

ECSA Third Biennial International Conference
Washington, May 1993

Paper prepared for the panel on
The Functioning of the Single Market

Regulating Professional Services in the Single European
Market: the Cases of Legal and Medical Services in France and
the United Kingdom

Jill Lovecy

University of Manchester

The research on which this paper is based was undertaken at
the University of Manchester's European Policy Research Unit,
in collaboration with Prof.M.Moran and Prof.M.Brazier, and
was funded by an ESRC grant within its Single European Market
Initiative programme.

Draft paper: not to be cited without permission of the author.

Introduction

This paper is intended as a contribution to that growing literature which seeks to understand the European Community primarily as a regulatory state and to analyse the establishment and functioning of the Single European Market as an exercise in regulatory reconstruction. [Majone, 1989 and 1991; Peikmans, 1989; Sternberg, 1990; Dehousse, 1992] [1] By focusing on rules and rule-making the paper is primarily concerned with identifying the competitive struggles between and within professions which have helped to shape, and have in turn been shaped by, the making of EC-wide rules in the sector of professional services.

The Community's institutional framework is characterised by a number of features which make a regulatory approach particularly apposite. Most notably, these features include: the limited resources and restricted range of policy instruments available at the Community level; the resultant heavy reliance of the EC's own institutions on authorities and agencies at the level of the Member-States - or at lower, sub-state levels - for the implementation of EC-wide rules; and, in particular, the role of central importance that has accrued to legal procedures and to the jurisprudence of the Community's own Court of Justice, both in resolving disputes as to the meaning of EC-wide rules (whether in the form of Treaty provisions or subsequent Community legislation) and in securing their application in this multi-tiered system.

These institutional characteristics of the EC have a number of implications for analysing the functioning of the Single European Market, putting a premium on analytic frameworks that combine the disciplines of law, politics and economics. Careful attention needs to be paid to the legal bases for EC-wide rules in those policy sectors designated as falling within the Single European Market itself (as set out under the terms of art.8a of the Single European Act signed in 1986, which modified some aspects of both the objectives laid down in the 1957 Treaty for achieving what was then termed a Common Market, as well as the procedures for achieving those objectives). These will be examined in section II of this paper.

Differences in the institutional framework applying to the various policy sectors within the SEM and differences in the objectives laid down, in the original Treaty and subsequently, for these policy sectors mean that the functioning of the SEM is characterised by a marked degree of *inter-sectoral differentiation*. This type of differentiation is further reinforced by the multi-tiered character of the EC, notably because the *scope of competences* assigned to EC institutions relative to those already exercised by the 12 Member-States (or devolved to lower levels within these states) varies greatly between sectors. There is also the basis for important elements of *intra-sectoral differentiation* where, as is the case with professional services, significant differences obtain in the form and substance of rules already in force for individual professions in each of the Member-State. The particularities which characterise the sector of professional services and their implications for the development of EC-wide rules establishing a Single Market in Professional Services, are discussed further in this Introduction and in section I of the paper.

Moreover, as a multi-tiered system, there is a significant potential in the European Community for processes which the neo-functionalists referred to as "spill-over" [Lindberg, 1963; Haas, 1964] to operate in the form of *vertical regulatory linkage* between different levels in the system, as well as through interaction with other international rule-making arenas, such as GATT. The way in which such processes may contribute to policy dynamics in the sector of professional services will provide a major focus for section III of the paper.

Within the broadly defined (and quite heterogeneous) services sector, professional services occupy a distinctive place. Some aspects of this distinctiveness were, indeed, recognised in the Treaty of Rome. [2] Indeed the core objectives relating to these kinds of services, laid down under Title III's provisions on the free movement of persons, services and capital, amounted to a relatively modest deregulatory project. Two kinds of restrictions were to be progressively abolished: firstly, restrictions on the right of nationals of any Member State to establish themselves to provide services on a permanent basis in the territory of another Member State (art.52); and, secondly, restrictions on the right to provide services on a temporary or intermittent basis, where the provider is established in a Member State other than that of the recipient of the service (art.59). In both cases, a clear timetable and detailed procedures were laid down in the Treaty; moreover, the Treaty identified "the

mutual recognition of diplomas, certificates and other evidence of formal qualifications" as the key mechanism for achieving this liberalisation [arts.57, para.1, and 66].[3]

But the distinctiveness of the professional services derives essentially from the extensive, and often complex, character of the bodies of rules applying to it that have been developed historically at the nation-state level in the 12 countries which now make up the European Community. Professional services are thus covered by separate regulations for each of the very large number of separately organised professions in each Member-State, whilst in some of these states a number of aspects of professional regulation - and, as we shall see, these are not only concerned with tasks of rule-implementation but also with rule-setting - are organised at the level of sub-state units.

The degree of complexity that characterises this sector thus derives notably from broad differences in the regulations already established at the Member State level, differences that may be either cross-professional or cross-national. Furthermore, for analytic purposes the regulatory frameworks for any one profession can be sub-divided into five discrete sets of *substantive rules* together with a sixth set of *procedural rules*. The former cover, respectively: professional monopolies (that is, exclusive rights in respect of the provision of specific services); training and entry; professional ethics and standards; practice organisation and the delivery of services; and the funding of professional services; whilst the procedural rules are primarily concerned with establishing regulatory agency/ies to implement the other substantive rules.

Because of the close inter-relationships between these different sub-sets of rules, this paper will suggest that in this sector analysis needs to be particularly sensitive to processes of *horizontal regulatory linkage*. Such processes can operate *within* individual professions, through the "spill-over" effect which changes in one such sub-set of rules (for example, those governing entry) may have on another set of rules (for example, those concerning practice organisation). In addition to such *intra-professional* dynamics, similar linkages may also take an *inter-professional* form, with changes introduced into the rules governing one profession in turn impacting on other neighbouring professions.

The potential for *intra-sectoral differentiation* is thus particularly marked in the professional services sector, precisely because the bargains between occupational categories and the state, which have historically been constitutive of professional organisation and identity, vary considerably both between different states and between different professions, and are comprised of these quite complex sub-sets of rules. Nevertheless, much of the recent secondary literature on professions has - despite other disciplinary differences of focus and concern - identified an underlying unity within this sector, in the pattern of restrictions on competition and mechanisms of market-protection and demand-creation that are such a crucial characteristic of these bargains, and which, at least in part, derive from the need to protect client/patient interests in a market situation characterised by "informational asymmetry". [4] This means that establishing a Single European Market in professional services effectively involves the radical reshaping of a landscape resulting from what have in many cases been centuries-long efforts by specific occupational categories to entrench limitations on market competition through the organisation of separate, segmented "markets" for themselves within the domestic economies of these 12 States.

The sector of professional services is thus distinguished at one and the same time by its rule-bound character and by the competitive struggles to which such rules give rise, these struggles taking place both *between* professions, over boundaries, and *within* professions, over the nature and range of restrictions to which members are, or should be, subject in offering and providing services.

This paper will therefore not primarily be concerned with reviewing in detail the processes through which the new frameworks of EC-wide rules have been elaborated within the sector of professional services or with accounting for their adoption. These are issues which have already been explored in a number of previous accounts [De Crayencour, 1982; Séché, 1988; Hurwitz, 1990; Orzack, 1991; Carnelutti, 1991] and will be addressed here only rather briefly, in the second section of the paper. [5]

Our primary concern here will instead be with developing an appropriate framework for analysing the functioning of the Single European Market in the professional services sector by focusing on the interaction between Member State-level and EC-wide rules, and

by examining both sector-specific factors and also other profession-specific and country-specific factors which can be expected to crucially shape that interaction. Because of the size and complexity of this policy sector, the analysis of these issues in Sections I and III of this paper will draw primarily on the experiences of two major professions, doctors and lawyers, in two of the larger Member States, France and the United Kingdom.

This choice of professions and countries has been made because between them they enable us in Section I to illustrate a broad range of the divergent rules established in this sector at Member State and sub-state levels, and also because the two professions are now covered by two of the three different sets of EC-wide rules that have been elaborated for the professional services sector. Moreover, both professions have won somewhat distinctive provisions within these two general patterns of EC regulation. As a result Section II is able to examine the ways in which EC-wide rules themselves reflect some of the diversity present at the member-State level.

Finally, and of especial importance to this study, the legal and medical professions offer crucial contrasts in terms of the extent to which both the services they provide and the nature of the market for those services have been directly affected by the process of European integration itself. A first contrast derives from medical practice being based on a shared body of knowledge, whereas this is not the case for legal practice. Patterns of legal service provision and the markets for these are fundamentally shaped by the specific bodies of law and the legal procedures that have been developed within individual states. Since France has a civil law system and the UK a common law system, these two countries exemplify this particularity of the markets for legal services in an especially marked form. Nationally-differentiated markets in legal services have thus hitherto been founded, at least in part, on such differences in the substance of law and in legal process, whereas it is differences in the funding frameworks established in each Member State which primarily underpin the separate national (and other sub-national and sectoral) markets in the health-care sector.

Yet, as has already been underlined, the place of law and legal procedures has been central to the course of European economic integration. Thus important parts of the actual

body of laws on which legal services are based - especially, but by no means exclusively, in the lucrative fields of commercial and company law - have been reorganised through the development of new EC-wide legal provisions (whether in the form of Treaty provisions, EC legislation or ECJ jurisprudence) whilst the establishment of the EC itself involved the creation of a separate court with its own specific procedures. Developments such as these find no parallel in the field of medical services.

A further contrast concerns the relationship between the corpus of professional knowledge that training for these professions imparts and the corresponding range of services over which they have effectively gained 'jurisdiction' [Abbott 1988]. In the health-care sector the domain of doctors is not seriously challenged by any other major occupational categories. In the field of law, in contrast, the dividing line running between commercial legal services and those provided by accountants, in particular, is not clearly demarcated. This has now become a much contested boundary, as the 'big bang' in financial services and the new international strategies being developed by major industrial conglomerates have both opened up enormous market opportunities for specialist services. Here, then, the development of EC-wide rules are the focus of intense competitive struggles between lawyers and accountants and between different strata within each, for which again we find no real equivalent in the medical services sector [Dezalay, 1990, 1991; Eburne, 1990].

These contrasts between the legal and medical professions will be of particular relevance to the discussion in Section III of the ways in which changes in rules and changes in market opportunities and structures can be expected to interact together within the EC's Single European Market. Here we will be especially concerned with examining the interplay between EC-wide rules and other policy changes being pursued within the domestic political arenas of the Member States, whilst also considering how EC-wide rules may, in some cases, serve to mediate other wider processes of globalisation and internationalisation now underway [Kravis, 1985; Dezalay, 1990 and 1992; Petit, 1993].

**Section I The organisation of segmented domestic markets for professional services:
some profession-specific and country-specific variations**

If the organisation and regulation of professional services are best understood as embodying a contract between a particular occupational group and the state, in which a public interest in maintaining appropriate standards and levels of competence in the provision of specific services is secured in exchange for protection from some elements of market competition, then it is evident that the terms of such contracts have been shaped by widely differing historical circumstances at different points in time in the countries currently constituting the European Community. These are issues that lie at the heart of a substantial and burgeoning literature on professions, their contemporary forms of organisation and their historical origins.[6]

For our purposes here, it is the protean element of segmented market organisation which needs to be placed at the centre of our analysis, as the key sector-specific variable shaping the functioning of the Single Market in professional services. However, whilst the shared outcome for professions by the mid-twentieth century had been the entrenchment of domestic market segmentation in this sector, the pathways along which individual professions in the EC Member States travelled to reach that situation diverged in significant respects. As a result, the professions demonstrate important elements of "path-dependency" in the contemporary period - in terms of both procedural and substantive rules organising the markets for their services.

In this section our survey of the regulatory regimes that have evolved for the medical and legal professions in France and the UK will be confined to a limited selection of issues. Our main purpose here is to convey a sense of the complexity and density of the mass of rules already in place at the level of the Member States and of the interlinkages between the different sub-sets of rules - since the elaboration of EC-wide rules offer opportunities to challenge or further entrench existing rules, as well as to shape the organisation of emerging European and international markets. Some of the more significant sources of domestic change in these rules in the recent period will also be noted, developments that will be drawn on in our subsequent discussion, in Sections II and III, of the development of EC-wide rules and their implementation. A first sub-section therefore considers rather briefly some of the major divergences found in the procedural rules governing the professions, whilst the following sub-

section focuses on selected aspects of four of the five sets of substantive rules noted in the Introduction.

i. procedural rules

These provide a major focus for much of the academic literature on the professions and here we encounter a key "path-dependent" variation in this sector, with reliance on self-regulatory regimes in a number of (primarily English-speaking) countries, whilst in others (including much of Continental Europe) state-licensing regimes, or some hybrid variant, predominate.

The presence of such contrasting procedural rules is clearly of significance for the development and implementation of EC-wide rules covering professional services, since they entail differences in the legal status of the substantive rules in force in the Member States (as falling either in the domain of private law or of public law) as well as differences in terms of the agencies to which responsibility for the implementation of EC Directives would be delegated (as between statutory professional bodies or the relevant ministries themselves). They also make for important differences as regards the arenas available for professions, or particular strata within professions, to pursue those competitive struggles which moves towards the development of a Single European Market can be expected to engender.

In any case, these contrasting regulatory frameworks have substantially complicated the development of EC-wide rules. The complexity of established Member State provisions in this respect is amply demonstrated by our evidence gathered on the medical and legal professions in France and the UK. For whilst, as expected, our two sets of professions do manifest marked cross-national contrasts, these national regulatory styles are in turn cross-cut by other cross-professional and intra-professional variations.

Thus within the UK, the degree of professional self-regulation enjoyed over a long historical period by the Bar has been far more complete than that achieved subsequently by either solicitors or the medical profession. [7]

In contrast, in France the revolutionary upheavals at the end of the eighteenth century had set about abolishing older forms of corporatist self-regulation and replacing them with forms of state-licensing. Such rules were applied to the French medical profession until the 1940s when a significant element of self-regulation was finally introduced with the establishment of a statutory body, *L'Ordre des Médecins*, which was given the duty to maintain the register of qualified practitioners and disciplinary responsibilities roughly equivalent to those exercised by the British General Medical Council. [8]

However, lawyers proved an exception to these new procedural rules. Legislation enacted at the beginning of the nineteenth century re-constituted the French Bars with extensive powers in respect of entry and training, discipline and also practice organisation, and established a quite distinctive set of procedural rules covering the *notaires* and *avoués*. As *offices ministériels et publics*, these professions had a hybrid regime combining a form of state-licensing (through state appointment, and also fixed fee-rates) with major elements of self-regulation of the kind enjoyed by the Bars. [9]

Indeed, there is a more striking general contrast between these procedural rule components of the national regulatory styles of France and the United Kingdom, and one that holds consistently across both sets of professions. In the UK self-regulation has been combined with a high degree of centralisation, albeit within the three separate territorial units of England and Wales, Scotland, and N.Ireland, whereas in France legislation has provided for an equally characteristic pattern of decentralisation (with significant powers accorded to professional organisations at the local - and in some cases also regional - levels). This, too, has potential implications for the development of EC-wide rules in this sector. [10]

Nevertheless, it should be noted that the contemporary period has seen significant changes get underway in respect of such procedural rules. The prospect of EC-wide rules being developed itself acted as a catalyst for major legislative reforms in France (see sub-section ii.a. below). In the process the entrenched decentralisation of the French Bars has been broken, with the establishment of a national statutory body for the first time, the *Conseil National du Barreau*. [11] In the UK, legislation has finally brought the self-regulatory structures of the Bar under statutory control. [12] Here, however, debate has not

focused directly, in the way that it has in France, on the wider EC context for such regulatory changes.

ii. substantive rules

We suggested earlier that it is the the extensive scope of rules defining and organising separate market "segments" for each profession which is of crucial importance in shaping the Single European Market programme in this sector. The scope of this vast web of rules at the Member State-level, and their varying legal bases, will be illustrated here by focusing on a selection of issues drawn from four of our sub-sets of rules: monopolies; accreditation; and delivery of services together with funding. Here, too, important kinds of the regulatory changes have been introduced within the Member States since the Treaty of Rome was originally signed - by France in 1957, and by the UK in 1972.

a. rules governing professional monopolies

The ability to maintain exclusive rights over the provision of specific services has been central to "the professional project" in the modern period, yet the legal status and scope of rules securing such professional monopolies vary considerably. In the field of health care the French medical profession has enjoyed a general monopoly over medical acts in law since the beginning of the nineteenth century, whereas in the United Kingdom a statutory monopoly exists in respect of professional title only, and not over medical acts themselves.

In the legal field, such contrasts have been further complicated by the presence of several separately organised professions in each country. Thus the exclusive rights of audience in the higher courts enjoyed by the Bar in England and Wales had no statutory basis whatsoever until very recently, whilst the solicitors' conveyancing monopoly was for a long period only partially protected by statute and has recently been abolished. [13] In France, in contrast, the larger number of separately organised professions have each enjoyed a statutory monopoly over specified contentious and non-contentious legal procedures since their reconstitution in the aftermath of the French Revolution. However, legal services concerned with important areas of commercial law were left without statutory provision. As a result a

quite heterogeneous occupational category developed in France without any regulatory framework at all, until a statutory monopoly in respect of the title of *conseil juridique* was created in 1971.

The medical and legal professions also illustrate the importance of another type of variation in the organisation of markets for professional services, between general and segmented monopolies. In the medical field in both these countries (as in the other Member-States of the EC), we find that, whilst specialisation has given rise to the development of separate rules and organisations governing the usage of specialist titles, these have operated within the framework of very large unified professional organisations. By the early 1970s, there were nearly 70, 000 registered doctors in France, compared with in the UK. [14a] In contrast, the English common law system and France's civil law system have each given rise to a number of quite separately organised professions, although the total number of qualified practitioners in law has been considerably smaller in each country. In France six separately organised professions - the *avocats*, *avoués* and *notaires* (numbering respectively around 7,500, 1,500 and 6,500 at this period) together with the two specialist corps of *avocats aux conseils* (60) and *avoués auprès les Cours d'Appel* (220); and those using the now regulated title of *conseil juridique* (around 4,000 strong) - have traditionally undertaken a range of legal services which, although by no means exactly equivalent, are nevertheless functionally close to those provided by the two main professions in England and Wales, barristers and solicitors (these professions being, respectively, by the early 1970s some 2,700 and 26,000 strong). [14b]

In both countries recent reforms have, however, challenged these traditional patterns of segmentation. In France the *avocats* first absorbed the lower-court *avoués* under legislation enacted in 1971 and have subsequently merged with the *conseils juridiques* under a law passed at the end of 1990. This latter legislation also established in law for the first time a general monopoly somewhat similar to that enacted for the medical professions almost two centuries earlier. This covers a wide range of legal services and is jointly assigned to all the regulated professions.[15] In England, a contrasting trend towards deregulation in the 1980s has been followed by the establishment of statutory controls over rights of audience and the conduct of litigation. [16] These arrangements *may* also open the way to a more thorough-

going process of market de-segmentation, with the possible emergence in the longer-term of a unified profession in England and Wales based on a common initial training, whose members could specialise to varying degrees in the course of their careers in different areas of legal practice.

Moreover, both sets of legal professions demonstrate another important variant on market segmentation, based not on specialisation but on the *territorial delimitation* of professional monopolies. This has been a particularly pronounced feature of France's legal system in the modern period (reflected in the previously noted decentralisation of procedural rules for the French professions): *notaires*, for example, may only provide authenticated legal documents for clients within the area to which they have been appointed (normally that area corresponds to a single *département*). [17] In the United Kingdom, the process of state-building resulted in Scotland, following its relatively late incorporation into the British state, retaining a quite separate court and legal system, alongside that operating in England and Wales, whilst separate court provision was maintained in N.Ireland following the establishment of an independent Irish state in the 26 counties. As a result rights in respect of audience, the conduct of litigation and other legal services have been separately accorded for each of these three units of the United Kingdom, with separately trained and organised sets of professions in each.

b. rules governing professional accreditation

If rules governing access to training and to subsequent accreditation are viewed in terms of their capacity to limit market entry (by "controlling the production of producers"), such controls may be based solely on qualitative criteria or may also incorporate quantitative criteria. At its

most extreme this latter takes the form of a fixed *numerus clausus*. Here, too, we find both cross-national and intra-professional contrasts. Among the three French legal professions which remain as *offices ministériels et publics* a quite exceptional form of statutory *numerus clausus* is entrenched through state-appointment.[19] In England and Wales the Bar has had some success in restricting numbers entering the profession but the rules governing entry to

the solicitors' profession in England and Wales and to the main French profession of *avocats* have not offered equivalent filtering mechanisms. [20]

In the field of health care, however, it has been the British, and not the French, profession where an effective *numerus clausus* has been in place for some time, selective entry to university education having enabled the Department of Health, following the establishment of the NHS, to determine the total annual intake to UK medical schools. [21] In France, initial enrolment in medical as in other faculties has not proved amenable to such controls and here a *numerus clausus* has only been developed much more recently. [22] This is determined jointly by the Ministries of Health and Education and is imposed at the stage of entry to the second year of undergraduate studies (by fixing a ceiling to the number of candidates allowed to pass the end of first year examinations).

The last twenty or more years have also seen some significant changes in aspects of this second set of substantive rules. One trend common to both sets of professions has been a growing "professionalisation", in the sense of establishing more rigorous standards of qualification and of professional training.[23] In practice this has also meant decreasing reliance on individual practitioners as gatekeepers to entry and an increased role assigned to nationally established rules, with both the setting and the application of such rules shifting to, or being shared with, authorities external to the professions concerned. [24]

The application of such rules have in any case been greatly affected by broader changes in their regulatory environment. Most notable here has been the great expansion that has taken place in the provision of higher education, producing ever larger numbers of qualified applicants for post-graduate legal training. It has also substantially altered the composition of the pool of applicants, in terms of gender, class and ethnic background, a trend found also at initial entry into undergraduate medical training.

Another trend, most visible in the medical field over a rather longer period, has been increased market segmentation through the growth and diversification of formal specialist qualifications. However, specialist accreditation procedures have varied very considerably between the two countries' medical professions in large part because such qualifications act

as a gateway to quite different kinds of position (and status) in each of these countries (in the context of the two very different frameworks for funding and delivering services, details of which are discussed below). Somewhat similar forms of market segmentation in legal services are now being developed in France. [25]

c. rules governing employment status in the professional services sector

These are another area of professional services regulation which demonstrate considerable "path-dependency", both the professions under consideration here having been heavily influenced by their origins in the early modern period when professional corporations sought to enforce solo-practitioner rules and when the main purchasers of their services were wealthier individuals and family units. Examining such rules and some of the changes that have taken place in them, moreover, will enable this sub-section to bring out the close interlinkages between rules governing practice and our other sub-sets of rules, in particular those covering funding.

Early forms of market organisation and restrictions on competition, which were typically geared to limiting "production by producers" and restricting price-competition between them, found expression in rules banning or imposing forms of fee-setting and prohibiting advertising, as well as in rules enforcing self-employed status. [26] In addition, exclusive rights over particular ranges of legal and medical acts were underpinned by rules prohibiting individual members from undertaking forms of multi-disciplinary practice and from entering into multi-disciplinary partnerships, thus entrenching the boundaries between them and their neighbouring professions. But whilst recourse to any and all forms of corporate structures has until quite recently been prohibited outright in all the legal professions, members of the medical professions in both countries have been allowed to form, and take up salaried employment in, public and private companies - subject to some "public interest" restrictions.

The Treaty of Rome's provisions in respect of professional services were themselves quite explicitly founded on the assumption that the providers of such services would for the most part be self-employed (for further detail, see Section II below). Yet in the contemporary

period a secular shift away from self-employed status is undoubtedly underway. However, this shift in turn has much wider ramifications because of the extensive range of interrelated rules that have hitherto bound together various forms of market protection and demand-creation with the maintenance of standards of ethical conduct.

These issues are especially clearly illustrated in the medical sector, where contrasting modes of funding the delivery of health-care have developed since the mid-twentieth century, resulting in fundamentally different patterns of employment status. In the UK, the state has become the main direct purchaser of medical services: here, most hospital doctors are directly employed by a district health authority (or, under more recent reforms, by an NHS hospital trust), whilst general practitioners practise under contract (to a Family Health Service Authority or, more recently, as fund-holders). [27] In France the state has acquired overall responsibility for organising the framework of compulsory health insurance for those in work through which health-care is funded: here, as a result, the demarcation between private and public sector provision has rather limited significance in terms of funding arrangements but considerable significance in terms of the employment status of doctors. Only a small minority of doctors are full-time salaried employees (19% in 1990, primarily in the hospital and community health sectors) whilst the vast majority work as solo-practitioners on a self-employed basis in the private sector. [28]

The predominance of self-employment in the French health sector has therefore meant that the *Ordre des Médecins* and its *Code de Déontologie* play a central role in regulating and policing the terms of "market"-competition between its members, authorising the setting up of a new practice, or a second practice, and scrutinising the contracts between doctors practising in partnership. This is a role played equally by the legal professions' statutory bodies and codes of conduct in both countries. In contrast the GMC in the UK, where the vast majority of doctors are accountable directly to an employer or a contracting body, has an altogether more limited role in relation to the organisation of medical practice.

Equally, the role of specialist accreditation and training is fundamentally different in the two countries. The predominance of specialist practitioners in the primary care field in France - together with the absence of generalist practitioners acting as gatekeepers for

access to specialists - has meant that the various registers of specialist practitioners serve to organise what are effectively different market segments, as well as to inform patient choice. Indeed no doctor may practise as a specialist without appropriate formal accreditation. At the same time, post-graduate specialist accreditation in France involves correspondingly limited status, since it provides access for very large numbers of medical practitioners to self-employment in a highly competitive environment - access, that is, to what will in many cases be relatively modest levels of income.

In the UK, in contrast, no *legal* barriers prevent any registered doctor from practising as a specialist. Here, however, the qualification gained after initial post-graduate specialist training, undertaken over a two to three-year period, is itself not normally sufficient for appointment to a NHS consultancy. [29] The organisation of segmented "markets" for specialist services continues to be overseen by the Royal Colleges. They require that initial training in a specialism be followed normally by a further three to five years in what are effectively training posts; it is only then that a doctor in the UK will normally be eligible to be appointed to one of the relatively small number of consultant (or equivalent status) posts in the hospital system.

In the legal services sector self-employed status has more generally been retained until quite recently. Indeed, the tiny specialist corps of *avocats aux conseils* were statutorily prohibited from anything other than solo practice until as late as 1978. The solicitors profession in the UK has been exceptional in the modern period in not being prohibiting its members from salaried employment. This profession also introduced rules permitting partnerships at an early stage; the maximum number of partners permitted had already been increased to 20 by the early 1960s. Most other professions followed suit, allowing members to form partnerships in which they share some overheads, or fees and clients also, although the Bar has maintained rules excluding partnerships (and *a fortiori* salaried employment). [30] The requirement that members of the practising Bar do so from recognised private chambers has, however, in conjunction with the clerking system allowed some quite large chambers to develop - and enabled such barristers to operate effectively as specialist practitioners.

In both the legal services sector and amongst hitherto self-employed doctors in France radical reforms are now underway. In France a second law of 31st December 1990 has provided for members of *all* regulated professions in France to practise in a wide variety of corporate structures (subject to a formal limitation on the proportion of capital subscribed from sources outside of the professions concerned, which has been set at 25%) and to participate in multi-disciplinary partnerships. As a result it will now be possible for members of all these professions to be salaried employees.[31] The apparent re-regulation of legal services organised through the new statutory monopoly enacted on the same date has thus accompanied by a quite radical rupture with the long-entrenched rules prohibiting incorporation and salaried employment for members of these professions.

In England and Wales two separate pieces of legislation, with the Administration of Justice Act in 1985, and the Courts and Legal Services Act in 1990, have enacted similar changes for the legal professions. The former included provisions, whose implementation was however delayed until 1992, for solicitors to incorporate, whilst the CLSA has abolished the prohibition on multi-disciplinary partnerships. The traditional rule that barristers may only practise from private chambers, however, remains in force.

Moreover, the advent of legal aid in the period since the end of the Second World War has meant that a substantial market segment that is publicly funded has been created in the legal services sector, too. This has come to represent a particularly important part of the total market for legal services in the UK, the total cost to the Exchequer running at £1 bn. by 1993: here, therefore, many, if not most, barristers and solicitors now depend on public funding for a part of their income, with a stratum of both professions reliant on legal aid for virtually all of their income. In France a similar development has taken place, although on a more modest scale. [32]

Although the scale and forms of such funding are therefore quite variable, the emergence of public funding as a major feature of both the medical and the legal service sectors in France and the UK has meant that in the last decade, in particular, both these sectors have been the target of governmental cost-containment exercises. The forms which these have taken to date, however, have also varied correspondingly. Such exercises have

incorporated measures, particularly in the medical sector, that are erosive of traditional forms of professional autonomy (through the listing of drugs available for NHS prescription or reimbursable through insurance, and through the introduction of medical audit). Especially in France, measures have been adopted that directly "police" the market for medical services in the ambulatory sector by limiting patient's choices. [Steffen 1991] [33] In the legal sector, as we have seen, major deregulatory moves have been initiated in the UK. In both countries controls have been introduced on legal-aid fee-rates and, in France, also on the fee-rates set for the *offices ministériels et publics* professions. Such developments have in the most recent period made for increasingly conflictual relations between organisations representing the professions and their supervisory ministries on both sides of the Channel.

Section II From the Treat of Rome to the Treaty of Maastricht: the development of EC-wide rules governing professional services, and their legal bases.

Very little of the complexity found at the level of Member States in the form of these sub-sets of rules has been recreated at the EC level. However, we do find a marked element of *intra-sectoral differentiation* in the professional services sector, since the Directives adopted here have resulted in the establishment of what are effectively three distinct regimes, which between them now cover the full range of regulated professions. Nevertheless, in spite of other differences between these regimes, which will be examined below, what stands out in this sector is the *really quite limited* transfer of regulatory competence to EC institutions that has been implemented to date via the Community's policy-making institutions centring on the Commission's right of initiative and the Council of Minister's right of decision.

Indeed the *scope* of what has so far been agreed at the Community level in the form of Directives (Regulations and Decisions) in respect of professional services remains relatively modest. In this sector, therefore, the Single European Market has been inaugurated (from January 1993) on the basis of a highly uneven distribution of regulatory competences as between the Community's own institutions and those operating at the Member State and sub-state levels, where a vast and dense substructure of regulations remains in place. In particular, the EC Directives to date have been almost exclusively concerned with relatively narrow aspects of accreditation - although, as will be discussed further in Section III, there

is evidence of this in turn precipitating further rules changes, through processes of horizontal regulatory linkage.

This is an outcome, some 35 years after the signing of the Treaty of Rome, that cannot be accounted for simply by reference to the substance of that Treaty. These include provisions of potentially much wider scope: both via art.57, para.2 which allows the Commission to initiate proposals to achieve a broader co-ordination of existing rules covering "the taking up and pursuit of activities as self-employed persons" and via art.64 permitting additional liberalisation measures in respect of the provision of services [de Crayencour 1982]; as well as through other Treaty commitments (some enhanced in 1986) in respect of competition policy and the protection of consumer rights. In the course of the 1960s, art. 57 in particular seemed to provide the basis for much more broad ranging consultations between a number of professions and the staff of DG III. What was then envisaged, it seems, was a highly ambitious programme of 'co-ordination', some professional organisations claiming that this would need to extend across to questions of professional deontology, practice organisation and to fiscal and social security regimes [De Crayencour 1982: 63-69]. Indeed the Commission's initial draft proposals for doctors have been described as amounting to "nothing short of a socio-medical charter" [ibid.: 66].

In the event, ~~the~~ the Directives agreed to date have been more narrowly focused on the principle of mutual recognition of professional qualifications. As a result, they have effectively incorporated into EC law elements crucial to the established mechanisms of restrictions on market entry in the Member States. These EC-wide rules have thus, at least initially, served to maintain barriers to market entry by entrenching the existing boundaries between the separate segmented markets for professional services, even while favouring the mobility, *within* such market segments, of qualified professionals across the 12 Member States. Where the "designated authorities", as in France and the UK, are the professional bodies for each separately regulated profession, these rules have in addition reinforced their role in the accreditation process, extending it to cover migrant professionals qualified in other EC states.

Nevertheless, Commission and Council of Ministers, together with the Parliament, are only one source of EC-wide rules, the other main source being embodied in the jurisprudence of the European Court of Justice. Ultimately, this looks set to become an altogether more extensive source of EC-Wide rules for this policy sector as for many others. We will need initially, however, to examine the main Directives that have been adopted for the professional services sector [De Crayencour 1982; Laguette and Latham 1978; Séché 1988; Hurwitz 1990; Orzack 1991; Carnelutti 1991].

The first of the three sets of EC-wide rules embodied in Directives pre-dated the adoption of the programme for completing the Internal Market, and its incorporations into the Single European Act as a specific policy goal for the Community. These EC-wide rules took the form of a series of separate Directives, sets of two Directives being adopted for each profession. They covered eight professions in all: doctors, veterinary surgeons, midwives, nurses, dentists, pharmacists, architects and auditors; the first of these, adopted in 1975, covered the medical profession. Directive 75/362/EEC lays down a system for the mutual recognition of diplomas for both general and specialist medical qualifications, whilst Directive 75/363/EEC enacts minimum standards (expressed both in rather general qualitative terms and in quantitative terms) that the accreditation procedure for doctors in each of the Member States would henceforth be required to meet.[34]

These medical, and the other parallel, Directives did incorporate some elements of a broader harmonisation strategy. Associated Council Decisions established two Committees in order to co-ordinate and review the implementation of the Directives. [35] These Committees, and those which followed for the other professions in this grouping, have been characterised as forming a nascently corporatist "sub-bureaucracy" attached to the European Commission which "proved cumbersome and costly" to operate [Orzack 1991: 143].

However, the rules applying to doctors also set medical services apart from those provided by the other seven professions in this group. Firstly, the presence of large contingents of salaried employees amongst doctors in the EC meant that a special Council Statement had to be issued to clarify the applicability of these measures to them as well as to doctors practising on a self-employed basis to which Directive 75/362/EEC specifically

referred. In addition, a Council recommendation, supplementing these Directives, was issued on access to clinical training posts. [36] Secondly, a third Directive 86/457/EEC was published, largely and quite understandably - in view of the seminal role which General Practice plays in the UK health-care system - on the instigation of the UK, setting a minimum two-year period of vocational training for those entering General Practice, this training to be completed after the initial medical qualification. [37]

The legal professions had also engaged in extensive consultations with Commission staff in DG III in this period, both through direct lobbying by individual national professional organisations but more especially through their collective European representative body, the CCBE. However, equivalent Directives failed to be agreed in this period. Only a much more limited Directive was published, in 1977, enabling lawyers to provide legal services in a state other than that in which s/he has qualified using their home title. By this time, indeed by 1975 when the first doctors Directives were published, ECJ jurisprudence had in any case established the direct effect of core provisions of the Treaty of Rome, such as articles 52 and 59, from the end of the transition period in 1969, notably in the *Reyners* and the *van Binsbergen* cases. [38]

Subsequently, following the adoption of the Internal Market programme (which was itself inspired by the ECJ's landmark decision in the *Cassis de Dijon* case published in 1978 [Mattera, 1992]), a second and third set of EC-wide rules have been developed which have taken a quite different form: a single Directive in each case laying down a common regulatory framework that would apply directly to a whole category of professions, with professions now being classified on the basis of the level and duration of post-secondary education and training required for accreditation.

Directive 89/48/EEC covers all those professions (excluding the ^{right} ~~services~~ previously covered by separate Directives) requiring a minimum of three years post-secondary education and training. Three years later a second General Systems Directive was adopted by the Council of Ministers in February 1992 [39]. In both cases all the professional services covered by each Directive were to be opened up on an EC-wide basis by giving "the migrant professional, whose qualifications are recognised under the terms of the Directive, ... the right

to apply to become a member of the relevant host state professional body and to use any appropriate symbols, designation or professional title" [Lonbay et al, 1990: 2].

The procedural and substantive rules covering the mutual recognition procedure in the first of these two General Systems Directives differ, however, in important respects from those which had previously been laid down in the earlier Directives covering the medical and other professions. In particular, no further official committees, incorporating representatives of the professions were set up along the lines of those previously established for the doctors and other professions. Instead an altogether lighter mechanism linking DG III to a designated responsible official in each Member State monitors and co-ordinates the implementation of the Directive; these officials also seek to resolve problem cases as they arise. [40] This seems to fit with an interpretation of the overall trajectory of EC integration in terms of a more ambitious harmonisation strategy prior to the Cassis de Dijon decision having given way to a reliance on mutual recognition of established, and diverse, national arrangements as the key regulatory mechanism for further progress [Tsoukalis 1991].

However, other aspects of these three sets of Directives suggest a rather different trajectory over time, with mutual recognition providing the core mechanism for the earlier sets of Directives, whilst the First General Systems Directive has incorporated additional barriers to mobility in the form of a new EC-wide rule. Under the former, a migrant qualified in another Member State would have to furnish appropriate proof of their qualification to the "designated authorities" in order to obtain the right to full registration in the host state. The procedural and substantive rules incorporated in the latter Directive differ significantly: the migrant professional covered by its provisions has, in addition, to undertake either an aptitude test or a period of supervised practice in the host country *as a condition* for receiving full establishment in the host state. For all professions other than the legal professions the choice of aptitude test or supervised practice is left to the individual migrant. [41] These provisions amount to the creation of an added barrier to professional mobility, and thereby to market entry, that is not present for the professional services covered by the earlier Directives.

A separate procedural rule was, however, incorporated specifically applying to legal services only, as a result of the profession's lobbying. Exceptionally, the Directive provides for this choice to lie not with the migrant professional but with the "designated authorities" in each Member State, because it recognises that "precise knowledge of national law" may be "an essential and constant aspect" of a range of legal services. Here a process of vertical regulatory linkage, downwards, has in effect resulted in a new EC-wide rule giving to the "designated authorities" an enhanced role, relative to that accorded to similar authorities in other areas of professional services, in setting the substantive rules to be applied in the accreditation process. In both France and the UK these authorities have imposed aptitude tests conducted in the host country language. [42]

Initiatives for further Directives and regulations are currently underway, but these will be considered in Section III below. Also one important Regulation was adopted by the Council in 1985 establishing EC-wide rules covering one aspect of the delivery of services by permitting the creation of European Economic Interest Groupings. [43] However, alongside this quite narrowly-focused body of EC-wide rules embodied in Directives, Regulations and Decisions, there is now a much more substantial and far-ranging body of general principles applicable to the professional services sector that has been generated through the decisions of the ECJ. We have already noted that key provisions of the Rome Treaty had acquired direct effect retrospectively through the Court's jurisprudence, before the medical Directives.

But the ECJ has not only acted as a catalyst for the Directives now in place on the mutual recognition of diplomas; it has also produced rules, some developed in cases specifically concerning professional services, but others in the form of broad-ranging principles which have already had and are likely in the future to have even more significant applications in litigation arising in this sector[Mancini 1989; Mattera 1991]. An example of the former is the 1984 decision in the case of *Klopp v. Barreau de Paris*, overriding the latter's attempt to prevent a German barrister from establishing chambers in Paris in addition to those from which he intended to continue to practise in Germany. This again is a case of horizontal regulatory linkage, application of the Treaty's provisions on freedom of establishment requiring additional changes in established Member State rules on practice

[44]
organisation. Other examples relate to the Court's jurisprudence concerning 'proportionality' which has already been applied, in conjunction with the principle of mutual recognition, to professional services in a number of key cases [Mattera 1991]. [45]

The application of such broad principles to the professional services sector, operating in conjunction with the Directives already enacted, has thus established an intrinsically dynamic framework for processes of both horizontal and vertical linkage to develop in the professional services sector. It is to an examination of these that we now turn in the final section of the paper.

Section III Policy dynamics in the Single Market for professional services

Although, as we have seen, the EC-wide rules that have been established as a result of Treaty-based transfers of competence to the Community's institutions have as yet been relatively limited in scope, it is the argument of this paper that the functioning of the Single European Market in this sector can be expected to be characterised by considerable dynamism. This is in large part because of the extensive scope of restrictive rules that remain in place in the Member States (and in sub-state units) covering such matters as prohibitions on salaried employment, restrictions on partnership arrangements and incorporation as well as advertising, or, in some professions, ^{the maintenance of} fixed fee-rates. These kinds of rules may be open to challenge on grounds of incompatibility with established EC-wide rules - whether these be in the form of Directives and other legislation or of ECJ jurisprudence ^{as in the Klopp case} - or with such EC rules as may be developed in the future. [46]

This latter point is of especial importance since, as was noted in the Introduction, there are other areas of Community competence where relatively little direct legislation and jurisprudence affecting professional services have as yet been developed, for example, in the fields of competition law and consumer protection (the Community's competence in respect of the latter having been reinforced under the 1986 Single European Act). A variety of initiatives in these sectors are currently underway, and here the competent DGs and other Commission agencies are, moreover, bodies which do not have a long history of consulting with representatives of the professions of the kind built up by DG III. [47]

Apart from new EC-wide rules emerging in the form of new Directives or (through what is essentially a process of horizontal regulatory linkage, as in the Klopp case) ECJ jurisprudence, such restrictive practices have also been significantly reshaped as was seen in Section 1, in the legal services sector in both France and the UK by legislative changes at the Member State level in the recent period. However in the case of France, where ^{more far-reaching} deregulatory moves regarding practice organisation were more directly championed by a modernising fraction within the legal professions [whereas in the UK they seemed to derive more directly from a government-unopposed agenda], that modernising fraction has been able to draw very considerable leverage from pointing to the likelihood of future EC-wide rules being developed covering aspects of practice organisation and to the need to develop more competitive forms of practice organisation to challenge the market dominance achieved by Anglo-American law firms in the lucrative commercial legal services sector. This kind of change in Member State legislation can thus be viewed, at least in part, as a case of vertical regulatory linkage. Moreover, where modernising fractions within professions or national governments find their paths to deregulatory reforms blocked, this may feed into a process of reverse ^{vertical} regulatory linkage, with EC-wide regulations being drafted in order to overcome legal obstacles at the Member State level. This is certainly a plausible explanation for the Bangemann initiative on European Economic Groupings (Allowing the German Federal Constitutional Court's upholding of the German professional ban on partnerships)

Policy dynamics in respect of that other structural characteristic of the professional service sector to date - market segmentation - are also complex and can be expected to reflect some of the profession-specific and country-specific variations examined in Section I. A core objective of the 1957 Treaty's objectives was to provide for cross-national mobility within market segments, by removing national rules discriminating against professionals qualified in other EC states. However, as noted in Section II, the General Systems Directive is less liberal in this respect than the earlier set of single-profession Directives. To date mobility of professionals seems still to be limited in practice [Brazier et al 1992c]; but this may be offset, in the medical sector, by some degree of patient mobility and, in the legal services sector, by the rapid growth in transnational networking between lawyers.

More generally, mutual recognition of qualifications has, it has already been suggested, served to entrench market segmentation, by giving EC-wide recognition to qualifications to which exclusive rights over specific major activities have been assigned in Member-State legislation. Nevertheless, here too developments exhibit considerable complexity. For example in the UK in the legal services sector, the mutual recognition procedures have initially contributed to an unravelling of both specialist and territorial ^{market} segmentation in this sector. [49] In contrast in France, as we have seen, the modernisers in the profession and in government won a substantial programme of intra-professional desegmentation through the 1971 and 1980 reforms, but the price of this was an extension, at least in formal terms, of the joint demise of the separately organised legal professions that remain

do a general statutory monopoly over a much wider range of legal services than they had hitherto enjoyed.

Market segmentation is also being challenged in the current period by a variety of initiatives emerging both at Member-State level and at EC level for legislation providing for Multi-Disciplinary Partnerships in the professional services sector. These developments have been fuelled abroad by the competitive struggle between accountants and lawyers for market advantage in the healthcare - and expanding - sector of international consultancy services [Dowling 1990, 1991].

Such competitive struggles, both between and within professions, have thus increasingly come to be subordinated through the prism of EC law, in its various forms, over the last two decades.

Nowhere is this more clearly demonstrated than in the changes that the DTHS' Chief Medical Officer has now proposed to implement to align the UK's restrictive training arguments for specialists on the rules established by the 1975 Directives [50]

Nevertheless, where the development of particular trans-national markets for professional services cannot be policed simply by Member-State legislation but do not lend themselves either to EC-wide regulation, this sector may see the development of other 'variable geometry' categories of rules to meet particular problems on an ad hoc basis. A particularly interesting example of this has now arisen in the healthcare sector with the signing of a Franco-Italian agreement to regulate the procedures for referring Italian patients for specialist treatment in France and the costs of such treatment (as a result of allegations of queue-jumping and differential pricing for non-French nationals in some kidney transplant centres).

Notes.

1. The research project, National Regulation and the Single Market: the Case of the Professions, on which this paper draws, was an interdisciplinary project in law and political science. See M. Brazier et al., 1992a, 1992b, 1992c; and 1993a, 1993b.

I am grateful to Christine Kirschbaum and Laxmi Reilly, of DG III, Janice Webster, of the CCBE, Colm MacEochaidh and Mme. Sylvie Deniniolle, respectively Brussels representatives of the Law Society and the Barreau de Paris for agreeing to discuss these issues with me; and to the BMA, GMC, L'Ordre des Médecins and the Comité Permanent des Médecins des Communautés Européennes / Standing Committee of Doctors of the EC for information which they have supplied for this research project.

2. In particular, those professional activities which are "connected, even occasionally, with the exercise of official authority" [arts.55, para.1 and 66] are excluded from the Treaty's provisions. Exemption from their application is also made admissible "on grounds of public policy, public security or public health" [arts.56 and 66].

3. The relevant provisions are found in Chapter 2, Right of Establishment [arts.52-8] and in Chapter 3, Services [arts.59-66]. The removal of both these kinds of restrictions was to be achieved by the end of the transition period, with the Commission submitting a draft general programme within the first two years of the first stage of the transition period.

In addition two articles [art.57, para.2 and art.64] also provided for the commission to initiate and the Council of Ministers to agree a wider programme of co-ordination of regulations and liberalisation in respect of both the Right of Establishment and the Right to Provide Services [for further detail, see below, Section II, p. and n.].

4. On this literature see below, p.8 and n.6.

5. See also Brazier et al.[1993], ch.4.

6. Notable examples of the Anglo-American literature include: Friedson, 1970; Johnson 1972; Berlant, 1975; Larson, 1977; Wilding, 1982; Abbott, 1988; Abel & Lewis, 1988a, 1988b, 1989; and of the French literature: Bourdieu, 1986; Karpik, 1988; Dezalay, 1990, 1992. Much of this has been written primarily from a sociological perspective, examining the relationship between professional knowledge and power, and has concerned itself with processes of social as well as market closure. The Anglo-American literature in particular, and perhaps inevitably, has focused on restrictions on competition - through "controlling the production of producers" as well as "production by producers" [Abel, 1988], whilst economists have been more concerned with issues such as rent-seeking behaviour, demand-creation and the informational asymmetry underpinning markets for such services [for an example of the latter, see Holmstrom, 1985]. The political science literature to date has been more restricted; it includes, however, an American monograph on the French *notaires* [Suleiman, 1987].

7. Both these professions' regulatory frameworks were laid down in their essential features much more recently, in the mid-nineteenth century [Brazier et al 1992a]

8. As a result, both are also empowered to compel individual practitioners to pay membership dues.

9. This legislation therefore exempted lawyers from the general ban on professional organisation that had been instituted with the *Loi Le Chapelier* in 1791.

10. Another notable contrast in the procedural rules governing these professions concerns the 'representative' character of the statutory professional bodies. Reliance on the elective principle in France contrasts with a mix of elective and co-optive arrangements in the UK (and as a result it has been possible to incorporate an element of lay representation in disciplinary proceedings in the UK which finds no parallel in the French professions).

11. *Loi portant réforme de certaines professions judiciaires et juridiques*, 90-1259, of 31 December 1990, and implementing decrees. Other legislation has, for example, reinforced the regulatory powers of the national statutory body for the notaires (the *Conseil Supérieur du Notariat*).

12. On the Courts and Legal Services Act, see below, p.14 and n.16.

13. Under the 1985 Administration of Justice Act and the 1986 Building Societies Act.

14a. Bui, 1984: 42.

14b. The English Bar, as the statutory body representing the profession, is comprised of members of the judiciary and those prosecuting counsel recruited from within the ranks of the practising Bar, as well as practising members of the Bar. In contrast, firm boundaries separate members of the French Bar (*avocats*) from the Bench, and from both investigating and prosecuting magistrates. [Brazier et al, 1993b: ch.3]

15. *Loi portant réforme de certaines professions judiciaires et juridiques*, 71-1130 of 31 December 1971, and implementing decrees; *Loi portant réforme de certaines professions judiciaires et juridiques*, 90-1259, of 31 December 1990, and implementing decrees. This new general monopoly covers legal advice and simple contracts; however, exemptions are provided, including for accountants.

16. Introduced by way of a new statutory procedure under the Courts and Legal Services Act of 1990, with rights of audience and rights to conduct litigation now being granted by duly designated "authorised bodies". As a result the Bar's own rules concerning accreditation and practice organisation, for example, are now subject for the first time to statutory controls.

17. The *avocats*, who enjoy rights of audience before any court of first instance, can only appear before the regional appellate court having jurisdiction over the lower-court to which their home Bar is attached.

18. The secondary literature emphasises that candidates are normally not only required to demonstrate appropriate levels of specialist knowledge and skill but also to meet other ascriptive norms as well.

19. The *notaires*, *avocats aux conseils* and *avoués auprès les Cours d'Appel*; these have also traditionally operated equally entrenched ascriptive criteria (the *offices* typically passing to sons, sons-in-law and nephews). Following the introduction of partnership arrangements (see

below, p.21 and n.30) in these professions, their numbers increased by the mid-1980s to 7,300, 80 and 320 respectively.

20. See n. 24 below on control of postgraduate provision for the Bar; the Inns also control the availability of tenancies in private chambers (such a tenancy being a prerequisite for registration at the Bar by successful candidates in the Bar's Finals Examinations). By the mid-1980s, the numbers practising at the Bar had nevertheless virtually doubled from the early 1970s total (to 5,400); the numbers of solicitors and *avocats* had also nearly doubled, from their rather higher base lines, to 46,500 and 13,500.

21. As the body responsible for funding the employment (in the NHS) of nearly all trained medical manpower since 1946, the Department has had a direct interest in medical manpower planning but such planning has proved difficult and has, in practice, been supplemented by the availability of overseas-trained doctors, mainly from the New Commonwealth countries (these, however, being required to satisfy a test of language competence, the PLAB).

22. The Napoleonic principle of university education being open to all holders of the appropriate *baccalauréat* has been sustained into the contemporary period despite the reforming ambitions of many Ministers of Education over the last thirty years.

23. The secondary literature often questions the relationship between the corpus of professional knowledge that such training imparts and the corresponding range of services over which different professions have won exclusive rights. The 'contingency' of this relationship has been explored, in particular, by Abbott [1986].

24. The exception here is the 'state-licensed' French medical profession, where responsibility for such rules has always formally resided with the Medical Faculties under the aegis of the Ministries of Health and Education. At the other end of the spectrum the English Bar remains exceptional, because the Senate of the Inns of Court *directly* controls (through the Council for Legal Education) the postgraduate curriculum (as well as fees and numbers enrolled). In between, control over accreditation is variously distributed: by the profession accrediting courses run by university Faculties (as with the Law Society - although it also directly provides courses of its own - or the British Royal Colleges) but with the examination set by the professional body; through joint profession/faculty-run postgraduate provision (as with the French Regional Bar Schools) etc.

25. Formal accreditation procedures for specialist qualifications, pioneered by the *conseils juridiques* profession, have been integrated into the statutory rules governing training for the newly enlarged and reformed profession of *avocats* under Loi 90-1259, of 31 December 1990.

26. In health-care this was limited to the ambulatory sector.

27. Thus GPs' contractual arrangements within the NHS have enabled them to retain their status as self-employed professionals.

28. On the nature of the demarcation between public and private sectors, see Steffen 1987 and 1989. The national framework was finally put in place with the establishment of the CNAMTS (*La Caisse Nationale d'Assurance-Maladie des Travailleurs Salariés*) in 1971.

Growing numbers of private-sector practitioners do now also hold public-sector part-time salaried appointments in France. Legislation has been introduced enabling generalist and specialist practitioners in the private (non-hospital) sector to share fees and work in partnerships, although only a minority (30% in 1989 and mainly younger doctors) have as yet opted-in to such arrangements. In contrast in the UK only 10% of GPs practise alone.

29. Or for recognition by a major health insurer to undertake equivalent work in the private sector in the UK.

30. Solicitors may be employed by other solicitors, as well as in commerce and industry and in the public sector (primarily with local authorities). In France "juristes d'entreprise" are excluded from membership of the legal professions and their statutory bodies, whereas employed barristers in the England may be affiliated to the Bar Council, but are debarred from exercising rights of audience. The partnership (*Sociétés Civiles Professionnelles*) legislation of 1966 was applied to the *notaires* from 1967, the *avoués près les Cours d'Appel* from 1969, and to the *avocats aux conseils* from 1978.

31. Subject to the necessary implementing decrees to *Loi* 90-1258 being published. For a commentary on its application to the legal professions, see West 1991.

32. Here the provision for legal aid is much more recent (dating from 1971, as against 1945) and has been partially funded by the profession (of *avocats*). It was only extended to non-contentious services quite recently.

33. France has one of the highest levels of medical expenditure in the industrialised world, with 308 doctors in practice for every 100,000 inhabitants by the late 1980s (compared to 174 in the UK) [Levy 1990].

34. Official Journal, No.L 167/1, and 167/14, 30 June 1975: For example, D 75\362 art.1d) refers to "suitable clinical experience in hospitals under appropriate supervision" whilst art.2.1a refers to the "successful completion of six years of study". A further Directive was issued in 1982 to update various provisions of the initial two doctors' Directives. Loc.cit., 43/ 15 February 1982.

35. An Advisory Committee on Medical Training and a Committee of Senior Officials in Public Health, the former including representatives of the statutory professional bodies and the practising profession, Council Decisions 75/364/EEC and 75/365/EEC. Directive 75/363/EEC also includes a commitment to the up-grading of these minimum standards over time.

36. Council Statement, Official Journal, No C 146/, 1 July 1975. Council recommendation, loc.cit., 167/21 of 30 June 1975.

37. For implementation in the Member States by 1995.

38. Cases 2/74 and 33/74, respectively. The 1975 Legal Services Directive therefore does little other than give alternative legal form to EC-wide rules that had already come into force through the Court's jurisprudence.

39. Covering a more disparate grouping of professions requiring a minimum of three years of vocational training at either secondary or post-secondary levels of education, the Commissions's final draft of this had been published in August 1989 [COM(89)372 final].

40. In the UK the relevant official is located in the DTI; in France in the SGCI (a post held by M.A.Camelutti: Camelutti 1991).

41. Directive 89/48/EEC, art.4 (b).

42. Loc.cit., Art. 4.1 (b). Indeed, this difference is perhaps such as to warrant designating these particularist provisions for legal services as constituting a fourth set of EC-wide rules in the professional services sector. In contrast, the authorities in the case of those professions covered previously under the separate Directives are specifically denied the right to impose language tests as a condition of registration. EC doctors are thus exempt from the PLAB test (see supra n.21) [BMA 1990: 9]. However, Member States may apply for derogation from art.4 (b) for other professions covered by the 1989 Directive. The procedure is set out under art.10.

43. Regulation 2137/85, Official Journal, No L 199/1, 31 July 1985. See Lawyers in Europe, 1990 (2): 6; 1990 (2): 7-9; and 1990 (4): 24 for comments on its application to the field of legal services.

44. French national legislation had hitherto prohibited *avocats* from practising from more than one set of chambers. A new law in line with the ECJ decision was enacted in December 1989.

45. For example, the 1977 Thieffry decision, the 1986 Double Cabinet decision, the 1987 Heylens decision, and the 1991 Vlassopoulou and Dennemeyer decisions. Another area concerns the rights of those married to EC nationals, whether or not they themselves hold an EC Member State qualification (as in the Gül case).

46. A question was, for example, asked in the European Parliament (addressed to the ^{Commissioner} DGIV) about the compatibility of free-
scapes with EC competition law.
47. Examples include the Bangemann proposal for European Economic Groupings which would override existing Member-State restrictions on partnerships (as in the German and Italian Bar professions); and legislation concerning liability for defective services resulting in physical damage.
48. Although the number of qualified doctors from EC states registered with the GMC has remained quite low (as a percentage of overall number employed in the NHS), doctors do seem to account for a very high proportion of the total number of migrant EC professionals coming to the UK, as recorded in the Control of Immigration Statistics (of UK Command Paper 2063 Cm, 1991).
49. Through English solicitors qualifying as barristers and vice versa, on the one hand, and Scottish (and also Irish) solicitors and advocates/barristers qualifying for registration with the English Law Society/Bar, on the other.
50. The UK specialist training rules were challenged by the Commission in 1992 and by the High Court (in R v. Joint Committee of Higher Medical Training ex p. Goldstein; 10 Dec. 1991). The CMOV Report was published on 6th May 1993.

Bibliography / References

A. Abbott [1988], The System of Professions: an Essay on the Division of Expert Labour, Chicago: University of Chicago Press.

R.L. Abel & P.S.C. Lewis eds. [1988a], Lawyers in Society, vol.1: The Common Law World, Berkeley: University of California Press.

----- [1988b], Lawyers in Society, vol.2: The Common Law World, Berkeley: University of California Press.

----- [1989], Lawyers in Society, vol.3: Comparative Theories, Berkeley: University of California Press.

J. Berlant [1975], Profession and monopoly: A Study of Medicine in the United States and Great Britain, Berkeley: University of California Press.

P. Bourdieu [1986], 'La force du droit, éléments pour une sociologie du champ juridique', Actes de la Recherche, no.64.

R. Boyer [1991], 'The transformation of modern capitalism: By the light of the "regulation" approach and other political economy theories', Paris: CEPREMAP, no.9134.

----- [1992], 'Markets: History, theory and Policy', Paper presented to the EAEPE Conference, Ministère de la Recherche et de la Technologie, Paris.

M. Brazier, J. Lovecy, M. Moran and M. Potton [1992a], The Regulation of Doctors and Lawyers in England and Wales: A Preliminary Report, Manchester: EPRU Working Paper, University of Manchester.

----- [1992b], The Regulation of Lawyers in France, Manchester: EPRU Working Paper, University of Manchester.

----- [1992c], 'Professional Labour and the Single European Market: the case of doctors', in Journal of Area Studies, 1: 115-24.

----- [1993a], Professional regulation and the Single European Market: A Study of the Regulation of Doctors and Lawyers in England and France, Report of Research Commissioned under the 'Single European Market' Research Initiative funded by the UK Economic and Social Research Council. [Available from the authors]

----- [1993b], 'Falling from a tightrope? Doctors and Lawyers between the market and the state', in Political Studies, forthcoming [June]

British Medical Association [1990], 'European Communities. General Information for Doctors', London: BMA professional Scientific and International Division, Information Note Europe, no.1.

- D.H.D.Bui [1984], Les Médecins en France. Perspectives de Démographie Professionnelle et d'Organisation Sanitaire, Paris: Centre de Sociologie et de Démographie Médicales.
- A.Carnelutti [1991], 'L'Europe des professions libérales: la reconnaissance mutuelle des diplômes d'enseignement supérieur', in Revue du Marché Unique Européenne, 1: 23-46.
- J-P.de Crayencour [1982], The Professions in the European Community, Brussels: Office of the European Communities.
- S.Davidson [1989], 'Free Movement of Goods, Workers, Services and Capital', pp.111-28 in J.Lodge ed.
- R.Dehousse [1992], 'Integration v. Regulation ? On the Dynamics of Regulation in the European Community', in Journal of Common Market Studies, XXX (4): 383-402. / NAPA.
- Y.Dezalay [1990], 'The *Big Bang* and the Law: Internationalisation and Restructuration of the Legal Field', in Theory, Culture and Society, 7: 279-93.
- [1991], 'Territorial Battles and Tribal Disputes', in The Modern Law Review, 54 (6): 792-809.
- [1992], Marchands de droit. La restructuration de l'ordre juridique international par les multinationals du droit, Paris: Fayard.
- A.Eburne [1990], 'Accountants and lawyers heading for a showdown', International Financial Law Review, X (5): 15-18.
- H.Eidenmüller [1990], 'Deregulating the Market for Legal Services in the European Community: Freedom of Establishment to Provide Services for EC Lawyers in the Federal Republic of Germany', in The Modern Law Review, 53(5): 604-8.
- E.Freidson [1970], Profession of Medicine, New York: Dodd Mead.
- E.Haas [1964], Beyond the Nation State, Stanford: Stanford U.P.
- R.Hollingsworth & R.Boyer [1991], 'Contemporary Capitalism. The Embeddedness of Institutions', in R.Hollingsworth and R.Boyer eds., The Social Embeddedness of Capitalism, forthcoming.
- B.Holmstrom [1985], 'The provision of services in a market economy', in Inman ed.
- L.Hurwitz [1990], The Free Circulation of Physicians within the European Community, Aldershot: Avebury Gower.
- L.Hurwitz & C.Lequesne eds. [1991], The State of the European Community. Policies, Institutions, and Debates in the Transition Years, London: Longman.
- R.P.Inman [1985], Managing the Service Economy. Prospects and Problems, Cambridge U.P.: Cambridge.

- T.Johnson [1972], Professions and Power, Lodon: Macmillan.
- L.Karpik [1988], 'Lawyers and Politics in France, 1814-1950: the State, the market and the public', in Law and Social Enquiry, 4: 707-36.
- [1992], 'La Profession Libérale. Un cas, le barreau.', pp. 285-321 in P.Nora ed.
- I.B.Kravis [1985], 'Services in world transactions', pp.135-60 in Inman ed.
- S.-P. Laguette and P.Latham [1978], Lawyers in Europe.
- M.S.Larson [1977], The Rise of Professionalism: A Sociological Analysis, Berkeley: University of California Press.
- J.Lodge [1989], The EC and the Challenge of the Future, London: Pinter.
- D.Levy [1990], 'L'Europe et les Professions de Santé', Les Enjeux de l'Europe, 3: 65-67.
- L.Lindberg [1963], The Political Dynamics of European Integration, Stanford: Stanford U.P.
- G.Majone [1989], 'Cross-National Sources of Regulatory Policy-Making in Europe and the United States', in Journal of Public Policy, 1: 79-106.
- [1991], 'Market Integration and Regulation: Europe after 1992', EUI Working Papers SPS N.91/10.
- G.F.Mancini [1989], 'The making of a constitution for Europe', Common Market Law Review, 26: 595-614.
- A.Mattera [1991], 'Les principes de "proportionnalité" et de la "reconnaissance mutuelle" dans la jurisprudence de la Cour en matière de libre circulation des personnes et des services: de l'arrêt "Thieffry" aux arrêts "Vlassopoulou", "Mediawet" et "Denemeyer"', in Revue du Marché Unique Européenne, 4:191-204.
- A.Mattera [1992], 'L'article 30 du traitéCEE, la jurisprudence "Cassis de Dijon", et le principe de la reconnaissance mutuelle', in Revue du Marché Unique Européenne, 4:13-71.
- P.Nora ed. [1992], Les Lieux de Mémoire, vol. III: Les Frances, 2. Traditions, Paris: Gallimard.
- L.H.Orzack [1991], 'The General Systems Directive and the Liberal Professions', in L.Hurwitz & C.Lequesne eds., The State of the European Community. Policies, Institutions, and Debates in the Transition Years, London: Longman.
- J.Pelkmans [1989], 'Regulation and the Internal Market: an Economic Perspective', pp.91-117 in H.Siebert ed., The Completion of the Internal Market, Tübingen: J.C.B.Mohr.
- P.Petit [1993], 'Les relations de services et l'internationalisation des économies: vers une globalisation différenciée', to appear in J.De Bandt & J.Gadrey eds. [forthcoming], Les relations de service.

J.-Cl. S  ch   [1988], Le guide des professions lib  rales dans l'optique du grand march  , Document de la Commission des Communaut  s Europ  ennes.

H. Siebert ed. [1989], The Completion of the Internal Market, T  bingen: J.C.B. Mohr.

M. Steffen [1987], 'Les M  decins et l'Etat en France', in Politique et Management Publique, 3: 17-39.

----- [1989], 'Privatization in French Health Politics: Few Projects and Little Outcome', in International Journal of Health Services, 19 (4): 651-61.

----- [1991], 'Les professions lib  rales de la Sant  ', in Regards sur la France, Nov.: 3-32.

C.W. Sternberg [1990], 'Regulatory Federalism: An Overview of the American Experience"', paper presented to the Conference on Regulatory Federalism, Florence: EUI / NAPA.

L. Tsoukoulis [1991], The New European Economy, Oxford, Oxford UP.

A. West [1991], 'Reforming the French legal profession: towards increased competitiveness in the Single Market', in Legal Studies, 11 (2): 189-203.

P. Wilding [1982], Professional Power and Social Welfare, London: Routledge.