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A New Analysis of the Market for Legal Services. The Lawyer, *homo œconomicus* or *homo conventionalis*?

*Franck Bessis & Camille Chaserant**

Abstract: »Eine neue Analyse des Marktes für juristische Dienstleistungen. Der Rechtsanwalt, *homo œconomicus* oder *homo conventionalis*?«. The current movement of deregulation of professional services in Europe rests on the idea that reducing professional regulation will increase market competition and lead to cut prices for customers. Studying liberalization of the market for legal services, we assume that competition relates much more to quality than to the sole prices. Endorsing the perspective of economics of convention, we show that the profession of lawyer overlaps with a diversity of autonomous and distinct logics that links the quality of services valued by clients with professional practices. These typical logics frame different rational processes characterized by the implementation of distinctive interpretation and reflexivity processes by lawyers. Given that the market-based rationality of maximizing profit sustains only one of the fourth logics embodied within the legal market, this article questions the consequences of professional deregulation on the performance of the market for legal services.

Keywords: Lawyer, market for legal services, competition, quality, convention, rationality, reflexivity, economics of convention.

1. Introduction

For more than a decade, international institutions supported by European governments have been fostering the increase of competition in the legal professions, promoting the creation of a free market of legal services (e.g., OECD

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2000, 2007; European Commission 2004, 2005; Attali Report 2008; Darrois Report 2009). According to the European Commission (2004, 7)

light regulation is not a hindrance but rather a spur to overall wealth creation. In countries with low degrees of regulation, there are proportionally higher numbers of practicing professionals generating a relatively higher overall turnover.

It thus promotes the liberalization of the market for legal services, in order to lower prices through an improvement of

the availability of better and more varied professional services [that] could also increase demand, which in turn could have a positive impact on job creation in this important sector where jobs are high-skill and high-paying. (European Commission 2005, 4)

Actually, in all countries, either a State-regulation or a self-regulation by professional bodies (usually a mix of both) organizes the provision of legal services. The intensity of this regulation may vary across countries. However, in all of them, providing legal services requires becoming member of a legal profession, i.e., conforming to education, practical training, organizational and conduct obligations. Typically, most of professional rules take the form of entry requirements, exclusive rights to perform specified services, restrictions on the pricing of some services, on the use of advertising, on forms of business organization and shareholding of legal firms.

From the perspective of competition policy, these regulations have the detrimental effect of “eliminating or restricting economic competition and limiting transparency” (OECD 2000, 17), therefore “reduc[ing] the incentives for professionals to work cost-efficiently, to lower prices” (European Commission 2004, 3) and “raising the price and limiting innovation in the provision of professional services” (OECD 2000, 7). Moreover, professional bodies may use their regulatory power in order to “enforce anti-competitive co-operation between its members” (ibid.). In this way, most professional rules have negative effects for consumers because they raise prices and allow the legal professions to benefit from economic rents. Consequently, they should be – using the terms of the European Commission (2004) – “eliminated” especially when they are “unjustified,” or “reformed” in order to “modernize the professions in Europe.” Increasing competition, through a reform or even a suppression of these rules, would thus reduce prices of legal services and benefit the consumer.

This way of thinking the market for legal services endorsed by international institutions both rests on and results in an abundant economic literature on legal services that commonly associates increasing competition with a decrease in regulation, and prices reductions (Chaserant and Harnay 2013, 2015). It presumes that the legal professions do not have specific characteristics that require a distinct analysis compared to traditional markets. Professionals are supposed to provide homogeneous services allowing a competition process based on prices. Hence, the economic literature on legal services highlights the costs of

their regulation, neglecting its potential benefits, and focuses on price competition, avoiding the study of its impacts on the quality of the legal services provided by professionals.

In a study for the French Bar Association investigating the economic consequences of liberalizing the market for lawyers' services (Favereau et al. 2009, 2010), we assumed that competition in the market for legal services relates much more to quality than to the sole prices – an idea already stated by Karpik (1989, 1995). Based on the approach of economics of convention (in short EC), we have shown that the legal profession overlaps with a diversity of autonomous and distinct logics, among which the market logic is clearly identifiable, but is not the only one. We thus proposed a distinctive analysis of competition on the market for lawyers' services, built on a ground-breaking typology of French law firms, which links the quality of services valued by clients with professional practices.

EC underlines the variety of valuation processes endorsed in economic coordination situations. Using EC tools then requires questioning how a lawyer's service is valued (what is quality of a lawyer service?), therefore investigating lawyers' professional practices (how do lawyers work?). We proceeded by interviewing lawyers on the way they operate with their clients, their colleagues, their peers, and the other professionals they are used to working with. Extensive excerpts from these interviews will be presented in this paper in order to highlight the diversity of logics of action within the legal profession – resulting in several types of competition in the legal market. (For each excerpt of interview, we specify in brackets the number of the interview, the legal domain of the lawyer, the location of his law firm, and the date on which the lawyer took his oath – giving a proxy of his age.)

Prices are not the unique valuation form of a legal service, and lawyers' behavior is not always price-oriented. Other forms of valuation of lawyers' quality of services actually sustain lawyers' work and, more broadly, the functioning of the legal market.

Therefore, explaining the processes of production of legal services requires extending the standard model of rationality, which is purely calculative and only adapted to price evaluation. In order to apprehend the different forms of valuation mobilized in coordination situations, EC has elaborated a theory of rationality characterizing the *homo-conventionalis* actors, whose capacities are not only the calculative ones of the *homo-oeconomicus* agents (Bessis et al. 2006). From the perspective of EC, the rationality of actors is bounded (Simon 1947), interpretative (Livet and Thévenot 1994; Batifoulie and Thévenot 2001; Favereau 2005) and reflexive (Bessis 2016). Considering that actors cannot process all available information, they need to define situations, to evaluate and to organize information, and they interpret the actions of others in order to achieve coordination.

The working activities of lawyers constitute a field exceptionally suited to the analysis of rationality. Indeed, in the clients' discourse, the lawyer must select and organize information in order to format their problems into legal issues on which legal strategies may be implemented and regulations may apply. Lawyers thus "qualify the factual situation[s]" (Thévenot 2012, 5). Moreover, law is inherently incomplete. Indeed, legal rules are not behavioral prescriptions of action but rather require interpretation into concrete contexts. Lawyers then interpret legal rules, and the way they do it is necessarily influenced by their ideas, values, and interests (Bessy et al. 2011). Highlighting these reflexive processes in the work of lawyers will lead us to show how they both endogenize and impact law.

2. A Typological Representation of Lawyers in France

In a study on the economic consequences of liberalizing the market for lawyers' services (Favereau et al. 2009, 2010), a qualitative investigation was carried out aiming to build a realistic picture of the French profession of lawyer, which we aspired to be both respectful of its pluralism and indicative of the competing dimensions of the quality of legal services coexisting in the legal market.

We conducted 24 semi-structured interviews, each lasting two to three hours, with lawyers belonging to various law firms in terms of location (Paris and outside of Paris), size and legal domains.¹ As regard the latter, we concentrated on employment law, family law, and corporate law (especially distribution law, mergers law, and acquisitions law). The 24 semi-structured interviews were transcribed in their entirety and are noted from E1 to E24.

The analysis of these interviews leads to the identification of two main criteria for organizing the plurality of ways of conceiving the meaning of a lawyer's activity.

2.1 Advice and/or Litigation

A first structuring difference between law firms lies in the organization of work.² Whereas some law firms strongly divide labor among their members regarding the provision of legal advice and litigation, others, in contrast, bring to the fore the need to join both in the production of legal services. The first criterion of differentiation between law firms thus rests on the degree of coupling between litigation and advice in the organization of the firm: are they separate and more or less exclusive of each other, or are they closely intertwined?

¹ More than 37% of the French lawyers work in individual firms. Moreover, nearly half of them work in Paris, where are concentrated around 30% of law firms.

² For an analysis of the organization of lawyers' activities, see Bessy (2015).

The good knowledge of litigation is presented as the very first distinctive dimension of the quality of the work provided by a lawyer, as compared with the other actors likely to give advice in the legal market. In this way, in interview E10, a lawyer suggests a qualitative gap likely to contribute to what is special in the service provided by lawyers compared to other legal specialists (e.g., notaries, house council, etc.):

It is certain that the quality of the services provided by bucket shops is not the quality of service of law firms. In the first instance, this is because they do not argue cases and do not do any litigation, so their advice will be rather abstract. When we give advice, we know how the courts appreciate the relevance of our arguments. (E10, labor law, Lyon, 1977, about advices in the field of work councils)

However, as stressed by several interviewees, the provision of advice is always carried out in view of litigation (“each contract contains the seeds of litigation,” E24), so that many prefer to challenge this distinction, irrespective of their field of activity: “When I give advice to try to avoid litigation, is it advice?” (E4, family law, Paris, 1981).

We thus observe that the complementarity perceived between these two types of legal activity is closely akin to the question of skills. Indeed, the experiment of litigation would be, for some lawyers, the only means of acquiring the expertise required for giving legal advice:

Both go hand in hand because often advice precedes litigation or follows litigation, or is done in parallel. Thus, for me, it is completely inseparable. You can give good advice when you have a good knowledge of litigation, because legal strategy also forms a part of the management of problems at a given moment. And thus, when you want to be credible in a negotiation, it is necessary to know the mechanisms of litigation and what comes out of it. (E6, distribution law, Paris, 1979)

Whereas the knowledge of case law is accessible starting from texts, the practice of litigation may nonetheless lead to providing different advice. The lawyer may indeed be guided by a more practical understanding of the weight of each element that can occur during a case argued before judges. Only the practice of both advice and litigation makes it possible to benefit from the practical expertise of one to enrich the other. It is the main reason that justifies our choice of this first axis of differentiation between French law firms.

We also observed that the coupling of advice and litigation not only leads to a better expertise according to some lawyers, but it also relates to the way lawyers perceive their own profession. This is what a lawyer specialized in labor law in an international firm (E3) means when presenting the practice of litigation as a point of identification for lawyers.

For people like us, in labor law, with a lot of expertise in litigation, there is also this ability to be true lawyers. We put on our robes and go to the Law Courts. All the time, every day.

Interviewer: Everybody?

Practically. Practically. Whereas in some firms, some people give advice about transactions although they don't even have a robe in their room! It is a gag, it is an anecdote, but simply you have to go, you have to go to the fight. Lawyers are like that. This is why we do this job, it is not only to draft contracts. (E3, labor law, Paris, 1990)

This definition of what a lawyer is (definition probably disputed by many peers specialized in providing advice) goes with an understanding of the profession's function and purpose ("This is why we do this job"), distinguishing it from the pursuit of financial gain. For the lawyer interviewed, the value of his profession is not firstly associated with the remuneration of his work, but rather with a tradition that is maintained by practice.

"In France there is a tradition of courtroom lawyers. And that creates the richness of this profession in France" (E3, labor law, Paris, 1990).

Consequently, the gap between advice and litigation does not only refer to a difference in legal expertise, but also appears to constitute an ethical discontinuity within the profession.

2.2. Towards a Co-Production of Legal Services?

The second criterion of distinction between law firms in our typology is the degree of joint decision between lawyers and their clients: does the lawyer follow the strategy decided by the client, or does the client let the lawyer take the main initiative and decide on the action to be taken? It depends on the type of clients' demands. Is the lawyer requested by clients in order to provide a pre-defined legal service - we will then speak of co-production. Does he rather need to define or re-define the demand, helping clients to understand their legal needs and interests? The lawyer then takes charge of the decision process. This difference between ways of grasping the demand of consumers overlaps with the disparity between types of consumers (firms or individual consumers) and consequently the variety of legal domains, but it does not fully cover it.

The idea of co-production of a legal service fits standard economic models. It may sound paradoxical given that economic theory never speaks of co-production but may rather use the classical term of production to refer to this case. Indeed, in its most widespread version, economic theory models an exchange situation in which the consumer's demand for services is given independently of the market: only desired quantities vary according to prices. In other words, the consumer's individual demand is determined before coming into the market. In order to find the services that maximize the consumer's satisfaction, it must be referred to her preferences, which are considered as given. Some economic researchers suggest that consumers' preferences should be endogenized. However, they generally introduce only a revision of preferences that follows her consumption of the service. So the interest of the consumer is determined either before (in the traditional model) or after (in the models of endogenous preferences) consumption, i.e., the encounter with the

producer. Conversely, in respect of legal services, the interests of the client may be determined during the interaction with the lawyer.

You have to go beyond what the client wishes in order to find, in what he tells you, the elements that will facilitate the true defense of his interests [...]. The idea is that we should not stop with the first story told by the client and his wishes. And we are not shopkeepers who pick the applicable legal texts to say, 'Sir, would you like 1382? Hop! Here is 1382. Would you like 1383? Here is 1383!' No! We have to say, 'Sir, what do you truly want? That, that, that, that? Well, what you wanted at the beginning, we will not do it. We will do something else. We are suggesting to you something else. Because your interest does not lie here, it lies there.' (E11, employment law, Rouen, 1980)

In this case, the lawyer takes charge of the decision process and the production of the legal service needed. In other cases, the client's demand is better defined when meeting the lawyer, and the legal service may be regarded as co-produced. The lawyer rather sustains the legal strategy envisaged by his client and may possibly refine it but he does not redefine it.

As noted above, from the lawyers' point of view, this difference partially reflects the distinction among clients between individual consumers and firms – consequently also reflecting the variety of legal domains:

I think that in family law colleagues have to get rid of the whole emotional, passionate part which must require a terrible amount of work, and I admire them because I would get irritated [...]

Interviewer: Whereas the requests addressed to you are more precise

The requests are more precise, basically one fits into a decision-making process, with the authority that the fact of being external can provide, because often legal counsel, when one holds a meeting with the managers, the legal counsel says, 'well, we see the managers at three o'clock, and thus at 2 a.m....' they ask us, if you like, to comfort them, to already give them the answers which they will provide in a short while. (E21, distribution law, Paris, 1957)

Experts in corporate law mainly work with business firms. Whereas a lot of them co-produce their services with in-house councils, others are working as with individual consumers by defining the interests of their clients and the legal strategy to be adopted. This is all the more so when the lawyer's interests are not aligned with the financial interest of his client:

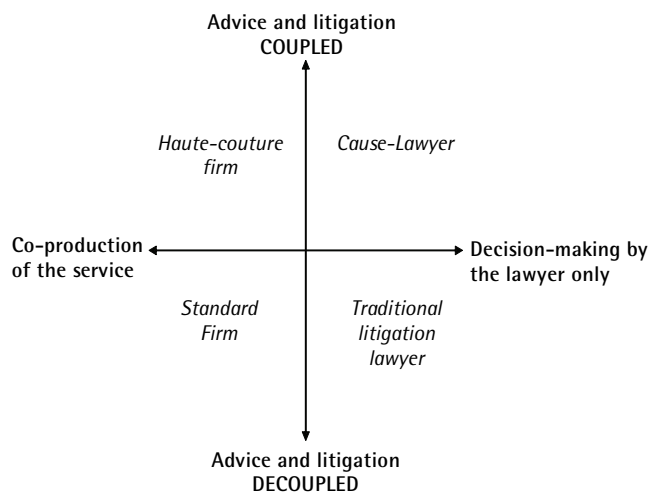
The lawyer, we say that his worst enemy is his client. It's also necessary to convince the client, from time to time, to make sacrifices, so to say. Huh... In business, except special cases where the enemy should be finished off so that one can never come up against him again, otherwise everyone should more or less come out OK. If I am only interested in the result, I will advise my client against compromising, I will advise him against reaching an agreement, until we reach the figure that I fixed for my fees, and perhaps we will reach it, or perhaps not, but that will have effects... on the image of my client, on the future of his business... He will be regarded as a hooligan, a swindler... Anyway. I will have satisfied my personal interest, but not that of my client taken as a whole. But it is precisely because I think that the lawyer is not only a pro-

vider of services, he is not only an economic agent. (E24, mergers & acquisitions law, Paris, 1972)

2.3 The Diversity of the Legal Profession: From the "Traditional Bar" to the "Haute-Couture" Law Firms

By crossing the two preceding criteria, we proposed to distinguish four ideal-typical features of lawyer who privilege a specific logic of action each in their own way, and share a specific view of the profession. From our reading of the 24 interviews, we have been able to categorize each typical figure by an intuitive label, sometimes directly picked from terms used by the lawyers interviewed. We distinguish between (i) the "traditional lawyer," who mainly represents and defends individual clients in litigation, (ii) the "cause-lawyer" who is a "builder" or "militant" in order to "promote a cause," thus working by strongly joining advice and litigation, (iii) the "standard" consulting firm, that works according to international standards from a clearly specified client's demand and (iv) the "haute-couture" law firm, characterized by high degrees of coupling advice and litigation and joint decisions.³

Figure 1: A Typological Representation of Lawyers in France



We will now define each of these four features.

³ For a shorter presentation of this typology, see Bessy (2012) and Diaz-Bone (2015).

The Traditional Litigation Lawyer

The lower right corner of the above typology corresponds to the best-known model of lawyer: the trial attorney – low degree of coupling advice and litigation – whose authority mainly rests on trust, which is maintained by the Bar association in the tradition of the “classical Bar” (Karpik 1995). In this model, the reputation of the lawyer is strongly linked to seniority and conveyed through family or friendship ties, within small offices resting on strong personal relationships. This picture is still present nowadays in France in Bars of small or average size.⁴ The “traditional lawyer” provides services mainly to individual consumers – low degree of co-production – and may be able to handle a wide range of legal domains. This requires above all non-specialized skills (which do not prevent a personalized service). The reputation of the lawyer derives from word-of-mouth by clients, and the lawyer stimulates this information flow by his involvement in local networks. Relationships between peers appear in line with those developed within the firm:

A provincial Bar is like a family. We see one another... The smaller the Bar, the more we see one another. We meet every day or almost, at the library, we stamp our feet in the hall of the law courts before arguing a case, we drink coffee together, or we leave the hearing and we have a drink at the bar... that's it. (E12, family law, Annecy, 1976)

The Cause-Lawyer

Among lawyers who devote themselves mainly, but not exclusively, to litigation – low degree of coupling – we find those who are first characterized by the defense of a cause. We use the expression “cause-lawyer” to indicate this commitment of the lawyer to a cause. Tonneau (2016) rather speaks of “invested lawyers,” encompassing “political lawyering” (e.g., Halliday and Karpik 1997) and “cause lawyering” (e.g., Israël 2001).

All the invested lawyers adhere to the cause of their clients, considering each individual case as the expression of a more general stake, and they are not willing to alternatively and equally defend clients of both sides like the classical attorney may be. (Tonneau 2011, 99)⁵

From this perspective, the individual case of the client is conceived by the lawyer as a part of a series of cases establishing the cause he is committed to:

When I handle the case of somebody, I defend this person, but behind that, I am defending 5, 10, 15, 20, 30, 40, 50, 100 identical cases, because there are

⁴ Over half of the 164 French Bar associations involve less than 100 lawyers. Only 18 of them involve more than 500 lawyers. Size discrepancies are very high, from the smaller Bar association of *Lozère* registering 16 lawyers to Paris where around 27 000 lawyers are registered.

⁵ Translation by the authors.

comparable problems. And success in a case has a strong effect on the others. And because I could have 100 cases when I fought against these companies, litigations were done by the dozen. And this way, gradually, we succeeded in putting up this edifice. (E6, distribution law, Paris, 1979)

The “cause-lawyer” chooses the cause he wishes to defend and to which he devotes himself for a long period in order to take part in the evolution of case law:

The labor law sector is one where case law matters a lot and where it evolves constantly. Thus in general in this sector, we create case law [...], we are in a perpetual fight on a certain number of subjects with our opponents, the employers’ lawyers. That is, you set up a series of arguments that are accepted and then you follow a strategy until you take a number of cases to the Supreme Court. (E8, labor law, Argenteuil, 1996)

Standard Firm

The lower left corner relates to law firms that fit into the decision-making processes of their clients – high degree of co-production of legal services – and strongly divide work between advice and litigation activities. Lawyers specialized in providing advice do in fact the same thing that legal counsels did before the merger of both professions in 1991 in France:

The strategy of the firm, today because that was not always the case, consists in saying that the legal activity is a special activity. And thus we wish to carry it out by experienced lawyers. So we do not wish a priori that other lawyers who deal mainly with providing advice, carry on legal activity. (E16, family law, Neuilly-sur-Seine, 1976)

“Standard firms” are mainly large multi-disciplinary law firms with standardized work methods, and are more present in corporate law, where the expertise of corporate lawyers allows better information of demand over supply.

The “Haute-Couture” Firm

“Haute-couture” lawyers are first characterized by their creativity developed from a tailor-made (co-)production of legal services. They provide services fitting precisely the need of their clients, and operate mainly in legal domains where there is no well-established applicable law, searching for new legal solutions. From this perspective, their activity is “the source of a new private professional system” (Bessy 2012, 28)

We try to make ‘haute couture,’ to be really as close as possible to the client, and to give each client specific advice taking into account their specific characteristics – we do not give the same advice to a man who is shy as to somebody who is very energetic – so we try to adapt our advice to the possibilities of our clients, whereas large Anglo-Saxon firms do more or less the same for everyone, which leads them to consistently apply the same methods, the same

procedures, to invoice per hour and we do the opposite. (E24, mergers & acquisitions law, Paris, 1972)

The lawyer's skills are developed by coupling advice and litigation in order to provide innovative and singular services, and then becoming an expert in the field. Consequently, activities are highly specialized and impede standardization and the expansion of the number of clients. "Haute-couture" lawyers meet the description of the artistic activity made by Heinich (1998, 46):

Because the 'rise in singularity' is above all relevant in artistic matter, where generalization [...] is disqualifying (the reduction to the general decreases the object by highlighting its shared, non-specific properties), whereas particularization is qualifying, increasing the value of the object by stressing its uniqueness, its originality, its irreducibility to categories.⁶

3. Coordination and Rationality within the Legal Profession: A New Perspective of the Legal Market

The profession of lawyers thus involves a plurality of perceptions by lawyers of their work, its quality and the identity of their profession – at least the four we have distinguished in the above typology. The latter has been built from the description lawyers make of their own work and professional practices, when they depict their practical problems and processes of production of legal services. Therefore, lawyers belonging to each category share the same interpretation and a same logic of action, including the evaluation of quality and coordination means. They thus act on the grounds of the same convention "understood as shared interpersonal logics how to coordinate and to evaluate actions, individuals and objects in situations of uncertainty" (Diaz-Bone 2011, 46).

Indeed, by "convention," we mean a presumably shared interpretation of a group, associated with a shared idea of what "correct" relationships and coordination of actions are. Like cultural frames of evaluation, actors use conventional frames when they need to coordinate and therefore build up a shared meaning of situations. EC assumes the co-existence of a variety of historically constructed conventions actors can refer to (Storper and Salais 1997).

A convention thus results simultaneously in the conceptual construction of a group, the confirmation of a form of coordination associated with a shared quality valuation, and creates expectations about the behavior of its members. Through the quality valuation and the expectations it frames, a convention contains a normative dimension that mixes considerations of efficiency and

⁶ Translation by the authors.

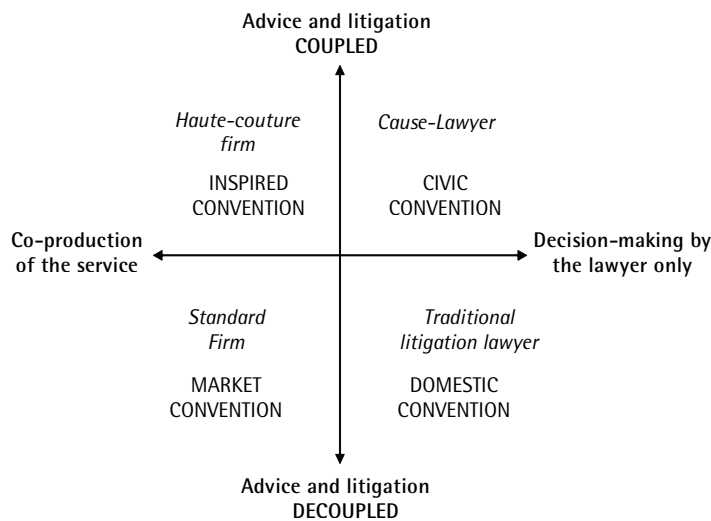
equity – the normative dimension being notably appropriate when considering law and the legal market.

3.1 Quality Conventions and Dynamics in the Legal Market

We enhanced and consolidated our typology by suggesting a possible match with “quality conventions” (Eymard-Duvernay 1989) produced by EC. Quality conventions are specifications of the concept of convention based on forms of general coordination grounded in tradition (for the *domestic* quality convention, using the terminology of Boltanski and Thévenot 2006), competition (for the *market* or *merchant* convention), technical efficiency (for the *industrial* convention), creativity (for the *inspired* convention) and general interest (for the *civic* convention).

Competition through quality – which is the form of competition we assumed to govern the legal market – requires an implicit agreement on the type of quality valued by clients in order to achieve stability. Indeed, each corner of our typology evokes a different perception of quality by the client: *inspired* quality (where clients’ expectations are focused on creativity), *market* quality (where clients expect the lawyer to provide a legal service meeting the international standards at low cost), *civic* quality (where clients’ expectations are linked to a conception of the general interest expressed by the lawyer) and *domestic* quality (where the clients’ expectations rest on their confidence in the lawyer’s ability to fully handle their personal case).

Figure 2: The Conventionalist Representation of Lawyers in France



Source: Bessy 2012, 30.

In practical situations, actors combine these various forms of coordination. As a matter of fact, all of them are mobilized in the legal profession and all of them favor an idea of common good by which they involve a *civic* component. Beyond that, however, the way in which each lawyer carries out her activity can be clarified by one specific quality convention. Reference to the five quality conventions, understood as so many ideal-typical constructions, allows to identify the consistency in each way of practicing the lawyer's profession and of the lawyer's positioning in the market:

When I teach young lawyers at the French Law School, I tell them, 'You have the amazing chance of having chosen a profession that does not have an absolute economic model.' By that I understand that nobody can claim that its economic model is inevitably the best and that only this one should exist. (E23, mergers and acquisitions law, Paris, 1980)

This EC interpretation of the plurality within the legal market makes it possible to deduce the market dynamics generated by each quality convention. Here again, in order to characterize each force at work, we use denominations derived from the discourse of lawyers. We show that, rather than a place of price competition, the legal market should be seen as the area of competition between all these dynamic forces.

3.1.1 "A Provincial Bar Is a Family": The Legal Market Seen from the Domestic Quality Convention

Within the frame of the domestic quality convention, competition affects less the prices than the efforts in communication. The principal medium for clients remains, however, word of mouth. Reputation is thus developed with time, as the number of past clients and the presence of the lawyer in local networks increases. The lawyers consider their colleagues less as competitors than as lawyers of the opposing party, and for this reason are concerned that this opposing party follows the rules that guarantee the right proceedings of lawsuits.

There are people who work in the same fields as our firm, but fortunately, because in family law you need to be two, so, there have to be some other people who do family law. It is more like friends anyway. I do not see them as competitors; I do not see any of my colleagues as a competitor. I am one of those who think that there are not enough lawyers in France [...]. I never had problem with clients. My problem with clients is that I had too many and I had to find... that several of us got together in order to be able to respond to requests, so I never asked myself the question of competition. (E17, family law, Poitiers, 1972)

In this context, a "bad" lawyer seems to be an isolated lawyer, a lawyer on whom the profession has no influence:

And well there are lawyers who cannot handle their job. But really! They are generally all alone. They do not have any link with the profession, no bond

with the associations, no reflection. It is those who are the most reluctant to continuing education! There are people who never train themselves! It is really insane. [...] There is a sort of breakdown among lawyers who have few cases. They have their small firm, their cellphone, their laptop... They do not have any connection with anyone. Thus there is no control on what occurs there. And generally these people write their submissions to the court at the last minute, and are always late... And that creates serious tensions. At a Bar like mine, 10 small-time good-for-nothings are enough to screw things up, that's clear. (E17, family law, Poitiers, 1972)

3.1.2 "Militancy Made Us Lawyers": The Legal Market Seen from the Civic Quality Convention

The cause-lawyer's behavior is not oriented toward profit maximizing, but seeks above all "to make things move forward" (E8, see below) in the sense of the lawyer's convictions. This explains why he accepts more often than others to handle the cases of clients not likely to pay anything (in particular recipients of legal aid) and, conversely, to separate more easily from a client in the event of a disagreement on the legal strategy to be followed. The reputation of the lawyer mainly rests on his commitment to the cause:

You must remember that it happened a few years after '68. That means that there are things happening in the city, and in particular [a case that concerned a very committed academic]. And since it was completely in the sphere of influence in which I lived, at the side of the man who was my companion at the time, we were caught in the game [...]. From then on, all activists came to see us, though we were still kids. In fact activism made us lawyers and nothing else. We acquired our knowledge from the social movement. We had to learn what was useful for the struggles that were submitted to us. (E17, family law, Poitiers, 1972)

The risk of disagreement with clients reduces over time by a "self-selection" of the clients:

In theory, we defend all trade unions. In practice, there are some who do not come to see us [...]. I believe that our way of defending our activity corresponds to the search of a certain number of clients. That does not correspond to everyone. (E8, labor law, Argenteuil, 1996)

Moreover, in line with the civic quality convention, when several lawyers belonging to distinct law firms contribute to the same cause, they do not consider one another as opponents but rather as allies. Consequently, they maintain cooperative relationships leading to exchanges of knowledge, case-law, models and even to specific replacements for representing or pleading some cases before courts. Because they share a cause in the same legal domain, the same branch of industry and/or the same side among the opposing parties, they reject the idea of competition between them or the law firms they belong to:

We must be 4 or 5 firms in Paris that do this in a significant way [...]

Interviewer: Thus approximately, there are 4-5 firms that are in a direct competition with you

I would not say that, I would not use the word ‘competition’; they have an identical or similar activity. I will not use the word ‘competition,’ because we don’t feel this way [...]

Interviewer: Is there no competition?

Well no, but we don’t feel it as competition. How can I tell you, we have a volume of activity that corresponds to our capacity to handle cases. So we could not handle any more anyway. So we are not in competition [...]. There is no competition in the sense of trying to obtain market shares. (E8, labor law, Argenteuil, 1996)

3.1.3 "We Are Subject to the Market": The Market Seen from the Merchant Quality Convention

Given that he provides advice in line with international standards, the “standard lawyer” finds himself in price competition with a great number of peers and other economic actors like bankers or chartered accountants. The degree of competition is high, resulting from both a lack of differentiation between competitors and the standardization of services:

What you will sell your clients are techniques, or standards if you will. And many clients when they see certain actions taken here and there, everywhere in the world, they will say, ‘Wait, these were not done according to international standards!’ And the man who is based in Chicago, or the one who is based in London, whatever they make something in the south of Italy, in Slovenia or in Russia, they want it to be done on the same documents, they want the standards to be the same, etc. (E23, mergers and acquisitions law, Paris, 1980)

Because of standardization, the reputation of the law firm rests on its size. Indeed, market incentives lead to maximize the number of clients or of cases in order to realize scale economies and to maximize profit. Only a lower price gives a competitive advantage. Indeed, if large corporate law firms, very numerous on the world market, offer nearly the same services, the same level “of expertise, technique [and] reputation” (E23), then the main conditions (standardization, fragmentation, information) are met so that clients concentrate above all on prices. The analysis of competition made by classical economics perfectly applies here:

We do not have any real influence on the market. Our ambition in the market is not to be too subjected to it, it is to try to follow it well, to support it well, and perhaps to anticipate it when we can. But no law firm will ever claim, ‘Wait, I do that and then the market decides.’

Interviewer: What does it mean, ‘to be subject to the market’?

To be subject to the market in its evolution of time constraints, the requirements of the clients, ... this is basically what I think, even the techniques of

market that are imposed on us. Today you have two phenomena that I will use to illustrate what I am saying. Panels: they issue tenders to select law firms that will be put on panels, OK. They put you on the panel because you carried favor for one hour and then they chose you, they found you super... You do not have any work contract, and you are subject to a whole series of obligations in terms of non-competition [...]. There, you are subject to the market. Then you can decide not to answer the invitations to tender, it is true, but in this case you are under the radar for all these people. Secondly, today some banks and financial institutions issue reverse auctions, a volume of legal services: 'Here, we believe we will issue about 5 million pounds sterling of bonds during the year,' huh, which are quite standardized financial products, 'We think that all the deals that we want to do are worth about 5 million pounds. We put them out to reverse auctions.' And there you are in your own office, 'Well, listen to me I bid 4.8 million, 4.6 million, 4.4 million'. Then they go back to you: 'But wait, are you sure? Your competitors are 30% lower than you. Are you sure that you do not want to lower your price?' What do I do? Do I go? Or I don't? Well. We are subject to the market, completely. (E23, mergers and acquisitions law, Paris, 1980)

3.1.4 "Cultivating the Difference": The Market Seen from Inspired Quality Convention

In the frame of the inspired quality convention, working deeper on cases produces an expertise likely to enhance relationships with existing clients – possibly only one client.

Interviewer: What does it mean for you, the idea or the expression 'To grow a firm'?

Several things. Before growing a firm, it is necessary to maintain a degree of skill. That requires preparatory work: keeping up to date with decisions, the development of the law, case law. Before growing, I mean. After that, growing the firm, either it grows through the number of clients, or else, through the number of partners and associates. As for me, very clearly, you've understood it from the beginning, I don't look at things this way. I look at things this way, 'I want quality work, and I do not necessarily want to grow for the moment.' (E19, distribution law, Paris, 1991)

This lawyer invests in all the problems that his client may encounter. In such a market characterized by some law firms acquiring "niche" positions, competition dynamics rests on services differentiation, each lawyer seeking to offer new services and to discover new ways to handle a legal problem:

There are niches within a niche and then you can see the firms where you find the new niche at the same time, anyway, because it corresponds to a need. And so it is there, where you have to be.

Interviewer: You move from niche to niche?

Yes, we move from niche to niche, yes. Finally, some firms are hyper-specialized, I am thinking of a colleague, who made his entry into the 'golden pension schemes', they go into the market this way. Well now, they broadened

a lot, but they had this niche. We all seek entry points like that, huh. And you find them or you don't. Sometimes, you find them. You have to be there at the right time.

Interviewer: What is the average lifespan for these niches?

Oh well, the time to be known, used... developed, it depends, that will depend on matters, but for example the [working-time reduction to] 35 hours, I have my partner who immediately got down to it, well, it grew for 2 years, then you move to something else. (E18, labor law, Paris, 1968)

In order to become *the* leader in a niche, a lawyer seeks to put forward an idiosyncratic skill leading him to be recognized as the only one delivering such legal services – like the signature of a great couturier. Competition among “haute-couture lawyers” thus sharply contrasts with the lack of differentiation characterizing the market quality convention.

Eventually, competition in the legal market does not bear on unique dynamics, but is far more complex than the European commission and most economic studies on the legal market may consider. If traditional price dynamics described by economic textbooks is clearly identifiable, it is limited to one market segment held by standard advice law firms subject to global competition. Yet, other quality conventions than the “market” or “merchant” one frame the legal market's dynamics, sustaining other coordination modes and expectations for actors. Analyzing the economic consequences of the liberalization of the legal market thus requires to go one step further by exploring the rationality of actors in order to show that it cannot be reduced to the purely calculative standard model implied by the European commission's recommendations.

3.2 The Interpretative and Reflexive Rationality of Lawyers – From *homo oeconomicus* to *homo conventionalis*

EC assumes bounded rational actors who cannot process all available information in situations, and hence need to select, evaluate, and organize it in order to achieve coordination. In situations, they have to interpret actions and interests of others, thus referring to conventions, and assuming the others are doing the same. In other words, they act on the argumentative ground of conventions, meaning that they use convention-based arguments and valuations in order to justify their choices or criticize the choices of others, especially when coordination fails (Boltanski and Thévenot 2006). Their rationality is thus reflexive.

In a general way, reflexivity can be defined as the access to an external position in a choice situation (Boltanski 1990). This external position enables the actors to widen their choice set through questioning (and then perceiving as constructed some elements of the situation that were considered to be self-evident (or natural) up to that point. This construction of the situational varia-

bles also apply to the goals or interests or to the system of rules within which actors are acting.⁷ Put differently, the concept of reflexivity can be specified in at least two ways: (i) actors can formulate meta-preferences, or preferences among preferences (Jeffrey 1974); (ii) they can take into account the fact that they act at the same time within and on the rules (Postel and Sobel 2006).

We will focus here on the reflexive processes implemented by lawyers, distinguishing four ways of reflexivity according to the four facets of the legal profession mentioned above. Indeed, each quality convention frames a distinct form of reflexivity implemented by lawyers: the domestic quality convention is favorable to “surpassing,” the civic one to “categorization,” the market convention to “displacement” – the inspired quality convention framing both “categorization” and “displacement” reflexivity processes – following Bessy (2007), we will speak here of “instrumentalization.”

Our analysis of reflexivity is rooted in the conception of multiple interests established by social identity theory (Tajfel and Turner 1986). The interest of the client is not unequivocal. Two extreme levels of interest can be distinguished, corresponding to two definitions of identity that social psychologists differentiate: personal identity and social identity. When considering personal identity, actors are defined and define themselves simply as individuals (independently of all their social ties), while social identity defines them as members of a group (e.g., a household, a firm, an association and so on). The group may be more or less inclusive, leading to consider oneself as a member of the whole society or even of humanity. Each one of these levels of identity corresponds to a distinct expression of the interest of the client, which the lawyer should take into account, whatever the demand expressed by the client:

In a divorce, you have to defend, for example you are the lawyer for the husband, the husband is also a father, you must defend the interests of the father. But you cannot avoid taking account of the interests of the child. And if you do not have this culture and this training and also this assertion of ethics, you will end up defending the father without scruple, without any concern for the effect on the child. Therefore, if you like, we work in fields that are significant enough, so there is this requirement of morality. And in my opinion, only the regulation of the profession makes it possible to guarantee it. (E7, family law, Paris, 1981)

The client who drops in and tells you, ‘My husband cheats on me, he is a bastard, he left with his secretary... I know where she lives, I know who she is, moreover she is a hooker, it is well-known, I saw her husband, he told me that... blah, blah’, oh well. You realize that the lady has been married for only 8 years, that she is 35 years old and has 2 children. So the woman has 8 years of marriage, she is 35, 2 children, she works. Nowadays, the adultery of her

⁷ In the language of the rational choice theory, this operation by which data is turned into variables can deal either with the goal (maximizing utility) or with the system of constraints under which the goal is maximized.

husband, as unpleasant as it is at the psychological level, will not bring much to her. And she thinks that because she already gave 5,000 euros to a detective to follow him, thanks to her 5,000 euros, she will recover 500,000. She will not! And she has to go through all this mourning. And you have to tell her, 'It is very sad. It is very unfortunate. It is not good at all. I understand your distress. I understand your sorrow. It is very unpleasant. It is this, it is that. But still, it remains that since the last reform, sensitivity to this kind of grievance is not so high. The judge will rule by thinking that... you are only 35 years old, that you will be able to rebuild your life... that you are employed... that you have a marriage settlement, which somehow protects your future... Thus do not expect, after 8 years of marriage, to have the same compensations than after 25 or 30 years of marriage, and being 57 years'. (E4, family law, Paris, 1981)

The arguments the two lawyers are giving to their clients do not only rest on a transfer of knowledge – i.e., the legal expression of their needs and the calculation of their chances of success – but also on the presentation of alternative strategies that include other points of view: that of other people (children, seen as so many ties for the clients, part of their identity, “you are still parents”) or of an anonymous third party (Justice, “less sensitive to this kind of grievance since the reform”).

This consideration for other points of view and other interests is the form of reflexivity favored by traditional litigation lawyers of the domestic quality convention. We use the term of “surpassing” or “going beyond” to refer to this form of reflexivity. It leads to take into account increasingly broad interests, climbing up the scale of identity levels.

As illustrated in the following example, the reflexivity processes implemented by a lawyer may be linked to different ways of handling legal rules:

There is this company, whose name I will not give you, because many people argue in court against it, which made a contract about fifteen years ago, an extremely perverse contract, because we do not know how to qualify it. It is very muddled, very ugly as regards clarity and purity of ideas, very difficult to analyze and to qualify.

Interviewer: ‘To qualify’, towards...

To qualify legally, to say this is a sales contract, is this a contract of power of attorney, is this a contract for a consignment, well, which is very well made, very well done, very vicious, very well done, a student would be penalized for doing it because we do not know what it is, but it is very well done. The writer of this contract, I do not know who it is, there were perhaps several, did a good job. And then, all our work is to do an analysis of this contract that succeeds in giving a qualification based on undeniable concepts. And truly really, truly really, I can assure you that, speaking about imagination, the work of the lawyer, of the true lawyer, it is imagination plus rigor. Imagination in ideas, I tell you when TJ, TJ is defender of [franchisees of product A], I was his opponent, my firm deals with distribution [of product A] [...]. And TJ was stuck! He was stuck on the branches of the law where he was. And he had to move forward, as one would say in football. And he found something else. We do

that every day. You deal with a problem of contract law, the contract binds you, you have to tell yourself, 'Pay attention. And in competition law, is opposing process permissible?' And I say 'No! That will be an agreement.' Then the law can evolve, that is, take shape, only through the imagination of the lawyers.

Interviewer: And giving a qualification to this contract, is it also redefining the qualification itself?

Yes, it implies defining a qualification, say what this contract is. Is it a sale? Is it a deposit? Is it a mandate? Is it a commission?

Interviewer: But exactly, compared to these categories, will this work transform the category in itself?

Yes. Well. I recently did a job on the affiliation commission. You go to Cache Cache, to Chanel,⁸ these people have key money, you believe that they are business people, but they are not owners of the goods that they sell to you. You buy a waistcoat, a dress, at Cache Cache for example, the goods that they sell you, they do not own them. It is the network head who remains the owner until the last moment. And that involves very serious consequences. They call that 'affiliation commission,' 'affiliation' does not mean anything, 'commission' is a wrong qualification. They are authorized agents! And that involves all kinds of legal consequences, and in particular the fact that these agents are entitled to an allowance at the end of the contract.

Interviewer: Finally a 'wrong qualification,' which remains true as long as it was not noticed.

Here it is! Exactly. 'Wrong,' 'wrong' you are severe [here it is], 'apparent', 'apparent' or 'proclaimed.' (E21, distribution law, Paris, 1957)

We find in this long extract the two key components of the model of change theorized by Boltanski and Chiapello (2005): the "displacement" operation that is congruent with the merchant quality convention and the "categorization" one operating within the civic quality convention. Whereas displacement operations consist in circumventing legal rules in order to grasp legal vacuum and deploy "legal inventiveness" (Bessy 2012), categorization operations lead to clarify the use of legal rules, sometimes by creating new legal classifications (catching up what displacement has created). Like "going beyond," categorization implies to climb up the scale of interests, whereas displacement goes the opposite way, down in the scale of the interests.⁹

⁸ Cache Cache and Chanel are two French brand names of clothing.

⁹ Categorization engages "a space with two levels, the singular elements level, and the higher one of conventions of equivalence having a character of general information" (Boltanski and Chiapello 2005, 411). In this sense, it is regarded as a more reflexive operation than the displacement one which "only knows one level" (Boltanski and Chiapello 2005, 409) and is associated at first with routine actions that avoid any form of control (Favereau and Le Gall 2006). This form of reflexivity is exerted only at and for the individual level, and do not need a change in levels of identity in order to deal with a conception of common good.

Alongside these three forms of reflexivity, we may observe in lawyers' work a fourth one, which has already been identified in EC literature: the "instrumentalization" mode by which lawyers "manipulate the law" (Bessy 2007). It consists in challenging traditional (and shared) interpretations of legal rules in order to favor the interests of the client, by modifying the spirit of a legal rule given by the intentions of the legislator. We can illustrate this mode by highlighting two opposing interpretations of distribution law, according to whether the lawyer is on the franchisee's side (E6) or on the franchisor's side (E19):

We do not simply implement; 'Oh well, such problem, here it is in my drawer, that's the answer to our problem: article thingummy, send it round, it's done'. It is not that. That is, there is a problem. How can we find the solution to circumvent the obvious facts that make what we have an insuperable obstacle in front of us. And the insuperable obstacle most of the time is a contract. And we did not write these contracts since they are contracts for joining that have been imposed on us by the franchisors. So we have to start with a hammer and with a chisel, to engrave this wall, to try to cut away what is wrong, etc., to restore equity, balance. (E6, distribution law, Paris, 1979)

We make the magistrates before whom we argue the case aware that the relationships existing between people linked by a contract, between franchisees and franchisors, are not inevitably those mentioned that the press seeks to echo, namely that the touching scene of the franchisee crushed by the untamable franchisor is more a matter for popular imagery, but it is not reality. Then there can be extreme cases, like everywhere. And so we make the way of seeing things evolve. (E19, distribution law, Paris, 1991)

The following table provides an ordering of the four types of reflexive processes that we have distinguished:

Form of reflexivity	Rules understood as	Identity level
Displacement	Constraints	Individual
Instrumentalization	Constraints and resources	Individual
Going beyond	Constraints and resources	Social
Categorization	Resources	Social

Eventually, in the reflexivity process of displacement, the legal rules are understood as constraints to be circumvented. On the contrary, they are seen as resources needed to advance a convention of equivalence in the categorization process. "Instrumentalization" and "going beyond" use legal rules both as constraints and resources. However, if "instrumentalization" mobilizes rules in order to advance an individual interest, "going beyond" aims at moving up on the scale of identity levels by putting forward broader interests.

4. Conclusion

The variety of professional logics governing the market for legal services rests on distinct quality conventions tied to different conceptions of the law. Each of the four typical logics of working and valuating that we have distinguished is based on a singular rationality process characterized by the implementation of distinctive interpretation and reflexivity processes by lawyers. The market-based logic of profit, associated with “displacement” and individual interest is thus not fully shared. Its extension to the whole market for legal services deriving from current deregulation policies is consequently questionable.

From the perspective of EC, it is doubtful that deregulation will lead to lower prices and higher quality of legal services as is usually expected. Moreover, its consequences will depend on the quality convention that frames the segment of the market. If liberalization may reduce the prices of “standard law firms” (lawyers belonging to those firms being favorable to deregulation measures), it will not be the case for the other segments of the market. The prices of “haute-couture law firms” may on the contrary increase in order to balance the lack of scale economies linked with their logic. Furthermore, whereas “cause-lawyers” may manipulate the professional rules as well as the Law, traditional lawyers are the most opposed to deregulation, which increases price competition and threatens the quality of the legal services they deliver. Should these consequences actually be thought of as leading to a better performance of the market for legal services?

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