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The role of competition in the Europeanisation of the professional complex¹

Abstract

This contribution develops a theoretical framework in the vein of accounts of sociology of professions which highlight the role of professions in advancing social integration and the role of competition in this context. Against this theoretical backdrop, I will develop a critical account of the role of professions in advancing the European integration. I hope to show why it is important for European Studies to pay more attention to sociology of professions and its notion of professions. Conversely, sociology of professions could learn from insights into the transnationalisation of politics and society provided by European Studies. The theoretical framework developed in this contribution will then be used to explore in a second part, through the magnifying glass of seminal rulings of the European Court of Justice, the Europeanisation of the professional complex and the role of competition law in this context.

Keywords: European Integration, Professions, Competition, European Area of Higher Education, Durkheim, Weber, Bourdieu, Gramsci

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Introduction²

Professions seem to have run into a major conflict. The troika of the European Commission, the European Central Bank and the International Monetary Fund has identified regulations of professions as one of the main causes of the economic crisis in Greece (European Commission 2014: 56). Professional regulations, such as fixed fees, advertisement requirement and entry regulations, are now being portrayed as the inappropriate enrichment of a few, as a cartel which needs to be abolished. Is the EU, with its neo-liberal market-promoting strategy, about to put an end to professions? Are we finally witnessing the end of this specific type of occupational group, which has been announced many times in the last few decades (Broadbent *et al.* 1997)? Two American sociologists, Elizabeth Gorman and Rebecca Sandefur (2011), recently echoed this prognosis and argued that, as a consequence, the sociology of professions has become obsolete. In this contribution, I aim to rebut this conclusion. I intend to show that we can rather identify the emergence of a new, European professional complex with competition underpinning this transformation. However, competition is not the only way to Europeanise professions.

I will first outline how we can further develop a critical account of profession that is able to grasp the quality of the changes of social mediation mechanisms that the Europeanisation of the professional complex introduces. A particular focus will be on competition and its role in this context. The last part of the contribution will illustrate the heuristic value of this analytical framework by exploring on more empirical grounds how the Europeanisation of the professional complex has been advanced by way of rulings of the European Court of Justice (ECJ) since the 1970s and the more general insights it provides into the European integration process.

Professions and social integration

A sociological notion of professions goes beyond considering this social group merely as a distinct category of professional work (Evetts 2012: 6; Gorman and Sandefur 2011). Professionals are more than experts and knowledge workers. Notably a Durkheimian perspective points out the role of professions in ensuring social cohesion, or organic solidarity to use Durkheim's term (Durkheim 2003[1957]; see also Lukes and Prabhat 2012). In order to fulfil this function professions need an "independent socio-cultural authority" (Sciulli, 2009: 180) which they maintain through on-going deliberation, identifiable jurisdictions and relative disinterestedness. David Sciulli underlines in his general theory of professions, not unlike Durkheim, that professions might change their organisational form. However, they retain their authority independently of their "respective contextual gestalts" (Sciulli 2009: 15).

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A Durkheimian perspective identifies two dimensions where professions contribute to social cohesion. Firstly, professions mediate between economy and the state. A case in point would be a chartered tax accountant applying the public tax code to companies. Secondly, professions also mediate between the individual and the ever more remote state and are, in this context, vital for constituting the nation. ‘A nation cannot be maintained unless, between the state and the individuals, a whole range of secondary groups are interposed’ (Durkheim 2014 [1893]: 27). Teachers, for instance, play an important role in making the pupils understand some of the social requirements they need to fulfil in order to become citizens in their own right. The social bonds they help to establish are characterised by what Durkheim calls ‘organic solidarity’. This solidarity ensures cohesion in highly differentiated societies where the collective consciousness is so abstract that it leaves more scope for individual variation (ibid: 228). In contrast, collective consciousness and individual consciousness are highly congruent in a society where a mechanical solidarity prevails (ibid: 138–173).

Competition risks jeopardising social cohesion, not at least since it undermines professional ethics and hence their socio-integrative role, warns Durkheim (Durkheim 2003[1957]: 10-12). Only where it is a rivalry for glory and status, helping to select the bests, does competition help to underpin professional authority. This perspective informs many criticisms of the effort to bring professions within the scope of EU competition law. It differs fundamentally from an Adam Smithian account which promotes competition as an important disciplinary mechanism to prevent sellers from overcharging consumers (Smith 2007 [1901]). In the light of the destructive dimension of competition, Durkheim calls – as does Karl Polanyi later on - for restricting competition (Polanyi 1968 [1944]). Professions should be governed by what Eliot Freidson (2011) calls a ‘third logic’ and Talcott Parsons a ‘professional complex’ (Parsons 1978 [1958] : 326). Accordingly, professional regulations can ensure the professions’ social role when they draw exclusively neither on market mechanism nor on bureaucratisation.

Parsons has further developed this idea and identifies three core mediation functions that essentially fuse Durkheim’s notion of collective consciousness and Weber’s theory of instrumental rationality (Zweckrationalität). Professions, Parsons argues, help to utilise

‘available rational knowledge or information in the interest of a multiplicity of functional needs of the society and its subunits; transmitting available knowledge from those who already have mastered it to various classes of people who may need it; and extending and improving the state of knowledge beyond that given at any specified time’ (Parsons 1978 [1958] : 334).

Professions are thus closely related to a collective consciousness which builds on scientific

knowledge and the rationality of modern society. Unlike crafts, the work of professions requires formally organised, theoretical or abstract knowledge. Accordingly, Parsons considers universities as the ‘centre of the professional complex’ (Parsons 1978 [1958] : 331). A strong bureaucratisation would, in contrast, undermine their role in mediating between this abstract knowledge and the specificity of the situation of their clients or patients. This line of reasoning still informs important subcurrents within sociology of professions, notably where they point out the risks of current reforms of professional regulations, for instance in the health sector through new public management methods undermining professional freedom or by way of quasi-competition (Salter 2004; Timmermans and Oh 2010).

The transfer of this notion of professions to the European level raises a number of interesting questions about the role of European professions in mediating between individuals located in the EU Member States and the even more remote European institutions. Richard Münch (2000; 2008) has developed a Durkheimian account of European integration. This perspective considers the social cement of the emerging European society in line with Durkheim’s ideal-typical notion of organic solidarity, best expressed by cooperative and re-constitutive law (see also Hirsch *et al.* 2008). This type of social cement allows for more diversity and loosely coupled social bonds than national identity.

‘Internal pluralisation, differentiation and individualisation break down differences between previously homogeneous cultures so that the nations become more similar to each other by way of internal differentiation. What is emerging in this process is a European society establishing a new type of solidarity and a new type of legal order focused far more on the cult of the individual than the national legal orders did before.’ (Münch 2008: 522).

Unfortunately, Münch explores little the role of professions, which comes as a surprise given the importance Durkheim has assigned to them. At the centre of his study is rather European law and its interpretation through the ECJ. The perspective he develops considers the judicialisation of European politics not only an expression of the judicial power taking over a kind of policy-making role, as scholars of political sciences underline (Leibfried and Pierson 2005; Mattli and Slaughter 1998; Stone Sweet 2010). The ‘judicial activism’ (Grimmel 2012) is rather a mode of socialisation which dissociates individuals from their national contexts with a view to reconnecting them more loosely at the European level. The new type of organic solidarity established in this process has a strong network character, concludes Münch (2008: 52). It is much looser than Durkheim’s organic ‘whole’ at national level.

Along these lines we can expect the ECJ and its rulings to provide a crucial mechanism to

Europeanise the professional complex. This emphasis does, of course, not imply that there are no other places. Drawing on Michel Foucault's notion of strategic apparatus (dispositive) we can understand the transformation of professions as a heterogeneous process which is part of an even greater transformation aiming to establish the EU as a 'formation which has as its major function at a given historical moment that of responding to an urgent need'. (Foucault, 1977: 195). This great transformation cannot be associated with one single will; it is rather a plethora of intentions and interests. Together they interact, reinforce, or block each other, producing positive or negative intended as well as unintended effects. As a result, a system of relations emerges which interrelates heterogeneous elements consisting of "discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions (...)." (ibid 194).

However, such a decentralization of the perspective should not throw the baby out with the bath water by underestimating the importance of judicial institutions. Studies have documented well the far-reaching consequences of the judicialisation of European politics, which justifies the study's main focus on the role of the ECJ (De Witte *et al.* 2013; Everson 2006; Panke 2007; Stone Sweet 2010). A case in point is the ground-breaking van Gend en Loos case in 1963 where the Court established a direct link between the individuals and the EU (Rs. 26/62 EuGH 1963; Joerges 2002: 5). We can thus expect the Court also to play an important role in dis-associating professions from their national context and reconnecting them at the European level.

A Durkheimian account of professions thus makes it possible to gain an idea of the socio-integrative role of professions as a secondary group mediating between individuals and the state. In line with Sciulli's general theory of professions we can expect them to be also important for the European integration, even though they might change their gestalt. The perspective has, however, clear limits when it comes to understanding the role of competition in the transformation. Furthermore, it lacks a notion of power and therefore cannot grasp how the Europeanisation of the professions changes power relations. The main sub-current within a sociology of profession that addresses the issue of power draws heavily on Max Weber to whom we turn in the next section with a view to examining what useful notions his account can provide for our case study.

Professions and power

Max Weber has been very influential in sociology of professions and provides some interesting insights into the relationship between competition and professions (Faulconbridge and Muzio 2011). Weber considers notably the traditional professions as a status group which he

distinguishes from the commercial classes which are closely related to the market-oriented economy. The status groups arise ‘within the framework of organisations which satisfy their wants through monopolistic liturgies, or in feudal or in ständisch-patrimonial fashion’ (Weber 1978: 306). Weber expects this group to disappear with the generalisation of the market economy which promotes actions (*Gemeinschaftshandeln*) where

“the potential partners are guided in their offers by the potential action of an indeterminately large group of real or imaginary competitors rather than by their own actions alone. The more this is true, the more does the market constitute social action.” (ibid 636)

The “consociation” (ibid: 365) established through money and which ceases to exist with the act of exchanging, is characterized by impersonality and is “the exact counterpart to any consociation through rationally agreed or imposed norms” (ibid: 636), argues Weber. The restriction of the market by way of professional regulations can therefore only be legitimated by rationally agreed rules so that modern professions become part of the rationalization of modern society.

Raymond Murphy (1984) and other scholars strongly criticise the assumption that restrictions that are not justifiable by rational norms will disappear in modern societies. They rather see new interest-based closures emerging. Magali Larson (2013[1977]: 68) refers to this change in terms of professional projects. Each project aims to improve access to privileges and thus collective mobility by challenging existing closure (ibid: 74). However, they also establish new social closure. Professional bodies play a vital role in this context. They help to limit the number of people active in a given profession and are therefore vital in the translation of

‘one order of scarce resources – special knowledge and skills – into another – social and economic rewards. To maintain scarcity implies a tendency to monopoly: monopoly of expertise in the market, monopoly of status in a system of stratification’ (ibid: xvii).

This line of reasoning provides an interesting analysis of professions as an interest group keen on restricting the consociation through money with a view to ensuring the scarcity of their knowledge and expertise. However, it risks losing sight of the professions’ role in integrating by mediating between individuals and the state, which is at the centre of a Durkheimian account. I suggest further developing this critical account of professions along the lines of Antonio Gramsci’s theory of hegemony with a view to reintroducing a notion of professions as a mode of social integration.

The hegemony effects of professions

Gramsci’s theory of hegemony considers professions as intellectuals, though it lacks a more in-

depth account of their specificity. However, his theory lends itself in more general terms to developing a critical account of the professions' mediation role. Gramsci considers professions as part of 'a system of solidarity between all the intellectuals' (Gramsci 1999 [1971]: 217). These intellectuals are associated with different social classes and interrelated in a hierarchical manner which reflects the more general relations between the classes. The social relationships between the intellectuals are 'bonds of a psychological nature (vanity, etc.) and often of a caste character (technico-juridical, corporate, etc.)' (ibid) In this regard they have their own autonomy as a social group regardless of their different class affiliations. Gramsci's analysis of professions and more generally of intellectuals is part of the ideational turn he introduces into Marxism rejecting the idea that economic structures automatically translate into the superstructure of ideology (for further development, see Sum and Jessop 2013). It rather understands social consciousness and knowledge as important mediation mechanisms which reflect the 'index of the importance assumed in the modern world by intellectual functions and categories' (Gramsci 1999 [1971]: 142). Hence a class *in itself* needs to get transformed into a class *for itself* in order to become a collective actor. Once the emerging class has become conscious of their societal role they also aim to gain leadership in a normative sense through the promotion of an ethical-political project delineated by their organic intellectuals.

This project may also include some of the allies' interest with a view to obtaining their support. The level of this inclusion varies as a result of the historically specific interdependency between capital and labour. Workers may have an expertise on which the production heavily depends and which, in turn, enables them to increase their share in the wealth produced by the capitalist mode of production. The fiercer the competition between the knowledge workers the less they can individually derive benefit from this dependency. We can thus understand professions as being a group capable of turning their special knowledge and skills into economic rewards. Increased competition between them weakens their negotiation position.

I suggest further developing this line of reasoning beyond the focus on the capital-labour relation with a view to bringing the social integrative role of professions back into the picture. A good point of departure is Stuart Hall's account of hegemony which criticises a too economic notion of hegemony. Instead of talking about the economy as the determinant force 'in the last instance', he emphasises the determination 'by the economic in the first instance' (Hall 1986: 43). At the core of his theory is the heterogeneity of society with manifold traditions, cultures, and customs. Hall insists that they have their own autonomy and therefore continue existing in spite of the generalisation of the capitalist mode of production. Some elements may complement and reinforce each other, while others enter into a relationship of tension or even contradiction. The

result, however, is not a pluralistic system, as a liberal approach would suggest (Hall 1986). The social heterogeneity rather becomes invisible through hegemonic norms and values claiming to describe the world in the only appropriate way. Individual social practices have to refer to these hegemonic norms to become intelligible and to gain legitimacy. This common reference interrelates them and creates the illusion of homogeneity, a ‘necessary unevenness of complexity’ (Hall 1985: 92) Hegemony is thus not simply the expression of a social compromise between capital and labour. It is also a mechanism of social integration creating the necessary illusion of a homogeneous society.

The system of solidarity between all intellectuals is vital in this context. The intellectual reasoning with its abstraction makes it possible to interrelate very heterogeneous elements of society and to mediate between individuals and society. Professions play an important role in this context thanks to their contact to clients or patients. Doctors, for example, meet essentially all members of a society at one point in time. On the occasion of these meetings they react to the specific situations of their patients and interrelate them to their more generic expertise by way of their professional service. Through this mediation very diverse situations become associated with norms claiming universal validity. As a result, the mediation constitutes the social materiality of these norms promoted by the ethical-political project of hegemony. They thus help establishing hegemony which is a ‘powerful system of fortresses and earthworks, backing up the state’ (Gramsci 1999 [1971]: 494), as Gramsci puts it.

In other words, a Gramscian perspective makes it possible to account for the power professions have as well as for their mediation role. The next section explores how we can transfer this critical account of professions to the European level.

Professions and the EU

A number of studies are particularly helpful for further developing a critical study of the Europeanisation of professions. I will present some lines of reasoning in this section with a view to outlining how we can integrate them into a Gramscian notion of hegemony. An interesting typology of the professions-state relations has been developed by Nilo Kauppi and Mikael Madsen (2013: 6). Their study draws heavily on Bourdieu and focuses predominantly on the legal profession. Kauppi and Madsen distinguish three power resources by which professions establish their position vis-à-vis the ruling class: Firstly, the expert power which assigns to professions the authority to define the problem and the solution to it; secondly, cultural power which underpins the trust relations between the professionals and their clients and patients; and thirdly, network power. The example they refer to is the transnational networks which lawyers and judges have

established in order to coordinate between the decision-making of the national courts and the ECJ. These different sources of power underpin the role of the professions in constituting the field of power which Bourdieu considers to be a meta-field existing horizontally through all social fields (for an introduction, see Hilgers and Eric 2015: 185). The ‘exchange rate’ (Bourdieu 1996 : 265) established by this meta-field defines how the different fields with their specific economic, social and cultural capital are interrelated. Drawing on Hall we can understand the exchange rate as part of the homogenising strategy which creates the necessary illusion of societal unity.

Yves Dezalay and Bryant Garth (2013: 124) conducted a study of the role of lawyers in advancing the European integration along these lines. They warn not to overestimate the coherence of the professional field and point out three different ideal types of legal elite factions. The *counsellor to the prince*, the *courtier-lawyer*, and the *charismatic tribune*. Each of these ideal types is positioned differently in the field of power. The *counsellor to the prince* used to be most directly related to the political monopoly determining which professionals can act as authoritative spokespersons and can provide expertise for legislative and administrative rules. We can expect the *counsellors* to be strongly affiliated to an intergovernmental system and the defence of the nation-states’ exclusive competences. Dezalay and Garth also describe this faction as the clerk of the nation-state and outline how its legitimacy is predominantly based on learned expertise certified by academic diplomas. Accordingly, universities and their degree-awarding power play an important role in the constitution of this professional elite. In contrast, the *courtier-lawyer* is less associated with state bureaucracy but more with the business world. The power is based on its capacity to interrelate different places and power. Last but not least, the *charismatic tribunes* draw their legitimacy from their role as advocate for social groups seeking recognition of their interests in the field of state power.³ Dezalay and Garth show how the emerging European legal field privileges notably the second ideal type, the *courtier-lawyer*, who establishes networks across the EU Member States. The authors point out a strong connection between this type of lawyers and the US. A case in point illustrating the influence is the training many of these lawyers have obtained in the US. In the light of the strong transatlantic dimension the two authors relate this type of legal elite to the transatlantic class which the Amsterdam School considers being at the centre of an emerging global hegemony (van Apeldoorn 2001). Accordingly, they put them on an equal level with the elites organised in fora such as the European Round Table of Industrialists, the Transatlantic Business Dialogue, and the Bilderberg Conferences.

With their analysis Dezalay and Garth provide interesting insights into the change of monopolies within the legal profession and how this reflects a more general change within the

³ For an excellent historical study of the differences between the professions and nation states which also brings a gender dimension into the picture, see Malesta (2011).

elites and their effort to establish a new hegemony. However, and not unlike the Amsterdam School, they risk being caught up in an elite-centred perspective and, as a result, paying too little attention to the mediation function of the system of solidarity between all intellectuals. They also fail to study in depth the enabling conditions of the constitution of this system, let alone the constitution of the professions. The lack of attention to the institutional dimension makes them too hastily understand the transformation as an Americanisation (Delazay 2007; see also Evetts 2011). We should, however, not underestimate the genuine European character of the process by which the former professional complexes are dissociated from their national context and reconnected at the European level. This has major consequences in particular for the *counsellors* of the princes/national governments. In the remaining part I will explore on more empirical grounds what modes of disconnecting-reconnecting mechanisms have been established at the European level. We can expect competition and its regulation to be vital. I will, however, also show that the mediation through money is not the only interconnecting mode. The study will be restricted to an analysis of the ECJ rulings. This limitation does not exclude processes facilitating the Europeanisation of the complex. In the light of the supremacy of EU law we can expect, however, that this site of struggles contributes heavily to the constitution of a European complex.

The redefinition of exercising official authority

We can trace the beginning of the European professional project back to the late 1960s and early 1970s when the inclusion of the profession into the integration process became an item on the political agenda of the EU. In the middle of this first period was the attempt to apply the freedom of establishment, hence one of the core values of EEC, to professions. The Reyners ruling in 1973 was seminal in this regard. Jean Reyners was living in Belgium, where he was educated and awarded a *docteur en droit belge*. He was of Dutch nationality, as his parents had migrated from the Netherlands to Belgium. The Dutch nationality was used by the Belgian authorities to justify the denial of the right to practice as a barrister and solicitor in Belgium. The European Court of Justice challenged this linkage between national citizenship and the right to practice (2/74/ Craig and de Búrca 2011: 52). In the vein of Dezalay and Garth's typology of lawyers, we can understand the ruling as an attempt to dissociate the *counsellors* from a specific, national prince and to put them on an equal footing with the *counsellors* of all the other (national) princes in the EU. Drawing on Gramsci's notion of hegemony, we get a first idea of how professionals should become part of an emerging European system of solidarity between all intellectuals. To reach this goal the Court tried to reduce the scope of professional services falling under the exercising official authority since these activities allowed for discrimination based on

nationality (TFEU Art. 51).

However, the Court's strategy met opposition from a number of princes/national governments. The Government of Luxembourg, for instance, argued that lawyers who also have the function of a procurator litis (*avocat-avoué*) 'are inseparable from the administration of justice and are indispensable to it' (2/74: 638). Consequently it pleaded for the application of the exception paragraph to the whole profession, which would have made it lawful to exclude Reyners from the right of practice. In contrast, the UK, Germany, and Netherlands argued in favour of differentiating between different types of professional activities rather than professions with a view to delineating more specifically what counts as the exercise of official authority. The Court supported the disembedding strategy and developed some guidance for determining what type of activities fall under the exercise of public authority. This guidance essentially delineated what should remain in the core competence of the state. Consultation, legal assistance, and defence of parties would not count as exercise of public authority 'even if the performance of these activities is compulsory or there is a legal monopoly in respect of it' (*ibid*: 656). Subsequent rulings further clarified the distinction and further extended the range of activities not falling under the exclusivity of the national requirement. In the *Commission versus Belgium* case, the Court ruled that the reservation of positions to nationals, and hence discrimination, was only lawful when the posts 'involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities' (149/79: para 10). An example of this would be police officers, but no longer secondary school teachers as the Court ruled in *Bleis* (C-4/91), even though this education level is still compulsory and therefore a service the state has to provide. In other words, the Court did not completely abolish the exclusivity of the national *counsellors* to the prince but gradually reduced the scope of their activities. But what was the rate of exchange promoted by the ECJ to interrelate the different national professional fields once the non-discrimination provision applied? What mechanism should help to create the illusion of homogeneity, or in Hall's term 'the unity in difference' (Hall 1986: 43)? Interestingly enough, it was not competition regulations which provided the mechanisms for equalisation in this first period. It was rather the equal right to practise which was in the centre of the ruling, which raises important questions of equivalence. Should the accreditation or licensing in one country be recognised as equivalent in another EU Member State? Should the education of a doctor who was, for instance, trained in Italy be put on an equal footing with one trained in Germany? The question of the equivalence of professional education has thus become a question of social mobility and belonging to the emerging European professional complex.

The limits of judicialisation

The *Reyners* ruling also extended the principle of direct effect to the regulation of professions. This principle essentially assigns the Court a proactive role in establishing new standards which then become codified into EU law (Shapiro and Stone Sweet 2002). However, the Court did not make much use of this possibility in the field of professions until the end of the 1980s (for an overview, see European Commission 2010b). We can take this reluctance as an indicator of the Court lacking the legitimacy for such a proactive role in the field of professions. However, without such standards the equivalence is difficult to determine and risks rendering the non-discrimination obligation obsolete. Professionals seeking access to other EU countries risked being confronted with qualification requirements so closely related to the educational system of the host country that they could hardly meet them, given the still existing major differences between the educational systems. Furthermore, as the Court ruled in the *Bouchoucha* case (C-61/89), the Member States may, in the absence of European standards, restrict the right to practise according to their own standards, even if this implies constraining the access of professionals from other countries where the regulations are less restrictive. In other words, the Court depends on European standards which it can use in its rulings as a common reference interrelating very different situations. Only on the grounds of such universal norms can it assess the proportionality of the professional qualification requirements, as a number of cases illustrate (see C-154/89, C-198/89). The fact that *Reyners* was educated as a lawyer in the country where he intended to practise made it easier to impose the non-discrimination requirement and the direct effect despite the opponents' major worry that the direct effect would place too much discretionary power in the hands of the Court in core areas of the professional complex (2/74: 643).

The *Reyners* ruling, however, also made it clear that the Court would use the principle of direct effect in the future. This threat made governments and the professional bodies take action. Just one year after the case a first directive was adopted which aimed to regulate mutual recognition for doctors (75/362/EEC), and this was followed by regulations for lawyers (77/249/EEC), nurses responsible for general care (77/452/EEC), dental practitioners (78/686/EEC), veterinary surgeons (78/1026/EEC), midwives (80/154/EEC), architects (85/384/EEC), and pharmacists (85/433/EEC). Advisory committees on training were also established for other professions, made up of professionals, teachers, and supervisory authorities (Dalichow 1987; Evetts 1998). For many other professions the efforts to establish European standards turned out to be a complex and rather cumbersome undertaking, often with a limited

outcome (de Cockborne 1995). The Community even failed to establish a directive in the field of engineering (Verbruggen 1994: 64). These failures indicate how solid the social structure of the old, nationally organised professional complex still was at that time. This set clear limits to the capability of EU institutions to Europeanise the complex.

Completion of the internal market

By the beginning of the 1990s the situation had changed significantly. In this second period the Europeanisation of the professional complex became closely related to the endeavour to complete the internal market. This is also the period when a number of studies situate the beginning of the emerging European legal field, with corporate lawyers well connected to the transatlantic class playing a vital role. A closer examination of this second period highlights the complexity of the transformation and illustrates again how the development of a European exchange rate, hence the standard of equivalence, requires more than the support of one faction of the legal professions and the ECJ. The change in strategies and the new difficulties provide interesting insights into the enabling conditions of this endeavour.

The Council introduced a sea-change regarding the Europeanisation of standards for professional qualifications in 1989 with the adoption of Directive 89/48/EEC. This strategy essentially transposes the new harmonisation strategy of the Community, drawing on the seminal *Cassis-de-Dijon* ruling in 1979 (120/78), to the field of professional qualifications. The new harmonisation strategy favours a 'laissez-régler' approach and refrains from establishing genuine European standards. It rather requires the mutual recognition of the member state-specific regulations based on equivalence. With this generic recognition provision the Directive 89/48/EEC established a new type of recognition regime. It applied to all regulated professions, with the exception of the few already covered by sector-specific directives. However, the regime has also become more restricted since it focuses first and foremost on the recognition of academic qualifications, and thus left room for manoeuvre to the regulatory bodies in the host countries if they wish to establish additional requirements.⁴ However, the regime restricts this at the same time by reducing the possibility of refusing recognition to two conditions: firstly, on grounds of public health concerns, or, secondly, in case of substantial differences between the incoming professional's qualifications and those of the comparable professionals in the host country (Directive 89/48/EEC: Art. 4b). The second condition is important for our study. It essentially aimed to establish European standards *ex negativo* which considers equivalence as the

⁴ Directive 89/48/EEC applies to higher education qualifications with a duration of three years. For the recognition of qualifications awarded on completion of professional education and training of less than three years' duration, see 92/51/EEC and 1999/42/EC.

absence of a substantial difference.

Judicialisation reloaded

Furthermore, ECJ became more active in this second period (European Commission 2010b: 6-8). In the seminal *Vlassopoulou* case in 1991 the Court introduced a duty to assess and compare a qualification issued in another Member State, as well as a duty to accord proper value to these qualifications and to recognise them fully or partially in case equivalence can be demonstrated (Janssens 2013: 16). These provisions increase the pressure on Member States to develop a detailed exchange rate, to use Bourdieu's terminology.

In the light of this strong pressure the Court managed to put on Member States, the time it took to develop standards delineating substantial differences comes, however, as a surprise. We thus gain an idea of the inertia of the old professional complex. Art 15 of the Recognition Directive 2005/36/EC introduced the first revision of the general system in 2005, and called for the establishment of platforms to specify further the meaning of substantial differences. These platforms were explicitly intended to include professional bodies, chambers of commerce, craft associations, and consumer associations in the standard setting. Yet, despite several attempts, no common platform was established, and in 2010 the European Commission deemed this standard-setting strategy a failure (European Commission 2010a: 16). Faced with these difficulties, in 2013 the EU introduced a second reform of the general system by amending Directive 2005/36/EC. This reform aims at a common framing of the different qualifications in the EU member states and calls for the establishment of a 'common training framework based on a common set of knowledge, skills and competences or common training test' (2013/55/EU: Art. 49a). A professional who meets the qualifications requirement of this framework shall be allowed to pursue a profession in another Member State on an equal footing with nationals of that state, and shall be 'eligible for acquiring the professional qualification under such framework without first being required to be a member of any professional organisation or to be registered with such organisation' (2013/55/EU: Art. 49a.2g). This provision thus contributes to the Europeanisation of the professional complex by undermining the role of the national bodies as gatekeeper.

What is remarkable is the role of the higher education in providing generic standards for this common training framework. Especially in the light of the incapacity or reluctance of the professional bodies to establish professional standards, the academic standards developed in the framework of the intergovernmental Bologna Process gained in influence (Hartmann 2011). These standards had been developed by universities and their associations together with the

ministries responsible for higher education within the legal framework of the Lisbon Recognition Convention (Lisbon Recognition Convention 1997; Hartmann 2010). Professional organisations had been involved in this process only at the margin. The new directive requests that the common training framework should be based on the standards established in this context. Cases in point are the European Credit Transfer System (ECTS) and the European Qualifications Framework (EQF) (2013/55/EU: 49a2d). It seems that the vital role of universities for the modern professions, which was pointed out by Parsons, applies even more to the European complex despite the efforts of professional organisations to set up their own professional bodies at the European level (for an overview, see Evetts 2002: 349-351). The universities are now, however, part of the European Area of Higher Education. The US has played only a minor role in this standard-setting process, which puts the thesis of the Americanisation into the picture.⁵

Subsumption under competition law

The second period of Europeanisation of the professional complex also aimed to use competition for establishing a second type of European exchange rates in the field of professions. The endeavour, however, is restricted to the professional activities which are considered furthest away from the exercise of official authority. The European Commission played a leading role in advancing this agenda (Moreira and Toshkov 2013; Szyszczak 2007: 87; Wendt 2012: 49). Backed up by international couriers and other transport companies, the Commission came to the conclusion in its decision 93/438/EEC that the services provided by customs agents in Italy were economic activities and should therefore bring them within the scope of EU competition law. It further concluded that the agents' professional association, the Italian National Council of Customs Agents (CNSD)⁶, was an association of enterprises. The reframing of professional activities and their control as economic activity makes it possible to strengthen money as a generic equivalent between different professional activities. It changes significantly the consociation between the professionals and their clients. Once under competition law, professional regulations such as fixed fees, advertisement restrictions, entry requirement, and reserved rights as well as regulations governing business structure and multi-disciplinary practice are put under scrutiny as potential sources of distortion of competition.⁷

⁵ The conditions of participation in the Bologna Process aiming at establishing the European Area of Higher Education points out an ambivalent relationship between the European project and the USA. To make sure the USA could not take part in the Bologna Process on the basis of the Lisbon Recognition Convention, participation in this process was restricted to the signatory countries of the Council of Europe's European Cultural Convention Berlin Communiqué. 2003.

⁶ Consiglio nazionale degli spedizionieri doganali.

⁷ The study on professional regulations and their effect on competition commissioned by the European Commission provides excellent insights into the way the challenge is articulated (Sebastian et al. 2007, see also Terry, L.S. 2009).

However, this far-reaching reframing of professional activities as economic activities encountered major opposition, not least from some national princes/governments. The Italian government fiercely defended the exemption of CNSD from competition law, arguing that customs agents exercised a liberal profession like lawyers or surveyors since they acted in a public law capacity and were not profit-oriented. The Court rejected this interpretation and followed the position of the Commission (C-35/96). Their decision stands for a change of perception strengthening a Smithian perspective which promotes the regulation through price mechanisms and competition as the best way to avoid abuse and ensure good quality in service provision (see for instance Wendt 2012: 281). Price mechanisms simultaneously allow for an increase of the level of abstraction from the specificity of a professional service, which in turn makes it possible for new service providers to enter the field. Drawing on the Weberian distinction between market-oriented economy and status groups, we can read this strategy as a gradual expansion of the market-oriented economy strengthening the establishment of a consociation characterised by impersonality (Weber 1930 [1905]: 636).

Following Murphy's critique of Weber we should, however, refrain from assuming that opening up does not imply the establishment of new social closures. The Wouters judgement is seminal in this regard. Here, the Court provided that subsumption under competition law did not imply the prohibition of any competition-restricting regulations (C-309/99). However, it also ruled that not all restrictions were lawful and delineated criteria for appropriate market restrictions. Restrictions have to be justified in the name of 'organisation, qualifications, professional ethics, supervision and liability' (C-309/99: para 97) and with the aim of ensuring that the professional service is provided 'with the necessary guarantees in relation to integrity and experience' (ibid). To make sure that these objectives do not restrict more than necessary the consociation through money. The Court ruled that an *ex post* assessment should evaluate 'whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives' (ibid).

Hence the subsumption under competition law does not only strengthen the price mechanism as the exchange rate interconnecting the professional fields which are considered to be furthest away from the exercise of official authority. It indirectly reinforces other European standards in the sphere of qualifications, ethics, and organisation.

Conclusion

This contribution has studied the Europeanisation of professions with a view to gaining insights into the European integration in more general terms. It has therefore privileged accounts of

professions that underline their social role. Notably a Durkheimian account points out how vital their mediation between individuals and the state is for constituting a nation. In the vein of Sciulli we can expect the professions to continue to fulfil this function even though the form they take might change. The contribution has further developed this sociological account of professions with a view to better grasping the relation between professions and power. A Weberian account points out how professional monopolies help this social group to maintain the scarcity of their knowledge and to turn it into a source of income. Other accounts point out the professions' close relationship to the ruling power which helps them to maintain their privileges. However, I have criticised this perspective for losing sight of the mediation role that is at the core of a Durkheimian account. I have therefore further developed a Gramscian notion of hegemony along the lines of Hall who outlines how hegemony is not only an expression of the social compromise between capital and labour but also part of creating an illusion of society as a unity. The system interrelating all intellectuals is the major site where this illusion is created which abstracts from the diversity of the world. Professions play a vital role in this context with their mediation between the particularity of the concerns of their patients or clients and the abstract expertise they build their service on. This theoretical perspective makes it possible to develop further a Bourdieusian account of professions which associates them with the meta-field of power. This field differs from other social fields since it interrelates them and their different capitals along a specific rate of exchange that reinforces hierarchies. We thus gain an idea of the crucial role professions have in advancing the European integration.

Against this backdrop, I have developed a theoretical framework which provides us with insights into the constitution of the European professional complex. I have argued that the European integration of the different nationally organised professional complexes themselves requires rates of exchange which abstracts from the specificity of the national contexts with a view to creating the illusion of a European unity. The empirical study has examined the strategies of the ECJ in establishing such exchange rates since the 1970s. The study has pointed out three different modes of including professions into the EU framework. Each is based on a different exchange rate. The *first mode* essentially is the absence of exchange. It applies to professions which exercise official authority. Regulations of these professions are allowed to maintain the exclusivity of *counsellors* advising their national prince, as I have labelled this particular profession-state relation in the vein of the typology introduced by Dezalay and Garth. However, the ECJ has gradually restricted the professions falling under this category. Police officers still belong to this group but no longer secondary teachers, even though secondary schooling is still a responsibility of the government. Teachers are part of the second group whose activities fall under the non-

discrimination provisions. Qualification-related standards of equivalence are vital for this *second mode* of integration that delineates the rate for the European exchange of the members of this second group. However, as the study shows, the ECJ and other supranational mechanisms, let alone professional associations were not particularly successful in developing generic equivalence standards. They have been rather developed by higher education institutions and the respective ministries in the framework of the intergovernmental Bologna Process. The genuine European character of this standard-setting process where the US played only a very marginal role puts the thesis of the Europeanisation as Americanisation into question.

The *third mode* of integration applies to the professions whose activities have become classified as economic. The activities of this type of professions fall under EU competition law. The social bonds between them and their clients are thus predominately mediated by money and hence characterised by impersonality. However, recent ECJ rulings have made it clear that market restrictions are still lawful also for this third group of professions, at least to a certain extent. Hence the exchange rate for this group of professions is not only based on money, it also builds on other norms.

Accordingly, the Europeanisation of the professional complex goes hand in hand with promoting norms and values which are at the heart of the ethical-political project of the emerging European hegemony. Once they are part of the legal regulation of professions these norms gain a social materiality since they inform countless interactions between the professions and their patients and clients and thus help to establish the 'powerful system of fortresses and earthworks' (Gramsci 1999 [1971]: 494) backing up the EU institutions and the necessary illusion of European unity. Professions are thus far away from becoming obsolete. They are vital in the European integration process since they provide a structure which mediates between individuals and the remote EU institutions. I hope to have shown with this case why the emerging sociology of the European integration should pay more attention to professions and hence to the sociology of professions.

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