legitimacy • Showing the credibility of the review • Providing solutions to specific problems 	Justifications of the new structures and practices	
<ul style="list-style-type: none"> • Framing the survival of the profession depending on the adaptability of change • Framing solicitors as resilient to change • Framing the reforms as an opportunity for solicitors 	Motivational Frames	
<ul style="list-style-type: none"> • Portraying an ideal justice system • Economic progress • International reputation • Independent justice system 	Developing and sharing a vision	

My reason to include other judicial office holders and the Scottish Government at the time was grounded in several reasons. First, the reforms were a project of the government at the time and the success of the reforms were important for them. Therefore, how they tried to theorise the change mattered. Second, Lord Gill, as the Lord President, was officially the leader of the other judicial office holders. These

office holders were the implementers of the reforms, as well as the bridge between the judiciary and the rest of the legal profession. They were obliged to follow and promote the agenda of the State and Lord Gill. They were also considered as the leaders of the legal profession since they occupied the main judicial offices in the country. Finally, and more importantly, since theorisation is an ongoing process that continues until the new practices and structures are taken for granted (Höllerer, 2012; Strang & Meyer, 1993), it was important for me to see how theorisation continued after Lord Gill retired in 2015. It was a time when the implementation process was not completed, and the new practices were not completely adopted.

Table 5-2 Data structure for the theorisation of other judicial office holders and the Scottish Government

First Orders	Second Orders	Aggregate Dimensions
<ul style="list-style-type: none"> • Expensiveness • Inefficiency • Victorian/antiquated system • Problems with the court hierarchy • Problems regarding professional inefficiency 	Specification of the failures of the existing system	Theorisation of other judicial office holders and government
<ul style="list-style-type: none"> • Giving the reforms moral legitimacy • Giving the reforms pragmatic legitimacy • Providing solutions to specific problems 	Justifications of the new structures and practices	
<ul style="list-style-type: none"> • Framing solicitors as resilient to change • Framing the reforms as an opportunity for solicitors • Encouragement for commitment 	Motivational Frames	
<ul style="list-style-type: none"> • Re-iterating and reminding the vision behind the change (without mentioning Lord Gill) • Re-iterating and reminding the vision of Lord Gill (with the specific acknowledgement of Lord Gill) • Praising the review and/or reforms 	Reminding/emphasising the vision behind the reforms	

The coding process for emotions of the change recipients was very challenging. The data showed that participants usually felt a blend of emotions regarding the new roles

and practices that the reforms presented for them. For instance, during the analysis of data, the first and second orders showed that solicitors felt different emotions, like fear, nervousness, insecurity, self-doubt and so on. They also felt a blend of these emotions. Therefore, it was very difficult for me to pinpoint which exact emotion the participant felt. I tried to combine similar emotions together during the second stage of data analysis and reached three second order themes: fear, anxiety and insecurity. Yet, I could see that these three emotions were still reflecting a blend of emotions and they had more to them to explain the empirical context that I had.

When I looked at the literature on the sociology of emotions, I saw that the blend of these particular emotions was a sign of a lack of self-confidence (Aristotle, 1926; Barbalet, 1993, 2001; Collins, 1981, 2004; Kemper, 1978, 2006; Poder, 2010). That revelation was consistent with how I also interpreted the data at the time. Based on my experiences and interactions in the field during the observations and interviews, I also had interpreted all these emotions as the reflection of the lack of self-confidence of solicitors. I had realised that the blend of emotions the participants felt and expressed was about their level of confidence. That is, I interpreted my data as an interpretivist researcher and concluded that the blend of these emotions reflected that solicitors' feel lack of self-confidence. As a result, by going back and forth between my data and the relevant literatures, I collapsed the first and second orders to the aggregate dimension of "lack of self-confidence" (please see Table 5-4 below). In addition, more often than not, the same quote was coded into several first orders because it reflected several themes within it. The below Table 5-3 shows an excerpt of how I coded emotions in the first stage of my coding process and the memos I wrote during the first stage of data analysis.

Table 5-3 An excerpt from the first cycle of coding process

Quote	Open codes	Notes to myself
<ul style="list-style-type: none"> • <i>These are [personal injury and clinical negligence] usually very sensitive cases. You need confidence in your judgment [to do advocacy for those cases]</i> 	<ul style="list-style-type: none"> • Does not trust his judgment • Confidence in professional judgement necessary for advocacy 	<p>He explains why he does not do advocacy in court. He does not feel confidence in his professional judgement in complex cases.</p>
<ul style="list-style-type: none"> • <i>I don't have enough experience. I have to think what is best for the client.</i> 	<ul style="list-style-type: none"> • Perceived lack of experience • Feeling Incompetent 	<p>As a result of a cognitive process- evaluating and deciding that he/she did not have enough experience.</p>

<ul style="list-style-type: none"> • <i>I think £100,000 cut-off is twice what it is in England, and about five times what it is in Northern Ireland [implying too high to handle a case alone as a solicitor]</i> 	<ul style="list-style-type: none"> • The threshold is too high • High value cases beyond the capacity of the solicitor 	
<ul style="list-style-type: none"> • <i>If it is a complex case, I instruct counsel.</i> • <i>We usually instruct advocates for important and high value cases.</i> • <i>If it is a straightforward case, I might consider handling it myself.</i> 	<ul style="list-style-type: none"> • Complex cases are not for solicitors • High value cases are for advocates • Important cases for advocates • Straightforward cases for solicitors. 	
<ul style="list-style-type: none"> • <i>They [advocates] will do a better job and the fact that they will do a better job is not in itself is a reason to use them and the court wouldn't think so but provided that it is appropriate then people will tend to just say, well I will just instruct counsel for this. You know sometimes the argument can be quite nuanced and it is something you need somebody with the experience to be able to look at and reply to.</i> 	<ul style="list-style-type: none"> • Belief that advocates will do a better job • Acknowledging that the fact that they will do a better job is not in itself is a reason to use them • Nuanced arguments are beyond the solicitor's capacity -need advocates in that case. • Solicitors have less experience 	
<ul style="list-style-type: none"> • <i>It makes your processes, it makes everything complicated, you have to be very strict, tight and accurate so there is probably a lot less leeway [in the newly established courts than local sheriff courts], I would say. Then you go and instruct counsel.</i> 	<ul style="list-style-type: none"> • Have to be strict, tight and accurate • Strict environment-less leeway in the new courts • Complicated issues for advocates 	Is there a belief here that she cannot meet the high standards of the new established court? If not, why would she complain about the necessity of being tight and accurate and present it as a reason for instructing advocates?
<ul style="list-style-type: none"> • <i>Well, chronically inadequate, I must say [when asked how she feels if she does not instruct an advocate for complex cases].</i> 	<ul style="list-style-type: none"> • Feeling inadequate/incompetent 	Here does chronically mean that she has a persistent/never going away feeling of inadequacy?
<ul style="list-style-type: none"> • <i>We do mock trials and trainings regularly here, but it is not the same, is it? It is terrifying in real life. Sheriffs are terrifying. I'm worried about my performance all the time. The mock trials, they don't help much because I can't afford making a mistake in real life. I have to think about the client's best interests</i> 	<ul style="list-style-type: none"> • Terrified because of sheriffs • Appearing in court is terrifying in real life • Insecure • Fear of failure • Fear of hurting client by mistake • Worried about his performance 	Here is another blend of emotions. The participant is here explaining why she prefer instructing counsel instead of appearing herself. Is fear of hurting client can also be considered as fear of failure? I believe so
<ul style="list-style-type: none"> • <i>She [a sheriff] brings solicitors up to just to give them a row and ending up making them cry in a packed room. I cannot face that.</i> 	<ul style="list-style-type: none"> • Fear of embarrassment • Reluctant to raise action in ASPEC (because of sheriffs' attitude) • Sheriffs are strict 	

<i>It's embarrassing. I'm reluctant to raise actions there by myself.</i>		
<ul style="list-style-type: none"> • They [solicitors] get very anxious, they get very nervous, it requires your mind to work in a particular way, you would probably have to be quick-thinking, which isn't necessarily the same as, well it often isn't the same as deep-thinking but there is no point in thinking of a clever question when you have sat down and closed your case. You have to be able to think of a clever question whilst you are there and the preparation is demanding. 	<ul style="list-style-type: none"> • Solicitors feel anxious- from a sheriff's point of view • Solicitors feel nervous- from a sheriff's point of view • Advocacy require the mind to work in a particular way • Advocacy require to be quick thinking • Advocacy requires demanding preparation 	Sheriffs's opinion on solicitors' emotions
<ul style="list-style-type: none"> • I don't appear in court. I have my network of counsel that I trust, I instruct them. My husband is in the Bar, you see. I know how hard they work and they provide the best representation that you can get, to be honest. – Why don't you appear yourself? It is not my thing. – can you elaborate a bit more, please. I don't like it. it is a very tense process. The preparations, the responsibility and all. 	<ul style="list-style-type: none"> • Not appearing in court • Regular instruction of counsel • Advocacy require hard work • Advocates provides the best representation- They are better than solicitors • Feeling tense during the process of appearing in court (nervous?) • Avoidance of responsibility • Avoidance of preparations • Don't like advocacy 	She was reluctant to talk about her feelings and why she does not want to appear in court. Gave me the feeling that she feels very incompetent regarding on feet performances.

Table 5-4 Data structure for coding for emotions

First Orders	Second Orders	Aggregate Dimensions
<ul style="list-style-type: none"> • Fear of failure • Fear of embarrassment • Fear of angry sheriffs • Fear of going to court • Feeling terrorised • Feeling terrified • Feeling intimidated 	Fear	
<ul style="list-style-type: none"> • Feeling nervous • Feeling tense • Feeling anxious • Feeling edgy/jumpy • Worrying 	Feeling anxious	SELF-CONFIDENCE [Lack of] (Emotional and cognitive) (Public and private)
<ul style="list-style-type: none"> • Feeling inadequate • Feeling incompetent • Self-doubt • Feeling insecure 	Feeling insecure	
<ul style="list-style-type: none"> • Advocacy needs one to believe in himself/herself • Advocacy needs one to presents confidence in the court room • Must be confident in their judgements 	Expected emotional display in the field for performing advocacy	

<ul style="list-style-type: none"> • Lack of belief in the ability to meet the standards for court/sheriffs/clients • Lack of belief in professional competency • Lack of belief in professional skills and abilities • Belief that she/he is lacking necessary professional traits (confident, expert, persuasive, risk taker, quick thinker etc.) • Belief that advocates are professionally superior 	Perceived self-efficacy (Cognitive Aspect)	
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Another important point regarding the coding for emotions was to realise that there were cognitive assessments of participants that affected how confident they feel about their professional capacities in the face of the changes. In other words, they measured up their skills and concluded that they were not competent enough to handle the new roles and practices that the reforms offered. However, it was hard, and even impossible, to differentiate if the lack of self-confidence caused these perceived negative self-efficacy assessments or if these self-efficacy assessments caused the lack of self-confidence. The literature on emotions, particularly the literature on social emotions, helped me on this issue, too. We know that emotions constitute what people think cognitively, and what people think constitute how they feel (Turner, 2014b; Zietsma & Toubiana, 2018). There exists a recursive relationship. Also, literature on self-confidence suggested that self-confidence has a cognitive component that is ‘perceived self-efficacy’. That is, the self-efficacy assessments are the cognitive building block of self-confidence as an emotion (Perkins, 2018; Poder, 2010; Stajkovic, 2006). Consequently, these self-efficacy assessments affect how confident the participants feel emotionally, and in turn, how confident one feels affect how he/she perceive his/her self-efficacy (Perkins, 2018; Poder, 2010; Stajkovic, 2006). At the end, while acknowledging this recursive relationship, I collapsed the first order statements reflecting a sort of cognitive assessment to the second order of ‘perceived self-efficacy’ (please see Table 5-4 above).

Further, since self-confidence is a social emotion and highly dependent on the gaze of others, I included what others think of solicitors and their professional capacities to my data analysis to create a connection with the social context. Therefore, I also

uncovered the dominant belief within the legal profession regarding the professional capacities of its members by the “pattern inducing” technique (Reay & Jones, 2016: 449). Pattern inducing is a good fit with a constructivist-interpretivist research philosophy and related methodological approaches (Reay & Jones, 2016). Following the framework provided by Reay and Jones (2015), I worked thorough the data inductively, with a bottom up approach, to capture the dominant belief within the profession. Since beliefs are “revealed through language, practices, and manifested in symbols and materials” (Reay & Jones, 2016: 442), I made sure that the data regarding symbolic and material aspects of the legal profession was considered in the data analysis. Then, similar to the process I explained in data analysis section the Methodology chapter (Chapter 2), I re-categorised the open coded data and reached the second-order codes, then I further re-categorised the second orders to reach the dominant institutional belief (please see Table 5-5).

Table 5-5 Data structure for coding for dominant belief regarding solicitors in the field

First Orders	Second Orders	Aggregate Dimensions (Dominant belief)
Solicitors needs advocates for: <ul style="list-style-type: none"> • Complex-complicated cases/parts • Important cases • High Value cases • Challenging cases/parts • Difficult cases • Equality of arms • Cases requiring specialism 	Perceptions on Advocates’ competency	Dominant belief in the field that solicitors are professionally inferior (Lack of external authorization)
Solicitors can only handle: <ul style="list-style-type: none"> • Easy cases/parts • Straightforward cases • Low value cases 	Perceptions on Solicitors’ competency	
Advocates are: <ul style="list-style-type: none"> • Very experienced • Equipped with better training • Very skilled in different ways • Have good performance in court-no mistakes 	Perceptions on advocates’ skills and expertise	
<ul style="list-style-type: none"> • Best lawyers become advocates • Solicitors will always need advocates 	Belief that solicitors will never be as good as advocates	
<ul style="list-style-type: none"> • Only advocates can be judges 	Reflections of assumed expertise	

<ul style="list-style-type: none"> • Only advocates can appear in higher courts 		
<ul style="list-style-type: none"> • Solicitors' not being allowed to enter the Faculty of Advocates • Advocates' wearing different clothes- wigs, gowns • Advocates' having ancient traditions that are not shared/practiced by solicitors • Advocates' using jargon 	Symbolic and Material Superiority	
<ul style="list-style-type: none"> • Lack of confidence of solicitors • Their reluctance to appear in court because of nervousness, being out of their depth, anxious and so on 	Perception on solicitors' emotional fitness for advocacy	

Then I brought the aggregate dimension of tables 5-5 and 5-4 together to reach further theoretical inferences. Going back and forth between the data and literature helped me to realise the fact that actors' capability to display a particular emotion publicly, feel it privately, and get external authorization on their capacities were the components the concept of emotional competence for institutional actorhood (Voronov & Weber, 2016). The below Table 5-6 presents this process.

Table 5-6 Data structure for reaching further theoretical inferences

Aggregate dimensions from table x and z	Further theoretical inferences
Lack of Self Confidence (Public display and private experience)	Emotional incompetence
Dominant belief in the field that solicitors are inferior to advocates (Lack of external/other authorization)	

5.4 Findings

In this research, I examined the role of emotions in the theorisation of institutional change processes. In so doing, I only focused on the solicitors, including solicitor advocates, and their reception of theorisation since three main purposes of the reforms, decreasing cost, increasing efficiency and increasing access to the justice system,

predominantly hinged on solicitors. That is, solicitors' adopting new arrangements mattered for the change initiators to realise the reforms.

The Scottish civil justice reforms required a wide array of practices and structures in many aspects of the justice system to change in order to solve a wide range of problems. After a long and largely smooth implementation process, the justice system was profoundly changed with its new structures and processes in place and running successfully. Yet, in one particular area regarding the increase of the threshold in the sheriff courts, solicitors did not adopt the new practices although that was crucial for the reforms to reach the desired end of 'decreasing cost and increasing efficiency'. This particular outcome was highly dependent on the solicitors because their adopting new practices and structures would reduce the legal expenses for public and the state significantly while increasing access to and efficiency in the courts. Here the new practices and structures refer to solicitors' handling high value cases alone, without instructing advocates, from the beginning of the case until the end and conducting oral arguments in the sheriff courts.

In other words, by shifting cases from higher courts to sheriff courts, it was expected that legal expenses would significantly be reduced both for the public and the state, primarily for four reasons. First, there would not be a need for expensive advocates' services in the sheriff courts. Second, the state would not have to pay additional fees for advocates' services since there would be no automatic access to counsel in the sheriff courts. Third, the overhead fees in sheriff courts, such as the salaries of judges, are cheaper than the fees in the Court of Session. Fourth, legal fees for raising a case are cheaper in the sheriff courts than in the Court of Session. In this regard, theorisation of change mattered because solicitors had to be convinced to adopt the new practices and reduce their use of advocates. However, my findings suggested that theorisation notably failed in this regard and consequently solicitors did not adopt the new practices and structures.

In my data analysis, three themes emerged: *theorisation efforts*, *the reception of the theorisation efforts: lack of self-confidence* and *the dominant belief* in the field regarding the professional competency of solicitors and advocates. Next, each theme will be explained in detail.

5.4.1 Theorisation Efforts

5.4.1.1 *Lord Gill's Theorisation of the Change*

The data analysis showed that Lord Gill actively tried to theorise the reforms from the early times of preparing the review regarding the Scottish civil justice system until his retirement in 2015. In his review, as well as in the speeches addressed to either solicitors or to the whole legal profession, he followed several steps to theorise the change: specification of the failures of the existing system, justification of the new practices and structures, creating an urgency for change, having and sharing a vision, and deploying motivational frames. Next, I will explain each of these steps in detail.

Specification of the failures of the existing system. Lord Gill's theorisation efforts included specifying the failures, "flaws" or "fundamental weaknesses" in the existing system and explaining how these problems cause "failing in delivery of justice". The data analysis showed that his theorisation of the problems within the system could be categorised into subgroups of expensiveness, organization, the publics' lack of confidence in the justice system, problems with the hierarchy of courts, problems regarding professional inefficiency, and having an antiquated system.

In this regard, Lord Gill continuously emphasised how expensive the system was in his speeches and the report on the Scottish civil justice system that he wrote. The data showed that in every public speech where he mentioned the Scottish civil justice reforms, Lord Gill emphasised the fact that "access to justice is inevitably and inextricably linked with affordability", as he did in his "Looking over the horizon" speech in 2014. For example, in his speech in the Holyrood Conference in 2015, that was addressed to the legal profession as a whole, he stated that "future generations will be surprised to learn that we tolerated a system in which the legal costs of the first day of an action could exceed the value of the claim." According to the data analysis, high fees in the Court of Session, cost of unnecessarily instructing counsel for the state and for public, cost of delays, and cost of not using advances in information technology (IT) effectively were the main aspects of his specification of the problem of the expensiveness of the system.

He also emphasised that the system was inefficient due to being slow, having delays and backlogs, the lack of using IT, overreliance on temporary resources, haphazard

organization of the court system and pressure of criminal business on courts. In addition, Lord Gill presented professional inefficiency as another problem that the system was suffering from. He particularly complained that the lack of specialisation in the judiciary, inappropriate and unnecessary use of advocates' services, excessive workloads of sheriffs and judges, and solicitors' taking too many cases – just for convenience – to the Court of Session instead of using the local sheriff courts. For instance, he noted in the speech to the Holyrood Conference in 2015:

The whole purpose of these reforms is to maximise the efficiency and the output of the courts. We can no longer allow the progress of an action to be dictated by the convenience of the parties or their lawyers. The court has interests and responsibilities of its own.

Lord Gill also explicitly mentioned the professional inefficiency problems in the report that he wrote:

In a legal system in which most litigations are conducted by solicitors or counsel, the court should no longer be tolerant of professional inefficiency where the effects of it are to put an added burden on the judiciary and the court administration, to cause needless expense to the parties and to add to the law's already notorious delays. In these respects, too, it is for the court to assert the public interest. Nor should it tolerate its own inefficiencies (Gill, 2009a: ii).

In his theorisation efforts while he was specifying the problems with the existing system, Lord Gill portrayed efficiency problems as one of the core issues buttressed by and also the result of the other specified problems. For example, Lord Gill frequently stressed that the civil justice system was Victorian and functioned with antiquated structures and practices that also contributed to inefficiency of the system. Although linked to inefficiency issue, Lord Gill also portrayed having an antiquated system as a separate issue leading to failure in keeping up with modern Scotland and its needs. He repeatedly mentioned that these antiquated practices and structures caused inadequate remedies for the public, therefore failing to deliver justice in the 21st century as he stated in his review:

The basic structure of civil jurisdictions in the Scottish courts remains much as it was in the late nineteenth century. Meanwhile, fast moving changes in the social and economic life of Scotland in recent decades have left us with a structure of civil justice that is seriously failing the nation (Gill, 2009a: i).

He also frequently stressed, as he in his speech to Law Society of Scotland in 2009, how “Scotland is far behind many other jurisdictions in its use of IT” and how the ancient methods, procedures, and paperwork styles, within court practices were in place for over more than one hundred years. In this regard, in his review, he stated:

The practitioners of 100 years ago would have little difficulty in picking up the threads of today’s system In the Scottish civil courts, processes are still conducted as a paper exercise. Data keeping is done by manual counts. The format of pleadings and many of their stylised formularies have not changed in over 100 years (Gill, 2009a: iii).

Another group of problems that Lord Gill specified while theorising the change was regarding the established court hierarchy. He portrayed the issue of court hierarchy as the “root of the civil justice problem in Scotland” in his review where he stated that:

The root of the civil justice problem is that Scotland, uniquely among the major jurisdictions of the British Isles, has no proper hierarchy of civil courts at first instance or at appellate level. It has a flat, two-level structure of first instance courts whose jurisdictions for the most part overlap. It has only one appellate court, to which most litigants can appeal without leave (Gill, 2009a: iv).

According to Lord Gill, the problem of having “no proper hierarchy of civil courts” also led to other problems such as such as jurisdiction overlap between courts, unsatisfactory appeal process, and waste of judicial resources including talent of judges in the Court of Session because of the fact that the Court of Session was clogged up by “cases with modest value and of no legal importance” and “the decisions was being made at a needlessly high level”. He stated in his review that:

In the Court of Session, the lower limit of value is much too low. It enables actions to be raised in that court that should be beneath the proper countenance of a supreme court. They are a needless burden on its resources (Gill, 2009a: v).

He also frequently complained that “litigants have virtually unrestricted access to the Court of Session” (Gill, 2009a: iii) and all this made the Court of Session “a playpen for certain frivolous and irresponsible party litigants” (Gill, 2009a: iii). For example, he stated that:

In a proper hierarchy, the litigant should not have a choice of two courts of equal jurisdiction. There should be a classification by which a litigation should be conducted only in the court that is appropriate for it by reason of its nature, value or importance. Without such a basic principle, the system is bound to deploy its

resources wastefully, to inflict needless expense on the litigants and to fail to deliver justice promptly (Gill, 2009: iv).

Lord Gill kept emphasising that it was “ridiculous” to have a lower limit of £5000 for civil cases to be heard “in the highest court in the land” (Gill, 2009a: ii), as he did in his speech to Holyrood Conference in 2015:

Future generations will be surprised to learn that in the early years of the 21st century there were sections of the legal profession who thought it right to conduct civil litigations of a values of £5000 in the highest court in the land.

Several times, Lord Gill also pointed that it was waste of sheriffs’ talents since they only deal with cases with a value that is less than £5000. He portrayed sheriffs as capable judges who could handle high value cases and stressed that the existing hierarchy of courts not only wasted the resources of the Court of Session, but also the resources of sheriff courts. For instance, in this respect, while comparing the situation with England’s justice system, he stated in his review:

It is inconceivable that an English circuit judge¹⁵ would ever have to deal with the sort of minor business, civil and criminal, that constitutes so much of the workload of the sheriff court (Gill, 2009a: v).

While he was specifying the problems regarding the existing system, he always stressed that all these problems were causing another big problem that was the public’s lack of confidence in the justice system. According to Lord Gill, “public confidence in the system is being eroded” (Gill, 2009a: i) and “all these [problems] diminish public respect for the law and cause a loss of confidence in society’s ability to resolve disputes justly” (Gill, 2009a: iv). In this regard, Lord Gill did not only mean individual litigants, but also commercial litigants such as banks and international corporations. He stated in his review, “some Scottish commercial undertakings have so little confidence in our system that they enter into contracts providing for English jurisdiction and choice of law” (Gill, 2009a: i) and he found this unacceptable.

Justification of the new structures and practices. Lord Gill’s theorisation efforts also included the justification of the change and how the designed reforms provided

¹⁵ A judicial position in England that is similar to a sheriff judge in Scotland

solutions to the specified problems. According to the data analysis, he tried to achieve justification by three means: proposing specific solutions to the problems identified, giving the reforms moral and pragmatic legitimacy, and showing the credibility of the review that was the source of the reforms.

Lord Gill and his team identified the problems within the system in the review they wrote on the Scottish civil justice system. In the review, they also offered a number of recommendations as solutions to those problems and explained in a detailed way how solutions would work if they were applied. After the review was published, Lord Gill continued to explain how the offered reforms would provide solutions to the problems of the system in his speeches. Lord Gill proposed a short-term or long-term solution to all the problems he mentioned in the review. For instance, he frequently elaborated on how the reforms would free the Court of Session since it would, as he also stated in his Holyrood Conference speech, “no longer bear the burden of low value litigations”. He also stressed how these reforms would solve the problems regarding hierarchy of courts because of the establishment of the new courts and appellate procedures, as well as the shift of cases from the Court of Session to the sheriff courts. He explained how the reforms would cause cost-saving, increase efficiency, prevent delays, increase the use of IT, enable sheriffs to manage cases better, maximise the productive use of court time, provide more specialism in the profession, enable constant monitor of the system, and so on.

Furthermore, he tried to give moral legitimation to the reforms by linking the reforms to the values and principles of the justice system, and the legal profession. He explained in a detailed way how the reforms were strongly linked these values and principles. Lord Gill claimed that the reforms were to protect the “admired qualities of fairness, incorruptibility and expertise of our judicial system” (Gill, 2009a: i). For example, he mentioned in his speech to the Holyrood Conference that the reforms were necessary since the justice system should “serve the litigant and to the wider community and its needs” or “courts and judges can and should contribute to the prosperity of the country”. He also said these reforms would enable the legal profession to “secure the rights of litigants” and “protect the independence of the system” in his speech to The Commonwealth Law Conference, “maintain Scotland’s reputation throughout the legal world” in his speech in the ceremony of his instalment

as the Lord President and Lord Justice General in 2012, “deliver the quality of justice to which public is entitled” in his review (Gill, 2009a: i) and so on. He stressed that the reforms were the opportunity to be able to do so. He stated at the Holyrood Conference in 2015:

We have an opportunity now to improve upon these efficiencies and to avoid a relapse into the bad old ways. More importantly, we have a responsibility to litigants, to the public, and to the profession to ensure that our judiciary has control of the business of our courts. That responsibility is great.

Furthermore, linking the principles and ideals of the legal profession and the reforms, Lord Gill several times portrayed the reforms as the opportunity to enact those ideals as he stated in his speech of opening the legal year 2013:

These are troubled times for the profession [because of the reforms and upheaval they caused]. Change inevitably creates uncertainty, especially in the course of an economic recession. I appreciate and understand the profession’s concerns, but it may be opportune if we recall that the legal profession is a profession of learned men and women whose ideal is that of service; service to the rule of law; to the courts and to the client. For judges, our ideal is to give impartial and fearless justice to all who come before us. This is our opportunity to commit ourselves afresh to these ideals.

Or as in another speech, to the Law Society of Scotland in 2014, where he talked to the solicitor branch of the profession, he said:

This ancient and learned profession has survived many radical changes. It continues to be respected for the excellence and professionalism of its members. The solicitor profession, in my view, must continue to reinvent and renew itself; to anticipate changes in the law, the market and society and participate in the process of change; and above else uphold its reputation as ‘trusted adviser of choice’ offering unique and skilled services to the client. An opportunity presents itself to do all of those things.

Moreover, framing the reforms as a pathway to “increase access to justice” provides a moral legitimacy for them and makes it hard to say “no” to the change. Lord Gill also several times stressed that the proposed reforms were proposed by the judiciary and not by politicians, as he did in his speech to the Law Society of Scotland in 2009 where he “urge[d] all the professionals to embrace a lawyer-led programme for reforms”.

As mentioned above, Lord Gill’s presenting reforms as solutions to problems of the system pointed to their pragmatic value such as how the reforms would save costs, help economic progress, increase access and so on. That is, Lord Gill tried to create

pragmatic legitimacy by explaining their practical value. He frequently emphasised the functional superiority of the proposed reforms over the existing system. Several times, he highlighted how he and his team created a change that was “a pragmatic and practical programme of reform” and how “the new regime is logical and rational”, as he stated in his speeches to the Law Society of Scotland in 2009 and the Holyrood Conference in 2015.

Furthermore, Lord Gill stressed that the reforms were designed in a way that secured their integration with the existing system in a pragmatic manner. For instance, he stated in his review that:

Rather than make proposals requiring major investment that we could not cost, we have considered what practicable changes can be made to the existing system, accepting many of its limitations and trying as best we can to adapt it to meet current problems with best use of the existing infrastructure (Gill, 2009a: ii).

He went on to explain:

Our priority has been to make recommendations for pragmatic reforms that can be readily implemented at reasonable cost and will reduce the cost of litigation to the public purse and to the litigant. But will lead to new ways of thinking about the civil justice system and to the creation of mechanisms by which it can be reformed by continual evolution rather than by *ad hoc* changes. In this way, immediate and long-overdue gains will be the precursors of more fundamental gains in the long term (Gill, 2009a: ii).

Moreover, Lord Gill emphasised that the reforms would provide different benefits to different stakeholders such as solicitors, sheriff judges, the public and so on. While doing this he addressed the pragmatic value of the reforms for different groups that I will discuss in the next section.

Lord Gill’s justification efforts also included trying to increase the credibility of the review of the Scottish civil justice system that the reforms were based on. He frequently stressed how much research had been done for the review and how his review team worked hard and conducted very thorough research. He kept emphasising that the review was based on “statistical data never before collected” (Gill, 2009a: iii) and how he and his team “have consulted widely and thoroughly” to different stakeholders (Gill, 2009a: x). In his speeches, he provided statistics deriving from their research that presented the conclusion of the review as the only logical outcome. Lord

Gill stressed that the offered solutions in the review were “not plucked from the air”, as he stated in his speech titled “Looking over the horizon” in 2014, but they were grounded on research and facts. Therefore, he provided justification for the process of determining the problems with the existing system as well as the solutions the review offered for those problems. For example, he explained, in his speech to the Law Society of Scotland in 2009 that:

We have carried out a wide-ranging examination of the structure of the courts, their jurisdictions and their procedures. We have amassed a body of information never before collected in one source. We have received evidence from respondents to the consultation paper, from statistical data compiled by SCS¹⁶ and from comparative studies of other jurisdictions. We have also held numerous meetings with interested bodies and individuals.

He also stated that “the responses to the consultation paper were clear on the areas where reform is needed” in his speech to the Law Society of Scotland in 2009 or “we have carried out a remarkably successful consultation exercise that has left us with a clear vision for the future of civil justice in Scotland” (Gill, 2009a: x) in his review .

Creating an urgency for change. According to my data analysis, building on the problems of the existing system that he specified, Lord Gill also tried to create a sense of urgency for change as a part of his theorisation efforts. By creating an urgency for change, Lord Gill justified *the change* itself. That is, he theorised why change must take place. He did this in two ways. First, in his speeches and in his review, Lord Gill claimed that there was an “immediate need” for change. He repeatedly stressed that the change was “long overdue” and “minor modifications to status quo is no longer an option” (Gill, 2009a: i) and the system needed an “urgent” change. He focused on how the civil justice system had been neglected for centuries, hence, the problems accumulated and created a “big mess”. He acknowledged that the solutions he offered in his review were limited because he was “constrained by considerations of cost and time” (Gill, 2009a: ii). He justified the limitations of the solutions offered by stating the urgency of change. For instance, in this regard, he stated that “In such an exercise [starting from scratch and devising a system of perfect civil justice], in our opinion,

¹⁶ Scottish Court Services

the best would truly be the enemy of the good. The urgency of the matter is such that we cannot await the outcome of an exercise of that kind” (Gill, 2009a: ii).

Furthermore, he provided regular reminders of the drastic consequences of not changing - that also implied a sense of urgency. He frequently explained if the reforms did not take place how the system would “perpetrate injustice”, “continue to fail the public”, cause Scots law to “face atrophy” and cause “independent legal profession to face an uncertain future”. For instance, in his speech in the Law Society of Scotland’s 60th Anniversary Conference, he said that:

Unless there is major reform and soon, individual litigants will be prevented from securing their rights, commercial litigants will continue to look elsewhere for a forum for their claims, public confidence in the judicial system will be further eroded, Scotland’s economic development will be hindered, and Scots law will atrophy as an independent legal system. The conclusions of our Review are as stark as that.

Lord Gill also tried to create a sense of urgency for change by portraying his detailed review of the system as a historical opportunity for the country, implying that the chance to make things right would not come again in a long time. In his report, he stated that:

The opportunity offered by this Review has been too long delayed. If it is not taken now, many years may pass before it arises again. In that event, the scale of necessary reform will continue to grow (Gill, 2009a: viii).

At his speech at the Law Society of Scotland’s 60th Anniversary Conference, he stated that “this is not the time for tinkering with the system. We have had that for a century or more. This review is an opportunity to make a lasting difference”. He also stated in his speech to Law Society of Scotland in 2014, “it [not taking the opportunity] will merely postpone the difficult questions for another day. Experience shows that in civil justice reform ‘another day’ comes only once in a generation.”

Motivational frames. The data analysis showed that Lord Gill aimed to theorise the change in a way that would increase the engagement of the legal professionals in the new practices and structures. First, he depicted the change as something “unavoidable” and “constant” in the legal world and gave previous examples of changes that occurred in the Scottish Justice System. He pointed that radical change would have come in any

way since the change is unavoidable. For example, he stated in his speech to the Holyrood Conference in 2015:

Even without the civil justice reforms the profession would have faced the prospect of radical change. Consider the changes that have occurred in the profession since we reported in 2009. Would anyone now contend that, for example, the structure of the solicitor profession or the system of legal aid will be the same in ten years' time as it is now?

He also frequently stressed that the legal profession needed to adapt to survive:

It is my impression that those lawyers who opposed change assumed that the profession was living in a static legal world. Events have disproved that assumption. In the Scottish legal world change is all around. Solicitor firms of high repute have gone to the wall. Famous legal names have disappeared as a result of the entry of international law firms into Scotland (Holyrood Conference, 2015).

Building on his theorisation of change as something that is unavoidable and must be adapted to, Lord Gill further framed the reforms as a significant opportunity for solicitors. While acknowledging the challenges the reforms created, he kept pointing to the opportunities they offered, as in his speech to Law Society of Scotland in 2014:

The solicitor profession, in my view, must continue to reinvent and renew itself; to anticipate changes in the law, the market and society and participate in the process of change; and above else uphold its reputation as 'trusted adviser of choice' offering unique and skilled services to the client. An opportunity presents itself to do all of those things. The Courts Reform (Scotland) Bill provides, I accept, a further challenge to the profession. More importantly, in my view, is the great opportunity that it presents for the solicitor branch.

By opportunity, Lord Gill particularly meant the opportunities to improve professional skills and skilled advocacy, deal with claims of significant value and develop careers, and improve business opportunities as he explicitly and repeatedly stated in a speech to the Law Society of Scotland in 2014:

What opportunity does it present? It throws open to every solicitor in Scotland a large tranche of work that hitherto has been the exclusive preserve of the bar and of solicitors with rights of audience in the higher courts.

What opportunity does it present? It gives to every solicitor in Scotland the opportunity to develop skill in appellate advocacy and to develop an expertise that has hitherto been seen as the exclusive preserve of the bar.

That is, Lord Gill theorised the reforms by framing them as an opportunity for solicitors to embrace. He further stated, in his ‘Looking over the horizon’ speech addressed to solicitors, that “the reforms provide an opportunity for the profession to renew itself. The opportunity is there for the taking. I urge you all to embrace it.”

However, while framing the reforms as opportunities, Lord Gill frequently stressed the fact that solicitors still could instruct advocates when they needed to, assuming that they would need to do so in complex cases. He stated that counsel’s service would be available depending on the “difficulty”, “complexity”, “the importance or value” of any claim and he stated, in his speech in Holyrood Conference, that “the desirability of ensuring that no party gains an unfair advantage by virtue of the employment of counsel”. According to Lord Gill, if solicitors deal with relatively less complicated cases and leave the most complicated ones to the counsel, “counsel would have a real and meaningful role in the work of the sheriff court in its expanded jurisdiction”, as he further stated in the same speech.

Having and sharing a vision. My data analysis showed that Lord Gill theorised the reforms as a part of his vision regarding the future of the Scottish civil justice system. He shared his vision with the legal professionals in his speeches and the review. He portrayed an ideal justice system that he wanted to reach with the reforms as a system that is “fair”, “accessible”, “efficient”, and “delivering high quality of justice expeditiously and economically”. He shared his desire of creating a civil justice system that would be “fit to serve the modern society in Scotland that the previous generation of lawyers would not have recognised” in his speech in Law Society of Scotland in 2014.

One important aspect of his vision was the desire to build a justice system that secures economic progress. In his review, Lord Gill argued that “an efficient civil justice system is vital to the Scottish economy” (Gill, 2009a: i). With the reforms, by improving the conditions of the Court of Session as the highest civil court in the country, he aimed to create “a court that will make its own contribution to Scotland’s prosperity” and a justice system that “big commercial cases are efficiently handled”, as he stated at the Holyrood Conference in 2015. Therefore, his vision with the reforms included creating a system that is “a driver for economic progress in Scotland”. He

also stated that “our courts and our judges can and should contribute to the prosperity of our country. We can do that.”

In this regard, he frequently reminded the legal professionals that they should create the necessary conditions in the courts and the justice system to support the country economically: the reforms would enable this process. For example, he mentioned how in the past the legal professionals missed certain opportunities to support economic progress of Scotland and stated that in Holyrood Conference:

In the 1960s and 1970s the economy of Scotland was transformed by the discovery of North Sea oil. The judges and lawyers of that time were not alert to the opportunity that Scotland could be an international forum for resolving disputes in the oil and gas industry. We paid a price for our complacency when the international oil and gas industry passed us by. Half a century on we should look at Scotland’s economic opportunities and see how the courts can best serve them.

Another important aspect of the vision Lord Gill tried to share with the legal professionals was that he had an ideal to create a court that has a good international reputation. He particularly stressed that all these reforms also aimed “making Scotland a forum of choice for litigations from abroad”. Lord Gill summarised this ambition at the Holyrood Conference:

We have the courts. We have the manpower. We have the skills of our judges and of our lawyers. My ambition is that we should create a court of international renown that will make its own contribution to Scotland’s prosperity.

According to the data analysis, the final aspect of Lord Gill’s vision was to secure the “independency of Scottish law” and the justice system. He considered the reforms a way to make the system efficient and make sure that higher courts stayed as the places of intellectual development and provided judges with the best conditions to continue this intellectual discipline. He stated in his review that “an efficient civil justice system is vital to the survival of Scots law as an independent legal system” (Gill, 2009a: i).

Considering the judicial system, Lord Gill desired a modern justice system to be proud of and good enough to compete with England. He was particularly unhappy with the fact that big commercial cases often were heard in England instead of Scotland and stated in his Holyrood speech:

Scotland prides itself on the independence of its legal system. That independence is worth defending. We have a system to be proud of. But we are inevitably subject to the influences of a much larger legal system that is our neighbour. Much of our statutory law nowadays is common throughout the United Kingdom.

And he added:

If the continued independence of the Scottish legal system is a cause worth fighting for, our courts must meet the needs of the litigant. Unless the courts can provide a justice system that is expeditious, economical and excellent, Scots law faces atrophy and our independent legal profession faces an uncertain future.

Table 5-7 Proof table for the data analysis of Lord Gill's theorization

Lord Gill's theorization	
Theme	Illustrative quotes
Specification of the problems	<ul style="list-style-type: none"> • <i>The structural and functional flaws in the working of the Scottish civil courts prevent the courts from delivering the quality of justice to which the public is entitled. The Scottish civil courts provide a service to the public that is slow, inefficient and expensive. Their procedures are antiquated and the range of remedies that they can give is inadequate. In short, they are failing to deliver justice. Public confidence in our system is being eroded. The much-admired qualities of fairness, incorruptibility and expertise of our judicial system will have little significance if the system cannot deliver high quality justice within a reasonable time and at reasonable cost (Gill Review, 2009: i).</i> • <i>Scottish civil justice fails on all of these counts. Its delays are notorious. It costs deter litigants whose claims may be well-founded. Its procedures cause frustration and obstruct rather than facilitate the achievement of justice. (Lord Gill, As the Lord Justice Clerk, Speech titled "Victorian Scots Justice System", 2009.)</i>
Justification of the new structures and practices	<ul style="list-style-type: none"> • <i>This programme has made it possible for reform in the entire justice system to be implemented according to a systematic, integrated plan. It is an outstanding example of public administration in Scotland. (Lord Gill, as the Lord President, speech titled "Speech to the Holyrood Conference", 2015).</i> • <i>The increase in the privative jurisdiction and in time, the introduction of the specialist personal injury court should ensure that cases find their appropriate level in the court system. Expenses will be lower for the parties. Cases shall be dealt with more expeditiously than at present. The specialist sheriffs, in partnership with the profession, will develop a body of specialist and authoritative case law. A greater emphasis on case management and improved use of IT will be introduced by way of court rules and will promote a pro-active, front loaded litigation that reduces the time spent waiting in court for short straightforward hearings. At the same time efficiencies will be improved in the Court of Session. The Court of Session will continue to be the forum for high value and complex cases. Our hope is that these cases can be dealt with greater expediency as a result of the reforms, so that cancellations of hearings because of lack of judges and/or court time will be a thing of the past. (Lord Gill, as the Lord President. Speech titled "Looking over horizon: Life after the Courts Reform (Scotland) Bill", 2014).</i>
Creating a sense of urgency for change	<ul style="list-style-type: none"> • <i>I have been saying for years that such a review was long overdue. (Lord Gill, As the Lord Justice Clerk, Speech titled "Victorian Scots Justice System", 2009.)</i> • <i>Meanwhile, fast moving changes in the social and economic life of Scotland in recent decades have left us with a structure of civil justice that is seriously failing the nation. Reform is long overdue. (Gill Review, 2009: i).</i> • <i>You may think that the profession has enough to contend with without also having a civil courts review as well. I sympathise with that view. In over 40 years in the profession, I have never experienced times like these. But there is never an ideal</i>

	<p><i>time for change. So, I urge you to be receptive to the conclusions of a lawyer-led programme for reform, if only for fear of something worse. (Lord Gill, As the Lord Justice Clerk, Speech titled “Victorian Scots Justice System”, 2009.)</i></p>
Motivational Frames	<ul style="list-style-type: none"> • <i>I am certain that the Law Society and its members shall not only survive the legislation but shall adapt to it in its commitment to excellence. The reforms provide an opportunity for the profession to diversify, renew itself and to improve upon the work already undertaken in the Review. (Lord Gill, as the Lord President. Speech titled “Looking over horizon: Life after the Courts Reform (Scotland) Bill”, 2014).</i> • <i>The next few years will be a period of transition. I am confident that the profession will adapt flexibly to whatever changes emerge. I am convinced that these changes will be most effective and beneficial if all of us, for our respective parts, approach them with an open mind and in a positive spirit. (Lord Gill, As the newly appointed Lord President, in Ceremony of installation of the Lord President and Lord Justice General, 2012.)</i> • <i>To those members of the profession who will be opposed to our proposals, we observe that two of the outstanding features of the legal profession are its resistance to change and its endless adaptability. The history of the abolition of the two-thirds rule, the two-counsel rule, the transfer of divorce jurisdiction to the sheriff court, the extension of rights of audience and the introduction of licensed conveyancing is a history of reforms that one or other branch of the profession saw at the time as roads to ruin; yet the profession has adjusted to them, often to its advantage (Gill Review, 2009: ix).</i> • <i>At sheriff court level solicitors will have the opportunity to deal with claims of significant value and to exercise skilled advocacy in cases that in former days would have been litigated in the higher courts. (Lord Gill, as the Lord President, speech titled “Speech to the Holyrood Conference”, 2015).</i>
Having and sharing a vision	<ul style="list-style-type: none"> • <i>Our civil justice system will be fit to serve the modern society in Scotland that the previous generation of lawyers would not have recognised and will promote the fundamental principles that I mentioned at the outset (Lord Gill, as the Lord President. Speech titled “Looking over horizon: Life after the Courts Reform (Scotland) Bill”, 2014).</i> • <i>We have an opportunity now to improve upon these efficiencies and to avoid a relapse into the bad old ways. More importantly, we have a responsibility to litigants, to the public, and to the profession to ensure that our judiciary has control of the business of our courts. That responsibility is great. It will be achieved only through a concerted effort by all judicial office holders. In the public’s eyes, we are one, whether we are summary sheriffs, sheriffs or senators of the College of Justice. We take the same oath. We serve the same society. And we, like the lawyers and the public, are now on the road to the new digital world. It is the pathway to a modern justice system of which we can be proud. (Lord Gill, as the Lord President, speech titled “Speech to the Holyrood Conference”, 2015).</i>

5.4.1.2 Theorisation of the Change by the Other Judicial Office Holders and the Scottish Government

During Lord Gill’s presidency and after his retirement in 2015, there had been public speeches made by other judicial office holders, Lord Carloway as Lord President succeeding Lord Gill and Lord Justice Clerk preceding Lady Dorrian, Lady Dorrian as Lord Justice Clerk, and Mhairi Stephen as the President of Sheriff Appeal Court, mentioning the reforms. While the main topic of some of these speeches was explicitly

the Gill reforms, other speeches only addressed the reforms indirectly. Since these office holders were official representatives of the judiciary, they were the implementers of the reforms and tried to theorise the reforms in ways that I now explain. Moreover, since the reforms were a project of the Scottish Government at the time, albeit weakly, the Scottish Government also tried to theorise the reforms via their publications.

According to the data analysis, theorisation efforts of the other judicial office holders had a striking resemblance to Lord Gill's theorisation steps suggesting that there was at least an attempt to coordinate efforts across those charged with designing and implementing the reforms. The data suggested that, in their speeches, all parties specified the very same problems of the existing system. These members also justified the offered solutions trying to provide moral and pragmatic legitimacy for the reforms, as well as carefully explaining how the reforms provided solutions to the problems and had positive impacts so far. Their providing pragmatic legitimacy was similar to Lord Gill's since they all tried to explain how the reforms would function better than the previous system and were integrated to the certain elements of the existing structure so well that the expected performance would be very good. They also tried to justify the reforms and the solutions they offered by sharing some statistics and information pointing to the positive impact on the civil justice system.

In terms of providing moral legitimacy for the reforms, the data analysis showed that the judicial office holders, as Lord Gill, mentioned the values and principles of the justice system and how the reforms were all about enacting these values and principles such as securing 'access to justice', 'protecting the independency of the Scottish law', spreading the justice 'wisely and fairly' and so on. They also kept addressing the responsibility of the legal profession in terms of these values and tried to increase moral legitimacy of the reforms in the eye of the professionals. For instance, Lord Carloway who replaced Gill as the Lord President stated in a speech to the World Bar Conference in 2016:

What is the role of the legal profession in all of this [change process]? The profession is a vital part of the machinery of justice. The court relies on both branches of the profession to perform their functions as representatives of the parties. Without this input, the risk that the court will fall into error is greatly increased. The challenges posed by the development of the traditional roles of

the profession, models of funding, competing interests, and modern technology are all ones which the profession, as well as the court system, require to meet. The rest of us in the profession, who have always seen their role as, not just to perform their particular task in the system but to improve it, to augment the quality of evidence and to promote justice generally, will alone continue to be the ligaments and muscle which move the skeleton of the law forward.

Lady Dorrian, the Lord Justice Clerk, noted in her speech to the Twenty First Century Bar Conference in 2017 that:

Justice must be delivered promptly, while the effect of the court's decision can still deliver benefit to the parties and perhaps to society too. In addition, the courts must be accessible and responsive in a manner which is truly reflective of the realities of modern life. We each of us have a role in making sure that all of these reforms actually work; that they produce real and sustainable benefits

Moreover, the majority of the speeches made by other judges had one or more historical examples that supported the principles of the Gill reforms and explained how certain values and concerns stayed the same, therefore, the reforms were to cure central problems in the justice system as well as strengthen the fundamentals of Scottish law. For instance, Lord Carloway, then the Lord Justice Clerk, at the Twenty First Century Bar Conference in 2015, stressed that the Gill reforms were such that certain historical figures would have been proud if they could have seen it.

This is neither the first, nor will it be the last exercise in the reform of our courts. The reforms have been promoted out of concerns to secure access to justice, through increased efficiency, reduced expense and the hearing of cases by courts commensurate to their subject matter. These are not new concerns; Bentham and his contemporaries were grappling with them more than 200 years ago. The historical comparative serves to emphasise the need for the justice system to renew, adapt and respond to developments and innovations in broader society. Today, this is achieved through effective and meaningful use of IT, by rationalising court business and ensuring that cases are dealt with at the appropriate level. These reforms are ones of which Bentham would have been very proud. Bentham's concern was to achieve a procedure which primarily served the needs of the people, and the essential concern of The Scottish Civil Courts Review – the Gill report – is to promote and support justice, more particularly access to justice, through the quality and efficiency of our courts

Another example is from Lady Dorrian's speech to solicitors and advocates at the Twenty First Century Bar Conference in 2017, where she explained how "protracted, expensive and inaccessible justice led to societal break-up and reduced trust in the system, and adversely impacted upon productivity" in Europe in the 18th century.

Thus, it was essential to apply the reforms in Scotland for not facing the same problems. She emphasised that the Gill reforms shared the same ideals with important figures in the history of law, and the solicitors and advocates should bear the responsibility required for this significant ideal.

All of us, not just the judges but the solicitors and advocates too, have a part to play in securing the efficient disposal of business in our courts – reflecting, at least in procedural issues, Klein’s¹⁷ idea of teamwork between court and parties. The issues we are debating today are very similar to the issues have been grappled with by our forebears. Klein is perhaps the godfather, but the issues are real and important, and they never go away.

It is no small thing to promote changes in law and practice. It takes time, it takes imagination, it takes careful and diligent thought and, we must all recognise, it takes a good deal of patience! But it is time, imagination, thought, and patience which it is well-worth expending if at the end of it we have a modern, adaptable, efficient and accessible legal system. That is precisely what was expounded by Klein more than 130 years ago.

Furthermore, the judicial office holders also tried to theorise the reforms by frequently reminding solicitors the vision and ideals behind the reforms to the legal professionals. According to my data analysis, they did this in three ways in their speeches. First, they re-iterated the vision of Lord Gill with the specific acknowledgement of him. For instance, Lord Carloway stated in his speech of opening the legal year 2016/2017 as the Lord President:

In February 2017, a decade will have passed since Lord Gill was tasked with carrying out a review of the civil justice system. Over that period, all of our professional lives - as judges, advocates, solicitors, and court staff - have become steeped in the process and language of change. The purpose and principles of the reforms - to make the justice system work efficiently and, in particular, to promote just decisions which are delivered in proportionate time and at proportionate cost - are well known. We must not lose sight of that goal. The purpose of procedural reform is ultimately as a means to an end. It is to secure substantive rights by ensuring that the public have access to the courts, unhindered by undue delay or expense.

Second, the judicial office holders reminded the solicitors the purposes of the review or reforms without a specific acknowledgment of Lord Gill. The judicial office holders explained over and over again how the reforms would transform the system, why these reforms were important, and change was necessary for Scotland, and what the

¹⁷ Franz Klein was an Austrian scholar who was very influential all across Europe regarding civil law.

principles and purposes of the review and the reforms were in general. After the retirement of Lord Gill and before being appointed as the Lord President, Lord Carloway stated in his speech titled “Aims of the civil courts reform” and made in the Faculty of Advocates in 2015:

Courts reform is never complete. That is not a cause for concern. It is a sign of progress. The immediate goal has been to achieve structural change. The lasting effect will be to enable continuous improvement and to respond appropriately to changing conditions in a progressive society. The essential consideration is to promote and support justice, more particularly access to justice, through the quality and efficiency of our courts.... These are times of great change and some uncertainty in many quarters. The reforms present significant challenges to those striving to manage their impact on everyday practice. That is so not only for the legal profession, but also for the judiciary and the courts administration. All have had to devise methods of smoothing transition. It remains important in the transitional phase not to lose sight of the underlying rationale for reform, and the benefits which will ultimately be gained.

Third, they praised the review or/and the reforms in their speeches addressing the strengths of the review and reforms, as well as how reforms were reason to be proud because of their intended ideals. In this regard, while opening the legal year of 2015/2016, Lord Carloway, as the Justice Clerk, noted:

There are too many to mention by name, but we are indebted to all who made it possible to have reached this stage in implementation and we will be equally indebted to those – notably the much pressed rules rewrite team, whose work cannot but be admired for its scrutiny of detail and those on the Scottish Civil Justice Council – who will take it forward. One individual, however, requires special mention. Lord Gill, who retired as Lord President in May, dedicated 8 years to the reform of our court system. The implementation of the reforms in this new legal year owes so much to his foresight, determination and leadership. Despite the reservations of some, the reforms will be part of a lasting legacy. We will ultimately be in his debt. The Court of Session will be different, but it will be much improved as Scotland’s Supreme Civil Court.

Furthermore, the data analysis showed that these judicial members also used motivational frames similar to Lord Gill’s. As a part of their framing solicitors as resilient to change, they depicted change as something unavoidable and constant while giving examples of previous changes occurred in the Scottish civil justice system. They tried to show that how “solicitor profession has an excellent track record of adapting to change – indeed anticipating change – not only in the law but in society and in the marketplace”, hence, they would survive this one, too.

They also framed the reforms as opportunities for solicitors to improve their professional skills, business opportunities and careers as Lord Carloway stated in his speech made in the Faculty of Advocates in 2015:

With the rationalisation of the court structure comes the integral rationalisation of the legal profession. The solicitor branch, including those with the privilege of extended rights of audience, will enjoy increased opportunities to demonstrate and develop advocacy skills in significant cases at sheriff and Sheriff Appeal Court level, in the swathe of business to be devolved from the Court of Session and High Court of Justiciary

The president of the Sheriff Appeal Court, Mhairi Stephen stated in her speech in Scottish Young Lawyers' Association annual lecture in 2014:

The solicitor profession is well placed to both anticipate and participate in the process of reforming the way legal services are delivered to clients in the justice system of the future. More than that, the court reform programme presents great opportunities for solicitors themselves and their personal career development

While these prominent figures of judiciary were trying to increase the acceptance of the reforms by solicitors, they frequently stressed the fact that solicitors still could instruct the counsel if they had difficulties or a complex case.

Also, in the data analysis, I did not see much of a theorisation effort from the Scottish Government, particularly addressing legal professionals. There had been some effort made by the government representatives during the discussions in the Parliament aiming to specify the problems in the justice system and justify the solutions offered by the Bill. These efforts were mainly paraphrasing what the review and Lord Gill said rather than coming up with new justifications, solutions or mentioning other problems that were not in the review.

There were also published reports of responses by the government addressing the concerns and questions raised by the consultation letters by different stakeholders. According to the data analysis, since there were concerns raised in the consultation process regarding “whether there are sufficient solicitors with the necessary expertise and experience to provide appropriate and equal representation to that which might be

available from counsel”¹⁸, government reports aimed to ease these concerns and theorise the change by justifying the increase in the threshold of sheriff courts. In order to do so, while not stating the confidence of Scottish Government in solicitors’ professional skills to handle the case alone, the reports emphasised the fact that solicitors could still instruct counsel if the sheriff judge hearing the case granted sanction.

Table 5-8 Proof table for the data analysis on the theorization of other judicial office holders and the Scottish Government

Theorization of other judicial office holders and the government	
Themes	Illustrative Quotes
Specification of the failures of the existing system	<ul style="list-style-type: none"> • <i>Do you see the civil courts as modern institutions which adequately deal with the disputes commonly arising in today’s Scotland? Do you consider that the criminal courts are producing fair trials which properly balance the rights of the accused with those of others? If the answer to each question is “well maybe not entirely”, the next question is what is to be done about it. (Lord Carloway, As the Lord President, the speech titled “Redesigning the court room”, 2016.)</i> • <i>The last major reforms before the Gill Review were in the first quarter of the 19th century. We now need to capture the benefits which 200 years of technological advances have given us. We certainly have not done so yet. (Lord Carloway, As the Lord President, the speech titled “Redesigning the court room”, 2016.)</i>
Justification of the new structures and practices	<ul style="list-style-type: none"> • <i>Today, two new courts are established. The all Scotland Personal Injury Court located in Edinburgh Sheriff Court will provide an impressive state-of-the-art facility. It will relieve the pressure on the Outer House. Although some fear the consequences of the change, it will remove cases of relatively low value and free up time to allow more significant cases in terms of value to be heard within a reasonable time. There is a particular concern with the time lag in the fixing of long proofs in the Outer House, which will be addressed in the coming year. (Lord Carloway, As the Lord Justice Clerk, Opening the legal year 2015).</i> • <i>As anticipated by the reforms, there has been a significant reduction in both appellate and first instance civil work in the Court of Session and in summary criminal appeals to the High Court. There has also been a predicted drop in the number of commercial cases. As a consequence of all of this, this court the Court of Session ought to become leaner, trimmer and fitter in the coming years. (Lord Carloway, As the Lord President, Opening the legal year 2017/2018).</i> • <i>The courts are in a period of transition; catching up with the technological advances of the modern world. Court proceedings have been broadcast live from this building for the</i>

¹⁸ The quote is from a document that was analysed. It was published by the Scottish Government in 2013 and named as “Courts Reform (Scotland) Bill: Analysis of Consultation Responses”

	<p><i>first time, opening our courts to a wider audience, even if the press reaction was mixed. Our justice system is seeking new and innovative ways to use technology to capture best evidence, avoiding the need for witnesses, accused and perhaps soon lawyers, to attend court unnecessarily. This will cause a hastening of the pace of business; a challenge which we must all strive to meet. (Lord Carloway, As the Lord Justice Clerk, Opening the legal year 2015).</i></p>
<p>Motivational Frames</p>	<ul style="list-style-type: none"> • <i>The Lord President in his introduction to the Scottish Civil Courts Review remarked that "Two of the outstanding features of the legal profession are its resistance to change coupled with its endless adaptability". That is true. The extension of rights of audience in the Supreme Courts to solicitors has reinvigorated both branches of the profession. Society, of course, has changed a great deal in the past three decades. The solicitor profession has an excellent track record of adapting to change. (Mhairi Stephen, as the president of the newly established Sheriff Appeal Court- 2014)</i> • <i>Much of this will be achieved in our professional lives, provided that we do not take a cantankerous and obstructive approach to it. Ultimately, it is much better that we have a legal profession that enjoys working in a civil or criminal justice system which works fairly and efficiently; not one which may be seen by some as failing in certain areas. It is my hope that you will all engage in this process so we can have a system in which, when the questions I asked at the beginning of this talk are asked, we can say "well, just about". (Lord Carloway, As the Lord President, the speech titled "Redesigning the court room", 2016.)</i> • <i>There are those who are, and will remain, resistant to change. The impact of continuing reform on court staff, the judiciary, and the profession generally is tiring. Reform fatigue is a recognised phenomenon. Maintaining business as usual, when substantial changes are being made, is a significant feat in itself. The court staff, judiciary, and the legal profession are to be thanked for their patience whilst the changes come in; not without tears. The reform project has benefitted and will continue to benefit considerably from the continued engagement of the legal profession. (Lord Carloway, As the Lord President, the speech titled "The Scottish Courts in the 21st Century", 2017.)</i> • <i>The work being done today is designed to bring our justice system into line with 21st century expectations. The legacy of my generation, when it comes to pass control to yours, will be a modern system which is fair, efficient and cost effective, but also one which is nimble and ready to adapt to the future expectations of society. Your generation – having lived through the significant changes ushered in by the 2014 Act and the philosophy underpinning the Civil Courts Review - will be uniquely poised to seize the baton and to carry on the course of change. (Lady Dorian, As the Lord Justice Clerk, "The 21st Century Court", 2016.)</i>
<p>Reminding/emphasising 'the' vision behind the reforms.</p>	<ul style="list-style-type: none"> • <i>Whereas Bentham's concern was to achieve a procedure which primarily served the needs of the people, the essential concern of The Scottish Civil Courts Review – the Gill report – is to promote and support justice, more particularly access</i>

	<p><i>to justice, through the quality and efficiency of our courts. (Lord Carloway, As the Lord Justice Clerk, Speech to 15th Annual 21st Century Bar Conference, 2015)</i></p> <ul style="list-style-type: none"> • <i>It [justice system] will be changed from its current Victorian form into something fit for the 21st century. The direction of travel may differ between the civil and criminal processes, but there will be themes common to both. In all of this, a particularly important factor is your, the practitioner's, attitude to the proposed modernisation; the view that you have about the efficiency and effectiveness of the current systems. (Lord Carloway, As the Lord President, the speech titled "Redesigning the court room", 2016.)</i> • <i>The modern concept of access to justice recognises that it is not good enough for a decision simply to be correct, or at least of a high quality, on the merits. It must be delivered timeously, that is to say at a time when the parties, and perhaps society too, can still benefit from it. If a decision is received too late for it to be effective, it is worthless. A just decision is one which is delivered within a reasonable time. It must also be produced at a reasonable cost. As the United Kingdom Supreme Court has recently stressed, justice which is unaffordable to litigants is inaccessible. It undermines the substantive rights of those who cannot afford to enforce them. Where cases are allowed to drift, or where one party is permitted to prolong their resolution artificially for his own ends, there is a real risk that justice will not be done. (Lord Carloway, As the Lord President, the speech titled "The Scottish Courts in the 21st Century", 2017.)</i> • <i>It [Gill reforms] has been an ambitious project, which constitutes a significant achievement in the re-distribution of business to the appropriate levels throughout the court hierarchy. However, the reform project is not complete and the innovations are continuing. (Lady Dorian, As the Lord Justice Clerk, Speech titled "Current Issue: Modern Case Management", 2017)</i>
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5.4.1.3 Lack of Emotions in Theorisation of the Scottish Civil Justice Reforms

My data analysis suggested that the change had been theorised based on rational arguments and alignment with the values and norms of the profession. As mentioned above, in his theorisation of the reforms, Lord Gill specified the problems with the existing system, justified the new practices and structures that were offered as solutions to the problems, created an urgency for change, framed the reforms as opportunities for solicitors and portrayed the reforms as a vision that is worth for changing the system. In addition, the theorisation efforts of other judicial office holders were very similar to Lord Gill's.

By uncovering what Lord Gill and others did for theorisation, I was able to show what they did not. I saw that while Lord Gill and others built extensive rational and normative arguments to theorise the reforms, there existed a lack of emotion in their theorisation processes. The only emotion-related aspect of theorisation of all parties was regarding having a system to be proud of or having a system that is not beneath the English system. The data analysis showed that there was not any other emotion *explicitly* addressed in the theorisation efforts. However, *implicitly*, creating an urgency for change by laying out potentially disastrous outcomes can be considered as an attempt to create fear to urge the recipients to adopt the practices as fast as possible. Also, justifying that professionals are good at changing can be considered as an attempt to manage the negative emotions like distress and anxiety deriving from the fear of change. Yet, these were very implicit and very ineffective attempts that I will discuss next.

5.4.2 Reception of the Theorisation Efforts by Solicitors: Lack of Self-confidence

The data analysis showed a lack of emotional resonance with the theorisation in a way that solicitors did not share the same desires or fears with Lord Gill. That is, when asked solicitors did not mention the importance of the reforms for the future of Scotland, the economy of Scotland, or independence of the Scottish law at all. They did not even slightly refer to the urgency of the change, or the negative outcomes of not changing during the interviews. They did not show excitement, a sense of pride or any emotional identification with the reforms or the vision behind the reforms. That is, in regarding the reception of theorisation, a lack of emotional identification to what theorists said showed itself in the data. When asked about the drivers of the reforms and the positive and negative aspects of them, none of my solicitor participants mentioned a desire to be better than England, pride in the independency of Scottish law, the future of Scotland or any type of emotional driver for the reforms. As discussed in Paper One, professionals did not want the change to happen, let alone have an emotional identification with the reforms.

Nevertheless, solicitors accepted that there were problems with the existing system and the change was necessary in certain aspects such as freeing the Court of Session,

increasing the usage of IT and having specialist sheriffs. For instance, a solicitor, Naomi stated:

It is probably a good thing to have specialist sheriffs and I think across the board it is quite good to have specialist sheriffs because it adds another dimension to the case if you are appearing before a sheriff who you know has never done a personal injury case in his or her life before and it takes a lot more court time having to explain things and in my field, in the clinical negligence field.

Isaac, a solicitor, stated:

I think most of us agree that some cases which were previously dealt with in the Court of Session, for example, if the case is worth £10,000, it shouldn't be dealt with in the Court of Sessions, it should be dealt with in the sheriff court. Yes, these low value cases clog up the court and cause delays.

According to the data analysis, solicitors also were “aware of the professional opportunities” offered by the reforms, as Daisy, one of the solicitors, stated. Solicitors frequently stressed that they recognised that adopting the new responsibilities and practices might have led to improvements in their professional lives and competency as, Kim, a solicitor, stated clearly:

Good things [coming with the reforms] are intellectual challenge, job satisfaction, professional development - a solicitor has to learn parts of the job and so if those things are no longer outsourced then the solicitor has to learn all of the job and be able to fulfil that competently. So that will drive standards up. There will be more accountability to the solicitor.

However, the data suggested that framing the reforms as opportunities as a part of theorisation was not enough for solicitors to adopt the new practices. I found that, there was one aspect of the reforms that all the solicitors were completely uncomfortable with: all the solicitors found the threshold of £100,000 for cases to be heard in the Court of Session to be very high and they did not see the point of building a new nation-wide personal injury sheriff court with no upper limit. Yet, the threshold increase was largely the main point of the reforms. For instance, Gavin, a solicitor, explained how he accepted the merit of increasing the threshold, but he also found the current amount very high:

So, there was a case, I think, for putting the privative jurisdiction limit up, but not to £100,000. So, I agree that some reform would have been necessary. But now it is absurd. If they had increased the privative jurisdiction to £50,000, I don't think that there'd have been much complaint from anyone.

My data analysis indicated that, at the core of the solicitors' disapproval lied the fact that these changes would restrain solicitors' attempts to instruct advocates, while pushing them to handle high value and complex cases alone. According to the data, although there were also economic and practical reasons for their reluctance¹⁹, the strongest factor was solicitors' lack of self-confidence, as Isaac, a solicitor, also noted:

This might seem like an opportunity for us, if we have the confidence to say I think I could run this [a civil case] myself.

Or as Gary, a solicitor, noted:

I know you're thinking, 'Well you are the specialist in this and so why can you not run these cases?' There are lots of reasons, but I think it is more to do with the confidence, believing in yourself.

Lord Gill, the Scottish Government and members of the judiciary were all aware of the disapproval of solicitors. However, in the data analysis, I saw that theorisation efforts failed in convincing solicitors to adopt the new practices and engage in the new tranche of work the reforms presented with the threshold increase and opening of the new nation-wide sheriff court with no upper limit. Therefore, solicitors' interaction with the new practices remained very limited. Next, I will explain further details of this theme.

5.4.2.1 Lack of Self-Confidence

My data analysis showed that solicitors experienced a lack of self-confidence in the face of the changes that the reforms brought. Their lack of self-confidence showed itself in the fact that they felt a blend of emotions, such as fear, anxiety and insecurity. These emotions are classified as the opposite of self-confidence (e.g. Barbalet, 2001; Collins, 2004; Kemper, 1978; Kleres & Wettergren, 2017). All the quotes regarding the emotions of solicitors below are based on the discussions during the interviews on why solicitors do not handle civil cases alone although the reforms presented opportunities for professional growth and opened the doors for solicitors not to instruct advocates even for complex and high value cases.

¹⁹ Please see Chapter 4.

Fear. The idea of dealing with professional challenges coming with the opportunities that the reforms presented caused solicitors to experience the emotion of ‘fear’. In the data, I saw that solicitors were afraid of appearing in court that was also buttressed by the fear of failure and fear of embarrassment. When they considered adopting the new responsibilities and opportunities, they frequently mentioned that how it was very “frightening” or “intimidating” to appear in court, particularly after many years without doing so. As Jane, a solicitor, stated, “it is challenging to have to suddenly get up and dust off your gown and go into court again and it can be quite frightening.” Another senior solicitor, Ian, shared how he feared appearing in court:

I hate going to court a lot of the time, but ultimately that was the point of becoming a litigator. Or working in a litigation firm. I am a [personal injury] solicitor, but ultimately, I’m a litigator, most of our business is litigated cases, litigated claims and so I shouldn’t be afraid to go to court, but I do.

The data analysis also showed that solicitors were afraid of appearing in court because they feared that they would embarrass themselves, particularly considering the strict attitude of the sheriffs in courts. Interviewees stated that sheriffs applied the rules very stringently and did not tolerate mistakes, therefore making solicitors severely concerned about their experiences in courts. Sarah, a solicitor of 12 years, told me a story about how some solicitors’ mistake caused them to embarrass themselves in front of their colleagues and how she is afraid of experiencing a similar thing if she goes to court:

She [a sheriff] brings solicitors up to just to give them a row and ending up making them cry in a packed room. I cannot face that. It’s embarrassing. I’m reluctant to raise actions there by myself.

In this regard, another solicitor, James, also hinted that he was afraid of making mistakes in the sheriff courts and then having a notoriety:

You would go to the court, forget something or ask for something, and it would be refused, so you would have to go ahead with it and there became a reputation, I am speaking very frankly here, but there would be a reputation.

Solicitors also frequently expressed that they felt “terrorised”, “intimidated” and “terrified” in front of angry and very strict sheriffs, as Clark a young solicitor expressed his feelings:

I think that [sheriffs' strict attitude] is very intimidating for a person like me who isn't appearing in court regularly.

Another solicitor, Lucas, shared his emotion regarding appearing in court:

We do mock trials and regular trainings here, but it is not the same, is it? It is terrifying in real life. Sheriffs are terrifying. I'm worried about my performance all the time, as a junior, you know. The mock trials, they don't help much because I can't afford making a mistake in real life. I have to think about the client's best interests, and [the firm's] too, to be honest.

Anxiety. In the data analyses, I saw that solicitors also felt “nervous”, “anxious”, “tense”, and “edgy”. In one of the conversations during my field observations in the sheriff courts, a junior solicitor shared that he was rather uncomfortable at the time. When asked, he explained that he felt “on edge” because he had to handle certain difficult tasks in a “draconian” environment. That is, while sheriffs' strict behaviours make solicitors frightened, they also made them feel very nervous. As another young solicitor, Callum, also said at a different time: “It makes you nervous. I certainly feel nervous. Some sheriffs are very fearsome.”

However, sheriffs were not the only reason for solicitors to feel nervous in court. The general idea of appearing in court for handling complex and important cases made them nervous and anxious. Coming together with the fear of failing in many fronts and embarrassing themselves, the idea of leaving “the safety blanket of counsel” made them nervous. For instance, Percy, a solicitor, explained why he does not appear in court to handle cases alone:

I suppose it is not for me, I feel a lot of pressure, you know having to do advocacy, I suppose other people too, they might be nervous about it and they might feel that they want counsel there as a sort of safety blanket and I can understand that to a certain extent and I think obviously with higher value, more complex cases if you can get sanction for counsel then yes, that is definitely what we should be doing.

Insecurity. My data analysis showed that solicitors also expressed emotions of self-doubt and insecurity. One common discourse I came across in the data analysis was solicitors' emphasis on how advocacy requires one to “believe” in himself or herself, and do not doubt. They frequently shared that many people felt “insecure” due to lack of confidence. For example, Samuel, stated:

I think it will come, a lot of it has to do with confidence so that people don't just say, 'oh great, I can go and run a proof.' it has to do with confidence, it is to do with being encouraged to do that. You have to believe in yourself.

A very experienced solicitor who was also a partner in a law firm, Percy, stated:

If you feel that advocacy is what you want to do, you want to go and argue cases and you believe in yourself then you will do it. I think, for many, probably that nervousness and insecurity is always there. I did like advocacy but I then had the nervousness and insecurity.

Kevin, also a partner and solicitor in a law firm, similarly stated:

People have to feel confident in what they do otherwise it is not fair to send them, you know there is nothing worse than being sent to do something you don't feel confident. So, that conversation [within the firm regarding solicitors' reluctance to appear in court and have oral arguments] was triggered entirely by reforms.

A junior advocate who was a solicitor before 2014, Jonathan, mentioned the self-doubt of solicitors regarding their actions and lack of confidence in general:

I think even being a solicitor, seeing some of my colleagues, you know, really struggling with crises of confidence sometimes about not knowing they have done the right thing or worrying too much about whether they were performing to expectations.

I also found that solicitors sometimes found their reluctance to handle cases alone somehow irrational since lawyers were expected, by the clients, to be able to handle a case from the start to the end effectively. For instance, Kevin, said:

Clients might say 'well, I don't really understand because you're the experts, are you not capable of doing this [representing me without instructing someone else]?' and then it does not sound terrific if you say, 'well, you know, I can't.'

Furthermore, contrary to how solicitors felt about themselves, I found that advocates were very self-confident.²⁰ In particular, they were very confident in their professional skills, expertise and general competency. They emphasised how they did not make professional mistakes, how good they were at skills such as writing, arguing, preparing themselves for difficult cases, and dealing with complex cases in general. They also

²⁰ Please see Chapter 3 for detailed quotations regarding how advocates feel about themselves.

underlined that their professional standards were very high, and they had excellence in the court room and beyond.

Perceived Self-efficacy. The data analysis also showed that solicitors did not only ‘feel’ a lack of confidence, but also thought at and assessed their competence based on how they perceived their professional skills and abilities cognitively. These appraisals are based on carefully considered and calculated assessments of previous experiences, training, performances, observations and so on. For instance, Gavin, a solicitor, assessed his competency based on his previous experiences and comparing himself with the performances of others:

I don't particularly visualize myself as being quick at argument on my feet. I see myself as being somebody who has to go away and think about things. I can do some quite good academic essays. I can do presentations that I've thought about. But on my feet as a lawyer... I have appeared in the sheriff court a few times. But I've often found that the decision about whether I should ask that question or just leave that question, "Don't ask that particular question. It's risky." I find that very difficult. Whereas, an accomplished advocate is very good at knowing when to say nothing more, and don't ask anything more. The witness has said some good things, just leave him. Don't take any risk, don't ask him one more question in case he goes back on what he said. That kind of skill I admire very much in advocates.

Adam, a very experienced solicitor and a partner in a law firm, evaluated his skills and explained the limits of them as:

I have never been a terribly technical lawyer. I'm a bit like the football fan who they see Ronaldo, and they can't play like he can. But if he hits a bad shot or has a bad game, they'll criticise him. Well, I'm a little bit like that. If I see an advocate who does something wrong, or does things badly, I can tell that he's made a mess of it.

I have rich data showing how solicitors decided if they needed to instruct advocates or handle things alone. Solicitors evaluated their professional competency in relation to the complexity, difficulty, value and importance of the case. This process requires constant measuring of their own competency against the advocates and each other, as well as in general to see if they would be capable of handling a particular case. That is, according to the data, the decisions were not only based on felt emotions, but also based on “weighing up” the situation, as Nick, a solicitor and a partner in a law firm, noted:

If it is very complicated, you might get counsel in. If it is not so complicated, then we weigh up the position where we have to make a decision. Do we do this proof/trial ourselves or do we get counsel in?

Isaac, another experienced solicitor, also noted that professional self-awareness had increased since reforms forcing solicitors to think more about when to instruct counsel.

Now [after the reforms] we have greater awareness of what we are capable of and if we think what we are doing is good or bad or competent or incompetent and so that I suppose, we do have a greater awareness of our skills.

Another interviewee, Ali, a solicitor, explained that there are certain aspects of the cases that he assesses and decides to leave to counsel or undertake himself or both.

Now we have to think well maybe I cannot justify it [getting help from an advocate] for the whole action, but there might be parts of it where I think counsel's input would be needed. And that is quite a good way of going about it, that is what we have done in some cases we have said, well in some cases we have not used them from the beginning, we have brought them in at a particular point, maybe when we have had an offer to discuss that with the client and that has made the difference and that seems to be reasonable, so a lot more thought was having to go into when do we instruct counsel and for what parts of the procedure.

Also, according to the data, solicitors had the lack of belief in meeting the standards of sheriffs in courts based on their experiences. Some of them already failed in doing so and have developed a sense of the extent of their competency. They many times shared that the quality of their work was not good enough for the sheriffs, as Jess noted:

The way that the All Scotland Personal Injury Court is running is very strict in terms of the rules, extremely strict in terms of quality of what you put in. Very often things were rejected, our motions were rejected, a very, very strict regime.

Overall, my data strongly suggest that solicitors did not consider themselves efficacious enough to handle complex cases in the sheriff courts and that led to their feeling a lack of self-confidence. Then, the lack of self-confidence affected how solicitors perceived their professional competency cognitively, which in turn, further reduced their self-confidence.

Confidence as the expected emotional display for performing advocacy. My data analysis so far also showed that the legal professionals think that one's believe in herself/himself, with a confidence their judgment, presenting arguments in the court

room with confidence are the expected emotional display to be considered as a capable professional who can do advocacy in court. Almost all of the above quotes explicitly or implicitly suggested the very same thing which is that doing advocacy requires confidence. Participants explicitly mentioned that “It [advocacy] is all about how you carry yourself before the judges and your colleagues. You need to be convincing and confident” as Paul, an advocate, stated. Also, a new advocate, Jonathan, when asked what were the challenges that he had as a very junior advocate in the court room, stated, “I would say feeling comfortable, calm and confident”. Furthermore, when she was explaining opinions regarding the instructing advocates, an experienced solicitor, Claire, said “You have seen them [advocates] and you think that they are very good, they are very convincing, you see that they are very confident, and you say they will do a better job”, Here, in a way, she portrays how an ideal advocate looks and behaves.

Another experienced solicitor, Susan, also shared with me an example of an outstanding advocate:

There was this gentleman, who trained me really, who I worked with, for the majority of my fee earning years. He was one of the best advocates in Scotland and so he is retired now, he was an outstanding advocate and a better person. I used to look at him and think ‘wow how can he act with such poise, confidence and assuredness on his feet?’ I mean he was absolutely outstanding in court.

In summary, regarding the reception of theorization, we saw that solicitors were aware of the benefits of the reforms; however, they feel a lack of confidence that prevented them from embracing the new arrangements. Their lack of confidence manifested itself as a blend of fear, insecurity and anxiety, as well as limiting beliefs regarding their professional capacity. Solicitors also think that they should feel confident to perform advocacy and be able to display it, too. Table 5-9 provides further support for this theme.

Table 5-9 Proof tables for the theme 'Reception of theorization: Lack of self-confidence'

Aggregate dimension: Lack of Self-confidence	
Second Order Themes	<i>First Order Illustrative Quotes</i>
Fear	<ul style="list-style-type: none"> • <i>The idea [of going to court and having oral arguments] is scary, you see, after all these years... Every now and then, opportunities emerge [to handle the case alone from the beginning until the end]. But, I don't wanna make a mistake.</i> • <i>I suppose for the older solicitors like me, and if you are thinking about change, the older solicitors in the office who have been practising for 20 years or more who are used to not appearing because they are used to counsel doing</i>

	<p>everything in terms of appearance work in the Court of Session then it is challenging to have to suddenly get up and dust off your gown and go into court again and it can be quite frightening</p> <ul style="list-style-type: none"> • I think the sheriffs have made life quite difficult for quite a few of us, particularly the younger solicitors. They tend to give them short-shrift and I think quite a lot of the young solicitors have been absolutely terrified to appear. • No, will never do that [appear in court and do advocacy] again. I could not stop crying in the court room, you know. I was terrorised by that experience [that she had in front of a strict sheriff judge]. My hands were shaking and all. It was terrible – terrible. [Because of a mistake she did, the sheriff hearing the case was angry].
Anxiety	<ul style="list-style-type: none"> • I usually don't like appearing in court. -Why? -Don't know. I usually become a bundle of nerves, s'pose [laughing]. • So that [appearing in court] puts pressure on people and quite a lot of anxiety, a lot of stress. • The upcoming oral arguments make me very nervous. I hate speaking up in a crowd. • I don't appear in court. I have my network of counsel that I trust, I instruct them. My husband is in the Bar, you see. I know how hard they work and they provide the best representation that you can get, to be honest. – Why don't you appear yourself? It is not my thing. – Can you elaborate a bit more, please. -I don't like it. it is a very tense process. The preparations, the responsibility and all. • I'm worried about my performance all the time. The mock trials, they don't help much because I can't afford making a mistake in real life. I have to think about the client's best interests and WWW's too to be honest.
Insecurity	<ul style="list-style-type: none"> • Well, chronically inadequate, I must say [when asked how she feels if she does not instruct an advocate for complex cases]. • These are [personal injury and clinical negligence] usually very sensitive cases. You need confidence in your judgment. • ASPIC [All Scotland Personal Injury Court] needs to be flexible and a place where people feel confident that they will be listened to and there should be a general desire that the parties' intentions will be taken on-board. If it is seen as a place where you go to battle against people, against the sheriffs, it is never going to work and people will still choose to go to Glasgow Sheriff Court or to Dundee Sheriff Court or they will instruct counsel and it will not have the impact that they were hoping for. • I feel secure when I know that I have got somebody in the background who is better at it [handling complex cases and doing advocacy]. I am aware that I rely on my comfort blanket of always using counsel. • I would like to know that [the reason why the sheriffs are too strict] as well if I am honest with you, I don't see what it [being too strict] achieves. Yes, the rules are there, the rules should be followed, and you know solicitors shouldn't just, they should be sticking to timetables but at the end of the day there are just some things, you know. What is the point of making us embarrassed, really? It doesn't really make sense to me but that is just what we have to deal with. • When you are out of practice of doing that, or you have just never had practice of doing that, it is quite difficult to imagine what it is like to run a proof and to have a sheriff say to you, but Mrs Daisy you don't have any evidence for that, you know, be challenged on things... And if you are always having counsel tell you what to do, which is often what counsel does, I want this information and I think you should go and take a statement from that witness and I need this document and so on...It is not easy to do it all by yourself.
Perceived Self-efficacy	<ul style="list-style-type: none"> • I don't have enough experience. I have to think what is best for the client.

	<ul style="list-style-type: none"> • <i>I am not being unduly critical of my profession [a solicitor-advocate], but it is just that you cannot dabble with this stuff, even at low levels of money it is just too complicated now.</i> • <i>So, we would tend to start the cases off ourselves, always, but if ultimately it looks like a case where the proof, for instance, is going to be very complicated, you think clients would maybe get a better service if you were to instruct counsel to do the advocacy part but they would tend to be further down the line towards the pre-trial meeting negotiation, preparation for proof dates that we would be tend to be thinking about getting counsel involved.</i> • <i>They [clients] become particularly involved often in their action, you know, they have maybe had an accident which has meant that they cannot work anymore and so they are now at home and they have lots of time to ruminate and this becomes a very big thing and sometimes so much so that until the action is out of the way they almost cannot move on and so it takes a certain skill to manage a client like that and sometimes you do need to involve counsel to say, I need a second opinion and I need somebody else to take a look at this.</i> • <i>That is a big cost and you cannot pass that on to the client. So, you make sure you get it right first time. It makes your processes, it makes everything, you have to be very strict, tight and accurate so there is probably a lot less leeway [in the newly established courts than local sheriff courts], I would say. Then you go and instruct counsel.</i>
<p>Confidence as expected emotional display for performing advocacy</p>	<ul style="list-style-type: none"> • <i>They [solicitors] get very anxious, they get very nervous, it[advocacy] requires your mind to work in a particular way, you would probably have to be quick-thinking, which isn't necessarily the same as, well it often isn't the same as deep-thinking but there is no point in thinking of a clever question when you have sat down and closed your case. You have to be able to think of a clever question whilst you are there and the preparation is demanding. A sheriff.</i> • <i>If you want to do that [advocacy], you need to believe in yourself, you need to show that. Working hard, being disciplined, being comfortable on your feet and whatnot. I'm not hardwired to be one [advocate]. A solicitor.</i> • <i>You need to be confident for being able to do advocacy. You need to believe in yourself. They're [solicitors] insecure, they make mistakes. They're clumsy in court. A sheriff.</i> • <i>If, however, you felt that Advocacy is what you wanted to do, you want to go and argue cases and you believe in yourself then you will do it. A solicitor.</i> • <i>The bottom line is that the way I was trained was that you always think about the end result and so you are always thinking about, what if this case goes to court, have I got the evidence that I need, how will I prove this, how will I deal with that and I think you almost need that way of thinking to be able to fully feel confident. An Advocate.</i> • <i>So, either because they [solicitors] decide just not to pursue it because they don't feel able to, or perhaps they do but get a bit out of their depth. - An advocate</i> • <i>It seems they [solicitors] all struggle with insecurity. You know, all these law firms are all about profit. Professional development is not their thing as much as they advertised their in-house trainings. They don't teach how to handle yourself in court.- A sheriff</i> • <i>A lot of solicitors I work with and who are solicitor advocates are happy to do easy procedural hearings but when the going gets rough they are happy to bring someone else- An advocate</i>

Table 5-8 Further proof on solicitors' seeing the merits of the reforms

Second order themes	First order illustrative quotes
<p>Seeing the rationale behind reforms and accepting its merits</p>	<ul style="list-style-type: none"> • <i>I think it's also positive [aspect of the reforms] that more cases can be raised in the Sheriff Court without the need for counsel necessarily being involved, in terms of expense, and additional work in each case.</i> • <i>Well, it is obviously a great opportunity for us, you know, to be better at what we are doing. Handle a case from the beginning till the end.</i> • <i>I think that the intention was by removal of the lower value cases from the Court of Session was that we [solicitors] would have more conduct of most of the work in the Sheriff Courts. As I understood it, one of the aims, as I say, was to reduce costs and not have people requiring paying for both a solicitor and an advocate or, as I say, a solicitor advocate. And obviously in any case raised in the Court of Session, only an advocate or a solicitor advocate can appear, and the intention, as I understood it, of Gill's intention was that with more litigation going through the Sheriff Court, there wouldn't be a need for the instruction of advocates, or I'll say counsel, in these cases. It is a good plan in theory, I'm not gonna lie to you, but don't think that we [solicitors] are ready though.</i> • <i>It could have been better for solicitors to actually go to court than sitting at their desks. So, I think it's been disappointing and so far, there seems to be so little emphasis on solicitors actually handling the work.</i> • <i>I mean realistically there were an awful lot of claims being raised particularly for personal injuries in the Court of Session for relatively, well they would be for quite substantial sums that would be raised but ultimately the claim would be worth a relatively small sum and you do wonder whether applying the rules of what is proportionate that they should have been in the Court of Session.</i> • <i>I suppose, is that you've reduced the level of business within the senior, the higher-level Court of Session, thereby freeing it up, theoretically at least, to deal with the higher value more complex cases.</i>

5.4.3 Dominant Belief: Solicitors Are Professionally Inferior to Advocates

My analysis showed that there was a dominant belief in the field that asserted solicitors were professionally inferior to advocates. This belief was so very deeply rooted in the field that there was consistency among sheriffs, high court judges, advocates, members of the Scottish Parliament, solicitors themselves, and administrative staff of government and professional associations. Furthermore, not just the analysis of the interviews, but also my analysis of documents including books and articles regarding the history of the legal profession in Scotland, the Thomson Review regarding the rights of audience in the higher courts in Scotland, parliament minutes and letters to the government regarding the reforms reflected the same belief. Several sub-themes emerged in my data that I will detail next.

Perception of advocates' skills and expertise. The data analysis showed that there was a common belief in the legal profession that advocates were better equipped to handle legal cases than solicitors. Participants from different groups such as sheriff

judges, solicitors or advocates stated that advocates were “very experienced”, “very skilled” in many ways than solicitors, had “better performances” in court, did not make “mistakes” and “equipped with better training”. The data analysis also showed that participants thought that these beliefs were so deeply rooted that, regardless if they were completely true or not, “there will always be a perception that counsel is somehow the more experienced or skilled”, as Gabriel who was a solicitor stated. I saw that believing that advocates were more skilled and experienced also brought the belief that they were more competent in handling certain type of cases, as I discuss next.

Perception of advocates’ and solicitors’ competency. According to the data analysis, there was widespread belief in the legal field that advocates were the only ones who could handle the cases that were complex, important, high value, challenging, difficult or requiring specialist expertise. Consequently, solicitors were considered competent to represent clients if only the cases that were straightforward and low value as Nancy, a very experienced solicitor, stated:

There are obviously some cases where it would be completely inappropriate to instruct counsel, the very straightforward cases. You would not have the brass neck to instruct counsel in a case like that, you would always want to do that yourself but there are other cases which are in the sheriff court and which are very complicated and where, as a solicitor, you might feel quite challenged.

Furthermore, another aspect that emerged from the data was that having an advocate representing a client instead of a solicitor was considered as an advantage for the parties. As a result, the actors in the field believed that if one party had an advocate representing them, the other should also be allowed to do so. They built this argument on the notion of “equality of arms” which is a principle created by the European Court of Human Rights and requires a fair trial between parties. Equality of arms “is not in itself a right, but a principle intended to ensure that the parties' rights are realised in a balanced manner” (Champod & Vuille, 2011: 23). In the interviews, participants frequently emphasised how having advocates representing their clients was important for the equality of arms. The legal professionals consider that one party has a solicitor representing them while other party has an advocate as a violation of the principle of equality of arms. That reflects the direct assumption of advocates’ competency as better than solicitors regardless of advocates’ personal and professional capacity.

Moreover, the Courts Reform (Scotland) Act, Section 108 explains the sanction for advocates in the sheriff courts where “the court is deciding ... whether to sanction the employment of counsel by a party for the purposes of the proceedings” (The Courts Reform (Scotland) Act, 2014: s. 108). According to Section 108, there are certain conditions to consider before granting the sanction as it is stated below (emphasis added):

“The court must sanction the employment of counsel if the court considers, in all the circumstances of the case, that it is *reasonable* to do so.

In considering that matter, the court must have regard to—

(a) whether the proceedings are such as to merit the employment of counsel, having particular regard to—

(i) *the difficulty or complexity, or likely difficulty or complexity*, of the proceedings,

(ii) *the importance or value of any claim in the proceedings*, and

(b) the desirability of ensuring that *no party gains an unfair advantage* by virtue of the employment of counsel.

The court may have regard to such other matters as it considers appropriate.”

The law has been designed in a way that reflects the dominant belief regarding the professional competency of lawyers, which is that advocates are professionally superior to solicitors. The law assumes that solicitors would eventually need help from advocates in one way or another, and it clarifies the conditions when it is “reasonable” to let them get this help. The law expects that solicitors will ask help if a case is complex, difficult or important. Also, it assumes that a solicitor cannot compete with an advocate and that would be an “unfair advantage” for the party with the counsel.

Moreover, the law does not provide another way around in the sense that, while the right of solicitors to ask for counsel’s help has been guaranteed by law, there is no offered solution in case an advocate needs help. Moreover, if there is a very complex and important case and solicitor does not ask for help, no one can force the solicitor to instruct the counsel. That is, sheriffs cannot make the solicitor instruct counsel even though they think it is “reasonable” where the case is very complex and they think that solicitor would not be able to handle it. Here there is the assumption that solicitors would always ask for help themselves in the face of complexity in any way. All these reflect the deeply rooted beliefs regarding the advocates’ and solicitors’ competency.

Belief that solicitors will never be as good as advocates. Another sub-theme that emerged from the data analysis is the belief that solicitors will never be professionally as good as advocates. I found that participants think that solicitors will always need the advocates' help and there will always be the role for counsel since solicitors will always have complex cases where they will want to have a senior person dealing with it. That reflects the belief that solicitors will never be good enough to handle complex cases alone. Also, according to the data, actors in the field believe that the best solicitors will choose to become an advocate and "there will always be that space for the good ones", as Susan stated as a solicitor. As a result, the participants accept that, as Ted stated as a solicitor, "there will always be a perception that counsel is somehow the more experienced or skilled".

Reflections of assumed expertise. My data analysis showed that there are certain practices in the field that reflect an assumed expertise of the advocate's over solicitors. These practices are all accepted and taken for granted by the actors in the field. One of the practices is that only advocates can be judges in the supreme court regardless of the professional capacity of the solicitor. In addition, only advocates can appear in the supreme court whereas solicitors can only appear in the lower courts. The data analysis showed that these practices are a "reflection of expertise" that is assumed by the actors in the field as it is possible for a solicitor to be better than a certain advocate. In this respect, one of the solicitors, Steven, stated "to be honest it is not always the case that an advocate will do a better job. I mean some advocates have never been in practice as a solicitor, some have and then they go to the bar, others leave university and they pretty much go straight, and they may not have that much more experience".

Symbolic and material superiority. According to the data, the belief regarding the advocates' being professionally superior to solicitors showed itself in the symbolic and material elements. For example, the building that the Faculty of Advocates and the library is located, Parliament House, is a magnificent building with historical importance. Shared with advocates, the building was used as the Parliament until the 19th century. "Parliament House, designed as the physical and symbolic heart of Scottish political power, is now the physical and symbolic heart of the Scottish legal system, further indicating the Faculty's elite position in the apparatus of the Scottish state" (Siebert, Wilson, & Hamilton, 2016: 1612). This building is where advocates

work, train, socialise, and meet with solicitors. However, solicitors are not allowed to enter the library of the Faculty of Advocates or use the resources within the library. That was something brought to my attention several times by the members of different groups.

Also, advocates wear different clothes than solicitors in their court appearances. Their work costume includes a wig and gown that are quite spectacular in their own way and give an impression of importance and status. During my observations in the courts, it was difficult to distinguish who was a solicitor and who was a layperson with a suit and a tie in the corridors of the courts, whereas it was very easy to spot an advocate.

In addition, my data showed that advocates have ancient traditions that are not shared and practiced by solicitors such as communicating with hand-written letters, using a very particular language with a rich and elaborate style, having different ceremonies and rituals, as well as having a different professional etiquette. All these symbolic and material elements reflect the established superiority of advocates over solicitors.

Perception on solicitors' emotional fitness for advocacy. Based on the data analysis, I saw that the fact that solicitors' experience a lack of self-confidence is observed by other members of the professional field such as advocates and sheriffs. That makes them question the emotional fitness of solicitors for doing advocacy, particularly by the sheriffs. For instance, below is an excerpt from the interview with Sheriff Wilson who, while giving his opinions on the opportunities created by the reforms for solicitors, mentioned his expectations of those who have oral arguments before him:

Sheriff Wilson: I don't think that this is a great opportunity for solicitors. Opportunities were already there before. They had this creature of solicitor-advocate, for instance. Still when you go to the courts, you'll only see advocates standing on their feet.

Interviewer: What do you think about the reason for this?

Sheriff Wilson: You need to be confident for being able to do advocacy. You need to believe in yourself.

Interviewer: So, do you think solicitors do not believe in themselves?

Sheriff Wilson: No, they don't. They're insecure, they make mistakes. They're clumsy in court. You can't just come along and say you forgot to do those

because of an oversight, or you did not do that because somebody was on holiday and then apologize endlessly. No, you are not children.

Another example is from the interview with Sheriff Taylor:

Sheriff Taylor: A lot of solicitors have an aversion to appearing in court.

Interviewer: Why is that?

Sheriff Taylor: Lack of confidence, it seems. There is a disappointing inclination to instruct counsel.

Furthermore, a very experienced advocate and QC, Charles, shared his opinion on the lack of confidence of solicitors for doing advocacy in the court room as:

So most definitely there is [an issue of confidence], and I am really quite surprised at the openness of quite senior people to say that I feel incompetent doing proofs-which to me seems inconceivable but then I know that I am from a different era.

5.5 Discussion

The intent of this study is to extend our current understanding of how emotions affect institutional change processes. In this regard, this paper particularly asked ‘what role do emotions play in theorisation processes?’ In so doing, my focus is on the reception of theorisation because new arrangements have to be accepted and adopted by the change recipients (Delmestri & Greenwood, 2016; Greenwood et al., 2002).

This paper makes two main contributions to our current understanding of institutions. First, it shifts the attention from the extant theorisation literature’s traditional emphasis on cognitive processes towards emotional processes that are required for successful theorisation. Thus, this paper presents a revised theory of ‘theorisation’ that incorporates emotions and presents a model of theorisation based on the findings and the literature on theorisation and emotions. Second, it brings ‘self-confidence’ as a social emotion into institutional theory. Self-confidence as an emotion, or self-efficacy as its cognitive component for that matter, has been almost completely overlooked in the institutional theory literature, even though self-confidence is crucial for action and understanding enactments of institutionally embedded actors. In this respect, the contribution of this paper also lies in the fact that it approaches the emotion of self-confidence from a macrostructural point of view, and considers self-confidence as a social emotion that is embedded in social structures such as class, segments of

professions, segments of society, power and status relationships and so on (Barbalet, 1993, 2001; Collins, 2004; Kemper, 1978, 2006; Kemper & Collins, 1990). By doing so, this paper further aims to introduce a greater appreciation of the role of self-confidence to the institutional theory, as a “basic social emotion that constitutes agency on individual, social and institutional level” (Poder, 2010: 112).

5.5.1 Revised Theory of Theorisation

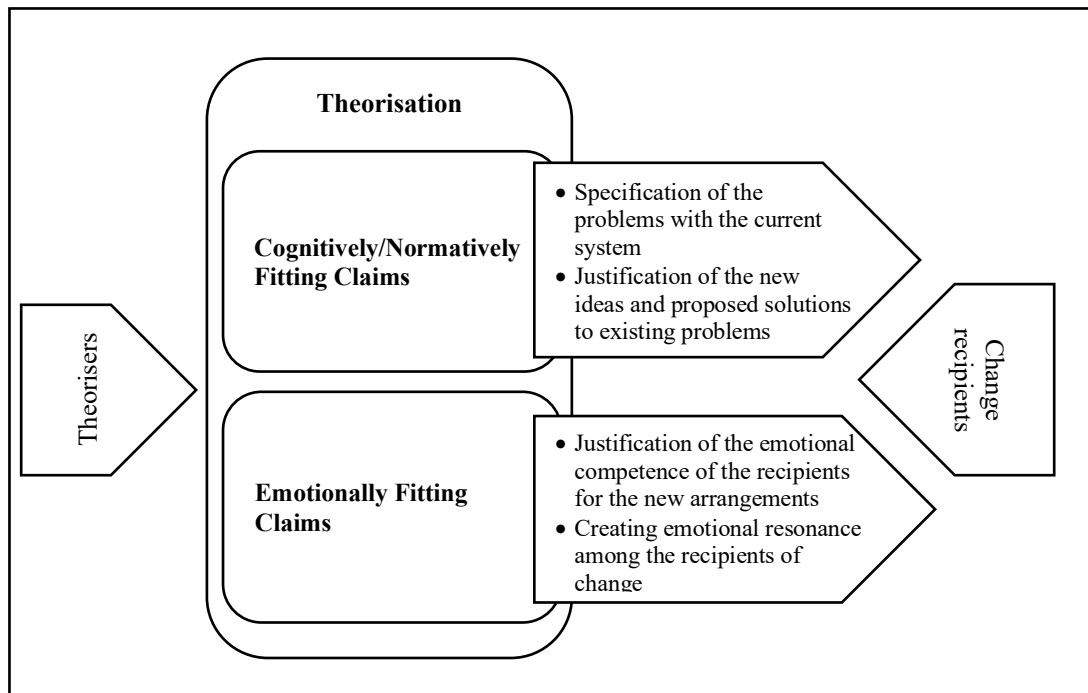
Our current understanding of theorisation portrays successful theorisation as a purely cognitive process that “increases the zones of acceptance by providing rationales for the practices to be adopted” (Rao et al., 2003: 816). Successful theorisation is depicted as “understandable and compelling” (Greenwood et al., 2002: 75) and being able to “earn endorsement and acceptance” of the relevant audience (Delmestri & Greenwood, 2016: 514). It is supposed to “persuade constituencies of the desirability and appropriateness of institutional deviance” (Suddaby & Greenwood, 2005: 37) and “craft a compelling message advocating for change” (Etzion & Ferraro, 2010: 1092).

In order to do so, current accounts of theorisation suggest that two major tasks must be achieved: *specification of the problems with the current system* and *justifications of the new ideas as solutions to those problems* (Greenwood, Jennings, & Hinings, 2015; Greenwood et al., 2002; Mena & Suddaby, 2016; Tolbert & Zucker, 1996). This process requires giving pragmatic and/or moral legitimacy to the new ideas either by “nesting and aligning them with prevailing normative prescriptions and/or by asserting their functional superiority” (Greenwood et al., 2002: 60). In so doing, our current understanding portrays successful theorisation as a process that creates cognitively established chains of cause and effect (Cartel, Colombero, & Boxenbaum, 2017; Greenwood et al., 2002; Mena & Suddaby, 2016; Strang & Meyer, 1993). These “causal chains may be either pragmatic or normative in nature” (Cartel et al., 2017: 156) and “the rhetoric of these claims seeks efficiency, effectiveness, and moral acceptability for the new archetype” (Hinings & Malhotra, 2008: 119). That is, in short, literature on theorisation presents a successful theorisation as a purely cognitive process that aims to invoke cognitively and normatively fitting claims for the change recipients (Cartel et al., 2017; Delmestri & Greenwood, 2016; Weber, Thomas, & Rao, 2009) since “theorization is essentially the process of matching adopters to practices

and practices to adopters” (Green, Li, & Nohria, 2009: 13). It is apparent that, the current framework of theorisation suggests that the new ideas and practices introduced during institutional change are adopted to the extent that theorisation is built on a compelling rationale and the existing values of change recipients.

However, based on my findings, I present a revised theory of theorisation that incorporates emotions. In this revised theory, I argue that along with its cognitive building block which is developing *cognitively/normatively fitting claims*, successful theorisation must also include *emotionally fitting claims*. My revised theory suggests that regardless of how well the change is argued and the rationales are developed, theorisation will be inadequate unless the emotional component is addressed. Figure 5.1 depicts the model that I created based on my proposed revised theory of theorisation that, next, I will explain in detail.

Figure 5-1 The revised model of theorisation



5.5.1.1 Emotionally Fitting Claims

My main argument regarding the emotional component of my revised theory is that a successful theorisation should include “emotionally fitting claims”. I based this argument on my findings that pointed the missing link between the theorisers of Scottish civil justice reforms and the recipients of their theorisation of the change. My

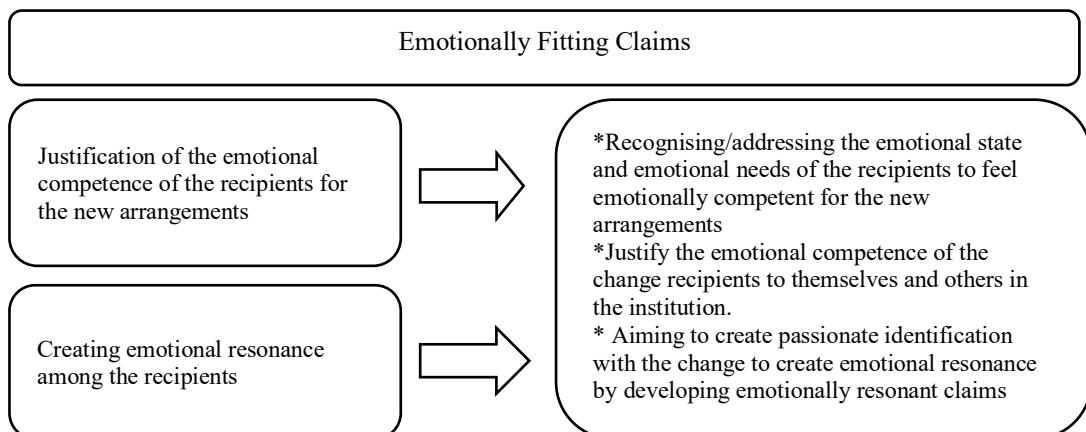
findings showed that theorists of the Scottish civil justice reforms specified the failures of the existing system and justified the new structures and practices in a similar way to the many accounts of theorisation studies suggest (e.g. Greenwood et al., 2002; Strang & Meyer, 1993). In their justification, Lord Gill and others aimed to provide moral and pragmatic legitimacy for the reforms by addressing the solutions that the reforms would bring to the existing problems as the literature suggested (David, Sine, & Haveman, 2013; Greenwood et al., 2002; Mena & Suddaby, 2016; Suchman, 1995). Theorisers of the change in my context also tried to show how reforms were aligned with the values of the legal profession. The arguments that Lord Gill and others presented clearly and logically showed why the current system was not working and the change was necessary and important. These theorisations emphasised how pragmatic and rational the reforms were in general and underlined the opportunities that the change offered for the solicitors. Theorisers also claimed that the reforms would advance the change recipients' privileges and interests. However, when this particular part of theorisation was laid out, recipients did not take it onboard as much as it was desired by the theorists and thus did not adopt the new practices and structures.

My findings showed that although the change recipients, solicitors, recognised their rational interests and logic of the reforms in general, their lack of self-confidence stopped them from engaging with the reforms and adopting the new practices. Because of the emotional issues that the change recipients had, they were not receptive of the presented arguments. The data showed that solicitors understood these arguments yet understanding and accepting the merits of the arguments was not enough for them to adopt these new practices. Considering the fact that theorisation is deemed to be successful to the extent that the new arrangements are accepted and adopted by the change recipients, we see that theorisation in my case study was unsuccessful. Based on the recipients' response, we saw there was an emotional unsuitability between the theorisation arguments on new arrangements and the change recipients' emotional state. There existed an emotional barrier between what is said by theorists of the reforms and what change recipients felt at the time regarding adopting the new arrangements.

If it was just down to rational solutions, as it is suggested in the literature, theorisation in this empirical setting would have likely been successful. Studies of theorisation assumed that actors would engage in action and adopt the new practices when they are cognitively compelled that change would serve the interests of them in some ways. The current accounts of theorisation research suggest that “theorizing about general organizational failings and alternative institutional arrangements” or creating “a purely cognitive awareness of institutional opportunities and of one’s interests being poorly served by current institutional order” (Voronov & Vince, 2012: 72) is sufficient for making people adopt the new arrangements. Yet, my findings show that theorisation built on only rational arguments is not sufficient. We saw in the findings that theorisation remained inadequate because promoters of the change theorised it without any emotional understanding of the recipients’ emotional state and they assumed a rational nature of human agency and ignored the emotions constituting the agency.

In this regard, the revised theory of theorisation that this study presents suggests that theorisation should have an emotional component to be successful. That is, it should not only invoke *cognitively/normatively fitting claims*, but also invoke *emotionally fitting claims* specific to the recipients of the change. With these emotionally fitting claims, two tasks must be achieved: justification of emotional competence of the change recipients for the new roles and practices in the changing institution and creating emotional resonance among the change recipients. Figure 5.2. summarises the emotional component of theorisation model that this paper presents. Next, I will explain each task in detail.

Figure 5-2 Summary of emotional component of the revised theory of theorisation



Justification of emotional competence of the change recipients for the new arrangements. In the empirical setting of this study, change recipients, solicitors, suffered from feeling emotionally incompetent within the new arrangements. Emotional competence means the ability to “*experience* and *display* emotions that are deemed appropriate for an actor role within the institutional order” (Voronov & Weber, 2016: 457). The findings showed that the change recipients experienced the feelings of emotional incompetence in two ways. First, they shared that they do not feel confident enough to undertake new challenges and engage with the new practices. Second, they emphasised that feeling confident and displaying the confidence is a *requirement* for successfully performing the new practices that they were asked to do, and they do not feel it. In other words, the change recipients implied that they do not have the emotional competence to adopt the new practices. In this empirical setting, solicitors did not experience the self-confidence privately or display it publicly that was considered a *must* for successfully performing the new practices and they were aware of this fact, also leading to experiencing further anxiety, fear and insecurity.

In my findings we saw that the basis of the change recipients feeling of emotionally incompetent for the new arrangements was their feeling lack of self-confidence. My data showed that change recipients suffered from, as a reflection of their lack of self-confidence, strong fear, particularly fear of failure and fear of embarrassment. Furthermore, they stated that they suffer from self-doubt, feeling inadequate and incompetent, hence insecure. Self-confidence as a social emotion that has been portrayed as the complete opposite of these emotions of fear, anxiety, and insecurity (Barbalet, 1993, 1996, 2001; Collins, 2004; Kemper, 1978; Kleres & Wettergren, 2017). Yet, theorisation process did not address this issue at all while still trying to get “endorsement and acceptance by relevant audience” (Delmestri & Greenwood, 2016: 514). We saw that there was a mismatch between how the change had been argued by the theorists and how it was received by the recipients. Based on this, I argue, if “theorization is essentially the process of matching adopters to practices and practices to adopters” (Green et al., 2009: 13), then, this matching process should also emotionally match practices to adopters and adopters to practices. However, my findings showed that Lord Gill and others did not see if the recipients feel emotionally incompetent for the new order and address their emotional needs accordingly. They

did not acknowledge that solicitors were capable enough, emotional or otherwise, for the changing arrangements. They did not build arguments claiming that the new practices and new roles coming with the institutional change are a good match for the emotional competency of the recipients. Based on this, I suggest that theorisation process must include justification of the emotional competence of the change recipients for the new arrangements. That is, theorisation should convince *the recipients themselves* that they are emotionally capable of undertaking the new institutional roles and inhabit the new institutional arrangements.

Voronov and Weber (2016) argue that actors' feeling emotionally competent depends on two factors: self-regulation and other-authorization. That is, both actors themselves as well as the others within the institution should consider them as competent institutional actors. That is why justifications should address these two factors by recognising and addressing the emotional needs of the recipients to feel emotionally competent and justifying their emotional competence to themselves and others in the institution.

Regarding the other-authorization aspect of feeling emotionally competent in an institutional order, we saw in the findings that solicitors are not considered, emotionally or otherwise, competent actors to fulfil the new practices that are offered for them by the reforms. The lack of self-confidence of solicitors seems obvious to others in the field, decreasing the emotional competency of the solicitors since 'other-authorization' did not occur in the new system. In another words, solicitors were not able to display confidence 'publicly' that was necessary for performing the new practices. Therefore, they failed to live up to the expectations of the institutional order. The dominant belief regarding the professional capacity of solicitors asserted that solicitors neither have the professional skills and expertise nor the required emotional competency. That is, solicitors are not deemed as competent institutional actors by others. The fact that change recipients feel emotionally incompetent for the new institutional arrangements caused them to build a barrier between themselves and theorisation claims. In the theorisation efforts of all parties, there was not any attempt to develop professional acceptance and recognition of solicitors' abilities, in an institution where no one accepted or recognised solicitors' competency regarding the

new practices, particularly advocacy. Consequently, theorisation remained inadequate and ineffective.

Furthermore, in the findings, we saw that there was a repeated rhetoric that solicitors were good at changing and adapting to change. However, solicitors' lack of confidence was not fed by the fear of failure in changing, but by the fear of failure in performing skilfully and competently. This shows how the theorists of the change failed to grasp the emotional needs of the change recipients. Lord Gill and others built their arguments on emotional concerns that were not experienced by the change recipients. Therefore, justifications during theorisation addressing the capability of solicitors in changing were not effective in persuading solicitors to adopt the new arrangements. Based on this, I argue that in order to successfully theorise an institutional change, promoters should address the emotional needs of the change recipients to undertake the new practices and roles.

The emotional needs of change recipients faced with institutional change could be different in different contexts. In this particular empirical setting, feeling self-confident and displaying confidence was the emotional need that should have been addressed. While institutional theory is mainly silent on the emotional underpinnings of the reception of theorisation processes and completely ignores the emotion of self-confidence, some studies of social movements have acknowledged the importance of mobilizing the self-confidence within movements for enabling the action (e.g. Goodwin & Jasper, 2006; Jasper, 2011). These studies highlighted how protest organizers try to ensure that individuals or groups feel confident due to the importance of protesters' self-confidence for collective action. They mainly suggested that self-confidence has to be constructed in shaky moments where challenges and adversities create fear and self-doubt (Barker, 2001). As being at the opposite spectrum with feeling confident, fear needs to be managed in order to make people feel confident and mobilize action (Goodwin & Pfaff, 2001; Jasper, 2011). "For a movement to succeed, as we saw, activists must devote enormous effort to giving participants a sense of their own agency. They need confidence in their own ability to act, something that requires the suppression of demobilizing emotions such as apathy and fear" (Goodwin & Jasper, 2006: 626). Similarly, the theorisation efforts of Lord Gill and others should have aimed to control the fear among solicitors because fear, particularly fear of failure

and fear of embarrassment, reduces self-confidence (Kleres & Wettergren, 2017) and loss of self-confidence may paralyze actors or cause panic (Jasper, 2011) while inhibiting agency and action (Barbalet, 2001). Yet, we saw in the findings that theorists failed in managing the fear. They could not develop strategies that inspire confidence, as they should have (Flam, 2005). Solicitors suffered from fear of failure and embarrassment, hence lack of self-confidence. As a result, they did not respond well to the rational justifications of theorisation and did not adopt the new practices.

In the findings, we also saw that theorists did not mention how change would provide ways to secure access to resources that were necessary for the change recipients to perform the new practices. In my setting, these resources might be training opportunities, time, social support and so on. However, theorisation did not include explanations of how solicitors would have the required resources to be able to feel confident to adopt the practices in the present moment, as well as act accordingly in the future. Yet, one's "access to relevant resources for future action" is a central factor for one to feel self-confident (Barbalet 2001: 86). The access to resources is crucial not only for the immediate need, but also their availability for the future (Barbalet, 1996). One cannot keep feeling confident of acting towards an unknowable future without secured future admission to resources. Therefore, self-confidence is not only dependent upon social acceptance, but also access to relevant resources. In this regard, building on Barbalet, Poder (2010: 113) argues that "to feel confident about realizing a projection of oneself – confident, for example, that one will succeed in becoming a manager – one needs to know that one has entrée to resources of instrumental significance in this career development".

From a macrostructural point of view, emotions have been linked to individuals' or groups' positions in social hierarchies (Barbalet, 2001; Collins, 2004; Kemper, 1978; Kemper & Collins, 1990). As a positive and social emotion, self-confidence is also distributed over societal segments (Barbalet, 2001; Kemper, 2006). That is, while some groups have more confidence, some other groups have less. Particularly, high status actors have more confidence than lower status groups (Kemper, 1978; Kemper & Collins, 1990; Turner, 2014a).

Actors feel positive emotions, particularly self-confidence, when they have access to resources (Barbalet, 2001; Kemper & Collins, 1990; Turner, 2014a). In addition, when people feel positive emotions like self-confidence, they act on opportunities, pursue other resources, and persist on and commit to their pursuit (Turner, 2014a). This experiencing positive emotions helping them to access more resources, then they experience further positive emotions; leading them to pursue and secure more resources. That creates a circle; a compounding impact of emotions. Even in the face of failure and negative emotions, those who have “a reservoir of self-confidence” perform better at rising from failure and committing themselves to success (Turner, 2014: 193), while the ones who do not have the reservoir of confidence experience the opposite of these experiences.

Therefore, a reservoir of positive emotions and self-confidence, is a valued resource that can be distributed unequally like any other resource. The consequence is that “the emotionally rich get richer, and the emotionally deprived get poorer” (Turner, 2014: 193). That is why positive emotions are considered as highly valued resources that “have very large effects not only on people but social structure and culture at all levels of social organization” (Turner, 2014: 179).

The above discussed aspects of the distribution of emotions among segments and the fact that emotions are resources for action, success and status is very important for understanding this research. The context of this study is an empirical setting with a status hierarchy that is historically very established with advocates having enjoyed a higher status than solicitors for centuries. Accordingly, we saw in the findings that self-confidence of the solicitors as a group were significantly less than advocates. Self-confidence, as an emotion is a fundamental resource for action and is distributed unequally across fields. In my case, the designers of the institutional change did not consider this unbalance of emotions among the segments. Furthermore, this deeply established status hierarchy has established and long-standing customs, habits, division of labour and so on. Consequently, “it requires a great deal of confidence to challenge tradition” (Poder, 2010: 117). However, my findings showed that theorists mainly ignored the fact they asked solicitors to challenge the tradition. They tried to justify an institutional change that required a jurisdictional migration in which ‘who does what’ migrates from one group to another, yet they did not consider the

distribution of emotional resources among the groups. They ignored that it requires confidence to be willing to take place in this migration- which I believe it also contributed to the failure of theorisation in this front.

In summary, in this study, we saw that claims justifying the emotional competency of the change recipients to themselves or others was completely non-existent in theorisation. There were not any claims suggesting that change recipients were emotionally competent for handling the new arrangements. Also, all of our discussion so far points that theorisation should include a correct assessment of emotional needs of the change recipients in order to claim emotionally fitting claims regarding the offered change. Yet, there were not any attempts to fulfil the emotional needs of change recipients.

Creating emotional resonance among change recipients. In my revised theory of theorisation, I borrow the concept of ‘emotional resonance’ from the social movement literature and suggest that successful theorisation requires emotional resonance among the change recipients by developing *emotionally resonant claims* in addition to the traditional emphasis on the fact that theorisation should invoke cognitively resonant claims. Giorgi (2017: 721) defines emotional resonance as “an audience’s experienced personal connection with a frame at the emotional level, as an alignment with audiences’ feelings and desires” and further elaborates “emotional resonance is achieved when framing moves or shakes its target recipient”. That is, if an audience feels passionate identification with a person, cause, idea or vision, then emotional resonance is achieved (Giorgi, 2017). The social movements literature further suggests that the frames that change agents use must have emotional resonance with their audience to increase the possibility of success in mobilizing change (Goodwin, Jasper, & Polletta, 2000). Theorisation studies have ignored the importance of emotions in this regard, although as a discursive process, theorisation generally includes use of frames or other rhetorical strategies to convince actors to adopt new practices.

I incorporate the concept of emotional resonance in my revised theory because theorisation involves not only rendering ideas into abstract and compelling formats, but also developing the capacity to inspire actors to act and stimulating their participation in the new practices by motivating them (Lok et al., 2017; Voronov,

2014). Yet, theorisation studies have largely overlooked the motivational nature of theorisation, and mainly focused on translation of ideas. However, theorisation is largely about convincing people to act and engage in change. In contrast to institutional theory studies, social movement studies offer insights regarding the link between emotions and motivate people to engage in change and action. For example, we know organizers build their movements on the pre-existing emotions of people such as love, anger or fear (Jasper, 1998) and moral shocks that people experiencing help recruiters to motivate people to join social movements (Jasper, 2011; Jasper & Poulsen, 1995). Also, activists try to create moral outrage and anger to motivate people within social movements to act in desired ways by turning their fears and anxieties into anger (Goodwin, Jasper, & Polletta, 2001) and “passion for justice, is fuelled by anger over existing injustice” (Jasper, 1998: 414). Activists also try to inspire hope and manage fear for mobilising people in a movement (Flam, 2005) and they intentionally undermine some emotions such as fear, shame and hatred, while strengthening the emotions of pride, solidarity and anger in order to “transform cementing, status quo-supporting emotions into subversive, mobilizing emotions that bring about social change” (Flam, 2015: 266). All these studies suggest that a level of *emotional resonance* with the desired change among the audience is necessary for making them engage with the change and adopt the new practices.

I acknowledge that managing emotions is not easy, even by the most skilled and charismatic actors (Tracey, 2016). Yet, it is necessary for mobilizing action and agency (Jasper, 2011). My findings showed that in the process of theorising change there was not any attempt to manage emotions and develop emotionally resonant claims. We saw that Lord Gill as the institutional entrepreneur, developed a strong vision and shared his vision with the rest of the profession, a standard aspect of theorisation (Battilana et al., 2009; Leca et al., 2006). He abstracted changing practices, structures and roles into a vision and worthy cause. The vision was to bring a change that restores a sense of pride in the Scottish justice system. The cause behind the change was increase access to justice. However, these claims did not resonate with the recipients of the change. There was not any passionate identification with the vision and cause among the change recipients. They were not emotionally connected to these claims. On the contrary, the change recipients were indifferent towards the conveyed messages in this

regard. The claims of theorisation did not “strike a responsive chord” with the recipients (Snow, Rochford, Worden, & Benford, 1986: 477). I argue that theorists of the change should have recognised the emotional state of the recipients (Polletta, 2009) and aimed to create emotionally resonant claims because emotional resonance among the change recipients is believed to decrease indifference towards conveyed ideas (Giorgi, 2017).

I also argue that, in a situation of a field change, increased emotional resonance may help overcoming the anxiety, shame and fear caused by feeling emotionally incompetent in the face of new arrangements. It is because “emotional resonance can shake up existing feelings and unfreeze them” (Giorgi, 2017: 724). Therefore, theorisation efforts should aim to develop emotionally resonant claims so that the change recipients passionately identify with the change and find the confidence to try something new that they feel emotionally incompetent.

It has been already suggested that presenting emotion based justifications or emotive appeals (pathos) to build pragmatic and moral legitimacy is important (Brown, Ainsworth, & Grant, 2012; Green, 2004; Harmon, Green, & Goodnight, 2015). However, creating personal emotional connections with the change and institutional projects is beyond legitimacy concerns (Giorgi, 2017) and more to do with the having an emotional connection to these emotional projects. For example, in their study regarding how organizations create and encourage evangelists, in the context of Ontario wines, Massa et al. (2017) found that organizations used dramatic and emotional rituals to commit people to their institutional projects. The rituals organizations used for attracting evangelists turned into inspiring emotional experiences for participants with distinctive and receptive identities. While these emotional experiences make these participants behave in evangelistic ways, they were unsuccessful in inspiring some others. Also, Voronov, De Clercq and Hinings (2013) showed how Ontario winemakers altered the emotive content of their script depending on which audience they were interacting with. The insights from the social movement literature regarding the necessity of emotional resonance in narratives for change were implicit in these studies. Thus, I suggest that theorisation claims must be emotionally resonant with the recipients of the change in order to be successful.

Höllerer (2012: 89) argues “theorization is a dynamic and circular process that involves active adopters... where they are on the forefront of theorizing” providing ground for new ideas and practices to spread. However, in my data, there was no evidence regarding early adopters and their successful conduct of new practices. This also shows the scope and depth of the failure of the theorisation efforts. Overall, theorists of the Scottish civil justice reforms failed as emotional competence and resonance builders. They could not motivate, encourage and compel people to act on change and adopt the new practices.

5.5.2 Self-confidence and Institutional Change

My work brings ‘self-confidence’ as a social emotion into the conversation in institutional theory. I suggest that self-confidence of actors within an institutional field is particularly crucial for the processes of institutional change since “action and, therefore inaction, derive from the degree of confidence actors feel about their capacities to realize an unknowable future” (Barbalet, 1993: 239). The prevailing view on action and agency in institutional theory is that people act relatively intentionally, while having legitimacy concerns and being conditioned by the institutions that they are embedded in. Recent studies have particularly emphasised “the awareness, skill and reflexivity of individual and collective actors” (Lawrence & Suddaby, 2006: 219). However, this more or less “conscious intentionality” (Lawrence, Suddaby, & Leca, 2009: 11) is not enough to explain agency and action because having an intention to act, in other words intention to engage with a practice, would not secure being able to act upon those intentions (Poder, 2010). I suggest that actors, individually or collectively, are dependent on self-confidence for engaging in any action that is not routine for them (Jasper, 2011).

Cech, Rubineau, Silbey, and Seron (2011: 646) argue professionals must have self-confidence to be able to handle “the practical competencies of day-to-day professional work; and identification with the professional role and belief that one will enjoy this role, with all the complexity, uncertainty, and responsibility that accompany its fulfilment” . This means that professionals need to feel self-confident in order to be a particular kind of actor in an institution with established practices let alone to handle new practices that are poured upon them through an institutional change.

Jasper (2011) states that emotions are crucial for understanding the important moments when people leave routine practices for the new ways of acting. In this regard, it is the emotion of self-confidence that creates a “willingness to act” (Barbalet, 1993: 229), “a boldness in taking initiative” and “a readiness for action” (Collins, 2004: 39); an inclination to “take on new challenges” (Poder, 2010: 112). It is an emotional basis for human agency since “self-confidence kindles action” and lack of it makes actors “avoid engagement and remain passive” (Jasper, 2013: 108). Given that self-confidence is crucial for understanding enactments of institutionally embedded actors within the macrostructures and their access to resources, I suggest that institutional theory should work to better understand the emotion of self-confidence and how it is distributed in order to extend our understanding of structure, action and agency.

5.6 Conclusion

With this research, I developed a revised theory of theorisation that introduces an emotional component. In particular, I have argued that theorisation should include emotionally fitting claims in addition to the cognitive/normative claims that the extant theory suggests are required to be successful. I have further suggested that developing emotionally fitting claims requires theorists to justify emotional competence of the change recipients for the new arrangements and create emotional resonance among the recipients. Furthermore, while echoing scholars who underlined the importance of emotions in institutional theory, I particularly highlighted the relevance of the social emotion of self-confidence, varyingly distributed across a field, for understanding the links between structure, action and agency.

6 Chapter Six: Conclusion

The three empirical chapters, Chapter Three, Four and Five, of this dissertation together make three overarching theoretical points. First, the intra-professional dynamics of a profession are much more important in determining the process of institutional change than have been portrayed in the literature. These intra-professional dynamics affect how change unfolds, how it is understood and how resistance towards change takes place. Second, the consequences of these intra-professional dynamics significantly affect the institutional projects of other entities such as the state. Professions are strongly linked to other institutions and the internal dynamics of professions therefore have significant repercussions with the broader environment. Third, from a macro level perspective, professions are *the actors* within other institutions and their collectively agentic nature derives from the fact that they are institutional orders. They inhabit other institutions and experience them with their own “work activities, social interactions, and meaning-making processes” (Hallett, 2010: 53).

6.1 Summary of Theoretical Contributions

Chapter Three contributes to the institutional maintenance and professions literatures by uncovering the factors that hinder maintenance work and offering insights into intra-professional segmentation and its consequences for institutional change. It is found in Chapter Three that institutional maintenance work requires strong, coordinated action across intra-professional groups if it is to be effective. Further, while uncertainty provides opportunities for institutional change, it hinders institutional maintenance efforts. Also, Chapter Three shows that intra-professional identity differences are sharpened rather than dulled when an externally imposed change threatens different levels of status and these sharpened differences are likely to prevent coordinated maintenance work, even when it is perceived as being in the best interests of all involved.

Chapter Four contributes to the institutional persistence and professions literatures by extending our understanding of field stability and disruption by uncovering new field mechanisms of persistence. These can hold disruption at bay in fields in the face of

strong exogenous shocks and maintain the internal cohesiveness of a profession. These mechanisms are *jurisdictional contentedness* and *lack of a career bridge*. These mechanisms can work together or separately, albeit one can be weaker or stronger in effect than the other.

Chapter Five contributes to the institutional change and professions literatures by providing a revised theory of theorisation that incorporates emotions into the current model of theorisation. It extends our understanding of institutional change by positing that theorisation, if it is to be effective, should include emotionally fitting claims in addition to the cognitively/normatively fittings claims that the current literature suggested. This chapter also further contributes to our understanding of emotional underpinnings of institutional processes by shifting focus to the social emotion of self-confidence and its relation to the structure, action and agency.

6.2 Limitations

As every study, this study also has limitations. First of all, I was limited by time and resources and a longer engagement with the field would have likely revealed further nuances of institutional change. That would have helped me further strengthen my theoretical inferences. Second, I might seem naïve to some who might think that the power and interests behind many actions are invisible in this research and my “inadequate awareness of power”, like many other institutional theorists (Munir, 2015:1) covers the conflicts and contestations in the field. However, I absolutely see the relevance of discussing power in institutional studies, particularly institutional maintenance since they are focused on retaining the status quo of established interests and privileges. Although I did not shy away from identifying uses of power, I did not find enough evidence in my data that depicts a power story. I expect, in order to discover issues related to power and interests more effectively in this research setting, one needs to look at deeper relationships among actors within the same segments, rather than the whole profession. For instance, I believe solicitors’ firms are not collaborative but more likely characterised as sites of conflict and competition. Thus, studying the stability of their environment might give us insight into power and politics. However, this was not in the scope of my research since my level of analysis was macro level: the judicial system and the legal profession.

6.3 Managerial and Policy Implications

In addition to the theoretical contributions of this dissertation, this research also provides significant insights for policy makers and institutional entrepreneurs in general. The practical implications of this research are particularly relevant for those who are engaged in initiating change that involves professional groups. I suggest that policy makers should consider the internal dynamics of professions since professionals are, often, the implementers of institutional changes.

For policy makers who aim to design change programmes to tackle a grand challenge, such as increasing access to the justice, I suggest that they should not take the support of professionals for granted. The literature on professions strongly suggest that professionals are very good at resisting change and maintaining the status quo. Therefore, based on the findings of my dissertation (Chapter Three), for those who want to reduce resistance towards an institutional change and overcome the likely maintenance efforts of parties with established interests, I suggest strategies that can sharpen intra-professional differences and create uncertainties so that maintenance efforts would be less effective and change would proceed without much coordinated resistance. Also, as an alternative, policy makers should take much greater consideration of interests that would motivate intra-professional groups to change. On the other hand, for those who want to establish strong resistance towards institutional change in heterogenous professional fields, I suggest employing strategies that focus on a shared identity and shared values within a profession.

Policy makers or institutional entrepreneurs should be especially aware of the fact that professional bonds within a profession can be much stronger than they expect (Chapter Four). These bonds are the skeletons of professional fields that enables maintenance of the status quo. They can be so strong that even an external legislative *deus ex machina* or an impressive community leader with a strong vision may fail to break them. That is, while designing or implementing institutional change that involves professionals, policy makers should consider the strength of the professional bonds and act accordingly.

Moreover, policy makers should particularly be aware of the distribution of emotions among the segments within society because these emotions are the sources of

resilience, assertiveness, and change (Chapter Five). These segments can be intra-professional segments as it was in my case or be any other societal segments. What matters is that emotions are crucial for action and agency, yet not considering them while designing and implementing an institutional change may lead to failure or undesired and unintended consequences. Aligned with this point, policy makers who aim to deal with inequalities in society should see how emotions are distributed unequally across institutional fields. For example, self-confidence is a particularly important emotion that can be distributed unequally among different groups in society, yet it is necessary for those who is required to take action. For instance, there can be policies that aim to bring institutional change by creating opportunities for disadvantaged groups within society to improve education, health or income. However, if these groups lack the reservoir of self-confidence to take advantage of these opportunities or bounce back from previous failures, institutional change may be unachievable. Rather, offered opportunities may be seized by those groups with a bigger reservoir of self-confidence rather than the intended groups. Also, change agents should diagnose the emotional state of the change recipients and address their emotional needs to accommodate the new practices (Chapter Five). Change designers or implementers should strategically manage negative emotions such as fear and shame and nourish the positive emotions that encourage engagement with change such as hope and optimism.

6.4 Avenues for Future Research

We have given insufficient attention to understanding some of the major societal consequences of institutional processes...institutions per se do not matter. It is the depth and profundity of their consequences, coupled with their ubiquity (Greenwood et al., 2017: 16).

This dissertation provides insights into intra-professional dynamics within a profession and shows how these dynamics affect institutional processes and change initiatives of the state. I echo Zietsma et al.'s (2017: 421) suggestion that "the dynamics of the subfield populations need empirical investigation, together with a search for other subfield populations. All of this is part of the important element of systematically elaborating different actors within a field, their common meaning systems and their homogeneity and heterogeneity." I suggest that a fruitful area of

future research would be seeing how these internal dynamics of professions affect the institutional projects of other entities that aim to tackle grand challenges. In particular, what are the processes and outcomes of the actions of professionals engaged in institutional change?

In addition, this dissertation provides insight into mechanisms that keep a professional field intact while facing exogenous shocks. However, my focus was on a highly established profession with its established intra-professional boundaries. In this regard, a second useful area of research would be examining what makes professional fields with boundaryless careers or emerging professional fields without established jurisdictions robust in the face of exogenous shocks. To assess whether the mechanisms in my research will hold these types of professional fields together and maintain their current structure and practices in the long term, it will be necessary to undertake additional fieldwork.

Moreover, Chapter Three provides insights into the factors reducing the effectiveness of institutional maintenance efforts such as uncertainty and sharpened intra-professional identity differences. Drawing on Chapter Three and the calls for additional research on institutional maintenance (e.g. Lawrence et al, 2009; Micelotta & Washington, 2013), I suggest that another area of growth would be further studying unsuccessful institutional maintenance attempts. For instance, what role do emotions play in the (in)effectiveness of maintenance efforts?

Further, I encourage future research to turn back to the roots of institutional theory by re-focusing on institutional continuity and persistence by incorporating emotions into explanations of taken-for-grantedness. What does it mean to emotionally take something for granted and how does this effect institutional reproduction? Scholars so far have particularly focused on the emotions of fear and shame during institutional control and reproduction. However, there may be other positive and negative emotions that can enable or constrain institutional control. For example, how do feeling of hopelessness, gratefulness or optimism effect institutional change? Or can the emotions of greed or envy be so taken-for-granted in certain institutional environments that wrongdoings are considered normal and they persist?

Lastly, given that incorporating emotions into institutional studies is new and that most institutional theory research has focused on emotions from a micro-foundational perspective, a very significant future research area would be studying emotions from a macro-structural approach. In particular, it would be useful to see how social emotions are developed across different segments of society and how they influence processes of institutional change? What are the consequences of the unequal distribution of emotions in institutional structures, particularly for societal change initiatives and grand challenges? Are there any examples of successful or unsuccessful institutional change because of the unequal distribution of emotions within institutional fields? These are matters that are worthy of further empirical and theoretical investigation.

6.5 Final Remarks

In concluding this dissertation, I would like to state that professions and professionals are crucial for addressing societal challenges. Therefore, the improving of our understanding of the relationship between the professions, institutions and institutional change, I believe, is one of the main routes for us, as researchers, to help address societal problems. As a researcher whose passion lies in understanding the concept of change, I hope that I have contributed to this path by providing insights into the relationship between professions, institutional persistence, and change.

7 References

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8 Appendices

8.1 Appendix 1: The draft of the first email sent to the participants

Dear Mr/Mrs.,

I am a doctoral researcher in the University of Edinburgh Business School. Along with my supervisor, Prof. John Amis, I am engaged in a study examining the development and implementation of the Gill law reforms.

We have a very good academic team, and have been fortunate to be able to speak to some of the main figures involved in the reforms. We have noted that you contributed to the policy debate and might have an interest in the topic. If you would be willing and able to meet with us for an interview, Prof. Amis and/or I would carry it out at a time and place that is most suitable for you.

Best wishes,

Ilay H Ozturk

Doctoral Researcher

University of Edinburgh Business School

8.2 Appendix 2: The draft of the letters that were addressed to the sheriffs

Edinburgh
EH8 9JS

Edinburgh Sheriff Court
27 Chambers Street
Edinburgh
EH1 1LB

Dear Sheriff Wilson,

I am a doctoral researcher in the University of Edinburgh Business School. Along with my supervisor, Prof. John Amis, I am engaged in a study examining the development and implementation of the Gill law reforms. We have a very good academic team and have been fortunate to be able to speak to some of the main figures involved in the reforms.

We have noted that many of our participants recommended you as someone whom we should also interview in order to have a better understanding of the implementation process, underlying dynamics, expected outcomes and scope of the Courts Reform Scotland Act. If you would be willing and able to meet with us for an interview, Prof. Amis and/or I would carry it out at a time and place that is most suitable for you. We would appreciate it if you could please contact us through the email address i.h.ozturk@sms.ed.ac.uk.

Yours Sincerely,

Ilay H. Ozturk

Doctoral Researcher

University of Edinburgh Business School

8.3 Appendix 3: The email that was sent to those who were recommended

Dear Mr/Mrs...

I am a doctoral researcher in the University of Edinburgh Business School. Along with my supervisor, Prof. John Amis, I am engaged in a study examining the development and implementation of the Gill law reforms.

We have a very good academic team, and have been fortunate to be able to speak to some of the main figures involved in the reforms. We have noted that some of our participants recommended you as someone whom we should also interview in order to have a better understanding of the underlying dynamics, expected outcomes and scope of the Courts Reform Scotland Act.

If you would be willing and able to meet with us for an interview, Prof. Amis and/or I would carry it out at a time and place that is most suitable for you.

Kind Regards,
Ilay H. Ozturk
Doctoral Researcher
University of Edinburgh Business School

8.4 Appendix 4: A sample of the interview questions.

Courts Reform Scotland (2014) Interviews

Name:
Profession:
Date:
Time:

Opening:

Thank you very much for being here with me and accepting my interview offer. First of all, I would like to assure you that you will remain completely anonymous and no records of the interview will be kept with your name on them unless you state otherwise.

Also, I would like to ask for your permission to record this interview.

The purpose of this research is to understand the ways in which the recent Scottish Civil Justice Reforms have impacted the practices and processes of aspects of the Scottish legal system. We are particularly interested in the ways in which the changes have been formulated and implemented, including ways in which relationships among key players will be reconstituted, distributions of power altered, and values and norms reconfigured.

I have prepared an informed consent form. (Here, you can give the informed consent form to the participant).

General Information About the Reforms:

- 1- Could you please start by telling us about your career culminating with how you ended up in this position?
- 2- Could you please explain/summarize the key aspects of the Gill Reforms?
- 3- What are the key drivers of the reforms?
- 4- What are the potential positive and negative aspects of reforms?
- 5- I am quoting from Lord Gill:

“The civil justice system in Scotland is a Victorian model that had survived by means of periodic piecemeal reforms. But in substance its structure and procedures are those of a century and a half ago.”

- Do you agree?
- Why do you think that there have not been significant changes to the civil legal system over the last 150 years?

Understanding How Change Unfolds in the Field

- 6- Why do you think there was a 7-year gap between the review and the start of the implementation of the reforms?
 - Which interest groups/professional bodies have been involved in shaping the Reforms?
 - Was there any resistance to the Reforms?
 - Why did groups resist?
- 7- Are you a member of one of these interest groups? Did you or your group resist to change? If it is so, why? How did you resist? What was the outcome?
- 8- There has been no significant change to the Scottish Civil Justice System for a long time. Do you expect any disturbance in the field dynamics caused by the reforms?
- 9- How do you feel that power in the field may shift?
 - What will be the likely outcome of any shift in power relationships?
- 10- What do you think the impacts of the reforms on interest groups might be?

Structuration/Re-structuration of the Field and Vertical Integration

- 11- Could you please draw the current field structure of the civil justice system? Key players?
- 12- How do you think the structure of the field would change after the reforms? Could you please draw it?
- 13- How do you think these reforms would affect the relationships between different groups in the field?
- 14- Can you explain the relationship of the Scottish civil legal system with the rest of the UK?

Organizational Behaviour, Values, Interests, and Professional Identity

- 1- Please tell me how will these reforms affect your profession?
- 2- What are the professional values you have?
- 3- How important is it for you to be an advocate/solicitor?
- 4- What would you say that motivates you to perform this job?
- 5- What does it mean to be an advocate for you?
- 6- What are the essential/core attributes to be an advocate? Has any of these attributes changed by time?
- 7- What are the common attributes that all advocates have?
- 8- What is the difference between solicitors and advocates? There are solicitor advocates? How do you feel about them?
- 9- Can you tell me about the challenges you have while performing your job?
- 10- Do you belong any professional association? Why?

Getting Recommendations / Closing

- 11- Who would you recommend that we should interview with in order to understand the nature of the reforms?

-Thank you very much for attending this interview and sharing your ideas with me.

8.5 Appendix 5: The list of responses to the Scottish Government's consultation process and the relevant details

Responses to the consultation on the Courts Reform (Scotland) Bill		
No	Name	Page number
1	North Lanarkshire Council	8
2	Respondent 002	10
3	Colin Reid	9
4	Advocates' Family Law Association	18
5	Judicial Appointments Board Scotland	2
6	Compass Chambers	15
7	Brian Fitzpatrick	13
8	Falkirk Council	10
9	LV	11
10	RICS	2
11	Family Law Association	6
12	Sheriffs Principal	10
13	Simon Di Rollo	13
14	Forum of Scottish Claims Managers	15
15	SMASO	1
16	Highland Council	11
17	Aviva	9
18	Thompsons	26
19	Gilbert Anderson	21
20	Council of Employment Judges	11
21	Royal Faculty of Procurators in Glasgow	10
22	Alastair Kinroy	19
23	Sheriffs' Association	18
24	Sheehan Kelsey Oswald	10
25	Core Solutions Group	11
26	Murray Stable	16
27	Scottish Action on Asbestosis	6
28	Scottish Child Law Centre	11
29	CALM Response 1	7
30	Which	13
31	USDAW	12
32	Roderick Campbell MSP	10
33	UNITE	8
34	Clydeside Action on Asbestos	4
35	East Lothian Council	12
36	SHRC	4
37	Citizens Advice Scotland	21
38	Shelter Scotland	14
39	William Donald Muirhead	6
40	Axiom Advocates	18
41	Scottish Women's Aid	16
42	DWF Biggart Bailie	11
43	Westwater Advocates Personal Injury Group	16
44	Andrew Hajducki QC	2
45	Homeless Action Scotland	3
46	Forum of Insurance Lawyers	11
47	SLCC	10
48	Hastie Stable	15
49	Scottish Council on Deafness	2
50	Money Advice Scotland	17
51	Davidson Chalmers LLP	7
52	Drummond Miller LLP	15
53	SCRA	4
54	STUC	6
55	Bryan Heaney	16
56	Families Need Fathers Scotland	12
57	Society of Solicitor Advocates	19
58	Association of British Insurers	14

59	Association of Personal Injury Lawyers	13
60	JUSTICE Scotland	16
61	James MacFarlane	10
62	North Ayrshire Council	12
63	RMT	1
64	Law Society of Scotland	25
65	Victim Support Scotland	2
66	Scottish Legal Aid Board	10
67	Castlemilk Law and Money Advice Centre	10
68	Irwin Mitchell Scotland LLP	13
69	Motor Accident Solicitors Society	12
70	Federation of Small Business	2
71	CALM Response 2	10
72	Scottish Arbitration Centre	3
73	Glasgow City Council	12
74	Scottish Commissioner for Children and Young People	5
75	UNISON	5
76	Scottish Mediation Network	17
77	Scottish Court Service	10
78	Senators of the College of Justice	17
79	Paisley Faculty of Procurators	11
80	Scottish Family Law Arbitration Group	10
81	RTPI Scotland	2
82	Clan Childlaw	12
83	Digby Brown LLP	13
84	CELCIS	9
85	Rachel Smith	11
86	Administrative Justice & Tribunals Council	10
87	PCS Court Service Branch	11
88	PCS Scotland	14
89	Respondent 103	1
90	Lawford Kidd	15
91	RSPB Scotland	6
92	Friends of the Earth Scotland	8
93	Medical Protection Society	10
94	Pinsent Masons LLP	4
95	Simpson & Marwick	11
96	AXA Insurance UK plc	11
97	Gladman Developments Limited	11
98	LSA Brown & Co Solicitors	17
99	Angus Smith Logan	12
100	The Faculty of Advocates	46
101	StepChange Debt Charity Scotland	10
102	Morton Fraser	14
103	Zurich Insurance PLC	12
104	Phil Stuart	11
	Total	1154
Responses to the recent consultation on the treatment of civil appeals from the Court of Session		
105	Forum of Scottish Claims Managers	5
106	JUSTICE Scotland	5
107	Law Society of Scotland	5
108	Network Rail	1
109	Pinsent Mason LLP	4
110	Scottish Legal Aid Board	2
111	Senators of the College of Justice	2
112	Zurich Insurance PLC	1
113	Friends of the Earth Scotland	2
114	Judicial Appointments Board for Scotland	1
115	Penny Uprichard	2
116	Faculty of Advocates	9
	Total	39
Submissions received on the Courts Reform (Scotland) Bill		
117	Asda Stores Ltd	5
118	Scottish Arbitration Centre	4
119	Lawford Kidd, Personal Injury Solicitors	2
120	Iain A J McKie	4

121	Clydeside Action on Asbestos	5
122	Simpson & Marwick	4
123	Ampersand Advocates	2
124	Compass Chambers	5
125	Union of Shop, Distributive and Allied Workers	2
126	Advocates' Family Law Association	4
127	Terra Firma Chambers	4
128	Professor George L Gretton, University of Edinburgh	1
129	National Union of Rail, Maritime and Transport Workers	2
130	Axiom Advocates	9
131	Educational Institute of Scotland's	2
132	Relationships Scotland	5
133	Chartered Society of Physiotherapy Scotland	4
134	Ailsa Carmichael QC	5
135	Unison Scotland	2
136	Name withheld	3
137	Faculty of Advocates	13
138	Faculty of Advocates (supplementary submission)	14
139	Citizens Advice Scotland	9
140	Citizens Advice Scotland (supplementary submission)	7
141	Law Society of Scotland	13
142	Part Time Sheriffs' Association	2
143	Which?	6
144	Forum of Scottish Claims Managers	4
145	Scottish Trades Union Congress	4
146	Association of Personal Injury Lawyers	13
147	Association of Personal Injury Lawyers (supplementary submission)	6
148	Gilbert M Anderson	6
149	Medical Protection Society	2
150	Zurich Insurance	2
151	Bryan Heaney Advocate	6
152	Motor Accident Solicitors' Society	4
153	Scottish Children's Reporter Administration	5
154	Westwater Advocates, Edinburgh	5
155	Unite the Union	5
156	Associated Society of Locomotive Engineers and Firemen	2
157	Scottish Mediation Network	5
158	Keith Steward QC	7
159	Forum of Insurance Lawyers	5
160	Scottish Criminal Cases Review Commission	2
161	Judicial Appointments Board for Scotland	2
162	Justice Scotland	11
163	Justice Scotland (supplementary submission)	12
164	Professors James Chalmers, Pamela Ferguson, Kenneth Norrie, Roderick Paisley and Kenneth Reid	2
165	Brian Fitzpatrick, Advocate	10
166	Friends of the Earth Scotland and Environmental Law Center Scotland	7
167	Families Need Fathers Scotland	5
168	Marion Caldwell QC	1
169	Scottish Civil Justice Council	4
170	Scottish Women's Aid	10
171	David Bartos, Advocate	9
172	Police Scotland	1
173	Group of Devils, Faculty of Advocates	2
174	Society of Solicitor Advocates	4
175	Scottish Legal Aid Board	8
176	Macleod and MacCallum	4
177	Scottish Police Federation	2
178	Scottish Tribunals and Administrative Justice Advisory Committee	3
179	Money Advice Scotland	8
180	Ian Mackay QC	7
181	Children's Hearing Scotland	3
182	Usman Tariq, Ross McClelland, David McLean, Ceit-Anna MacLeod and Paul Reid (members of the Faculty of Advocates)	7
183	Association of British Insurers	3
184	Thompsons Solicitors and Solicitor Advocates	22
185	Thompsons Solicitors and Solicitor Advocates (supplementary submission)	2
186	Clan Childlaw	3
187	Lord President of the Court of Session	3

188	Lord President of the Court of Session (supplementary submission)	1
189	Angus S Logan, Solicitor	2
190	Family Law Association	4
191	Professor Tom Mullen, University of Glasgow	7
192	Shelter Scotland	3
193	Scottish Court Service	1
	Total	394
	Grand Total	1587

8.6 Appendix 6: The informed consent form that was used

THE UNIVERSITY OF EDINBURGH The Scottish Civil Justice Reforms (Courts Reform Scotland)

Informed Consent

Thank you for agreeing to participate in this study. The purpose of this research is to understand the ways in which the recent Gill reforms have impacted the practices and processes of aspects of the Scottish legal system. We are particularly interested in the ways in which the changes have been formulated and implemented, including ways in which relationships among key players will be reconstituted, distributions of power altered, and values and norms reconfigured.

Any information that you provide will only be used in aggregate form with other data collected as part of this study. Your confidentiality will be protected throughout with only the research team having access to your personal data. You will not be identified in any presentation or publication that emerges as a consequence of this work. The identity of the organization will be similarly protected. In agreeing to participate in this study, you acknowledge that you do so entirely voluntarily, and that you are free to withdraw from the study at any time without question.

If you are agreeable, the interview will be audio taped in order to ease data collection. Following transcription, a copy will be sent to you for review.

If you have any questions or concerns regarding this process, please contact one of the investigators involved with the study:

Name: Professor John Amis
University of Edinburgh Business School
Tel.: 07758 138971 (m)
E-mail: john.amis@ed.ac.uk

Name: Ilay Hicret Ozturk
Doctoral Student
University of Edinburgh Business School
Tel: 07821 843275 (m)
E-mail: I.H.Ozturk@sms.ed.ac.uk

Signed: _____

Name: _____

Date: _____