

What's in a name? Is the title of solicitor still relevant?

What's in a name?

“Solicitor” is but one name in the English lexicon of an estimated quarter of a million words.¹ The exact number is unknown because a language is not a fossil, frozen in time. The human penchant for dictionaries gives the illusion that a language can be captured in print and paper, but the result is only a time capsule. The real language, as it exists in the heads and on the tongues of millions of people is a living creature, always evolving. The evolution of a language is the sum of the evolution of its words, each of which, however fundamental they may seem, was made up once upon a time. In this way, every word is a historical artefact, a kind of time-space map, with a story to tell of where and how it has been used over time.

The story of the word “solicitor” is relatively unique in the global legal dictionary. In French you have the choice of words like “associé” and “avocat”. In Russian you have “юрист” (“yurist”) and “адвокат” (“advokat”). “Yurist” comes from the root for law, so “lawyer” seems to be the best fit - that happy, international catch-all. “Associé” fits with the Anglo-American title “associate”. “Advocat” and “advokat” fit nicely with barristers who practice advocacy. Even “barrister” makes sense as professionals are called to the “Bar”. But where did an oddity like “solicitor” come from?

Dictionaries give clues as to its origins:

- Late Middle English (denoting an agent or deputy): from Old French solliciteur, from solliciter (*Oxford*);
- 1375–1425; late Middle English sollicitour < Anglo-French; Middle French solliciteur. “One who urges”, “one who conducts business on behalf of another” (*Collins*);
- Early 15th century, meaning “one who conducts matters on behalf of another”. Both the fem. forms, sollicitress (1630s) and sollicitrix (1610s), have been in the sexual sense, but the latter seems more common in non-pejorative use (*Merriam Webster*).

It was after 1873 that the offices of “attorney” and “proctor” disappeared as terms relating to legally qualified persons, being replaced by “Solicitor of the Supreme Court of England and Wales”.² But the concept of a solicitor appears far earlier than 1873:

“The 1275 Statute of Westminster imposed penalties on lawyers who were found to be deceitful...In the 1400s, we see there was much work in the most used Court (the Common Pleas)...From 1590 to 1630 in particular, certain judges attempted to eliminate the profession as it was seen as less honourable and gentlemanly than the role of Barrister...”³

In this way, the title “solicitor” can be seen as a residue of the broader anthropology of the English, if not Westminsterian, legal system. It is an ancient and unique title.

¹ The Second Edition of the 20-volume *Oxford English Dictionary*, published in 1989, contains full entries for 171,476 words in current use, and 47,156 obsolete words. <https://www.lexico.com/en/explore/how-many-words-are-there-in-the-english-language>

² <https://englishlegalhistory.wordpress.com/2014/02/10/history-of-the-solicitors-training-contract/>

³ *Ibid.*

Would a solicitor by any other name smell as sweet?

Does a title really matter? Do names affect people's lives? Studies in naming trends have tried to establish whether a name can influence a person's outcomes in life. A leader in the field is the Harvard economist Roland G. Fryer Jr., who analysed 40 years of birth records from California in order to answer this question. The data contained many weird and wonderful names, including some aspirational ones: he found eight Harvards, three Senators, two Presidents and three Lawyers (but sadly, no Solicitors). An eye-catching data point was the Lane family, who had seven children in the late 1950s and throughout the 1960s. For reasons that no one can surmise, the parents named their first son Winner and their last son Loser. As if to make a point, Loser became a successful sergeant in the New York Police Department. Winner's most notable achievement was the length of his criminal record.⁴

The Lane family provide a powerful example of Fryer's conclusion: naming is not destiny. This is no surprise given our basic understanding of words and meanings - they are separate entities. When a person uses a word for the first time, it is not the first time the meaning behind the word is being introduced to humanity. Take a relatively new word from the world of social media - "unfriend". The first time this word was used, it did not invent the concept of removing someone from your list of friends on a social network platform. The concept came first, and then the word followed separately. It is for this reason, after all, that we can translate between languages. There are hundreds of words for cat across the world, but cat, chat and *kot* are just different labels for the same furry, four-legged, underlying meaning. The name changing from language to language does not change the destiny of the cat.

However, that was not the end of Fryer's conclusion. Fryer specialises in the study of black underachievement. In addition to the economic and social disparity between blacks and whites in the United States, Fryer became intrigued by the virtual segregation of black and white culture, which extended to names. (As many as 40 per cent of black girls born in California each year are given a name that not one of the approximately 100,000 white girls are given.) In addition to the conclusion that naming does not alter destiny, he found that names do tell us something definitive - about the person giving the name. Distinctive names were strong indicators of parents' characteristics, such as education level or how liberal they were. So perhaps the title "solicitor" tells us more about the profession that gave, and continues to give, the title than anything about the title itself. In this way, the title "solicitor" points to a profession that favours tradition and consistency in its use of this old and isolated word. Can such a title, and can such a profession, still be relevant today?

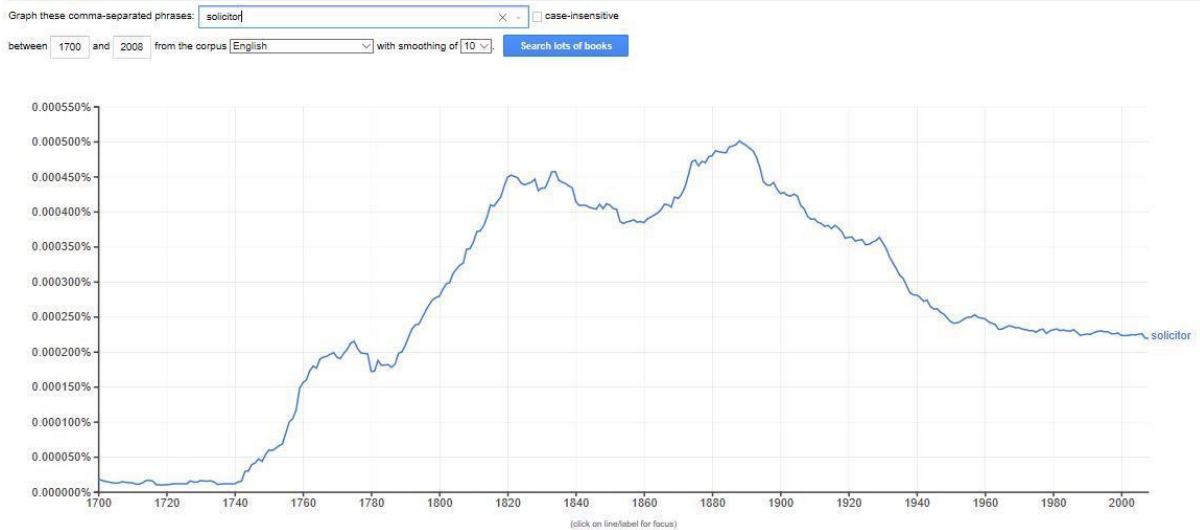
⁴ *Freakonomics*, Levitt. S and Dubner S. J., William Morrow (2005), pp.163-188.

Is the title of solicitor still relevant?

How can relevance be measured? One approach is quantitative; the more relevant a word is, the more it is used. Google Books Ngram Viewer is a tool which allows us to pursue this quantitative approach by searching the entire English-language corpus of the Google Books library for the percentage incidence of words.

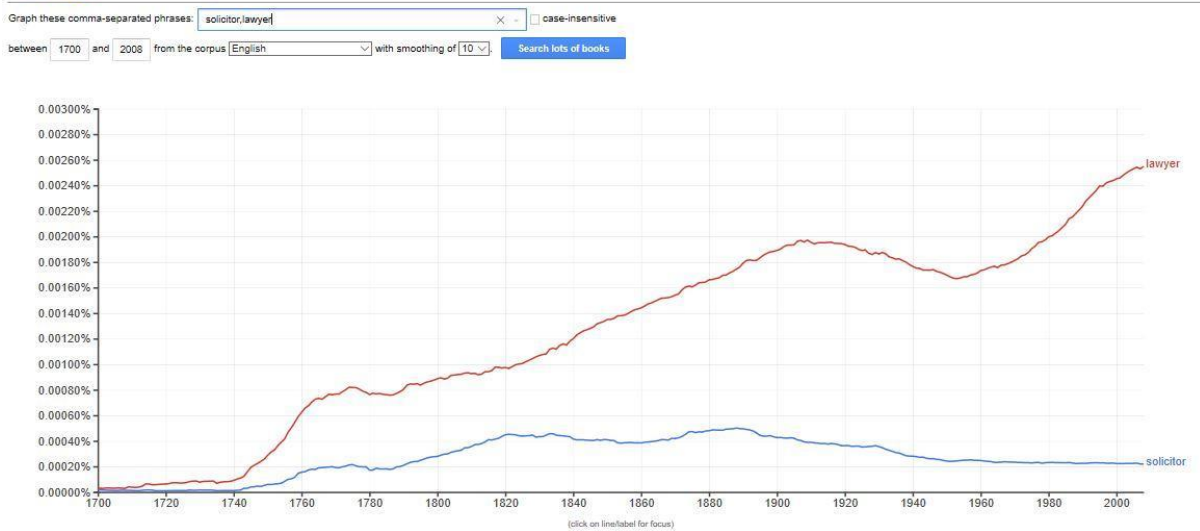
Searching for the word “solicitor”, it is clear that usage has been in decline for over a century.

Google Books Ngram Viewer



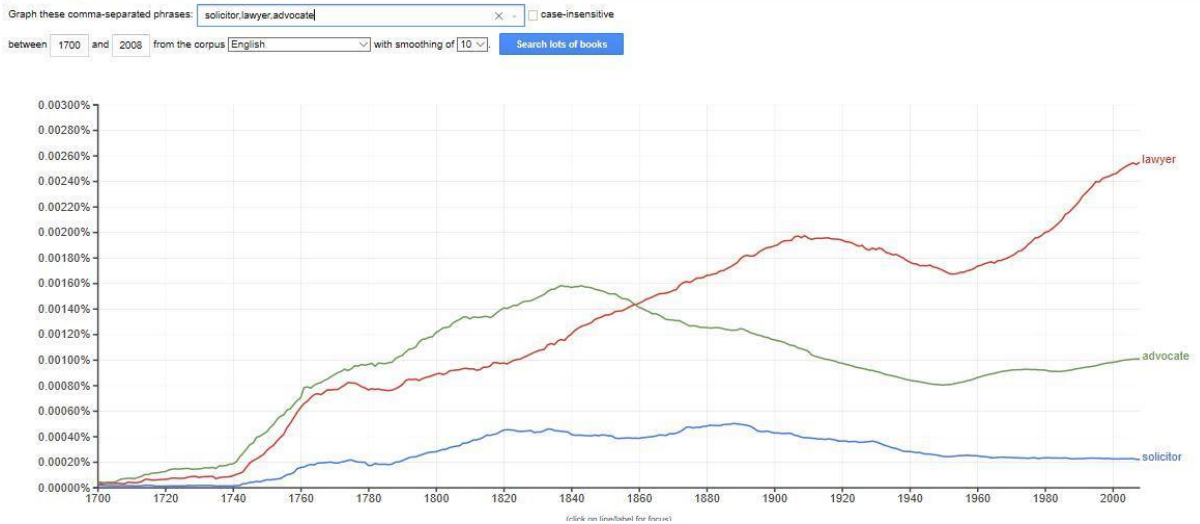
In fact, not only has the word been historically outstripped by its rival “lawyer”, the gap is growing.

Google Books Ngram Viewer



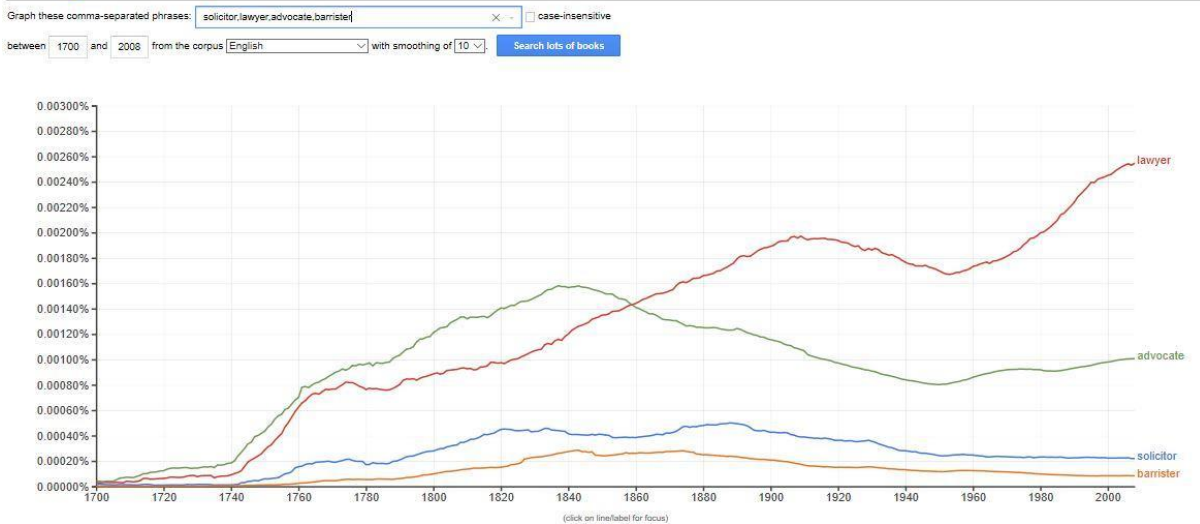
While “lawyer” has not always worn the crown - “advocate” took the top spot in the early nineteenth century - it is clear that “lawyer” is the dominant legal title in the twenty-first century.

Google Books Ngram Viewer



(At least solicitors can console themselves that they have more hits than “barrister”.)

Google Books Ngram Viewer



A second quantitative aspect is the choice by the profession itself to use the title. The profession consists of a sizeable 143,683 individual solicitors, all of whose names are written on the Roll of Solicitors, whose professional activities are regulated by the Solicitors Regulatory Authority (“SRA”) and, if things go wrong, whose actions are adjudicated by the Solicitors Disciplinary Tribunal.⁵ These key incidences of the title hold some weight, but are far from definitive proof of relevance on a quantitative basis. Apart from anything else, 140 thousand is not such a big number in a country of 65 million. To give an example of scale, it is around the same number of passengers stranded by Thomas Cook earlier this autumn.⁶

⁵ As of February 2019: <https://www.chambersstudent.co.uk/where-to-start/what-kind-of-lawyer-do-you-want-to-be>

⁶ <https://www.telegraph.co.uk/travel/news/operation-matterhorn-flights-cost/>

It is important to assess relevance from a qualitative perspective because it is not a standalone concept. Relevance does not exist in a vacuum because we always look at relevance in relation to something else. So while the title “solicitor” might be relevant to the profession itself, is it relevant to everyone else?

On an anecdotal level, explaining what one’s job is at a dinner party seems to be easier for doctors or teachers than it is for solicitors. Having to smile through harmless but misguided references to courtrooms or Harvey Specter suggests that the title maintains a certain mystery. In 2008-2009, the SRA attempted to measure this by conducting a study on perceptions of solicitors in the UK.⁷ They found that 41% of respondents had used a solicitor in the past five years. The relevance of solicitors clustered around key life events, for which professional assistance is required:

- 21% of respondents had used a solicitor for buying, selling or re-mortgaging property; and
- 14% of respondents had used a solicitor for wills or probate matters.

On this basis, solicitors do not appear irrelevant, but the full range of work they do is clearly more relevant to some than others. A significant proportion of the work carried out by solicitors (in particular, measured by revenue) has nothing to do with residential property or wills. However, areas like financial services or investment management are mysterious and irrelevant to the majority of people. Therefore, there is a gap between the full range of work conducted by solicitors and the parts of that spectrum which are accessible to the public. This gap is arguably reflected in the poor diversity statistics surrounding law firms. If solicitors and their work are not relevant to a majority of the public, how can the profession expect to recruit from a diverse range of backgrounds?

For example, a notable demographic gap between the UK workforce as a whole and the UK legal workforce is in paid education. While around 7% of the UK workforce were educated at a fee-paying school, the figure is around 22% in the legal workforce.⁸ These figures could suggest that paid education is an indicator of someone to whom solicitors are more relevant. A high-income, high-education background means that you are more likely to know a solicitor in your close network of family and friends. Students are much more likely to aspire to become solicitors if they have actually met one. But if solicitors are clustered in the same demographic pockets, those demographics will only repeat themselves.

This theory could go some way to explaining the demographic gap between law students and the legal workforce. Of law students in the UK, about 40% are from ethnic minority backgrounds and two thirds are female.⁹ And yet, firms with more than 50 partners report that less than 30% of their partners are female and less than 10% are from ethnic minority backgrounds. Law may be relevant enough for students to pursue a law degree, but solicitors and their work are not relevant enough for many of these students to enter the profession.

⁷ <https://www.sra.org.uk/sra/how-we-work/consumer-research/summaries/public-attitudes-towards-solicitors/>

⁸ SRA Diversity Toolkit: <https://sra.org.uk/solicitors/diversity-toolkit/law-firm-diversity-tool/>

⁹ <https://www.sbs.ox.ac.uk/programmes/custom-executive-education/creating-competitive-advantage/interview-christina-blacklaws>

In conclusion, the title “solicitor” is historical and unique, but names are separate from the people and things they are naming. This division between title and title-holder suggests that when asking whether the title “solicitor” is relevant, the more pressing issue is whether the solicitor’s profession is relevant. To the general public, conveyancing and probate are inevitable life stages in which solicitors are implicated, but this is not relevant enough to open up the partnership ranks to the full range of talent on offer. The demographic narrowness in certain corners of the profession shows that becoming a solicitor is still far more relevant to some people than to others. The profession should reflect on what can be done to improve the odds, for example, by helping more students from low-income backgrounds to meet one of the more than 140 thousand solicitors in England & Wales. This may sound like a lot, but the demographic data of the legal workforce suggests otherwise. After all, how many of us know someone who was stranded by Thomas Cook?

Helen Broadbridge, 30 November 2019