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Article

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economic sociology_the european electronic newsletter

Provided in Cooperation with:

Max Planck Institute for the Study of Societies (MPIfG), Cologne

Suggested Citation: Bessy, Christian (2012) : Law, forms of organization and the market for legal services, economic sociology_the european electronic newsletter, ISSN 1871-3351, Max Planck Institute for the Study of Societies (MPIfG), Cologne, Vol. 14, Iss. 1, pp. 20-30

This Version is available at:

<https://hdl.handle.net/10419/155999>

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Law, Forms of Organization and the Market for Legal Services

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The legalization of economic and social relationships has entailed the growth of legal services and has progressively changed the way that they are organized. More recently, historical rules of organizing the legal profession, in the form of a 'professional order' (bar association), have recently been undermined by the European Commission (2005) because they restrain competition useful to the construction of a market for legal services. Although this project of liberalization has not succeeded, professional orders have been ensured to renegotiate certain rules (prohibition on advertising, multi-disciplinary or fees issues).

From the case of the French professional order, the purpose of this article is to analyze these institutional changes and their setting up in new forms of organization¹. Beyond (and linked with) economic factors, like the globalization of business activities, there are legal factors, like the increasing complexity of law (Hadfield 2000). We would like to show that these changes are also the result of a more individualistic concept of law referring to a liberal political philosophy in which politics, in the sense of the management of the tensions between different common goods, is replaced by the enforcement of 'individual rights'.

The activities of lawyers are subject to social and organizational constraints, but reciprocally, the profession and the organization also constitute its support. This will be our analysis in the first part, starting from the notion of different sources of legal inventiveness, diverse modes of business development and their organizational supports. We will then examine how the emergence of new forms of organization, based on a more corporate logic, calls into question the professional rules. From an analytical point of view, we stress the normative dimension of these activity models and thus the expectations of the actors each one other, by referring to a plurality of common goods or "conventions of quality" (Boltanski/Thévenot 2006; Ey-

mard-Duvernay et al. 2006). The idea is also to connect them more generally to different concepts of law.

In a second part, we put emphasize on the emergence of organizational forms linked to the creation of markets for legal services in which law firms act as mediator in the absence of properly defined positive law. That will lead us to adopt a more endogenous definition of law (rule-setting), making it possible to see the close connection between litigation and provision of advice, which has become today predominant. Beside we link these organizational changes to a more individualistic concept of law, in particular by distinguishing between the various "causes" that can be defended by lawyers, which refer to diverse models of state intervention.

In conclusion, we will lead up finally to the consideration of two axes of analysis, which in turn will facilitate building a typology of the firms: the discretionary power of the lawyer towards his client and the narrow coupling of litigation and legal advice. This typology is referred to different ways of organizing the profession, and, more generally, different concepts of law and politics.

From an empirical point of view, we rely on semi-structured interviews of about thirty lawyers belonging to different 'firms' (organizations, cabinets) in terms of size, location (Paris/province), and legal domains (business and corporate law, labor law, family law).

1. Legal inventiveness and forms of organization

It may be surprising to speak about legal inventiveness in a universe that is strongly structured by positive law and in which judges are supposed to apply the law. From this point of view, this concept would undoubtedly be more relevant within the framework of Common Law, which some commentators agree to emphasize its adaptability to socio-economic changes, allowing greater economic efficiency (Posner 2003). However, even in the tradition known as Civil Law, the incompleteness of legal rules implies a very large amount of interpretation by the judges,

as well as by the whole set of law professionals (lawyers, consultants, etc), whose interactions contribute to stabilizing case law in a given context. It is because the context can vary that the law must also adapt itself and evolve. It is also because the context can vary on a temporary basis (following a crisis) that the law must adapt to the situation (in the event of drought, the law of water use is modified). It is also necessary to take account of particular cases, and other considerations of justice or equity (Bessy, 2007).

Concerning the inventiveness of the lawyers' work, we simply retain a difference in degree between the two legal traditions. This is by more readily stressing the emergence of new fields of law, in particular related to economic globalization and to the decline of State intervention, and to the growth in consulting activities about litigation, or to the development of alternative dispute resolution other than lawsuits.

1.1. Various dimensions of the inventiveness of lawyers

Far from taking place in a universe where legal decisions are perfectly foreseeable, the lawyers' work consists in thinking up new solutions to often complex problems. In this sense, we can say that the lawyers' activity, according to E. Lazega (2001), "is knowledge-intensive, in the sense of a 'knowledge-in-action' accumulated through experience and reflected by a 'sound judgment' – a term often used by colleagues to characterize the quality of professional work". This activity based on knowledge and experience, rather than on heavy investments in technical equipment, does not exclude any incorporation of knowledge in cognitive artifacts conceived at various organizational levels. In this perspective, our interviews have sought to point out different supports of the lawyers' activities in order to restore the distribution of knowledge among individuals and between them and their social-material environment (Hutchins, 1995).

The inventiveness of lawyers can occur at the time of the court hearing (strategy taking account of the "strengths" of the opposing party, rhetoric used for persuading judges, choice of the "means") and at the level of advice (writing a contract, doing a transaction, conceiving means of compliance to law in organizations,...).

This inventiveness contributes to an "economics of singularities" (Karpik 2010) in which emerges the style of a lawyer or of a firm (when disciples borrow from the Mas-

ter), or working methods of a firm, professional cultures, schools, families ("I went through such firm"). The acquisition of skills through experience is not separate from the idea of sharing values concerning the very activity of lawyers. This narrow gap between the cognitive and normative dimensions of training constitutes a strong source of professional identification.

At a later stage, a lawyer builds his reputation within his professional circle based on his style and methods; his reputation allows him to attract new associates and new clients (for example as regards criminal law). It is also a basis for a lawyer's professional pride, the defense of a practice that is close to love of art (or the law), or the quest for excellence.

Nevertheless, to be detached from this individualistic figure of the lawyer, close to a writer, it is important to stress that the emergence of new solutions is seldom the fruit of the effort of just one player. It results from work shared between several players, between the latter and their socio-material environment (role of cognitive artifacts, collections of cases, etc) and in particular by the sharing of a language which allows to work out new "legal approaches", to change from real-life experience to legal arguments and qualifications (Bessy/ Chateauraynaud 1995). These last are not inevitably recognized or accepted by the others, and in particular by the judges, which is why the lawyer must be able to handle rhetoric in order to persuade his listeners.

The art of persuasion also favors negotiation, a fast-expanding activity with the growth of the "Alternative Dispute Resolution" (arbitration, mediation, transaction) and of the "transactions" handled by business law firms. These transactions require a "true talent for negotiation, a sense of consensus,... so as to create a relationship with the opposing party, the opposing colleague. It is very important and it is very valued by clients" (lawyer in a large British business firm).

The style of the lawyer, which is the true mark of his personality, but also his talent as a negotiator, constitutes the main basis of his reputation, and of the attachment of his clients and his staff. A form of organization for legal activity already stands out in our mind, which corresponds to the traditional, excellent firm, based on the reputation of its founder, and where litigation remains the main activity or, in any case, the most formative for young lawyers. The great criminal lawyers are now given less media coverage than renowned business lawyers whom one entrusts with questions of honor and of fortune. These renowned firms

appreciably expanded by diversifying their activities in order to meet the needs for advice of the large CAC 40 companies, but acting in court remains the horizon of advice. Generally, concerning the working of the profession, they are rather careful, choosing moderate deregulation. In particular, they do not call into question restrictions on advertising, results-based fees and conflicts of interests. In fact Parisian firms charge very high fees.

Far from working alone, the lawyers use resources supplied by organizational structures which grow more and more, making impossible the exercise of the profession in an independent way. In order to understand the emergence of new forms of organization in the activities of law firms linked with the creation of markets for legal services, it is useful to characterize the organizations which, according to the model of a large law firm, work according to a true corporate logic.

1.2. Firms that provide legal services

The "large Anglo-Saxon firms" in general were used as a foil in the arguments of the majority of our interviewees and were said to cause many of the evils from which the profession suffers. However, if we take up again the arguments of the founder of a French business firm (of medium size), his remarks are more moderate. We can base ourselves on his arguments to draw a "negative" picture of the main features of a large Anglo-Saxon firm and the 'conventions of quality' from which he justifies or criticizes the worth of persons and objects.

He advances the personalization of service and the culture of litigation, two elements considered true competitive advantages of his firm against the more "industrial" activity of the Anglo-Saxon firms. These latter are marked by a strong division of labor among the lawyers, in particular between the provision of advice and litigation. Thus he refuses to take part in tenders and tries to avoid all means of pinning down his work: invoicing by hour, guides and classifications, brochures, all that could bring it closer to a service provider dependent on the client. He intends to keep his independence of judgment in order to defend the true interest of his clients, and in this sense he is opposed to contingency fees. Lastly, he grants much importance to avoiding conflicts of interest and adds to the formal definition of these conflicts some thoughts on loyalty towards his clients.

Our interlocutor highlights two different quality conventions, which can be distinguished by the resistance or not to any form of formalization of the quality of service, in particular using assessment tools specific to a given market. On the contrary, the remarks of the manager of a large international business firm instance a large dependence on the client (a consequence of the model of the very diversified business firm) and, more generally, on the market. "These are the market constraints" is the recurring statement of our interviewee, constraints that push them to accept conflicts of interests: refusal of "exclusive instructions" coupled with contingency fees. There is the example of the sale of a company where many bidders are competing. The firm can have its teams work for different bidders in order to minimize its risk of loss, which supposes setting up 'Chinese walls' between the competing teams.

Another form of organization of the activity can be created around a "big case" bringing together three or four senior partners, in order to define a strategy with the client. In the example given by our interlocutor (the sale of a company), you do not see very clearly the borderline between the search for legal guarantees and economic decisions. The law is then instrumentalized to the benefit of the economy, which is also seen in the fact that the double training course became a must, which, on account of short supply, entailed a rise in associates' salaries over recent years. Another consequence of the handling of "big cases" that require the involvement of several associates or teams or departments, is the implementation of a corporate logic, the pooling resources, clients in particular, and salaries.

The representatives of these large firms say that they are not affected by the creeping liberalization of the market for legal services, in which they take part, and see in a favorable light the different steps towards deregulation of the profession (advertising, contingency fees, opening up of the firms' capital and more). Inside the domain of business law, we are thus confronted to two very different way of exercising the profession, of connecting the "market" and the political action of the lawyers. But before go further on this issue, it is important to examine the economic factors explaining the modes of development of law firms.

1.2. Organizational constraints: from firm to networks

The main features of business firms are their increasing size, with specialization by department, and geographical coverage in various countries, which is increasing in extent.

This form of organization of legal activity is justified economically (in reference to the problems of the firm's boundaries) by economists such as L. Garicano and T.N. Hubbard (2009). They start from the notion that these law firms make specialization easier within themselves because they constitute a means of information, more efficient than the market, on new businesses opportunities. In short, the law firm itself constitutes a market intermediary, each lawyer being encouraged to pass on the client to a colleague when the advice activity of is outside his field of expertise. That can lead to a virtuous circle of information sharing concerning clients, knowledge, incomes and profits of the firm. This strong sharing of resources encourages the division of labor. Moreover, the activity of advice to clients encourages diversification of fields of law, because of the interdependence between the fields where advice given (which can lead to team work); whereas the activity of litigation is more compartmentalized.

Thus, authors show that litigation lawyers, who work in fields centered around litigation (criminal law, divorce, insurance,...), do it in very specialized firms in which clients themselves, through their network of personal relations, bring new cases to the most famous lawyers in their field.

Between these two logics, there is place for a hybrid form of organization: while evolving within a large firm, lawyers at the head of specialized departments own their clients, which ensures mobility towards other firms, where they sometimes bring their whole teams. This personal capitalization of clients, which is always a source of tension within firms, seems more developed, according to our interlocutors, in the United States than in the United Kingdom. In any case, it is evidence that uncertainty on the quality of the provision of legal services makes networks of interpersonal bonds critical to channel clients towards the lawyers (Karpik 2010).

But these various organizational logics should not mask the role of advice networks that transcend the borders of firms. Beyond the intra-organizational study starting from the study of the way of working of a large US business firm, E. Lazega (2001) shows the importance of inter-firm "advice networks" in the research of legal solutions. These networks function like practice communities based on rules of reciprocity, exchange of knowledge, but which are not free from considerations of status and strategic stakes. These rules of exchange rest on the existence of a professional model (or its functional equivalent), capable of controlling entry into the profession, of sharing certain training

expenditures and of solving litigations between lawyers as well as between the latter and their clients.

These inter-firms "advice networks" take a more and more structured form which can be explained by both the will of firms to follow their clients (in particular multi sites companies) in different geographic places and the quick evolution of law requiring high-level and hyper-specialized expertise. The domain of labor law offers a good illustration of this mode of network organization.

Indeed, all our interviewees who practice in this field stress the rapid development of labor law, so that they seek new solutions when case law is not stabilized. This legal innovation, incremental by nature (some people find the term innovation too extreme), is facilitated by a certain specialization in the field and a form of organization that allows the fast exchange of information based on common databases and training seminars. This organization can be increased by membership of a network on a national scale or European scale, which facilitates maintaining links with correspondents who exchange information, provide professional advice, transmit or accept files, litigation they can follow or act for in court within the jurisdiction of its bar association. This mode of network organization, especially developed by the firms working on behalf of employers, somehow follows the development of the large groups or multi-centered firms; these seek to take on the exclusive services of a law firm that will be able to handle files, via its network of correspondents, for its entire territory and for all requested services. As regards labor law, one can also see the adequacy with the new authorities representing employees (Central Works Council, European Works Council) and the signature of agreements, or cases as regards employee representation, which is followed and settled by the company's law firm.

There again, the agents themselves refer to niche firms which are competing through networks. Intensification of competition created a form of "race for the niche" in a specialized area of labor law that is in turmoil, as though there exists a race for patents in the field of technological innovation. The idea is that the first who registers the patent wins the whole market linked to the new product or process. In the same way, in labor law, the one who first finds the "new product" is likely to be acknowledged as the hyper-specialized firm on this matter and thus to attract the greatest number of clients in this new market².

This logic of attachment of clients, primarily made up of multi-national companies, based on the brand of a network of firms, has been extended to other legal professionals than lawyers. That raises the issue of multi-disciplinary structures of activity, which are forbidden in France, and that of advertising restrictions. The debate on advertising was based on attacking international networks that advertise law firms³.

Beside, this redefinition of professional standards constitutes an important limit to self-regulation by the profession. This applies in particular to what relates to "conflicts of interests", of which E. Lazega (2001) shows that they can only increase as the size of the firms increases. This raises the question of the invention of a form of regulation negotiated between the profession and the State, by which a form of external control could prevail. Indeed, the limits of opportunist behaviors regulation within firms (shirking: to steal a client or to leave with clients), which disturbs the accumulation and division of the human and social capital of the organization, hinder compliance with strict ethical rules by which the legal profession regulates itself.

2. Forms of organization, building and nature of law

We propose to link these organizational changes to a legal regulation which lies on a contractual process whose standards are defined by the large firms, in the absence of a truly applicable law. This role of mediation played by lawyers can be characterized according to different process of construction of legal rules and of their meaning. This mediation role contributes to a more endogenous construction of law and leads to consider lawyers as 'law intermediaries'⁴. But, these organizational changes can also be interpreted in reference to a more individualistic concept of law.

2.1. The role of mediator for large business firms

The interest of the analysis of Emmanuel Lazega (2001) is not only to highlight the links between forms of organization and the market for legal services, but to do it in relation to the contribution of large business firms to the very definition of the rules of law. Thus multiple representations, at the origin of potential conflicts of interest, can still have the advantages of a form of unofficial arbitration.

This role of mediation would be particularly important in international, commercial contracts in the absence of true business law and stabilized market rules. The large business firms can be regarded as powerful players for globalization. Because they are permanently in "conflicts of interests", they have an important power of arbitration in commercial contracts between multinational firms (they hold information about the two sides) and play a part in respect of them or in their possible renegotiation.

This role of go-between has also developed in finance and in particular in big international mergers and acquisitions. In the absence of applicable law, the large law firms provided standards for documents, contracts and written agreements, procedures, and have at the same time contributed to building the international financial market and the market for law. In becoming experts in the field, "opinion leaders", they take part in national or international regulation, especially as regards stock exchange law (Quack 2007). In this way, large business firms constitute necessary stages for international business and finance, which confers on them a position of strength vis-à-vis their clients and the international regulation authorities.

To fine tune Lazega's analysis, we would stress that private international law, through the impetus of international conventions and Community law, conveys both in conflicts of laws and jurisdictions, a large variety of solutions that are within a continuum between two poles: individual will (the contract) and various neo-statutory ways of control (police laws, exclusive jurisdictions, the theory of legal rights or fundamental rights) to take up again the argument of one lawyer. The actual border between private law and public law is redefined. The same holds for labor law.

We would like now to put forward some additional analytical elements in order to analyze the links between the organization of legal activities and the development of law, which results in having a more endogenous notion of law.

2.2. An endogenous law

One can refer here to the approach of L. Edelman (2003), an American sociologist of law, who defends an endogenous notion of law. She shows how the practice of law professionals, concerning civil rights as regards employment in the United States, fits in with a double process of "managerialization" of the law and "legalization" of organizations at the crossroads between the legal and organizational fields. Because of the abstract and ambiguous

character of these civil rights, lawyers in particular, by means of their consulting activity, collectively build models of compliance with the law that integrate organizations' objectives of efficiency and profitability.

Lawyers make known changes in the law and the new risks run by organizations because of patterns of litigation. They write in websites or professional newspapers and give training courses to other lawyers and managers, which are so many means for the objectivity of lawyers' quality. They may also work as consultants for non-specialized lawyers and especially for in-house legal counsel within organizations. In this way, they maintain very close links with both corporate management and with other management consulting firms. This activity makes it possible to single out "models" of compliance with the law and to assess better the possibilities of a lawsuit and the responsibility of companies. In this respect, they can exaggerate the threats (sources of legal insecurity) represented by the law, in order to enhance their power and their status within the companies, in particular in matter of dismissals.

As these constructions of the law become institutionalized, they gradually affect other protagonists in the employment relationship (including the judges) and the way in which they understand the significance of the law and rational conformity to the latter. Edelman raises the risk of inefficiency of the law in the sense that it does not achieve its initial objectives as regards, for example, the fight against discrimination. A whole set of compliance tools (e.g. internal arbitration) acquire a formal aspect without true, substantial content.

Such an analysis, stressing the irrigation of the fabric of the law through organizational practices, can easily apply to the other fields of law and of regulation of business activities which make refer to general principles (health, competition, bankruptcy, and environment). Developed within the framework of legal, liberal logic and common law, it can be used in a "civil law" country, although the roles of the courts and the training of the magistrates are different. The development of fundamental social rights, close to American civil rights as regards employment, gives way to the same type of involvement of French labor law firms that "europeanize" themselves via their networks. The influence of law firms on the definition of case law constitutes one of the main dimensions of their legal inventiveness, which in a way partakes of building the common good, but which is not devoid of challenges and conflicts between various groups in society.

2.3. A more individualistic notion of law

The international extension of lawyers' activities raises the question of their regulation by supra-state authorities, such as European institutions, which do not have true sovereignty. From here comes a policy of deregulation of the legal profession that does not truly propose re-regulation which would imply defining common values likely to set up a true political community. This is the idea of normative coherence between the internal practice of the profession and external philosophy likely to set up a society. The deregulation policy only calls for an increase in the competition mechanisms that make the clients kings. However, one might think that, behind the idea that "clients" can achieve a high quality service at the best price, there is also the idea that the client is able to define his rights, to put forward his claims to this or that right; which leads to permanent competition between each one's claims to his right, without any political authority determining a priori a hierarchy among rights.

The lawyers are then enlisted in this competition, being able to be used as mediator between parties with competing claims, just as easily being able to make equitable standards emerge, such as, conversely, defending the rights of the strongest to the detriment of those of the weakest. In the absence of a true professional model that gives life to a discussion space in which "causes" or "principles of justice" are debated or defended (Boltanski/Thévenot 2006), it then becomes more problematic to assess the quality of lawyer's services on a "macro" level.

From this view point, it seems to us that the emergence of new "professional practices", which are not well clarified, is to be related to a more individualistic notion of law (each one seeking to defend his right via his lawyer), preferring the "Alternative Dispute Resolution" (in short ADR, i.e. arbitration, mediation, transaction), where the lawyers tend to be negotiators between divergent individual interests, rather than interpreters of substantive law or mediators between local and general interests. One of the consequences of the "ADR" is to "privatize" the law (and justice), which then loses its characteristic of being a "public good" and an incentive to prudent behaviors. Another consequence is to limit the public and democratic debates concerning values.

These professional changes can also be connected to a more procedural notion of the law, based upon the idea of a greater autonomy of the actors in the process of building

rules (with an increased number of negotiation agreements as in labor law, or all kinds of pacts or charters), showing up the withdrawal of the State in the definition of substantial rights. These rights facilitated the fight against social inequalities and were thus strongly associated with an overall political plan, relying on a powerful administration and public funds. The transformation of "administrative bodies" into "agencies" which contract between them or with "private partners", by referring to objectives to reach, gives a good illustration of more horizontal social relationships and of the predominance of incentive mechanisms upon the regulations (administrative rules or statutory decrees). From a general point of view, these processes of contractualization, in which lawyers can play an essential role, contribute to the redefinition of the different concepts of "contract" and "legality" (Supiot 2003)⁵.

One can wonder whether we get closer to the traditional role of lawyers defending a form of political liberalism, namely a moderate intervention by the State, the promotion of civic freedoms and good representation of the interests of civil society (Halliday/Karpik/Feeley 2007). But the defense of the modern rule of law, based on autonomous individuals having fundamental rights, can take different forms and refer to diverse concepts of political freedom. For instance, the English-inspired political freedom, which distinguishes the spontaneous activities of civil society and the limited responsibilities of the State, is different from our model of political freedom (in continental Europe) where the State acts as guarantor of the common good, and the development of substantive law aims at establishing a set of priorities between various categories of common good that are always open to debate.

The risk of an individualistic notion that regards law as an individual freedom (or empowerment) is to make a misleading amalgam between all the "rights to", in not dissociating the rights which refer to possibilities of action, such as the right of expression or freedom to do things, from rights relating to things that can be allotted, not without competition, and which pose problems of social justice, of the distribution of resources.

Defending "individual rights" without being forced to go back to one form or another of common good is likely to invalidate the existence of a professional model that facilitates deliberation around a plurality of values. As a young lawyer working in a business firm puts it, what brings lawyers together is the fact that they all seek to defend the

position of their client in the name of the (purely subjective) principle that everyone has the right to be defended.

It is thus important to distinguish between the various "causes" that can be defended by lawyers, which refer to various political philosophies and models of involvement by the State. A difference must be made between the "causes" which lead to legislative production (statutory law) giving *a priori* real rights to individuals, accompanying by public measures providing material resources to make these rights effective, and those which are not instituted; The latter aim at assure minimal guarantees in situations of "crisis", in respect to ethical principles. According to this second perspective, the lawyers appear as defending ethical norms which are not respected. Intervening after the emergence of injustices, they recall to the members of the society their duty to honor their "imperfect obligations"⁶.

In fine, the intervention of lawyers can also generate an increasing "judicialization" of economic and social relationships if the lawyers do not play their role of arbitrator between the state of the law, always likely to be manipulated by one of the two parties, and the means of cooperation arranged by these parties in order to control their daily interaction (Bessy 2007). We can think that the risk of strategic use of law is especially high as the benefit of economic interest is stronger.

3. A plurality of law firms

In conclusion, we can propose a typology of the firms around their respective positioning on two main axes characterizing their activities and their relationships with their clients, and by connecting this position with their concept of the profession and, more generally, the law.

We can ground the typology of firms by using the concept of "quality conventions", produced by economics of convention and neo structural sociology. Both empirical and theoretical research has shown that competition through quality, in order to achieve stability in a viable market environment, requires an implicit agreement on the type of quality valued by clients. Indeed each case evokes a different perception of quality by the client: *inspired* quality (client's expectations centered on creativity), *industrial* quality (client's expectations based on efficiency), *market* (or *merchant*) quality (client's expectations centered on obtaining the international standard at the best cost), *civic* quality (client's expectations related to a certain vision of

general interest expressed by lawyer), *domestic* quality (client's expectations related to his confidence in the lawyer's ability to handle his personal file completely).

Figure 1, see Appendix

A first axis posits the firms that develop legal strategy together with their client, against those firms that have a greater discretionary scope to set up files and whose main activity is rooted in litigation. This opposition does not rest completely on the nature of the clients of the firms (companies, private individuals) or on fields of the law.

It takes up the distinction suggested by L. Karpik (2010) between a "traditional professional system" and a "private professional system". In the "traditional professional system", the "market" and the political action of lawyers are linked since they provide personalized services that can be in various forms and be produced with a concern of individual and collective independence, and supervised by control systems that allow adjusting the risks, which the lawyer will allow the client to run, to the available confidence. For Karpik, the risk today with the "private professional system" is that "politics", in the sense of defense of fundamental freedoms or the building of new "causes", disappears while there only remains regulation of the economic activity of lawyers, starting from the removal of impediments to competition.

On our side, we emphasize the risk that "politics" is reduced to the only possibility of each client of defending his right as he sees fit, without necessarily going back to a form of common good guaranteed by the State.

The hypothesis that we have advanced in this contribution is that the diffuse evolution towards a "private professional system" lies on an individualistic political and legal philosophy, in the sense where this liberal philosophy consecrates "individual rights". On one side, these individual rights are mainly the results of a contractual process in which each party seek to negotiate according to his proper interests. On the other side, it belongs to each one to reinforce his right and to have recourse to courts in order to claim justice. In such a configuration, we understand how certain actors seek systematically to acquire legal guarantees, in particular according to the importance of their (economic) investments, and thus have recourse to the advices of a lawyer. They contribute to the setting up and extension of "markets" for legal services.

A second axis makes it possible to oppose the firms according to whether they closely connect "the provision of advice" and "litigation", by more or less creating case-law in a precise field, a niche; and those where these two activities are disconnected, practicing either of them, or the other, but in cases that remain relatively simple and which are suited to a form of standardization of the service: legal monitoring for the "provision of advice", divorce by mutual consent or legal aid, for the "litigation".

In the fields of business firms, one can oppose the "well known French firms" that defend in a very personalized way the interest of their clients, by carrying out "tailor-made" work and by inventing new legal solutions, and the "large Anglo-Saxon firms", which follow standard procedures allowing the coordination of players over wide markets. This opposition itself is built by lawyers, in particular those who attack market logic in the name of a convention of quality that takes the interest of the client more into account, with reference to a form of "public good" or a widening of the private interests, leading to a form of agreement and allowing to safeguard a cooperative relationship. This attack on the "market" also argues in favor of moderate deregulation of the profession.

When these two axes are crossed, four ideal-types of firms are obtained (see Figure 1 in Appendix) even if, in practice, all the firms combines different forms of coordination of their activities.

■ The **cause lawyers** who build and defend causes, and who appear in a position of authority in their field of expertise. These lawyers seek to innovate at the legal level and to influence the building of the law in order to protect the most unprotected. This is in this sense that the civic dimension is predominant.

■ The **traditional lawyers** who work in relatively simple litigation, like legal aid, while taking care of setting-up of files and by exerting their discretionary power. When the relationship with their clients is more and more close, that leads to a *domestic* quality of the service.

The two other types of firms act more in the form of a co-production of their clients' legal strategy, which tends less to go beyond the request expressed by the client. The risk of manipulation of the law for the benefit of economic interest is stronger.

■ The **large firms providing standard advice** organize their activity in the manner of a company and services providers that seek to meet the needs of their clients by standardizing their methods, or while keeping in line with the standards of the law market, in order to increase their productivity by a certain division of labor (*industrial quality*). Clients are attached to the brand of “the firm” or the “network” rather than to the partners. They are large Anglo-Saxon firms that are highly diversified with offices all around the world, French firms specialized in the provision of advice and creating network bonds with other consulting professionals. They call into question the most of the professional rules and favor the emergence of a *market* order.

■ The **“haute couture”** firms are the source of a new private professional system based on both the provision of advice, seeking to answer accurately to the needs of clients, and on the search for new legal solutions, in the absence of well-established applicable law. Their activity as skillful negotiator or referee is developed in configurations where it is important to maintain a cooperative framework between the players. And in this sense, they become experts in their field and develop client loyalty. The maintenance of this capacity for expertise and permanent legal inventiveness (see *supra*, § 1.1) is a limit to the diversification (and standardization) of their activities, and supposes forms of on-the-job training.

To conclude, we can wonder whether the current professional Order is able to manage, to give meaning to the variety of these organizational forms. In any case, its diffuse decline due to the predominance of a market order risks calling into question the quality of the rule of law. Or said in another manner, is the governance of economy and regulations of markets must be the main objective of the legal system? An author like Hadfield (2000) shows that in a such legal system driven by corporate demand, this is the business client group that ultimately determines pricing in the market for legal services at the expenses of the less wealthy personal client group. That raises the issue of achievement of justice in society.

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Endnotes

1 This contribution is part of the final report of a collective research launched by French CNB (National Association of Bars) which has been directed by O. Favereau (2010). This report shows the interest of professional order (versus a market order) for managing the quality of legal service.

2 According to Hadfield (2000), complexity and unpredictability of law are “responsible for the winners-take-all dynamics that structure successive tournaments among lawyers, tournaments in which winning may reflect only negligible quality differences in fact”.

3 We can refer to the three large international networks: Ernst & Young, Price Waterhouse and KPMG, which include legal, auditing and consulting departments.

4 We have particularly developed this notion of ‘law intermediary’ in the analysis of the regulation of economic activities in order to point out the fact that legal professionals contribute to the link between different normative orders (Bessy/Delpeuch/Pélisse 2011).

5 The reflection followed by A. Supiot, in this paper, overtakes the distinction between ‘law’ and ‘contract’ in order to take into account the emergence of new conceptions both of the law (legislative power whose one part is transferred to the social partners) and of the contract which, in the absence of contractual liberty, becomes an enslavement device. The author underlines that this enslavement is likely to concern, not only, the employees, but also, all the actors, including public administration, via a set of norms and indicators who condition their behaviour.

6 This is the concept of “rights” defended by A. Sen (2004) when he seeks to analytically extend the “Human rights” to “economic and social rights” without passing by their prior legislative codification in order to avoid the legalisation of ethical norms.

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Appendix

