LAWYERS

History

Focusing on Plato's Gorgias, this article aims at showing that the platonic critique of rhetoric is not based on a principled hostility towards the rhetorician, but on the contrary develops from the rhetorical discourse itself. We begin with a analysis of the difficulties of the analogy which poses rhetoric as a simulacrum of justice : this analogy reveals in fact the way Gorgias tries to show the singularity and the value of his teaching. We then examine the main stages of the discussion between Socrates and Gorgias, which progressively focuses on the specifically judicial use of rhetoric, to show, in a last step, how the Platonic questioning of justice takes up Gorgias' thought on the subject, by radicalizing it.

We intend to study chapters X-14 of the first book of Aristotle's Rhetoric in order to try to grasp the art of justice that the Stagirite elaborates there. After having situated these chapters in their different contexts, from the conditions of the Athenian democracy of the 4th century B.C. to the intellectual competition which enlivens it around the training to public speech, we try to differentiate the multiple but coherent perspectives which structure this passage of the treatise : general knowledge of justice nurses the form of persuasive reasoning in singular judicial cases. Confronted with a system that refuses professionalization, Aristotle thus elaborates an art of justice that is properly rhetorical because it is inscribed in the dynamics of a citizen involved in the courts: the knowledge of justice is absorbed by the recognition of what sounds right.

The correspondence of Pliny the Younger, published in the second century A.D., is full of references to the lawyer's mission. Although the activity of lawyer is not the only one exercised by the author, it occupies a very important part of his time, as he himself admits, and fulfills an essential function within Roman society. By defending the rights of the men and women who solicit him, the lawyer makes sure to place justice and law at the heart of society and thus participates in the strengthening of the social link. Such a mission can, according to Pliny the Younger, only be entrusted to men whose human qualities are superior and who belong de facto to Roman nobility. The Plinian lawyer is distinguished by a nobility of rank and soul.

Because it stems from an ancient heritage, lawyers have been sharing a common culture since the end of the Middle Ages. In 17th and 18th-century France, these shared characteristics were reinforced by professionalization, institutional harmonization of the orders, and the strengthening of a law common to the bar, which was not the sole result of the work of lawyers and their professional structures; the emergence of a French bar was also favored by the State and the courts. With the Empire and the Restauration, the national construction of the bar

underwent a second major phase; at first, it was the State that imposed itself as its essential actor.

In almost two centuries, the legal profession has undergone considerable upheaval in FRance. The President of the Bar and the Council of the Bar still exist, but ethics and discipline have been largely modified. After a golden age of the litigator until the First World War, the bar had to reconsider itself. At first, it evolved slowly before being reformed in two stages between 1971 and 1991. Since then, it has never ceased to question its identity and today wonders what future awaits it. But the bar has to be the first actor of its future destiny.

The significant presence of lawyers in French political life under the Third Republic has often been summarized through the expression "Republic of lawyers". In a more complex way, the point is to show how, in the first decades of the Republic, lawyers were at the core of the building of a political field marked by the codification of electoral rules and a certain democratization of political staff. In the following decades, the forms of investment of the bar in politics changed, less inclined toward investment in the political field itself than toward a commitment via the legal defense of causes.

The authors study the feminization of the legal profession, in the double dimension of a significant quantitative increase, similar to that observed in other professions, notably judiciary, but also of a much slower qualitative progress ensuring real equality between women and men and eliminating gender-based discrimination. They study in particular the evolution of the terms used to title professionals, the place of women in the organizations representing the profession and in the structures of practice, highlighting distributional biases and important gaps in favor of men in terms of responsibilities as well as in terms of income, correlated with differences in specialties, that tend to keep women out of the most lucrative. Considering these phenomena reflect the permanence of patriarchal social structures and representations, they also show, in the last part, the effect of this fact when considering violence against women in a penal system, which, despite recent efforts, inherits from cultural patterns hostile to women.

International Comparisons

In this article, the author surveys the judicial organization of the United Kingdom, supporting it with various statistics, the role of the judge and the lawyer, the origins of common law, the essential principles of barrister and solicitor and the training of lawyers. He then ponders on the fact that English law is being so successful, both in England and abroad. Conversely, he mentions the current crisis in the administration of justice.

In this study, the author presents the French tradition: the force of the written law, its power and the compliance of the judge to it. He then points out that administrative law and administrative courts are a creation close in spirit to common law, at the initiative of the State, then

observes that the institutions of the judicial order bear the mark of the French Constitution de l'anVIII, while the modern world is witnessing a fragmentation of the law and a metamorphosis of the judge. Finally, he highlights some features of the profession specific to France.

Oliver Wiesike, *The Profession of Lawyer in Germany* 201

The German lawyer seems to enjoy a more valued status within the German judicial system than his French counterpart in his. The joint training with the future judges, in the absence of specific training such as judges' schools or lawyers' schools, provides for a certain affinity between the two professions and contributes to more respect between them. Germany has integrated in-house lawyers into the profession, so that they can take part into the lawyers' pension fund, which is much more attractive than the general scheme. The ethical rules applicable to in-house lawyers are supposed to guarantee their independence and confidentiality. The system of remuneration by scale according to the value of the dispute could be a model for a reform of Article 700 of the French Code of Civil Procedure far more ambitious and effective than the ideas of the Comité des États généraux de la Justice to this respect.

Laurent Cohen-Tanugi, *The American Lawyer* 213

The American lawyer is an emblematic figure of American society, regulated by law, and in which lawyers occupy a prominent position. This prominence and the unity of the legal profession have contributed to its influence far beyond the realm of law and the borders of the USA.

Barbara Villez, *Learning from Judicial Series: Fiction Helping Television to Represent the Lawyer and Justice in the USA and in France* 223

Television courtroom series are easily accessible and provide criteria about the legal system and legal professions. As they come to these series in a context of entertainment, viewers are more likely to acquire a legal culture. Frequently written by mixed teams of scriptwriters and jurists, American series have offered, for over sixty years, a mostly positive image of lawyers as saviors, capable of protecting their clients against a menacing judicial system. France has always preferred to produce documentaries and broadcast imported courtroom dramas, especially from the United States. Recently the abundance of legal dramas on French television has decreased and new French dramas are slowly replacing the imported ones, suggesting a new tendency and conveying a more positive image of lawyers.

Evelyne Sanchez, *Lawyers in Mexico (19th-20th centuries)* 237

This paper approaches the history of lawyers in Mexico thanks to microanalysis, that is, it infers a global history from a reduced scale and during the period of consolidation of what was considered a modern and professionalized judicial administration, on the eve of the Revolution. The questions of their social origins, their training, the competition of informal legal advisers, the cost of their services, the quality of their relations, sometimes stormy, with their clients are addressed. The last part deals with a very particular aspect of this history: the fact that lawyers were the pool from which judges and notaries were appointed, thus disrupting the liberal constitution. For this purpose, judicial sources, letters addressed or written by the Executive of the State of Tlaxcala, as well as some notarial sources were used.

Ichiro Kitamura, *The Lawyer in Japanese Culture* 255

In Japan, lawyers were instituted in 1872 in the image of the French lawyer, during the movement of modernization following the opening of the country to the West. But the state of mind was and remains that of a judicial bureaucracy. The lawyer did not obtain his independence until 1949. Despite appearances, his role does not seem to have developed enough to allow the justice system to make full progress toward the protection of rights and freedoms.

After a general overview of the evolution and current state of the legal profession, we will assess the possibility of extending its functions to new activities.

After more than 40 years of development, China has established a relatively complete system of lawyers, including laws and regulations, a unified qualification examination, and lawyers associations. Today, there are nearly 600,000 lawyers working in various fields. However, the Communist regime in China has never adopted the so-called Western values of freedom and equality, the guarantee of human rights, and the rule of law, while the socialist ideology emphasizes the obedience of the individual to the collective and to the power of the State, and thus the Communist Party has always emphasized management and control in its attitude toward lawyers. At the same time, because of its consistency with socialist ideology in many aspects, various concepts of traditional Chinese law have been preserved, which allowed a prejudice against lawyers based on traditional Chinese legal culture to persist to this day, to the extent that many Chinese people lack trust in lawyers. Chinese lawyers have no choice but to tactfully try to come to terms with the Communist Party and overcome traditional attitudes and unfavorable publicity against lawyers.

Organizing the Profession

This article discusses the major economic issues that characterize the legal profession. First, the main microeconomic aspects related to the organization of the profession are developed. This analysis makes it possible to study the merits of the "ordinal" professional model. Secondly, the article submits a more macroeconomic approach to the role of the legal profession, thus highlighting in particular the importance of the "legal human capital" in a perspective of economic and social development.

The lawyer's fees represent a legitimate remuneration for the work done and the service rendered by the lawyer in the interest of his client. Although they were originally a matter of contractual freedom, they are now highly regulated and, in certain matters, are even subject to tariffs. In addition to this strict framework, disputes concerning the lawyer's fees are subject to a specific procedure: the President of the Bar is the judge of the fees. This supervision and control has been further strengthened by the growing influence of European consumer law and the decisions of the Court of Justice of the European Union on this matter.

In addition to the articles devoted to the market and lawyers' fees, the author reminds us that legal aid combines the clarity of the principle with the difficulty of its implementation, linked to the conflicts of objectives that inhabit it. However, these are only the consequence of wider social dysfunctions.

In France, the Bâtonnier is a lawyer invested with special powers for two years. He presides over the Bar Council, which is the sovereign body of the Bar Association that he administers. The President of the Bar has exclusive powers, distinct from those of the Bar Council. He plays a central role and sees to the smooth day-to-day running of the Bar. He is also the leader and spokesperson of the lawyers of his bar. He has to carry out a large number of functions that are constantly evolving and must have increasingly technical knowledge. He ensures the self-

regulation of the legal profession by being the guardian of professional ethics, having a fundamental role in the controls that must be carried out. His relations with third parties are also essential. He is the pillar of a territorial network: he is the President of the Bar in the city, a developing role in society. His essential relations with the litigants and the actors of the judicial world are too often ignored.

In France, for 70 years, lawyers have been able to create structures to jointly practice the legal profession. Since 1990, the major innovation lies in the possibility for lawyers to structure their activity by means of special commercial companies, the "Sociétés d'exercice libéral" (SEL), whose objective is to preserve the independence and ethics of the professionals working within it. In 2015, lawyers were authorized to use classical commercial companies (SA, SAS, SARL), except for those confering to the partners the status of trader (SNC and SCA). This system has just been reformed by ordonnance No. 2023-77 of February 8, 2023, which raises the difficult distinction between SELs and common lawyers companies. Studying this distinction highlights the characteristic of these companies, the joint practice of a regulated liberal profession, whose legal regime is established by professional rules of public order.

This article is an opportunity to state again that digital technology, a communication tool with unquestionable economic advantages, may also be a factor of risk for individual liberties.
The development of digital technology has become unavoidable and requires a perpetual search of balance between economic benefits and safeguarding individual liberties.
The reader is invited to follow the point of view of a lawyer practicing in digital law, who is witnessing the oscillation between the progression of digital tools enriched by artificial intelligence and the respect of the principles governing all democratic societies.

Social networks are now among the first communication tool of the lawyer. But a lawyer on social networks is not an Internet user like the others. Although creating a profile or joining a social network does not have to be declared to the Bar, the fact remains that a lawyer participating in an online social network must act in accordance with ethics code and rules. As such, there is the professional secret, the “essential” principles governing the work of lawyers as well as the fundamental principles of Justice. In the end, it is the digital reputation of the lawyer that is at stake!

Lawyers and Courts

Representation before the French Court de Cassation can only be made by specific lawyers, who have received specific training and whose number is voluntarily limited. This particular system, which has its origins in the far past, find its justification in the technical nature of the appeal to the Court de Cassation and the extraordinary type of this remedy. But its effects are not limited to this aspect. Making possible regular and fluid exchanges between the Court and "its" lawyers, all of whom share a common culture, it allows the Court to rely on the lawyers to implement the reforms it deems necessary, in the interest of the entire judicial institution.

Pleadings are often criticized for slowing down the trial and being of no real usefulness. In fact, written submissions and oral arguments are complementary. Accessible and responsive justice requires a period of exchange customized according to the nature of the trial, the complexity and the stakes of the case. A judge active during the oral phase may also comfort the litigant that his or her case will be taken into consideration. In the interests of a proper administration of justice, there are various ways to restore a form of harmony between written and spoken words. At all stages of the trial, at first instance, on appeal and before the judge of cassation, the toolbox is now well-stocked to make a custom-made presentation. It is however necessary to promote this toolbox and to take full advantage of it.

The rhetoric that used to fill the courtrooms has been replaced by a more direct and stripped-down style of speech. This is not only a style associated to the era, that of the decline of humanities, but above all a practical necessity. The so-called "judicial implosion" has forced the courts to judge at a sustained pace, which caused a reduction in the length of hearings and therefore in the place of orality. However, pleading is still useful, not only in criminal matters, but also in civil trials. We are consequently observing the emergence of a new conception of judicial eloquence, which we hope will be as persuasive as yesterday's speeches: in a way, less pleading for better pleading... which presupposes, upstream, an intensive work of research, preparation and a great self-control, not only intellectual, but also physical.

The author studies the procedural constraints on appeal procedures, particularly following the so-called "Magendie" decrees. It shows the potential advantages due to the new Charter for the presentation of briefs and concludes by examining what is essential when the lawyer and his client choose to appeal or not to appeal.

Independence is a prerequisite for all the activities of a lawyer. It provides the lawyer with the freedom required to practice his profession. It presupposes that the lawyer pledges to his community to respect the professional rules regulating this situation of independence. However, the developments experienced by the legal profession over the last few decades have had concrete repercussions on it: independence has become flexible. This phenomenon constitutes the core of the difficulties that the profession is facing today. At the same time, the control of public authorities has been significantly reinforced. The ordinal model on which the independence of the lawyer is based could eventually be threatened.

As an independent auxiliary of justice, mandated by his client, the lawyer occupies a particular place in the French legal system and his speech is characterized a priori by a great freedom. A more careful scrutiny, however, shows that the lawyer's freedom of speech is subject to the ritual rules of the trial, which progressively tend to restrict it, and that the content of his words is framed by the requirements of his mission, even though he takes advantage of a safeguard whose efficiency is a fundamental guarantee of a fair trial. Thus, if the lawyer can indisputably in certain situations say more than the ordinary citizen, he must in all circumstances essentually try to speak better.

The paper illustrates the procedural particularities that characterize investigations and trial where organized crime offences are concerned. The special rules dictated to make the fight against organized crime effective are examined separately according to whether they directly concern the defendant's guarantees or increase the investigative powers of the investigative bodies (police and public prosecutor), thus creating a serious imbalance between accusation and defense. In reducing individual rights for better fighting organized crime, human dignity must in any case be recognized. The measures reducing these rights must be adopted by a motivated act of the judicial authority, in the cases and in the manner provided for by state law, in compliance with the proportionality criterion. This criterion cannot justify losses in the rights of defense in the trial judgment.

The Italian code of ethics for lawyers imposes, in addition to a general duty of probity, a duty of truth during trials. This work analyzes the scope of this duty and argues that it amounts rather to the prohibition of lying and to the duty to make assertions justified by the available evidence. This does not mean that truth plays no role in trials, as assertions in court raise a claim to truth, based on a conception of truth as correspondence, and since the contributions of lawyers and parties, in particular through adversarial proceedings, allow the truth about the relevant facts to be uncovered.

Lawyers and the Evolution of Law

The thesis of the author is that the realities of the European process, and of its continous expansion – above and beyond the political or treaty-based process of 'deepening' - are becoming more difficult to reconcile with classical monist theories, including of sovereignty as the insuperable horizon of any political creation, but also of legal norm hierarchies, not to say separation of powers. The author suggests to examine first the history of the dominant classical theory as well as the older theories that fell by the wayside. The author further suggests focussing on the concept of "primacy" of European law as the foundational rule of legal creation and interpretation, and the key legal mechanism of expansion of EU norms. In adopting this key 'rule of recognition' judges, and perhaps to a greater extent, lawyers, are playing an essential role.

For several years, it has been common knowledge that lawyers have played an important, even decisive, role in the creation and development of environmental law. They have thus been at the origin of major emblematic lawsuits that have led to the creation of fundamental principles of environmental law, which today are: the right to a healthy environment, the principle of prevention, the precautionary principle, and the polluter-pays principle. This was only made possible by decisions of judges, first of all first instance judges and later higher judges. This point presumes the existence of States governed by the rule of law, and in any case of States practicing the separation of powers. Without independent judges, no new caselaw observant to social demand is possible, linked first to a demand for conditions relating to the quality of life and, today, given the new threats to the climate and the collapse of biodiversity, to the protection of life itself. The environmental issue has thus moved from a local to a global request, and now concerns the entire planet. As a result, environmental law must constantly evolvem and has been transforming itself since its creation in the 1970s under the same and maybe9even stronger impetus of these legal auxiliaries.

The relationship between the lawyer and tax law may only date back thirty years, but it is far from being peaceful and harmonious. Indeed, taxation being at the heart of State financing, the explosion of public debt has placed the fight against tax evasion at the center of public policies. The tax lawyer has been presented to public opinion as the implementer of this fraud, even as the accomplice of the fraudsters, the one who, thanks to his knowledge of the matter, allows so called aggressive tax optimization. For nearly fifteen years, the tax lawyer has been the subject of numerous measures aimed at dissuading him from practicing his art as advice: obligations to declare cross-border optimization schemes, reduction of the scope of his professional secrecy, etc., the list of attacks on his practice is unfortunately long... Fortunately, the Priority Question of Constitutionality having been introduced at the same time, a new field of litigation to attack the norm has opened up to him. This particular litigation led him to familiarize with the new concepts of fundamental rights, which he then knew how to use against public authorities in order to defend his right to advise his clients and help them find the least taxed path, because the tax lawyer is an essential cog in the consent to tax, which is the pillar of our democracy. May our government understand this without the judges having to remind them.

Conflicts are consubstantial to man. To settle them, resorting to justice rather than to force allows life in society. However, State justice, decided in many countries by judges who are not independent from the executive power, is sometimes erratic or biased, rarely restorative and often expensive and slow. As an alternative, there are alternative modes of justice, including amicable (non-jurisdictional) modes and arbitration (quasi-jurisdictional mode), which can be used separately, successively or in parallel. Resorting to them by overcoming certain reticence, makes it possible to avoid many defects of State justice, in particular thanks to the acceptance by the parties of the amicable solution found. These alternative methods are most often practiced by lawyers and are increasingly favored by public policies, both in France and abroad.

Since the 1980s and the globalization of economy, international trade and litigation have increased. In 1995, France created an international chamber within the Commercial Court of Paris. However, London used to concentrate the majority of these disputes. With the Brexit, the French court has modernized by creating an international chamber within the Paris Court of Appeal. Two procedural protocols were created, adjusting French civil procedure to the needs of international trade. Several incompatibilities still exist between common law and civil law, considerably reinforcing the missions of the French lawyer vis-à-vis his foreign clients.

Solicited by the heirs of Jewish owners dispossessed during World War II, the lawyer is today led to retrace the journey of the looted property in order to demonstrate the illegitimate dispossession of its owner. In doing so, he intervenes in the adversarial debate procedure as a researcher of memory: the litigation of looted property thus constitutes for the lawyer a way to shape the collective memory of a country but also to write History. The lawyer thus plays a role in the search for justice, intervening at each stage of the elaboration of the judicial decision in order to point out its uncertainties.

The two authors present a multi-dimensional reflection, composed of analyses and poetic practices, on the vocation and the work of the female criminal lawyer confronted here, on the one hand, with the extreme individualizations generated and revealed by sexual crimes and their sanctions, including capital punishment, and, on the other hand, with the global determinants of a collective rape culture that resists and tends to persist, despite denunciations and protests.

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Miscellaneous Studies

The aim of this paper is to build the foundations of a meta-jusnaturalist conception by the description of nine types of jusnaturalism: moral, theological, cosmological, biological, humanist, mythological, rationalist, ethnological and essentialist.

The article comments on several provisions of the March 23, 2022 ordinance on managerial accountability and considers the evolution of the system after the disappearance of the CDBF and the creation of a Chamber of Controllers and a Court of Financial Appeals at the French Cour des comptes.