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THE FRENCH LEGAL PROFESSION: A PRISONER OF ITS GLORIOUS PAST?

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In 1978 a French television poll queried 982 viewers as to their images of the French lawyer (*avocat*). Of those polled, less than five percent held a positive view of the *avocat*. Eighteen percent of the 940 persons who expressed a negative view of the *avocat* simply conveyed this impression in general terms, but the remainder were more precise. Forty-eight percent of the respondents felt that the *avocat* was a "money sucker"; fourteen percent saw him as a man without conscience; and another fourteen percent believed that he acted with impunity within his bar. Four percent considered the bar to be an auxiliary of scoundrels; three percent suspected the *avocat* of connivance with his client's opponent; and those remaining viewed him as utterly incompetent.[1]

One officer of the Paris Bar concluded that this poll is the most blatant proof of the indisputable problems assailing the French legal profession. Reflecting on the image of the lawyer relayed by the public, he acknowledged that the *avocat* has lost his aura of distinction and has fallen into disgrace. He noted that the French lawyer is resented by the public on whom he imposes excessive economic burdens while, ironically, the financial situation of the average *avocat* is deteriorating every day. He deplored the facts that the profession is badly organized and inefficient, that the quality of new recruits is poor, and that the lawyer is participating in a judicial machine increasingly subjected to criticism.[2]

When these impressions are contrasted with those expressed not long ago, it becomes clear that a profound malaise is descending upon the French bar. Indeed, in the late nineteenth century the

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1. Ribs, *L'Avocat, quelle image de marque,* LE BARREAU DE FRANCE, Nov.-Dec. 1978, at 9.

2. *Id.* at 10.

famous lawyer Berryer was so revered by the French people that, even in that era of gallantry, ladies of elite Parisian society would curtsy when he entered the room.[3] Occasionally, artists and writers such as Voltaire or Daumier poked fun at the *avocat,* but generally the profession was considered "as noble as virtue" and "as indispensable as justice."[4] The lawyer was seen as a good man and as the fierce defender not only of princes and statesmen, but of widows and orphans as well.[5] The recent degradation of the public image of the lawyer is not unique to France. In the United States, for example, the same phenomenon has occurred, especially in the aftermath of the Watergate affair.[6] In France, however, the anxiety is more pervasive and feelings of frustration and impotence are widespread among the members of the bar. The head of the ethics committee of the Paris Bar reported to her peers that the French lawyer is suffering from a sense of inferiority to his colleagues in other parts of the world.[7]

This Article diagnoses the causes of this malaise by focusing primarily on the Paris Bar, both because of its prominent role in the French legal profession and because its problems are a reflection of those assailing the profession as a whole. To meet this objective, the Article examines the rules, customs and mores of the Paris Bar, from its inception to the present day. Many of these rules and customs have remained unchanged since the founding of the Paris Bar, and although valid at one time, today they have the effect of rendering the bar inadequate to meet the new challenges that confront it. It is this conflict between the forces of tradition and the needs of the modern world that is at the root of the problems facing the French legal profession. The French lawyer has become, in effect, a prisoner of his past.

I
THE TRADITION

When the Romans conquered the Gauls they imparted to their new subjects the methods of the Roman Bar. These methods soon were transformed, however, and completely disappeared with the

3. Oliver, *The Future of the Legal Profession in France,* 53 AUSTRALIAN L.J. 502, 506 (1979).

4. 1 M. CAMUS, LETTRES SUR LA PROFESSION D'AVOCAT, 1-2 (1818).

5. Boucher-d'Argis, *Histoire Abrégée de L'ordre des Avocats,* in 1 M. CAMUS, *supra* note 4, at 337, 339.

6. *See, e.g.,* Auerbach, *The Legal Profession after Watergate*, 22 WAYNE L. REV. 1287 (1976); Waltz, *Some Thoughts on the Legal Profession's Public Image,* 23 DEPAUL L. REV. 651 (1974).

7. L. Levi-Valensin, L'avocat a Travers les Frontieres 3 (no date) (unpublished report).

conquest of Gaul by the Franks. Little was recorded of the French Bar from the sixth through the eighth centuries.[8] The first text that mentioned the term *"avocat"* was LES CAPITULAIRES DE CHARLEMAGNE in 802, in which it was decreed "that no one may be a lawyer unless he is peace-loving, God-fearing, and a lover of justice."[9] The earliest recorded text to embody a comprehensive treatment of the French legal profession was the ESTABLISSEMENT DE SAINT LOUIS in 1270, which laid the foundation of the French judicial institutions. Chapter fourteen of that text dealt with the *avocat*.[10] It imposed on him some noble duties: never to plead an unjust cause, and to defend widows and orphans whenever requested to do so.[11] The text also required that pleadings be pronounced in a courteous manner, and that nothing base be said in fact or in law.[12] It was during the same period that Pierre de Fontaine (in his work entitled CONSEILS À SON AMI)[13] and Philippe de Baumanoir (in his compilation of the CUSTOMS AND USAGES OF BEAUVOISIS) commented on the ESTABLISSEMENT DE SAINT LOUIS.[14] Drawing on the principles contained in the earlier work, these commentators solidified the foundation of customs and usages which remain relevant to the professional practice of the *avocat* today. The oath currently required of the fledgling *avocat* was originally devised by the son of Saint Louis, Philippe Le Hardi, in 1274.[15]

It was during the thirteenth century that the term *"ordre"* (order) was first used to designate the association of *avocats* practicing at the *Parlement* of Paris. Except for a brief period during the Revolution, this term has been employed without interruption to the present day. According to one of the earliest commentators on the profession, an order is not a political body, but a class of people who are linked only by a quality common to them, which distinguishes

8. Boucher-d'Argis, *supra* note 5, at 364. R. JONES, HISTORY OF THE FRENCH BAR, ANCIENT AND MODERN 100 (1856). *See also* A. DAMIEN, LES AVOCATS DU TEMPS PASSÉ 13 (1973).

9. 1 LES CAPITULAIRES DE CHARLEMAGNE 10, in JONES, *supra* note 8, at 100.

10. *Id.* at 101.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id. See also,* J. LEMAIRE, LES REGLES DE LA PROFESSION D'AVOCAT ET LES USAGES DU BARREAU DE PARIS XXII (1975).

This oath presently reads:

> I swear, as an avocat, to exercise the defense and counsel with dignity, conscience, independence and compassion, with respect to tribunals, public authorities, and the rules of my Order, and not to say or publish anything which is contrary to the law, regulations, good morals, security of the State and public peace.

Decree No. 72-468, art. 23, 1972 Journal Officiel de la République Française [J.O.] 5884, 1972 Dalloz-Sirez, *Legislation* [D.S.L.] 268.

them from other orders.[16]

An ordinance of Philippe de Volois, in 1327, contained the first mention of the *Rolle,* or list, on which lawyers were to be registered: "No advocate shall be permitted to plead if he has not taken the oath, and if he be not inscribed on the roll of advocates."[17] This ordinance divides lawyers into three groups: the counselors (*consilarii*), who sometimes advise the court; the advocates (*advocatii*), who plead; and the "listeners" (*audientes*) or novices (*nori*), who listen but abstain from pleading.[18]

The *Barreau,* or Bar, is the barrier that separates the magistrates from the lawyers.[19] The term also designates a group of lawyers who practice in the same jurisdiction.[20]

An ordinance of Philippe IV, in 1344, ordered the establishment of a list of lawyers having taken the oath, on which the names of only the more capable were inscribed; the rest were excluded from the profession.[21] The same ordinance organized the apprenticeship system for lawyers,[22] a system that has endured to the present.[23] Another ordinance of Philippe IV, in 1345, dictated the conditions for admission to the *Rolle* of lawyers, most notably, the requirement of a professional examination, and also described various rules of incompatibilities and exclusions.[24]

The number of lawyers in France diminished during the Hundred Years' War, and by 1418 the list of lawyers included only eighteen names.[25] Later in the century, Charles VII (in 1446), Charles VIII (in 1490), and Louis XII (in 1498) evinced a more serious con-

16. Boucher-d'Argis, *supra* note 5, at 340.
17. R. JONES, *supra* note 8, at 102. A. DAMIEN, *supra* note 8, at 17.
18. A. DAMIEN, *supra* note 8, at 17.
19. J. LEMAIRE, *supra* note 15, at 9, n.15.
20. *Id.*
21. Boucher-d'Argis, *supra* note 5, at 376.
22. R. JONES, *supra* note 8, at 103.
23. Under the present system, to become registered with a local bar as an *avocat,* a candidate must be a French citizen and also must have acquired the Master (*Maîtrise*) or Doctorate degree in law. In addition, the candidate must pass a professional examination, the "Certificate of Aptitude for the Legal Profession" (C.A.P.A.). Finally, the candidate must take an oath and register with the bar. The candidate is then an "*avocat-stagiaire*" (lawyer in training) and his name is placed on the "*liste du stage*" (list of *avocats* in training). The period of training, normally three years, is conducted in conjunction with the Centers of Professional Training, which are funded by the State and are located at the seat of each regional *Cour d'appel* (intermediate appellate court). Instruction is given by professors, judges, prosecutors and members of the bar. The apprentice lawyer acquires practical skills through working with various legal practitioners such as *avoués* (solicitors), *conseils juridiques* (legal counselors), *experts comptables* (C.P.A.), or *avocats titulaires* (full-fledged members of the bar). Law No. 71-1130, art. 2, 1972 J.O. 131, 1972 Dalloz-Sirey, Législation [D.S.L.] 39. Decree No. 72-468, *supra* note 15, arts. 23, 24. Decree No. 80-234, 1980 J.O. 838, 1980 D.S.L. 172.
24. J. LEMAIRE, *supra* note 15, at XXII.
25. J. FABRE, LE BARREAU DE PARIS 4 (1895).

cern with the work of lawyers. Recommendations were made to lawyers to "plead and write concisely" and a prohibition was issued against the use of damaging words, whether against the adverse party or against any other person.[26]

In the sixteenth century, and particularly from 1535 to 1560, other procedural rules were established that continue to be applied today, such as the wearing of the robe for pleading; presence at the opening of the pleadings under penalty of default; presence throughout the trial unless excused by the court; and courtesy toward one's colleagues.[27]

By the early seventeenth century the Paris Bar had entered another flourishing period. Records from 1622 indicate that the number of lawyers had risen dramatically.[28] The Bar by then had been divided into ten equal "columns." Each column held its own meetings, and elected two officers who, along with the *Bâtonnier,*[29] formed a committee[30] which was the origin of the present Council of the Bar (*Conseil de l'Ordre*).

The Bar reserved the right to punish or expel any member of the "*Rolle*" if it determined that he had violated the rules of the Bar. The Bar was essentially "the master of its *Rolle*."[31] Thus, the Paris Bar of the seventeenth century exhibited the essential character of today's organization and had attained indisputable prestige under the Old Regime. Being a "gem" of the crown in the Old Regime, the lawyers' class was subjected to the same fate as its "patron" under the Revolution. A decree of September 1-2, 1790, by the Constituent Assembly, abolished the Bar together with the old *Parlement* and the other institutions of the Monarchy.[32]

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26. *Id.*

27. R. JONES, *supra* note 8, at 103-04.

28. *Id.* at 107.

29. The *bâtonnier* is the head of the bar. The "baton" or banner of St. Nicolas, which the head of the bar carried during the processions, symbolized his authority. J. LEMAIRE, *supra* note 15, at 49.

30. R. JONES, *supra* note 8, at 107.

31. J. LEMAIRE, *supra* note 15, at XXIII. This principle of the absolute autonomy of the bar to choose its own members was recognized until the Second Empire. In 1861, a decision of the *Cour de Cassation* (French Supreme Court) asserted judicial review of bar decisions concerning admission or expulsion of its members. Despite vigorous protests by the Bar, the *Cour de Cassation* persisted in its subsequent decisions. "The Council of the Bar acts," said the Supreme Court in one of its decisions, "not as a representative of a voluntary agency free to admit or not ot admit its members, but as a public authority charged to do justice; its decisions susceptible of infringing upon a right could not be free of appeal and control." F. PAYEN & G. DUVEAU, LES REGLES DE LA PROFESSION D'AVOCAT ET LES USAGES DU BARREAU DE PARIS 40, (1926). The present laws organizing the *avocat* profession reassert this principle of judicial review. Law No. 71-1130, *supra* note 23, art. 20. Decree No. 72-468, *supra* note 15, art. 46.

32. J. LEMAIRE, *supra* note 15, at XXIV. Another decree issued four months later recognized the right of the citizens to have counsel to represent them, either in writing or

Napoleon disliked lawyers; but paradoxically, by re-establishing their "*Ordre*", their robe, and their institutions, he became their ally. Perhaps he thought, as did Goethe, that "one could tolerate an injustice, but one could never tolerate disorder,"[33] and that the "*Ordre des Avocats*" was therefore necessary to attain his goal of creating an orderly society. But before signing the decree of December 14, 1810 re-establishing the class of lawyers, Napoleon did not miss the opportunity to vent his feelings on this topic: "[lawyers] . . . are factionists, artisans of crime and treason . . . I wish one could cut out the tongue of a lawyer who sets himself against the government."[34] To protect himself against the possibility of disloyalty he incorporated the following provision in the decree: "lawyers owe obedience to the constitution and loyalty to the Emperor."[35]

Napoleon's decree of 1810 was followed by other legislative enactments regulating the legal profession.[36] The essential characteristics of the practice and the legal duties of the lawyer, however, remained virtually unaffected until the Gaullist period. Near the end of the Gaullist period, a "sweeping" reform was attempted, the goal of which was to rejuvenate the image of the profession and to make the profession fit to confront the task of adapting itself to contemporary Europe. This Article reveals that the "sweeping" reform was actually a trifling one.

II
CONCEPT OF THE LEGAL PROFESSION

The profession of *avocat* has always been referred to as a "free" (*liberale*) and "independent" profession.[37] While these terms are used commonly in reference to the profession, they have never been precisely defined. The foremost, and perhaps the only systematic attempt to define the concept of a "free" profession, is found in a

verbally. *Id.* However, anyone could act as counsel. Some *avocats* of the old regime practiced under the revolutionary system, but they were submerged by "this *tourbe* of unofficial defenders without education and qualifications and who chased the clients with a disgusting voracity." Henri-Robert, *Napoleon et le jury,* REVUE DE PARIS, May 1921, at 89 (citing Thibaudeau, MEMOIRES) in J. LEMAIRE, *supra,* at XXV.

33. *Id.*

34. J. FABRE, *supra* note 25, at 37. The roll of *avocats* was actually re-established prior to the decree of December 14, 1810, by the *Loi du Ventose and XII* that also reopened the law schools. However, the decree of 1810 regulated the exercise of the legal profession. *Id.*

35. *Id.*

36. The most important of these enactments were: Law No. 20, 1920 J.O. 8322, 1920 Dalloz Périodique et critique [D.P. III] 118; Law No. 54-390, 1954 J.O. 3420, 1954 D.S.L. 158; and Decree No. 54-406, 1954 J.O. 3494, 1954 D.S.L. 165.

37. "The *avocat* profession is a free and independent profession." Law No. 71-1130, *supra* note 23, art. 7.

doctoral dissertation written over thirty years ago.[38]

The distinction between a free profession and other professions grew out of the division between free men and slaves in old Roman society. The manual labor necessary to ensure the economic well-being of the city was left to the domain of slaves and emancipated slaves. The citizens or free men contented themselves with the rendering of benevolent services to a certain clientele in the capacity of patrons. Later, when the number of free citizens substantially increased, they felt the need to earn a living through some sort of profession. A new distinction, therefore, was drawn between those professions that were degrading and those that were respectable, the latter being designated as the free professions. Intellectual activities for which one was remunerated (*operae liberales*) were considered to be manifestations of the client's gratitude, since no price could be set on such intellectual services.[39]

Since its inception as a free profession, the legal profession has maintained many of the attributes it inherited from Roman law. Throughout the Middle Ages and the Old Regime, in spite of the gradual disappearance of the distinction between freemen and slaves, society continued to classify men as either nobles or plebians. Although nobles did not generally practice law, the legal profession nevertheless did acquire an honorable social position. Lawyers could even claim the title of nobility by referring to themselves as "knights of the law." As a commentator of the time stated, "as a knight is bound to fight by the law of his sword, so too are lawyers bound to fight by the law of their practice."[40] If lawyers' pretensions to nobility were not always justified, it was recognized that nobles did not lower themselves by engaging in the legal profession as they did by engaging in commercial activities.

The concept of the legal profession as a "free" profession was thus originally a social concept in that it designated a profession practiced by members of the upper class (*la bonne société*); as such, it enjoyed greater prestige than other professions. Today the concept is linked to a social and economic system that is dying out. In this sense, one can echo the question of Jean Savatier, the author of the above-mentioned dissertation on the "free" profession: "Is the study of the 'free' profession the study of a dead thing?"[41] It seems that it is not, for over the years, this social concept has evolved into a legal concept in the sense that it is at the source of the laws, customs, and

38. J. SAVATIER, ÉTUDE JURIDIQUE DE LA PROFESSION LIBERALE (1947).

39. *Id.* at 24-27.

40. Delachanel, *Histoire des Avocats au Parlement de Paris,* (citing Boutillier, *Somme Rurale,* Paris 1603, at 671), in J. SAVATIER, *supra* note 38, at 29.

41. J. SAVATIER, *supra* note 38, at 9.

usages governing the French legal profession today. It could be said that the "body" may be dead, but that the "spirit" of the concept lives on in the self identity of the French legal profession.

The underlying laws, customs, and usages that have survived in this manner include the distinction between intellectual activity, which was honorable, and non-intellectual activity, (particularly commercial activity), which was contemptible and incompatible with the legal profession; the independence of the person engaged in the free profession (such a person could never be involved in an employment contract); and the disinterestedness of the person practicing the free profession, which means that person could only receive remuneration as an expression of gratitude but never as compensation for services rendered.[42] The aim of the free profession was not material, but spiritual, and was considered to be the fulfillment of a mission undertaken by the attorney attendant to his role in society.[43] The following examples illustrate the impact of this "free" profession concept on the functioning of the French legal profession.

A. Legal Fees and the French Lawyer

The portrayal of the French legal profession as a free and independent profession is most clearly demonstrated by the ethical rules of the Paris Bar concerning the collection of legal fees. In the nineteenth century Albert Joly, who later became one of the greatest French lawyers, is reputed to have shocked his interlocutor by declaring at the time of his request for admission to the Paris Bar that he "really counted on practicing his occupation for a living."[44] In his report to the President of the Bar the interlocutor noted, "the boy is dangerous because he has some very fixed ideas about the profession; he wants to make it profitable."[45]

In 1819 the President of the Paris Bar expressed his view on the collection of fees as follows:

> The lawyers at the royal court of Paris exact nothing from their clients . . . they content themselves with whatever the client really wants to give and he who would have recourse to justice to recover his fees would thus announce that he no longer wants to be a lawyer and would instantly be struck from the list. Clients can abuse this rule . . . but it matters little since the independence and consideration which we [lawyers] enjoy depends, in large part, on [this rule].[46]

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42. *Id.* at 35-39.

43. *Id.* at 42-44.

44. Damien, *La Profession Liberale et L'Usager,* Association Nationale des Avocats, Le Defi de le Profession Liberale 105 (1974).

45. *Id.*

46. Letter from *bâtonnier* Archambault to the Procurer général Bellart, in 1 G. Cresson, Usages et Règles de la Profession d'Avocat 316 (1888).

An order by the Council of the Paris Bar, issued January 8, 1829, declared that it was reprehensible to make the practice of a profession dependent upon the payment of a fee.[47] Thirty years later, the same principle was reiterated in another order that stated that fees could be demanded neither before nor after a lawsuit.[48]

The French legal profession believed that any step tending to impose a price on the lawyer's work would be a blow to the dignity of the profession. The word *ordre,* observed one commentator, is a descriptive term, inapplicable to one who, although nominally a lawyer, charges his costs and fees to his clients and demands payment through the system of justice. Such actions are considered incongruous with the *avocat* profession.[49]

Every professional ethics manual published prior to this century expounds the proscription upon exacting fees. Fees are considered gifts by which clients show their gratitude to their lawyers for the lawyers' efforts. Although no legislation prohibits a lawyer from recovering his fees through the courts of justice, the rules and usages of certain bars, such as the Paris Bar, forbid such action under pain of disbarment.[50] Thus, in one case a court of appeals confirmed both

47. *Id.* at 317.

48. *Id.*

49. Boucher-d'Argis, *supra* note 5, at 340.

50. F. MOLLOT, RÈGLES DE LA PROFESSION D'AVOCAT 113 (1866). It is curious to note that prior to the 18th century, fees were considered legitimate and the recovery of legal fees through the courts of justice was enforced, especially in the Ancient Regime. An ordinance of 1274 fixed the maximum legal fees at 20 *livres tournois* (equivalent to ten pence in English money at the same period.) The ordinance required that the *avocat* annually renew his oath not to take more. A. DAMIEN, *supra* note 8, at 22. Many *avocats* received retainers in the form of "pensions" from important clients. *Id.* at 25. (The *avocat* of the King of Navarre received between 70 and 800 Francs in 1368.) *Id.* Fees in kind were also common. (A butcher of the city of Mans was reported as having said that he paid his *avocat* "the most succulent head of calf one could find in the whole area.") *Id.* One wonders what the reason was for the change in the idea that the *avocat* could not exact fees from clients. This author believes that an episode reported in one of the early works on the *avocat* profession may have been the origin of the idea. 1 M. CAMUS, *supra* note 4, at X-XI. On May 18, 1602 the Parliament of Paris, at the instigation of either the Duke of Luxemburg or of Louis XIV's celebrated minister, Sully—witnesses disagreed on this point—issued an order (*arrêt*) directing the *avocats* to comply with a royal ordinance, which, though enacted in 1579, had remained up to then a dead letter. This ordinance required the lawyers to "declare and sign in their own handwriting the fee they had received," and non-compliance with the ordinance was punishable as equivalent to bribery. *Id.* The Parliament's order provided that failure of the *avocats* to so declare would result in their disbarment. It was reported that the *avocats* were so offended by the Parliament's measure that 307 of them assembled, and in ranks of two proceeded to the Court and declared that they would rather quit their profession than to subject themselves to a treatment so "prejudicial to their *'honneur.'* " *Id.* It was perhaps to avoid the scrutiny of the court that the *avocats* of Paris renounced their right to fees. It is significant that the prohibition on recovering legal fees originated with the Paris Bar at the start of the 18th century; the provincial bars followed the Paris lead only in the 19th century. J. HAMELIN & A. DAMIEN, LES RÈGLES DE LA NOUVELLE PROFESSION D'AVOCAT, 199 (1977). During this period of prohibition by the bar, the legislature rec-

a judgment condemning the client to pay the *avocat* his fees, and a judgment upholding the Bar's decision to expel the *avocat* for pursuing the claim against his client in the courts.[51] On appeal, the Supreme Court found that the Bar had neither exceeded nor abused its power.[52]

This Bar-imposed prohibition against a lawyer seeking legal fees by pursuing his client in the courts also applies to counterclaims. Thus when a client is a creditor of the lawyer, the client has the right to reclaim his debt, but the lawyer cannot set off his fees against the client's claim.[53]

The traditional reasoning underlying this prohibition is based upon the notion of the independence of the lawyer. Any public debate on fees would be beneath the dignity of any member of the profession and would tarnish the image of the lawyer. This notion is regarded as a rule "of professional elegance."[54]

The traditional reasoning has undergone significant evolution in the present century. An expression of the "new doctrine" is found in the following excerpt from the inaugural address of the Bâtonnier of the Paris Bar in 1906: "This concept [that a fee is a gift] has had its time and one can abandon it without regret. We do not practice our profession with the hope of collecting gifts, but rather with the strongly legitimate right to obtain the price of the efforts and services which we render. There is the truth."[55] This evolution in viewpoint continues gradually today; however, the traditional perception, that the lawyer's skill is not a saleable commodity and that legal fees are therefore given as a manifestation of the client's gratitude rather than paid as compensation for services rendered, continues to predominate. For this reason the Paris Bar forbids the *avocat* from

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ognized the right of the *avocat* to the fees. For instance, a decree of February 16, 1807 explicitly acknowledged the right, and a law of September 5, 1908 accorded the *avocat* preference over the Public Treasury for purposes of recovering his legal fees in criminal matters. ASSOCIATION NATIONALE DES AVOCATS, AU SERVICE DE LA JUSTICE 166-67 (1967). Tribunals have always sanctioned this right.

51. Chaplet, *Commentaire de la loi du 31 Dec. 1957,* in ASSOCIATION NATIONALE DES AVOCATS, *supra* note 50, at 167.

52. F. PAYEN & G. DUVEAU, *supra* note 31, at 385.

53. *Id.* at 389.

54. An authority on the ethical rules of the bar wrote in 1866:

> If you admit the recovery in justice for honorariums, you will drastically alter or even destroy the functions of the *avocat*; you will transform them into a salaried mandate, a contract for hire; you will subject the *avocat's* acts, his merit, dignity, and, therefore, his morality to public debate, uncertain and degrading . . . . It would be the ruin of the profession.

F. MOLLOT, *supra* note 50, at 114.

55. F. PAYEN & G. DUVEAU, *supra* note 31, at 383. Prior to the *Bâtonnier's* address, an opinion (*arrêt*) of the Council of the Paris Bar had asserted that honoraria are a right of the *avocat. Id.*

taking his fees in the form of promissory notes, drafts, or assignments of debts. Fees are not referred to as "fees," but instead are called "honorariums," a term less prone to connote the fact that payment is requisite to the provision of legal services. Traditionally, *avocats* have not delivered receipts for their fees since one does not deliver receipts for gifts.[56]

On several occasions, the Paris Bar has considered the propriety of a lawyer collecting fees from his client in various situations. For instance, it has been adjudged as beneath the dignity of a lawyer to accept a bank note from a jailed client, when the lawyer intends to retain his fee from that note, and tender the surplus funds to that client.[57] In another case a lawyer was disbarred for accepting fees which he knew came from a theft committed by his client.[58]

The Tribunal has also considered whether a voluntary remittance of fees by the client can later be deemed to have been excessive. The *Cour de Cassation* echoed the position that a lawyer's skill is not saleable merchandise in answering this question as follows: "Judges may not order the reimbursement of any portion of fees judged to be excessive once the fees were spontaneously paid by the client in an entirely free manner after the services [were] rendered."[59]

The law itself recognizes that the nature of the debt between the *avocat* and his client is unlike that of any other debt, and that the normal rules of procedure employed in the recovery of contractual debts are inapplicable in this situation. The *avocat* would find it repugnant to subject himself to such procedures, and is particularly averse to the so-called *taxation des honoraires,* which would make the amount of his fees subject to public debate and to scrutiny by the courts. Such a development would diminish the status with which the *avocat* perceives himself to be endowed through his membership in a noble profession.[60] In 1957 the legislature honored the tradi-

56. J. LEMAIRE, *supra* note 15, at 477. The true purpose of this rule is to deny the government or the courts the means to calculate the legal fees received by the *avocat*. When, for administrative and fiscal reasons, a client needs a receipt, the *avocat* can deliver a record acknowledging the receipt of honoraria but not mentioning the amount. As payment by check is commonplace today, this rule no longer stands. The law now requires *avocats* to account to their clients for their expenses and fees. Decree No. 72-783 arts. 31-34, 1972 J.O. 9279, 1972 D.S.L. 469, 471; J. LEMAIRE, *supra,* at 477-78.

57. J. LEMAIRE, *supra* note 15, at 472.

58. *Id.*

59. Note that the *Cour de Cassation* limited this finality rule only to fees paid *after* services were rendered. It seems, therefore, that restitution of excessive fees may be ordered if they are paid *before* services were rendered. The reasoning seems to be that if the client pays *after* the services were rendered, he has the opportunity to appreciate the *avocat's* efforts and results, and that undue pressure from the *avocat* is less likely.

60. J. LEMAIRE, *supra* note 15, at 462.

tional view by providing special procedures for causes of action involving legal fees.[61] The most recent reform of the legal profession reaffirmed legislative acceptance of these distinctive procedures.

These special procedures give the bar a preponderant role in all controversies concerning legal fees, whether the source of the discontent is the client or the lawyer. The law thus purports to protect the traditional image of the lawyer as a "free" and "independent" professional. Any action regarding legal fees, whether brought by the *avocat* or his client, must be submitted to the *bâtonnier,* whose first duty is to attempt a conciliation. If no agreement is reached, he then hears the arguments of both parties. The *bâtonnier* must render his decision within three months. If the parties are dissatisfied with the recommendations of the *bâtonnier,* they may take their dispute before the president of the *Tribunal de grande instance* (the equivalent of United States District Courts), the court in which the *avocat* practices. The president of that court hears the parties *in camera*, thus avoiding public debate as to the capabilities of the *avocat* and the value of his services. During the course of the suit, the president of the tribunal is required to stay in communication with the *bâtonnier* in order to obtain any information or advice that the tribunal might deem pertinent. The bar itself can intervene as a party to the suit. This same procedure is repeated on appeal; that is, all hearings are *in camera*, only the decision is published, and there is constant consultation with the *bâtonnier*. In a case in which the *bâtonnier* himself is a party to the suit, the conciliation stage of the proceeding is heard *in camera* by the President of the tribunal.[62]

The preponderant role of the bar in the dispute between the *avocat* and his client is regarded by the client as a conspiratorial effort to frustrate his grievances. This belief does nothing to enhance the image of the lawyer before the public.

The relationship between the public and the *avocat* is further complicated by another aspect of French legal fees—the *provisions* method of paying legal fees.[63] The term *provisions* has generally been translated as "retainer," but in actuality it is somewhat different in meaning from the American notion of a retainer. In American law, the term "retainer" refers to the contract through which a client engages the services of a lawyer. It also indicates a preliminary fee that is paid by the client to ensure that the lawyer will protect the client's interests and will not represent an adverse party.[64] The latter

61. Law No. 57-1420, 1958 J.O. 194, 1958 D.L. 29.
62. Decree No. 72-468, *supra* note 15, arts. 97-103.
63. J. LEMAIRE, *supra* note 15, at 463.
64. 7(A) C.J.S. *Attorney and Client* § 282 (1980).

meaning is closer to the French notion of *provisions*, but a significant difference remains. The American retainer is generally demanded at the opening of relations between lawyer and client. In France, the lawyer can claim the *provisions* during the course of the suit without fixing in advance the total figure of his fees. This practice grew out of the preclusion of *avocats* from suing clients for their fees.[65] Although that prohibition was lifted eventually, the practice continued because lawyers were, and still are, reluctant to have the courts determine their fees. The lawyer, by demanding the *provisions* as the case progresses, ensures that his services will be paid for before the case ends. The purpose is to prevent the complete loss of fees upon termination of the case.

The *provisions* method of payment, although legitimate in the legal sense of the word, has often been abused. For example, by requiring only a minimal *provision* (and neglecting to fix a total amount) prior to accepting a case, a lawyer may lure the unsuspecting client into accepting his services. By later demanding further *provisions* as the case progresses, under threat of termination of his services, the lawyer imposes a burden on the client which was unforeseen at the time the action was commenced.[66] Furthermore, if the client then discovers that the financial burden has become intolerable, he is unable as a practical matter to terminate the relationship. The client is now ensnared because of two determinative factors: first, he completely forfeits his prior payments to the lawyer, since fees "voluntarily" paid cannot be reclaimed;[67] and second, he is in practicality precluded from engaging another lawyer. The latter result follows from regulations of the bar that require the *avocat*, before agreeing to represent a client, to assure himself either that none of his colleagues has represented that client in the present matter, or that such colleague has been fully paid. If an *avocat* agrees to represent the client before his colleague is fully paid, the *bâtonnier* can declare him personally liable to his colleague for the client's unpaid fees.[68] This factor, combined with the jurisprudential rule that fees "voluntarily" remitted cannot be recovered,[69] augments the simplicity with which a lawyer could, if so inclined, unfairly manipulate his client under the *provisions* method of payment. Adverse

65. *See supra* text accompanying notes 49-54.

66. An issue often litigated is whether the payment by the client constituted a *provision* or the total fees. For example, the client often argues that the payment constituted the final fee, whereas the lawyer insists that it was simply a *provision* and that he is entitled to more. *See* J. HAMELIN & A. DAMIEN, *supra* note 50, at 195; J. LEMAIRE, *supra* note 15, at 464-65.

67. *See supra* note 59 and accompanying text.

68. Internal Rules of the Paris Bar (1979), art. 41.

69. *See supra* note 59 and accompanying text.

publicity regarding such incidents helps to explain the public perception of the lawyer as a greedy individual capable of acting with impunity within his bar.

This public sentiment is aggravated further by the fact that the traditional view, which sees the legal profession as a mission that cannot be valued economically, remains a strong influence on the *avocat*-client relationship. A recent commentator, referring to the historical distinction between spontaneous exchanges dictated by moral considerations and commercial exchanges that terminate when the debtor pays his due, concluded that in France, the legal profession has preserved the usages of a lapsed civilization in attempting to serve an advanced society.[70]

Another prohibition based upon the "free" and "independent" nature of the profession is that the French lawyer is not permitted to charge a contingent fee. The *avocat* must be detached from and disinterested in the result of the litigation. He therefore should not identify himself too closely with his client. The law, like the rules of the Bar, is particularly severe concerning fee arrangements based on the outcome of an action.[71] One *avocat* was disbarred for setting his fees at five percent of any award up to 1000 francs and three percent beyond that.[72] Disciplinary action notwithstanding, any contract containing a contingent fee clause is deemed by law never to have existed; the *avocat* thus cannot recover, even if his claim is based upon *quantum meruit*.[73]

With only a few exceptions, pauperization is the general trend within the French legal profession. A comparison of the propriety of recommended fee schedules in the United States and in France illustrates the impact of this trend. In the United States, a recent Supreme Court decision bars the use of such fee schedules on the basis of American antitrust laws.[74] In France, however, local bars often issue schedules for recommended fees, thus attempting to discourage members from charging clients too low a fee in an effort to attract more clients. In 1979 the Paris Bar recommended a rather

70. Gaudemet, *Une Sociologie de la Gratuité,* cited in Sebag, *La Détermination des Honoraires de l'avocat d'après l'arrêt de la Cour de Cassation du 17 June 1970,* 1970 *Dalloz-Sirey, Chronique* [D.S., *Chronique*], 177, 185.

71. Law No. 71-1130, *supra* note 23, art. 10; Code Civil, art. 1133.

72. J. LEMAIRE, *supra* note 15, at 473.

73. Law No. 71-1130, *supra* note 23, art. 10, E. BLANC, LA NOUVELLE PROFESSION D'AVOCAT 64 (1972).

74. Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975). The Court's unanimous decision construed minimum fee schedules to be violative of the Sherman Act. Two years later, the Court struck down the organized bar's traditional ban on advertising (Bates v. State Bar of Arizona, 433 U.S. 350 (1977)), basing its decision on the public's right to information under the first amendment.

elaborate schedule[75] with price competition in mind, believing that compliance with such guidelines would upgrade the public standing of the profession. It seems that Parisian *avocats* felt compelled to charge ridiculously low fees in the name of competition. The Paris Bar, guided by the belief that such "dumping" (to employ the terminology of international trade) was contrary to the dignity of the *avocat,* responded with the fee recommendation in an implicit plea to the *avocats'* professional pride.[76] The fact that the Bar felt these recommendations were necessary demonstrates the serious economic dislocation that had occurred among the members of the Paris Bar.

There is a current, though restrained, movement afoot to approach the economic aspects of the profession in a more modern and realistic manner.[77] This scheme would employ economic data in an effort to maximize the earning power of the profession. The *Union des Jeunes Avocats* recently published a study that focused on the hourly cost of the *avocat's* work. The study demonstrated that the majority of *avocats* are underpaid.[78] Indeed, when overhead costs were included, the estimated hourly cost of the *avocat's* efforts ranged from 100 Francs for an apprentice to 240 Francs for a more experienced *avocat,* while the amount the *avocat* actually received

75. Under the schedule recommended by the Paris Bar, fees are based upon two types of "units": the "unit of intervention," which refers to the proper amount of remuneration for the effective work of the *avocat* in the average case, free from special complicating circumstances, and the "additional unit," which is calculated based upon the "importance"—defined as "monetary interest"—at stake for the client in the litigation. The "unit of intervention" is considered to be equivalent to three hours of the lawyer's time. The amount of time spent in meeting with the client, in corresponding with the client, and in handling all litigation-related aspects of the case is aggregated in reaching the total amount of "units of intervention." To this amount the lawyer then adds "additional units" if the monetary interest at stake for the client is important enough. The recommended scale for calculating this "importance" imposes no "additional units" unless the interest at stake is at least 25,000 francs (approximately 5000 dollars). From that point, units are added for each increment of the total monetary interest. The additional increment of monetary interest required for the imposition of each "additional unit" rises as the total monetary interest of the client rises. This is done to maintain an affordable cost for "high-interest" litigation. In cases where the interest at stake exceeds 500,000 francs (approximately 100,000 dollars), however, the bar recommends that this schedule no longer apply. The rate suggested by the Paris Bar is 900 francs per unit (approximately 180 dollars per unit, or 60 dollars per hour). Due to competition, the bulk of French *avocats* do not follow the recommendations of the bar and get much lower fees. *Nouvelles Recommendations de l'Ordre des Avocats à la Cour de Paris en Matière de Fixation d'Honoraires dans les Affaires Judiciares de Type Moyen Pour l'Année 1979,* BULLETIN DU BÂTONNIER, January 1979, at 1-11.

76. In one treatise on legal ethics, the authors assert that charging ridiculously low fees as a means of dumping vis à vis other clients would damage the dignity of the *avocat.* J. HAMELIN AND A. DAMIEN, *supra* note 50, at 197.

77. *See, e.g.,* Farthouart, *Les Frais et les Honoraires,* 226 BARREAU DE FRANCE 6 (1978); Vandermaesen, *Quelques Reflexions sur le Cout de l'Heure d'Avocat,* 2 GAZETTE DU PALAIS (Doctrine, 447) (1975).

78. J.G.M., *L'U. J. A. de Paris et la Remuneration des Avocats,* 1 GAZETTE DU PALAIS (Doctrine, 291) (1976).

was far below these figures.[79]

Some observers have proposed abolition of the ban on contingent fees as a means of improving the lot of the *avocat*. One of the most vocal advocates of this proposition is Maître Damien, who has written extensively on the rules and usages of the *avocat*. He lists the reasons normally given for the prohibition of the contingent fee, and contends that the primary justification is the notion that the *avocat* by such agreements becomes so intimately tied to the outcome of the lawsuit that he loses his independence. Damien acknowledges that this reason is valid. He points out, however, that an *avocat* can become interested in the outcome of the litigation for other reasons, such as the pursuit of publicity or glory. The quest for monetary gratification is merely one aspect of the problem. Contingent fees, in Damien's opinion, would be more advantageous to the client than the present *provisions* system which, by leaving unresolved the foreseeable amount of fees, contributes to the insecurity of the client.[80] Influential members of the French legal community, such as Mr. Pierre Bellet, a former President of the *Cour de Cassation*, also favor such a change.[81] Such potentially beneficial reforms remain to be accepted, however, by certain sectors of the legal profession. Indeed, these reforms have been widely criticized. For example, some influential members of the Bar have criticized the cost per hour study conducted by the *Union des Jeunes Avocats* as not having taken into account "the special nature of the *avocat's* work."[82] *Bâtonnier* Rozier, a former President of the Bar, remarked that: "[T]he so-called honorariums problem is a false problem. The honorarium is only a secondary consideration, the first being the defense of the client."[83] He concluded that the work of the *avocat* is so unique, and involves such inconspicuous efforts as reflection and meditation, that it is impossible to calculate the economic value of that work. He remarked, in reference to the American lawyer, that "one cannot act like certain foreign lawyers in accounting for research and reflection on an hourly cost basis."[84] These reactions reflect the continued ascendancy of the view that the legal profession is a mission, the nature of which is shaped by the enduring notion of the *profession liberale*.

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79. Vandermaesen, *supra* note 77, at 447.

80. A. DAMIEN, LE BARREAU QUOTIDIEN 43, 194-98 (1971).

81. Interview with Mr. Pierre Bellet, President of the *Cour de Cassation*, in Paris (July 14, 1980).

82. J.G.M., *supra* note 78, at 291.

83. *Id.* at 293.

84. *Id.*

It is clear that proposed reforms, however modest, will not be effectuated in the very near future. Many members of the Paris Bar regard any efforts to introduce new rules with apprehension. In their judgment, such rules may undermine the independence and dignity of the *avocat*. These traditional principles will also be apparent in the following examination of the almost interminable list of activities in which the *avocat* is forbidden to engage.

B. INCOMPATIBILITIES

Any lawyer who undertakes a job inconsistent with the liberal and independent nature of his profession is in violation of his order's code. The Internal Rules of the Paris Bar clearly state: "The practice of the [lawyer's] profession is incompatible with any occupation susceptible to infringing on the independence and dignity of the *avocat,* such as, any employment for a salary (*emploi a gage*) or any commercial activity."[85]

Jean Lemaire, a former *Bâtonnier* of the Paris Bar, discusses this rule in the following terms: "Every profession or every duty which presupposes the sacrifice of all or part of the lawyers' independence, including [his] moral independence, is incompatible with the practice of the legal profession. The same rule is applied to activities having only profit as a motivation."[86] The law itself embodies the foregoing assertions, as well as the principle that any salaried position and every sort of business activity is forbidden to the *avocat*.[87] Both the bond of dependence existing in salaried positions and the profit-seeking motivation of business are opposed to the principles of independence and disinterestedness, and are, therefore, incompatible with the practices of the legal profession. The tribunals have interpreted this principle as prohibiting access to the Bar to those holding certain positions that,

> although they do not taint the person's character in any way or reflect unfavorably upon his abilities, nevertheless have the effect of enchaining his will. No lawyer, therefore, may hold any position that either gives others the right to dispose of his time, or obliges him to perform duties for the benefit of others under pain of reprimand or the loss of a potentially lucrative job.[88]

The list of incompatibilities is extensive. There are, however, three primary categories of activities forbidden to the *avocat*: public

85. Internal Rules of the Paris Bar (1979), art. 50. The term "*gage*" generally designates the salary received by a domestic employee. In the language of the ethical rules, it simply means salary regardless of the type of employment, provided there is an employer-employee relationship. J. LEMAIRE, *supra* note 15, at 113.

86. *Id.* at 111.

87. Decree No. 72-468, *supra* note 15, arts. 57, 62.

88. Douai, 31 July 1843, *cited in* J. LEMAIRE, *supra* note 15, at 112.

employment, employment by a private organization or individual, and commercial activities.

In general, one may not serve as a public official and at the same time be a member of the Bar.[89] Because France has a centralized government, and the state is the largest employer, a large segment of the national work-force is forbidden entry into the legal profession. This prohibition applies irrespective of whether the public employer fulfills all the basic requirements for entry to the Bar. As a result of the stringent enforcement of this regulation, a question arose that eventually prompted the creation of a narrow exception to this rule. The problem was that virtually all French law schools are state-supported institutions; therefore, should law professors be allowed membership in the Bar even though they are employees of the State? The question was answered in the affirmative because "men who make jurisprudence and the law their unique object of study, who initiate youth to the science of the law, must necessarily be in constant contact with the tribunals in order to acquire the practice necessary to the development of their teaching."[90]

The restrictions imposed as a result of the rule of incompatibility are most severe in the area of private employment. It is believed that any employment situation has the effect of subordinating the *avocat* to the will of another, thereby stripping him of his independence. This rule applies even to employment of an *avocat* by another *avocat*.[91] As one legislator remarked: "[T]he *avocat* has for his god, only the law, and for his master, only his conscience. . . . The youngest apprentice *avocat* and the oldest President of the Bar are equal under the robe, and it would be unacceptable that one would call the other his *patron*."[92] This perception is so deeply ingrained in the traditions of the profession that even the young *avocats* do not want to consider themselves as employees of other *avocats,* in spite of the social and economic benefits that such a relationship would provide.[93] During a recent congress of the *Asso-*

89. Decree No. 72-468, *supra* note 15, art. 62(b).

90. Ministerial directive of 15 June 1937 implementing the decree of 29 October 1936, *cited in* J. LEMAIRE, *supra* note 15, at 116-17.

91. Article 28 of the Internal Rules of the Paris Bar (1979) states that there can be no bond of subordination between the associate and his *patron*.

92. Remark by M. Andre Tisserand, in a discussion concerning the constitution of October 4, 1958. 1971 J.O. Assemblée Nationale, *Débats Parlementaires* 6531.

93. The benefits of being treated as employees under French law are obvious. First, the relationship of employees with their employers is governed by French labor law, an autonomous body of law independent of the general law of contracts. This autonomy is strengthened by establishing separate labor tribunals which follow special procedures, and in which labor representatives are present. Further, labor law, which is heavily geared to the protection of the worker, is deemed to be of *ordre public* status (i.e., at a minimum its provisions cannot be displaced by private agreements). Labor law, origi-

ciation Nationale des Avocats de France the young *avocats* urged their colleagues to resist the "employee mentality," and insisted that sacrificing one's independence for immediate social and economic benefits would "distort the face of the legal profession."[94] The import of this is simply that, were an *avocat* to work for another *avocat* they would still in theory be equals; this effectively eliminates any possibility of an employer-employee relationship. This result was emphatically stressed in a law enacted on June 30, 1977: "The *avocat* who practices his profession as an associate or as a member of a professional corporation or partnership, cannot be an employee."[95] This prohibition is characterized as having the effect of *ordre public,* which in essence means that any contract to the contrary will be deemed null and void.

An *avocat* cannot be employed by a non-*avocat*, whether the non-*avocat* is a corporation or an individual. The keeping of in-house counsel, therefore, is impossible in France unless the *avocat* renounces his membership in the Bar. The *avocat* cannot act as an agent or representative of another under any circumstances. The *avocat* profession is incompatible with all mandates.[96] An agent acts for his principal; because he must answer to that principal he could never maintain his independence. Thus the *avocat* may never act as business agent (*agent d'affaires*) for another. Any *avocat* accepting such a position is subject to severe disciplinary measures.[97] Until recently this interdiction was so far-reaching that it could strike an *avocat* through the activities of his spouse, the spouse being considered the alter ego of the *avocat*. The Bar considered it incompatible for the spouse of an *avocat* to be engaged in commercial activity,

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nally enacted to favor industrial workers, was later extended to aid white-collar workers. In the case of *avocats,* if they are treated as employees, the *patron* must pay their professional tax, social security contributions, and other benefits including vacation, paid holidays, and notice payment in case of termination. These benefits can amount to half a salary. It is understandable that most *patrons* in France do not want to see their associates treated as employees. More surprising, however, is the fact that young *avocats* themselves are reluctant to be treated as such.

94. Chambonnaud, *La controverse collaboration-salariat,* in ASSOCIATION NATIONALE DES AVOCATS, *supra* note 44, at 215.

95. Law No. 77-685, art. 3, 1977 J.O. 3433, 1977 D.S.L. 262.

96. Formerly Article 46(2) of the Internal Rules of the Paris Bar, this provision was deleted from the present Rules. Nevertheless, it is believed that the prohibition continues through the general principle enunciated in Article 50 of the present Rules, which states that the exercise of the *avocat* profession is incompatible with any occupation susceptible to infringing on the independence and the dignity of the *avocat. See* J. LEMAIRE, *supra* note 15, at 111.

97. These disciplinary measures include warning, reprimand, suspension and disbarment (*radiation*). One Court of Appeals decision upheld the disbarment of an *avocat* who had his office in the rear of a shop operated by his wife. Although this is an old decision, the same line of jurisprudence is valid today. *See* J. LEMAIRE, *supra* note 15, at 128.

because the *avocat* would be held liable for all debts of the spouse under the community property law prevalent in France. The directives of the Paris Bar state that this situation "would be incompatible with the peace of mind and independence required of an avocat."[98] The prohibition was later restricted to extend to only the spouse who is a business agent (*agent d'affaires*).[99]

Before the 1971 reform, the French lawyer could not serve on the Board (*Conseil d'administration*) of any corporation.[100] This proscription was lifted in 1971 in deference to the practice of other Common Market countries that permit lawyers to hold such positions.[101] Even today, however, the *avocat* may serve on the Board only under certain conditions. He must have been a member of the Bar for at least seven years. Within fifteen days he must also advise the *Conseil de L'Ordre,* in writing of his election to the post, and submit copies of the charter and the latest financial statement of the corporation of which he is a director. At any time, the *Conseil de L'Ordre* can require the *avocat* to render an accounting of his activities as a director. If the *Conseil de L'Ordre* determines that these activities are incompatible with "the dignity and the integrity" (*delicatesse*) required of the *avocat* by the rules of the Bar, it can demand that the *avocat* resign from his post. As a director of a corporation, the *avocat* can neither serve as legal counsel to, nor represent that corporation in legal proceedings, and he is similarly barred from pleading on behalf of or against the corporation.[102] Moreover, the interdiction still fully applies to an *avocat* acting as partner of a general partnership, as a manager of a limited partnership, or as president or co-director of a corporation.[103] As a rule, an *avocat* may never accept the position of president or director of any organization, even a non-profit organization, if that organization receives contributions and the *avocat* is required to answer for them.[104] An *avocat* is also forbidden to accept the position of executor of an estate unless he is a co-heir, in which case he is deemed to administer his own interests.[105]

The *Cour de Cassation* has announced the principle that the list of the incompatibilities provided by law is inclusive.[106] The Paris

98. Directives of March 1, 1827 and March 11, 1830, *cited in* J. LEMAIRE, *supra* note 15, at 127.
99. Law No. 54-390, *supra* note 36.
100. *Id.*
101. J. LEMAIRE, *supra* note 15, at 130, 139. Law No. 71-1130, *supra* note 23, art. 6.
102. Internal Rules of the Paris Bar (1979), art. 57.
103. *Id.*; Decree 72-468, *supra* note 15, art. 57-b.
104. Opinion of *Bâtonnier* Lacan, *cited in* 1 G. CRESSON, *supra* note 46, at 75.
105. J. LEMAIRE, *supra* note 15, at 131.
106. *Id.* at 132.

Bar continues to lengthen arbitrarily the list, however, by refusing admission to the Bar to former business agents and brokers.[107] The Paris Bar does this under the pretext of its right, recognized by the *Cour de Cassation,* to investigate the morality of any candidate for admission, and its power to determine the qualifications necessary for admission.[108] Because of the broad scope of this power, the Paris Bar has generally justified its decisions on the basis that such persons are presumed to have contracted habits that would make it difficult for them to respond in a free and independent manner to the exigencies of the legal profession. As a *bâtonnier* said,

> one must make sure that a former member of the business world is free of all obligations to which he was subject when engaged in his former profession and that he has the aptitude of assimilating all of the customs and usages of the *avocat* profession, so that he may observe them in the spirit required by the Bar.[109]

Few former businessmen have been able to pass such a rigorous test.

The traditional contempt of the *avocat* for everything concerning business was incorporated into Article 50 of the Internal Rules of the Paris Bar. This Article provides that the practice of the profession of the *avocat* is incompatible with any sort of business activity.[110] When a publisher of a periodical sought admission to the Bar, the question of his qualification for membership was put before the *Conseil de L'Ordre*. The *Conseil* determined that the candidate could not be admitted to the Paris Bar. His position as a publisher was deemed to have been commercial in nature because "it involved an administrative office, an advertising service, and the keeping of customer's accounts."[111] Likewise, an *avocat* could not accept the position of manager of a newspaper because "management *per se* is a commercial activity which is prohibited to the *avocat* even if it is only on a temporary basis."[112]

An *avocat* cannot enter any business ventures with a merchant if doing so entails any participation in the conduct of the business.[113] Only a remittance of funds, without more, is permitted.[114] The *avocat* is forbidden to be the founding member (*fondateur*) of a corporation because of the "special responsibilities that this form of activity would involve."[115]

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107. *Id.* at 132-33.
108. *Id.* at 133.
109. Statement of *Bâtonnier* Labori, *cited in* J. LEMAIRE, *supra* note 15, at 133.
110. Internal Rules of the Paris Bar (1979), art. 50.
111. Decision of the Paris Bar, December 7, 1847, *cited in* J. LEMAIRE, *supra* note 15, at 126.
112. J. LEMAIRE, *supra* at 127.
113. *Id.* at 126.
114. *Id.*
115. *Id.* at 138.

The list of activities incompatible with the *avocat* profession is virtually endless. The traditional French lawyer limits the activities of his practice to litigation. The public must look elsewhere for assistance when in need of other types of legal services. It is this self-imposed limitation in the name of "independence" and "disinterestedness" that explains the present fragmentation of the French legal profession, a phenomenon that is a major source of the difficulties confronting the French bar today.

III
THE FRAGMENTATION OF THE FRENCH LEGAL PROFESSION

A. CLASSIFICATION

One usually refers to the *avocat* as the French counterpart of the American lawyer. This is misleading because the *avocat* does not monopolize his country's legal profession as the American lawyer does. He is only one, although the most conspicuous, among a number of professionals who share the practice of law. In France, a distinction is drawn between those legal activities that are characterized as part of litigation (*le judiciaire*) and those that are not (*le juridique*). The *avocat's* field of expertise is the former; yet fragmentation exists even within this field. A distinction is made between acts of pleading (*plaidoirie*) and acts of procedure (*postulation*). The rather timid reform of the French legal profession that occurred in December of 1971[116] eroded this distinction somewhat, but certainly did not eradicate it.

Before the 1971 reform, there was a near total divorce of the activities of pleading from those concerning procedure. With only a few exceptions, in certain special jurisdictions, the *avocat* had a monopoly over the forensic act, whereas the *avoué* handled the procedural matters. Pleading and procedural activities before the commercial courts were extended to a special category of practitioners called *agréés*.[117]

Some claim that the reform of 1971 brought about a fusion of the professions of *avocat, avoué,* and *agréé*.[118] Although the "new

116. Law No. 71-1130, *supra* note 23. Representative Zimmermann, *rapporteur* of the bill before the *Assemblée Nationale,* emphasized that the distinction still continues under the new law. *Postulation,* he said, refers to the taking in charge of the various steps of discovery and procedure, whereas pleading is intended to "apprise the Tribunal of the pretensions of the parties." 1971 J.O. Assemblee Nationale, *Dèbats Parlementaires* 4458.

117. ASSOCIATION NATIONALE DES AVOCATS, *supra* note 50, at 198-200. The *agréés* could practice only before a particular commercial court and not before any commercial court. *Id.* at 50.

118. Law No. 71-1130, *supra* note 23, art. 1.

avocat" who emerged from that fusion handled both pleading and procedure, the purported fusion was incomplete. *Avoués* still practice at the appellate level,[119] and this situation is not likely to change in the foreseeable future, because *magistrats* of the Courts of Appeals prefer to deal with *avoués* instead of with *avocats*.[120] This inclination is partially due to the fact that there are fewer *avoués* than *avocats*. Also, *avoués* generally have more expertise in procedural matters than *avocats*. The strongest reason for the preference, however, is that French appellate judges are generally reluctant to break with the traditional role of the *avoué*.[121] Also, the reform of 1971 left the monopoly of the *avocat* over the forensic act incomplete. The provision awarding this "monopoly" before the courts to the "new *avocat*" stated that this principle would remain subject to legislative and regulatory measures in existence when the new law was promulgated.[122] Under these measures, practitioners other than the *avocat* have limited privileges of pleading with respect to certain types of litigation. For instance, *avoués* can present oral arguments to courts regarding all matters within their procedural competence, and are also permitted to plead motions for injunctive relief. In addition, *avoués* may plead before certain special jurisdictions (*juridictions d' exception*), a privilege they share with *notaires* and *huissiers*.[123]

Avoués, notaires, and *huissiers* are ministerial officers (*officiers ministeriels*). Unlike the *avocat,* whose registration with a bar depends solely upon his fulfillment of certain legal requirements as to education, prior occupation, and character, the ministerial officer is appointed by the Ministry of Justice upon "presentation" by a retiring officer. Such a presentation is made by the officer personally or by his heirs. The number of these officers is limited by law, and "presentation" is predicated upon the payment of a substantial sum of money to the present holder of the office or to his heirs. This practice goes back to the pre-Revolutionary era.

Non-*avocats* have preserved their foothold in the *avocat's* supposed domain of litigation; moreover, additional fragmentation exists within the *avocat* profession itself. Those *avocats* who are members of a Bar established within the jurisdiction of a *Tribunal de Grande Instance* (a District Court) cannot practice before the highest

119. *Id.* art. 4.

120. Interview with Mr. Pierre Bellet, *supra* note 81.

121. *Id.*

122. Law No. 71-1130, *supra* note 23, art. 4.

123. For a complete overview of the complexity and overlapping of the French legal profession, *see* ASSOCIATION NATIONALE DES AVOCATS, *supra* note 50, at 73-142.

courts,[124] where the *Avocats aux Conseils* possess a monopoly.[125]

The fragmentation of the legal profession in the litigation field appears minimal when compared with the myriad of professionals who practice outside the courts. In that sphere, chaos reigns supreme. The activities normally carried out by the American lawyer in the non-litigated area are divided among a great variety of French professionals; the most prominent of these are the *notaire* (notary), the *conseil fiscal et juridique* (fiscal and legal counselor), the *agent d'affaires* (business agent), the *expert-comptable* (C.P.A.), the *huissier* (bailiff), the *syndic* (receiver in commercial and civil tribunals), the *arbitre rapporteur* (arbitrator), and the *expert judiciaire* (legal expert attached to agricultural syndicates). The French view litigated legal activities in this field as *mandat* (representation), *sequestre* (receivership), *arbitrage* (arbitration), *consultation,* and *redaction d'actes* (drafting of documents).[126] Thus, the attribution of competence solely to the various practitioners is completely artificial.

In reality, most legal activities outside the area of litigation could be handled by the majority of those practitioners mentioned above. The law regulates certain categories of these professionals, notably *notaires* and *huissiers*, whose functions are specifically limited. But the broad category of legal adviser is left completely unfettered; even today, anyone wishing to act as a legal adviser may do so because the law regulates only those legal advisers who explicitly claim the official title of *conseil juridique et fiscal*.[127]

Of all non-*avocats* involved in the "non-litigated" area, the *conseils juridiques et fiscaux* constitute the most formidable threat to the *avocat*. Other professionals, such as the *notaires* or *expert-comptables,* have a limited field of expertise. The law recognizes their competence only in restricted areas of legal practice; therefore, they do not compete with the *avocat* in the pervasive and comprehensive areas of legal consultation with, and representation of, the client.[128]

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124. The highest courts are the *Conseil d'Etat* (highest administrative court) *and the Cour de Cassation* (Supreme Court).

125. Law No. 71-1130, *supra* note 23, art. 4.

126. For a table delineating the various professions, *see* ASSOCIATION NATIONALE DES AVOCATS, *supra* note 50, at 79.

127. Law No. 71-1130, *supra* note 23, art. 54. Giverdon, *Observations sur une reforme,* 1972 D.S., *Chronique* 101, 110-111.

128. The French *notaire* is a trained lawyer whose main function is the drafting of legal documents (wills, mortgages, *inter vivos* gifts, and corporate documents). The law requires his participation to render these documents valid. To challenge the "authenticity" of such acts, one must go through a difficult and complex special criminal procedure called the "*inscription de faux*." The *notaire* is a respectable institution in French society and often serves as a family counselor. *See* P. HERZOG, CIVIL PROCEDURE IN FRANCE 102-09 (1967). An *expert-comptable* is the equivalent of a C.P.A. (certified public accountant) in the United States. However, because of the *avocat's* traditional neglect of

The challenge presented by the *conseils juridiques et fiscaux,* however, is an altogether different matter. The *conseil juridique* fulfills precisely those functions that are commonly perceived as being within the province of the "modern lawyer," whose practice is becoming continually more oriented toward legal advice than toward litigation. The next section of this paper will focus on the development of the *conseil juridique,* whose continuing ascent presents the foremost challenge to the primacy of the *avocat* within the French legal profession.

B. THE CONSEIL JURIDIQUE AND THE AVOCAT

Payen, a former *Bâtonnier* of the Paris Bar whose works on professional ethics were considered to be authoritative until after World War II, listed the following among his rules of proper conduct:

> The *avocat* cannot engage in any activity outside of litigation.
> The *avocat* is not authorized to go to his client's house or to the office of other ministerial officers.
> The *avocat* cannot deal directly or carry on any discussion with an opponent.
> The *avocat* cannot act as an agent of a client in general corporate meetings or before meetings of a corporation's Board of Directors. He would act contrary to his duties if he were to visit the seat of a corporation or to become the administrator of any funds.[129]

Another theoretician went so far as to enunciate the rule that, according to custom, the *avocat* is not allowed to draft documents, because the dignity of the *avocat* lies in practicing only the forensic arts before tribunals.[130]

As discussed above, these rigid rules have been mitigated recently.[131] However, the rules help to explain both the birth and the increasing importance of the *conseil juridique*. One commentator portrayed the phenomenon in these terms:

> Despising business, refusing to go to the seat of a corporation or association, neglecting in most instances the domain of contracts, the traditional *avocat* limited his practice to that of litigation . . . . The archaic rules of the *avocat* profession have facilitated the spontaneous birth of a new profession, that of the *conseil juridique et fiscal*, which has been charged with rendering certain services to a clientele neglected by members of the bar.[132]

Although the profession was born in the nineteenth century, it remained unregulated by the law until 1971.[133] Before that time no conditions regarding education, experience, or morality were

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business matters, the *expert-comptable* often plays the role assumed by a tax lawyer in the United States.

129. *Cited in* R. TROUILLAT, LES CONSEILS JURIDIQUES 25 (1979).
130. *Id.*
131. *See supra* notes 85-115 and accompanying text.
132. R. TROUILLAT, *supra* note 129, at 26.
133. *Id.* at 30, 39.

imposed upon the *conseil juridiques*. Anyone who wished was permitted to become a legal adviser. Although the growth of business legal advisers became very important, they were not regulated by any organization resembling the Bar.[134] Some legal advisers operated under the form of powerful financial companies in times when lawyers were prohibited by law from grouping themselves into associations.[135] This oversight by the legislature was a blessing for the profession of the *conseil juridique* because it was thereby allowed to adapt itself to rising needs without the restriction of burdensome rules.

Although scorned by the bar, *conseils juridiques* have become undisputed competitors with modern lawyers. As a result, the *avocats* have attempted to halt the activities of the *conseils juridiques*. On December 30, 1952, five members of Parliament, who were also members of the Paris Bar, presented a bill designed to establish a monopoly of legal consultation in favor of the *avocat*.[136] Under that bill no one would be permitted to give legal advice, especially in the fields of tax, business, or finance, unless he were a professor of law or an *avocat*. The bill would also extend the privilege of consultation to *avoués*, to *agréés* practicing before the commercial courts, and to *notaries* and *experts-comptable* within the scope of their respective professions. The purpose of the bill, according to its authors, was to thwart "those who pretend to give legal consultation . . . without control, without discipline, and often . . . without knowledge and without scruples."[137] Although they were not expressly mentioned in the bill, the reference to the *conseils juridiques* was hardly veiled.

The *Federation Nationale des Conseil Juridique et Fiscaux*, a loosely organized group founded in 1920, reacted to the bill by proposing an amendment that would preclude anyone from giving legal consultation unless he had the degree of *Capacité en Droit*.[138] If passed, this amendment would have put the official seal of approval on the existence of the *conseil juridique*.

As expected, the Bar denied support to the proposed bill.[139] An *avocat* at the Congress of the *Association Nationale des Avocats* in

134. *Id.* at 31. *Conseils juridiques,* however, adhered to loose groupings for mutual support, but these organizations had no regulatory or disciplinary powers. There could be several groupings within the same geographic area.

135. P. Herzog & B. Herzog, *The Reform of the Legal Professions and of Legal Aid in France,* 22 INT'L & COMP. L.Q. 462, 464, n.8 (1973). *See also supra* text accompanying note 127.

136. R. TROUILLAT, *supra* note 129, at 30-31.

137. *Id.* at 30. For a list of these groupings *see* ASSOCIATION NATIONALE DES AVOCATS, *supra* note 50, at 75-76.

138. R. TROUILLAT, *supra* note 129, at 32.

139. *Id.*

Versailles in May of 1956 declared, "one should counter-attack and counter-attack vigorously." He warned that any attempt to accord legal status to the *conseil juridique* would create "a second bar which would enjoy complete freedom . . . and would very rapidly and surely eliminate us altogether."[140] As a result of this effort the profession of *conseil juridique* remained unrecognized, but its existence was not denied nor its growth derailed. Because the *avocats* were unwilling to pay the price of recognizing the existence of their competitors, the *conseils juridiques* continued to flourish, unrestrained by any semblance of regulation.

The *avocats* remain unable to eliminate their competition. This is primarily due to the strong lobbying effort exerted on the French Parliament by the *Conseils juridiques*. They count among their members many influential political figures, such as René Coty, one of the Presidents of the Fourth Republic. Coty was a *conseil juridique* even though he had been an *avocat* previously, and indeed, a *bâtonnier*.[141] The *conseil juridique* also possesses massive financial wherewithal, with certain of its number operating under a corporate structure with branch offices in most major French cities.[142]

Unable to eliminate the *conseils juridiques*, the *avocats* attempted to absorb them. A committee established in 1960, headed by Mr. Armand Rueff, recommended the creation of a commission to study the possibility of a reform of the legal profession to establish a unique body of legal practitioners.[143] The most notable undertaking along this line, however, was a report published in 1967 by a commission of the National Association of *Avocats*. The report proposed a comprehensive plan for the unification of the legal profession.[144] This scheme envisaged a monopoly of the legal profession, with those *conseils juridiques* deemed to be suitably "respectable and competent" joining the ranks of the enlarged legal profession.[145]

During the Gaullist period, when the Treaty of Rome[146] required the free movement of services between countries of the European Community,[147] the effort to unify the legal profession received a new impetus. There was a desire to bring the French legal profession in line with those of other Member States.[148]

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140. *Id.*
141. *Id.* at 32-33.
142. See *supra* note 135 and accompanying text.
143. R. TROUILLAT, *supra* note 129, at 36.
144. ASSOCIATION NATIONALE DES AVOCATS, *supra* note 50, at 567-626.
145. *Id.* at 604.
146. Treaty establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 (*in force* Jan. 1, 1958).
147. *Id.* arts. 52-66.
148. P. Herzog & B. Herzog, *supra* note 135, at 464-65.

The reformist initiative began with a convention of the National Association of *Avocats* in May of 1968.[149] The infant movement then received the support of the government.[150] The Minister of Justice created a commission composed of various representatives of the legal profession to study the matter.[151] There were high hopes for the "great reform," the purpose of which was to create a new unified legal profession encompassing all legal and judicial activities. The reform announced the birth of the "new *avocat*." In his final Cabinet meeting, President De Gaulle himself gave his benediction to this plan for unification.[152] Unfortunately, disagreement among the various practitioners prevented the reform from taking place.[153] In particular, the *conseils juridiques*, who lacked strong organization, were concerned that unification of the legal profession would mean their absorption into the well-organized existing bars, with a resultant loss of their flexibility and freedom of action.

On October 14, 1971, the National Assembly voted on the reform bill entitled, "The Law Concerning the Reform of Certain Legal Professions."[154] Article 76 of the new law declared simply that the unification of *conseils juridiques* and *avocats* would be accomplished in the future.[155] As a first step toward achieving that goal, the legislature upgraded the *conseil juridique* profession to a status comparable with that of the *avocat* by calling it a "free and independent profession."[156] The respectability thus gained by the *conseil juridique* was justified by the conditions the new law established as requirements for admission to that profession. These conditions are basically the same as those required for *avocats*, except that *conseils juridiques* do not take a bar-approved qualifying examination. The district attorney (*procureur*) gives the authorization to practice.[157]

The law also provided for the formation of a commission to study the measures deemed proper for carrying out the mandated fusion of *avocats* and *conseils juridiques*. The commission was to submit its proposals to the Minister of Justice for implementation

149. R. TROUILLAT, *supra* note 129, at 36.

150. *See* P. Herzog & B. Herzog, *supra* note 135, at 464-65.

151. R. TROUILLAT, *supra* note 129, at 36.

152. *Id.* at 36-37.

153. *See* Lobin, *Reflexions sur certains aspects de la réforme de professions judiciaires,* 1972 D.S., *Chronique* 36. *See also,* Representative Zimmermann's report, *cited in* 1971 Assemblée Nationale, *Debats* 4458; C. Giverdon, *supra* note 127, at 103.

154. Law No. 71-1130, *supra* note 23.

155. *Id.* art. 76.

156. *Id.* art. 56.

157. *Id.* art. 54.

upon completion of the study.[158] This commission was appointed by a decision issued on May 30, 1973 by the Minister of Justice.[159] A *Conseiller d'Etat* (a judge of the highest administrative court) presides over the commission, which includes representatives of the ministries of Justice, Treasury, and Labor, as well as members of the bench, *avocats*, and *conseils juridiques*.[160] The decree had initially set September 16, 1977 as the deadline for completion of the report, but to this day no propositions have been submitted to the Minister of Justice.[161]

While the project for consolidation of the legal profession can be characterized as a dismal failure, the law in the interim has consolidated the separate organizations of the *conseil juridique* and thereby turned it into a more competitive force with which the *avocats* must deal. A decree of March 15, 1978, instituted a national organization of *conseils juridiques* along with several regional chapters.[162] This decree not only endows these bodies with a representative function, but also confers upon them the right to make decisions independent of the *procureur* under whose authority *conseils juridiques* are placed.[163] The National Commission of *conseils juridiques* is competent to represent its members before public authorities, including the Ministery of Justice.[164] The Ministry of Justice accepts the advice of the commission "on any issues relating to the activities of *conseils juridiques*; to the protection of their collective interests, especially the protection of their title; the promulgation and enforcement of the professional rules of conduct, discipline, and educational standards; and relations with the other professions."[165]

If it functions effectively, the National Commission of *conseils juridiques* has a power potentially greater than the corresponding organization of *avocats*. It has never been possible for the *avocats* to create a national bar.[166] The provincial bars' fear of being sub-

158. *Id.* art. 78. *See also* declaration by Mr. Pleven, Minister of Justice at the Senate, *cited in Esquisses sur L'Avocat de Demain,* 2 GAZETTE DU PALAIS (Reforme des Professions Judiciares et Juridiques) 146 (1971).

159. R. TROUILLAT, *supra* note 129, at 69.

160. *Id.*

161. *Id.*

162. Decree No. 78-305, 1978 J.O. 1093, 1978 D.S.L. 184.

163. *Id.* arts. 7, 15.

164. *Id.* art. 14.

165. *Id.*

166. National groupings of the *avocats* are based on various factors such as politics, age, or specialty. Thus, the *Syndicat National des Avocats* is made up of communists, whereas the noncommunists belong to the *Confederation Nationale des Unions des Jeunes Avocats.* There also exists an *Association des Avocats non Postulants,* made up of "pure litigators" who engage in no procedural activities.

merged by the Paris Bar has been the principal reason that attempts at national unification of the bar have failed.

In granting the *conseils juridiques* a legal structure indicative of a seal of national approval, the legislature explained that these steps were designed to facilitate the future merger of the professions by making the *conseils juridiques* equal to the *avocats*. Yet, it is perhaps a more realistic conclusion that once the *conseils juridiques* are organized into a powerful association, it will become even more difficult to achieve this unification.[167]

The fragmentation of the legal profession, as exemplified by the *avocat-conseil juridique* dichotomy, remains essentially unchanged despite the 1971 reform. At first blush, it would appear that this reform created a monopoly for the *avocat*. Article 4 of the law of December 31, 1971 provides that no one, unless he is an *avocat*, may either assist or represent a party to a dispute, or appear and argue before judicial and disciplinary organs of whatever nature, under penalty of up to six months in jail.[168] In reality, this apparent monopoly is a mirage, for at the same time, Article 4 adds that this monopoly principle does not "create an obstacle to the application of special legislative and regulatory dispositions in effect as of December 31, 1971."[169] As heretofore noted, there are many special dispositions. In particular, the decree of July 13, 1972 expressly provides that the *conseil juridique* may assist or represent parties both in dealings with public or private institutions, and before administrative agencies.[170]

In general, the French do not favor the notion of a monopoly in any aspect of the legal profession. French courts have invariably decided against monopoly. In a 1972 adjudication by the *Conseil d'Etat*, the National Association of *Avocats* petitioned the highest administrative court, requesting the invalidation of a government decree authorizing all agents to represent parties before courts in actions for the recovery of certain debts.[171] The petitioners claimed the decree was illegal as a violation of the law of December 31, 1971, which established the monopoly of the *avocat*. The *Conseil d'Etat* rejected the petitioners' argument, holding that such monopoly, to the extent it exists, does not flow from a "general principle of law," and therefore is susceptible to regulatory limitations.[172] Thus, the

167. In 1971, a commentator wrote that the project of unification was simply wishful thinking ("un voeu pieux"). *See* Giverdon, *supra* note 127, at 112.

168. Law No. 71-1130, *supra* note 23, art. 4.

169. *Id.*

170. Decree No. 72-670, art. 2, 1972 J.O. 7556, 1972 D.S.L. 416.

171. Conseil d'Etat, decision of November 8, 1974, 2 GAZETTE DU PALAIS 458.

172. *Id.*

Conseil held that where the law does not expressly provide for monopoly, representation by "any agent" is clearly permissible.[173] For example, Article 852 of the Code of Civil Procedure permits "any agent" to act on behalf of the plaintiff in certain *ex parte* proceedings before civil courts.[174] Likewise, parties have total freedom to choose who will represent them before a commercial court.

The French Supreme Court (*Cour de Cassation*) has also interpreted the *avocat* monopoly very narrowly. In a decision handed down on November 5, 1975,[175] the court adopted the preceding conclusions of the *Conseil d'Etat*, and refused to expand the scope of the *avocat* monopoly beyond that existing at the time the new law was promulgated.[176] Subsequently, the Supreme Court affirmed a 1977 decision of the Paris Court of Appeals, rejecting the National Association of *Avocats*' contention that the *avocat* monopoly extended to representation in arbitral disputes.[177]

It is clear that the 1971 reform has not reversed the fragmentation of the French legal profession. The reiteration of some factors previously touched upon will illustrate the precarious future outlook of the *avocat* profession. The realities are as follows: the *avoué* is preferred by French appellate judges for purposes of pleading; a special bar of *avocats* continues to possess a monopoly in the highest French courts; the role of the *conseil juridique* is expanding, thanks to both the limited interpretation of the *avocat* "monopoly," and the aforementioned decree of July 13, 1972; and, the *conseil juridique* profession already possesses great financial and political clout, and is steadily increasing its national cohesiveness. In addition, the *avocat* must contend with competition from foreign legal offices in France, especially in Paris. When the above factors are aggregated, it is apparent that the *avocat* profession is being squeezed from all sides. The present state of the profession calls to mind a famous observation by Edward Gibbon who asserted that "[a]ll that is human must retrograde if it does not advance."[178] It is not suggested here that the present plight of the *avocat* profession cannot be cured; adequate time still remains for the profession to defend itself by responding creatively to the needs of modern society. But it appears that an inordinate number of archaic rules impinge upon the expansion of

173. *Id.*

174. Code de procedure civile [C. PR. CIV.], art. 852.

175. Decision of February 26, 1976, *cited in* R. TROUILLAT, *supra* note 129, at 48.

176. *Id.*

177. R. TROUILLAT, *supra* note 129, at 48.

178. 7 E. GIBBON, THE HISTORY OF THE DECLINE AND FALL OF THE ROMAN EMPIRE 304 (J.B. Bury ed. 1900).

the *avocat's* role in the legal profession. Another of these rules, the "unique office" rule, is deserving of scrutiny at this juncture.

IV.
THE "UNIQUE OFFICE" RULE

The "unique office" rule can be stated very simply: an *avocat* may not belong to more than one bar.[179] As might be expected, an *avocat* is forbidden to register with more than one bar. Moreover, within the jurisdiction of the bar, which is generally equated with the jurisdiction of the *Tribunal de Grande Instance* (district court), the *avocat* may have only one "professional domicile." It is a rare case, and then only with the consent of the *Bâtonnier,* that an *avocat* may establish a second office within the same jurisdiction.[180]

The "unique office" rule is based on the idea that an *avocat* must exercise his profession "effectively."[181] In the past, when solo practice was the only form of practice recognized by the law, the only conceivable way to practice "effectively" was to limit one's "mission" to a specific geographic location. The bar even required members to reside close to their offices. In 1879, the Paris Bar refused to admit an *avocat* who had his main residence approximately forty miles from Paris and a secondary residence in Paris. The Council of the Bar determined the latter to be a ficitious residence. The Court of Appeals of Paris held that "a domicile in Paris is a requirement for the practice of law before the [Paris] court." These decisions[182] were based on the ideas of effectiveness, availability to clients, and the necessity of supervision by the bar of the morality of the *avocat*.[183] With the advancement of means of communication, there has been a gradual loosening of this rule, but the

179. No legislative or regulatory text forbids the membership of the *avocat* in more than one bar. The unique office rule is simply a traditional rule that is not incorporated into all the bars. The Paris Bar, however, does adopt this rule. *See* Internal Rules of the Paris Bar (1979), art. 1(1).

180. *Id.* arts. 1(2), 69(5).

181. This idea is incorporated in the various texts dealing with the *avocat* profession. Article 1 of the Internal Rules of the Paris Bar states: "The *Avocat* . . . must practice his profession effectively and have a professional domicile in Paris." *Id.* art. 1. *See also* Decree No. 54-406, *supra* note 36, art. 3: "No one can be registered on the Roll of *avocats* . . . if he does not practice effectively at the Court or Tribunal."

182. J. LEMAIRE, *supra* note 15, at 101.

183. A decision of the Court of Appeals of Aix en Provence, rendered in 1822, stated that the requirement that *avocats* reside at the seat of the court where they practiced was justified by the fact that "the *avocats* can be appointed members of the [bar's] disciplinary enforcement commission or members of the legal aid bureau or court-appointed defenders of the accused . . . ," and that all this would not have been possible if the *avocat* resided elsewhere. *Id.*

evolution has been slow.[184] Many *avocats* today have their business offices at their residences. In Paris for instance, many famous *avocats* practice out of their homes, which are often located in residential areas far from the business centers. This accentuates their isolation from the business world.

The "unique office" rule also applies to group practice. No professional corporation can include members belonging to bars not within the jurisdiction of the same Court of Appeals.[185] An *avocat* can, on an *ad hoc* basis, ask permission of another court of appeals to plead in that jurisdiction, but he cannot engage in procedural activities therein.[186]

Group practice was not authorized by law until 1954.[187] Traditionally, such practice was viewed as being incompatible with the independence and individuality of the *avocat*;[188] a client could not entrust his interests to any *avocat* grouped with others in an association. This perception was based upon the rule that confidentiality must exist between client and *avocat*, a rule enforced by criminal penalties.[189] Before 1954, the only form of association between *avo-*

184. A July 18, 1878 decision of the Court of Appeals of Aix en Provence said that failure to reside in the locality where the court had its seat was not in itself a cause for disbarment. The *Cour de Cassation* also liberalized the rule. However, it still remains true that an *avocat's* professional domicile must be within the jurisdiction of the court (*Tribunal de Grande Instance*) to which the bar is attached. Thus, each *avocat* registered with the Paris Bar can have his office anywhere within the Department of the Seine under the jurisdiction of the *Tribunal de la Seine,* but he cannot establish his office at a place which, though within the jurisdiction of the Paris Court of Appeals, is outside the sphere of jurisdiction of the Tribunal. After the reform of the legal profession in 1971, the law provided for the future creation of additional district courts (Bobigny, Creteil, and Nanterre) within the jurisdiction of the Paris Court of Appeals. Law No. 71-1130, *supra* note 23, art. 3. The Paris Bar is now attached to the *Tribunal de la Seine.* Because of the force of tradition, however, the members of the Paris Bar continue to call themselves *avocats de la Cour de Paris* (*avocats* of the Paris Court of Appeals). The law provided that in the future the "professional domicile" of the *avocat* will determine whether he belongs to the Paris Bar or the newly created bars of Bobigny, Creteil or Nanterre. However, during a grace period of seven years, starting on the date that the new tribunals begin operations, those *avocats* who were members of the Paris Bar under the old jurisdictional rules can have their offices anywhere within the former jurisdiction of the Paris Court of Appeals. Internal Rules of the Paris Bar (1979), art. 1.

185. Law No. 71-1130, *supra* note 23, art. 8.

186. *Id.* art. 5(2). An exception to the rule prohibiting an *avocat* from engaging in procedural activities in another jurisdiction is allowed when the number of *avocats* in the latter jurisdiction is inadequate to handle all the cases. *Id.* art. 5(3).

187. Decree No. 54-406, *supra* note 36, art. 49.

188. J. LEMAIRE, *supra* note 15, at 416-17.

189. Article 378 of the French Penal Code deals with the breach of confidentiality by those professionals who are the "depositories" of their clients' confidence. Article 378 does not expressly name the *avocats* on the list of professionals whose breach is punishable, as it does with regard to doctors, pharmacists, or midwives, but the doctrine and the courts are unanimous in including *avocats* among this category of persons who, by means of their profession, are depositories of the secrets entrusted to them. Without exception, the laws and regulations dealing with the *avocat* provide that the *avocat* is both subject to

cats authorized by law and usage was that of a senior *avocat* and his apprentice (*stagiaire*).[190] However, even in these cases, the law insisted that there be absolute independence between the senior *avocat* and his apprentice; each *avocat* was required to practice his profession as an individual, and mutual rights and duties were to be imposed only by courtesy.[191]

Because of the housing crisis that followed World War II, it was both common and practical for *avocats* to share office space. The law contented itself with ignoring this situation, neither regulating nor prohibiting it. Under the Paris Bar rules, *avocats* practicing in the same location were still considered to be practicing as individuals who were merely sharing costs.[192] Each *avocat* was required to receive his clients in his personal office, and only the waiting room and the secretarial pool could be used in common.[193] The clientele of each *avocat* remained his own, and any fee-splitting or substitution among the *avocats* was strictly forbidden.[194]

A legislative decree issued on April 10, 1954 allowed associations of *avocats* to be authorized and regulated by the bars for the first time.[195] The Paris Bar permits this type of practice, but imposes certain restrictions.[196] The association cannot be a legal entity separate from its individual members; rather, it is merely a way of practicing the profession in common without obscuring the individuality of its members. The rights of an *avocat* cannot be transferred to another *avocat* within the association, and acts that are prohibited to one member of the association cannot be performed for him by another associate not so prohibited. The most basic rule is that each *avocat* in the association remains personally responsible to his own clients.[197] Even when the client addresses himself to the group as a whole, rather than to any particular member, each member must still answer individually.[198] Each *avocat*, therefore, is considered to be practicing his profession individually. This concept of individual

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the duty and entitled to the right of confidentiality. Decree No. 72-468, *supra* note 15, art. 89. Internal Rules of the Paris Bar (1979), art. 35; Code Pénal art. 378.

190. J. LEMAIRE, *supra* note 15, at 407.

191. *Id.*

192. *Id.* The current Internal Rules of the Paris Bar still maintain the same rules for this form of group practice (*cabinets groupés*). Internal Rules of the Paris Bar (1979), art. 67.

193. Internal Rules of the Paris Bar (1979), art. 69.

194. J. LEMAIRE, *supra* note 15, at 418.

195. Decree No. 54-406, *supra* note 36, art. 49.

196. Internal Rules of the Paris Bar (1979), art. 69.

197. *Id.* art. 69(6).

198. The existence of the association is recognized by rules which are based on principles other than that of personal responsibility to one's client. For example, no member *avocat* can represent clients whose interests conflict with those of clients of another member of the group. *Id.*

practice reinforces the "unique office" rule. The *avocat* cannot effectively practice in several jurisdictions at the same time because it is the *avocat* himself, and not the association, who personally handles the interests of each of his clients.

In 1966 the creation of a professional corporation with a personality distinct from that of its members was authorized for members of all free (*libérale*) professions.[199] A decree, issued on July 30, 1972, implemented the 1966 law with respect to the *avocat*, and further specified that this new group practice could extend to pooling and distribution of profits among the members.[200] Unlike the association, the client who makes use of a professional corporation deals not only with the *avocat* individually, but also with a corporate entity composed of several members.[201] At first glance it seems that the "unique office" rule is threatened by the recognition of the professional corporation, because this new law allows *avocats* admitted to different bars to belong to the same corporation, with the establishment of secondary offices conditioned on permission of the *bâtonnier*.[202] Because all such offices must be established within the jurisdiction of the same court of appeals,[203] however, the "unique office" rule is maintained.

In any event, the "unique office" rule has been denounced as an impediment to the *avocats*' professional advancement. Some twenty years ago an authority on legal ethics wrote that "[u]ndoubtedly, the unity of the professional domicile is traditional, but one must ask whether this rule . . . should not be mitigated to adapt itself to the needs of our time."[204] This notion is even more apparent now since the European Court of Justice has decided that legal services are among those services that the Treaty of Rome provides must be freely circulated among Member States.[205] In *Van Binsbergen*, the Court held that any activity that is open to a member of the legal profession within one Common Market nation is open to a practitioner of the comparable legal profession in any other Member State.[206] In view of the "unique office" rule, this free circulation of

199. Law No. 66-879, 1966 J.O. 10,451, 1971 D.S.L. 422, did not deal specifically with *avocats,* but simply authorized this form of group activity for members of all free (*libérale*) professions.

200. Decree No. 72-670, *supra* note 170, art. 1.

201. *Id.* art. 46.

202. *Id.* art. 2.

203. Law No. 71-1130, *supra* note 23, art. 8; Decree No. 72-670, *supra* note 170, art. 2.

204. Statement of L. Cremieu, *cited in* J. LEMAIRE, *supra* note 15, at 103.

205. *Supra* note 146, arts. 59-66.

206. Van Binsbergen v. Van de Bedrijfsvereniging voor de Metaalnijverheid [1974] E. Comm. Ct. J. Rep. 1299, 15 Comm. Mkt. L. R. (1975). In *Reyners v. The Belgian State,* [1974] E. Comm. Ct. J. Rep. 631, 14 Comm. Mkt. L. R. 305 (1974), the Court of Justice of the European Community held that a member state could not impose the nationality

legal services is very unfavorable to the French *avocat*. For instance, a German law firm can open an office in France as *conseil juridique* if the firm fulfills the qualifying conditions mandated by French law; yet a French firm cannot open a branch in Germany due to the "unique office" rule. Nor can a French firm operate as a *conseil juridique* in Germany, because German law does not recognize the existence of the *conseil juridique* for its own nationals, and therefore, under *Van Binsbergen*, Germany is not required to recognize it for nationals of other Member States.

Under French law, persons of foreign nationality can give consultations or draft documents in France, provided their activities relate primarily to foreign and international law.[207] Moreover, these conditions are not even imposed on nationals of members of the Common Market, or on those of a non-member country where reciprocity exists.[208] To register as a *conseil juridique* in France, the foreign candidate need demonstrate only that his legal training and moral character correspond with those standards normally required by the local *procureur*. A recent decision of the European Court of Justice mandates the recognition of the equivalence of diplomas among the Member States.[209]

As a result, Paris is swarming with foreign lawyers. This situation, according to certain members of the Paris Bar, constitutes discrimination against French *avocats* within the European Community. They observe that because *conseils juridiques* ordinarily are not recognized outside France, reciprocity does not in actuality exist. In addition, they note that foreign lawyers in Paris who act as *conseils*

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condition to deny citizens of other member states the right to establish themselves in that state. Reyners was a Dutch national holder of Belgian degrees who sought to establish himself permanently as an *avocat* in Belgium. In *Van Binsbergen,* the Court did not deal with the right of establishment but simply with the rendering of services. It held that residence in the country where services were rendered could not be required under Article 59 of the Rome Treaty. However, the Advisory Commission of the Bars of the European Community agreed that a "temporary professional domicile" can be required of lawyers. *See* Brunois, *Le Barreau et la Libération des Prestations de Services et des Établissements dans la Communauté Économique Européene,* 1977 REVUE TRIMESTRIELLE DE DROIT EUROPÉEN 405. A directive of the Council of the European Community of 22 March 1977 recommended that the member countries within two years take the measures necessary to facilitate the free rendering of services among the members. As a result, the French Government issued a decree on 22 March 1979 to that effect. Decree No. 79-233 1979 J.O. 659, 1979 D.S.L. 146. Under Article 126 of this decree, the foreign lawyer is excluded from activities relative to procedural matters (*postulation*) and from those reserved to ministerial officers (such as *notaires,* or *avoués* before the Courts of Appeals). In other matters, he must "act in concert" with a French *avocat,* whose office is the foreign lawyer's "temporary domicile."

207. Law No. 71-1130, *supra* note 23, art. 55.

208. *Id.*

209. Thieffry v. Conseil de L'Ordre des Avocats a la Cour de Paris, [1977] E. Comm. Ct. J. Rep. 765, 20 Comm. Mkt. L. R. 373 (1977).

juridiques have more freedom of action than the French *avocats* themselves, the latter being subject to the strict rules of their bar. For the foregoing reasons they suggest the immediate abolition of the "unique office" rule, so that the *avocat* can establish secondary offices in France and abroad.[210]

It is not likely, however, that the "unique office" rule will be changed in the near future. Fearful of the competition of the more powerful Paris Bar, the provincial bars do not favor the rule's abolition.[211] While members of the Paris Bar recognize the existence of this particular objection within France, some of them would like to see the rule relaxed to the extent of allowing them to be associated with foreign firms, or to establish themselves in other countries and to publicize that establishment.[212]

V.
TRADITIONALISTS VS. REFORMISTS: THE ONGOING DEBATE

The decline in earning power of the average *avocat* is a clear indication that the French legal profession is currently experiencing a difficult period. When compared with other French intellectual workers of similar age and education, the *avocat* is, on the whole, one of the least well-compensated of the group.[213] The pauperization of the average *avocat* is illustrated by specific figures: in 1976, 316 of the 4,618 members of the Paris Bar declared no income whatsoever, while 3,170 members, the bulk of the declarants, listed their income as being less than 20,000 dollars.[214] Thus, 75 percent of the *avocats* in the Paris Bar are plagued by very real financial problems.

The *avocat's* insistence on maintaining the characterization of his profession as a "mission" is a deterrent to his demand for more adequate fees. The client resents any financial burden imposed upon him by the *avocat* as excessive. Such a public perception does not exist in the case of the *conseil juridique*, because the relationship between the *conseil juridique* and the client is more businesslike.

Ironically, the public's perception of the *avocat* is inaccurate. Part of the problem is due perhaps to distinquishing features that are most visible when the *avocat* is carrying out the forensic act that remains his trademark. Notable among these are: the gown in which he appears before the public; the "center-stage" role he occu-

210. For an expression of these views, *see* Levi-Valensin, *supra* note 7, at 17-20, 27.
211. Interview with Mr. André Brunois, former *Bâtonnier* of the Paris Bar, in Paris (July 24, 1980).
212. *Id.*
213. Ribs, *supra* note 1, at 10.
214. Olivier, *supra* note 3, at 5.

pies in litigation, perhaps comparable to the role of the tenor in an operatic play; and the drama that surrounds those *causes célèbres* that the media have a tendency to magnify beyond all proportion. Also, some *avocats*, as a result of the personal wealth of their families, project a degree of affluence well beyond the means of the average *avocat*. These factors create and perpetuate the image of the *avocat* who "lives well," seemingly at the expense of the public, and who somehow does not fit properly into the modern world.

In the modern world, where the consumer has become accustomed to mechanization and the use of sophisticated equipment, the French *avocat* preserves an artisanal mode of operation. With a few exceptions, due to his isolation from the business world, and his lack of means, he continues to operate as an artisan. In the eyes of the modern consumer, this fact does not enhance the stature of the *avocat*; he does not project himself as an efficient and modern professional by fashioning his practice after that of lawyers performing in less complex times. In the words of a famous member of the Paris Bar, the *avocat* has become "a marvelous anachronism, artisanal, almost biblical."[215]

Members of the bar are aware of these problems and forces are beginning to clamor for change.[216] This movement has caused some trepidation within the bar with respect to the types of reforms that may occur. There is fairly widespread disagreement as to the degree of change needed to effect the desired renewal of the profession. The French legal profession is heavily bound by tradition. Settling upon an acceptable accommodation between tradition and adaptability is one of the more difficult obstacles faced by the profession. At this point two of the proposed solutions will be examined.

One proposal is to make the *avocat* a civil service position.[217] Proponents of this position argue that, by having the lawyer selected for his position and paid by the government, job security would be strengthened, and income earned by members of the legal profession would be more equally distributed. Under this scheme, cases would be assigned to lawyers by the *Bâtonnier*. If this plan was adopted, a lawyer would no longer have independence in selecting his clients, in fixing his legal fees, or in determining his mode of operations.[218] On the other hand, one commentator contends that some vestige of the

215. Isorni, *Les cas de Conscience de l'Avocat, cited in* R. TROUILLAT, *supra* note 129, at 35.

216. For an expression of these clamors for change, *see* Levi-Valensin, *supra* note 7, at 26-29. An interview with Mr. Philippe Jacob, a member of the Board of the Paris Bar, in Paris (July 22, 1980) confirmed the existence of this attitude throughout the Bar's ranks.

217. *See* A. Damien, *Le Barreau Quotidien,* at 57.

218. *Id.*

traditional independence could be preserved by awarding this civil servant (*fonctionnaire*) a status similar to that of a university professor.[219]

Some dissipation of the traditional independence has already occurred. For example, those *avocats* whose main clientele is made up of one or two clients, such as those representing insurance companies, do not select their clients; their fees are relatively fixed, and they are in reality little more than employees of the insurance company they represent.[220] Also, in the provincial areas, nearly 50 percent of the *avocats*' cases are commissioned by local bureaus of legal services.[221]

The above reasons for converting the position of the *avocat* to that of a civil servant have not gained much popularity within the bar.[222] However, the fact that certain *avocats* even suggested such a drastic step denotes the perceived scope of the difficulties that currently assail the legal profession.

The majority of the reformists prefer a different solution to the present plight of the *avocat*. This group suggests improving the existing system by expanding the scope of the lawyer's activity

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219. Oliver, *supra* note 3, at 506-07.

220. Interview with Mr. Pierre Bellet, *supra* note 81.

221. *Id.* Legal aid in France began long ago. It was reported that the *avocats* of the Middle Ages pleaded without fees for the poor "in the love of our Lord"; the *Etablissement de Saint Louis* confirmed this medieval practice by commissioning *avocats* for the "defense of the poor, widows, and orphans." *See* note 9, *supra*. A law of 22 January 1851 regulated the legal aid system for the first time. The latest law governing legal aid in France is Law No. 72-11 of 3 January 1972, supplemented by Decree No. 72-809 of 1 September 1972. These laws create a system of total and partial legal aid which is extended to all individual citizens and residents of France. As for corporate entities, only non-profit organizations are entitled to legal aid. The various *bureaux* of legal aid are composed of judges, *avocats,* and civil servants, and are installed at the seat of all civil and administrative courts. The *bureaux* examine the applications for legal aid and decide on their admissibility. The *bâtonnier* designates *avocats* for the cases transferred to him by the *bureaux.* Prior to 1961, it was the practice of the Paris Bar to appoint only young apprentice lawyers to handle legal aid cases, but since 1961, full-fledged lawyers have also been appointed by the *bâtonnier.* In 1978, the Bureau of Legal Aid installed at the Paris Court of Appeals received 171,009 requests and rejected only 14,459. BULLETIN DU BÂTONNIER, January 30, 1979, at 1. Court costs and *avocat* fees are generally borne by the State, or in limited cases by the losing litigants.

Besides their participation in the system of legal aid supported by the State, the *avocats,* especially the young members, also actively participate in bar-organized programs of free consultations given to the public. The Paris Bar, for instance, installs centers of free consultations in all the *arrondissements* of Paris. A Bureau called "S.O.S. *Avocats*" is established at the seat of the Paris *Palais de Justice,* seat of the Paris civil and criminal courts. The Paris Bar also maintains a permanent telephone answering service. The *Bâtonnier* requires that all members of the Paris Bar participate in these services, at least once a year, "in the interest of the public and for the good image of the Paris Bar." BULLETIN DU BÂTONNIER, February 5, 1980. In 1976, 7,094 free consultations were given to the public by the "S.O.S. *Avocats*" of the Paris *Palais de Justice* alone. BULLETIN DU BÂTONNIER, March 22, 1977.

222. Interview with Mr. Pierre Bellet, *supra* note 81.

beyond litigation.[223] It is easy to understand why the *avocat* is presently viewed as an unfortunate necessity by the common Frenchman, for it is the nature of reasonable people to avoid disputes if at all possible. This explains the popularity of the *conseil juridique*.[224] Yet, who would be better trained to advise people as to how they might void lawuists than those whose sole domain it is to try them? Until the *avocat's* permissible activities are broadened, he will continue to be perceived as a tool of those who resort to legal battle, rather than as a proponent of "preventive medicine" in the legal sense of the term.

Those who suggest an expanded role for the *avocat* have met with opposition from hard-core traditionalists who generally view proposed reforms as an affront to the proud and ancient heritage of the French Bar. Disagreements in principle between traditionalists and reformists are not the only factors complicating the landscape for one who would paint an optimistic future for the profession. Political concerns have also entered the picture. Recently the *Syndicat National des Avocats*, the association of *avocats* affiliated with the French Communist Party, accused the Socialist-oriented *Confederation Syndicale des Avocats* of practicing "modernism." The former group went on to warn that such a path is strewn with the danger that *avocats* will abandon their rightful role as "auxiliaries of justice" in pursuit of profit as the "auxiliaries of enterprises."[225]

The fear of the hard-core traditionalists is motivated by their romantic view of the profession, rather than by any dogmatic or politically inspired warnings. The traditionalists worry that the profession could lose its "soul" by turning to the use of aids such as computers; they believe that the introduction of technology will of necessity result in a diminution of personal contact between lawyer and client.[226] They warn that, within a short span of time, the French *avocat* could forget his ancient mission in the pursuit of justice and become virtually indistinguishable from his American counterpart.[227] Reformists do indeed point to the American lawyer, however, as a sort of model, but they are not infatuated with the methods of the American lawyer in preference to their own. Instead, they desire to attain the same economic status for the *avocat* in

223. Within the Paris Bar, a *Commission de Publicité Fonctionnelle* was created in 1978 to convey to the public that the role of the lawyer is not confined to litigation. BULLETIN DU BÂTONNIER, June 13, 1978, at 1.

224. There are presently about 10,000 *conseils juridiques* and 14,000 *avocats* in France. Ribs, *supra* note 1, at 10.

225. BARREAU DE FRANCE, Aug.-Sept. 1977, at 10.

226. Olivier, *supra* note 3, at 507.

227. *Id.*

French society as the American lawyer enjoys in his own.[228]

In general, the reformists do not wish to destroy and rebuild the French legal profession, but prefer to improve it through reforms designed to enable French lawyers to regain the influential role they lost as their society increased in complexity. It is probable that the traditionalists and reformists can reach an agreement on their philosophical differences; the goal of preserving the primacy of the *avocat* within the legal profession is a shared bond between them that should serve as a unifying force. A more pragmatic difference of opinion, that which deals with the movement of the *avocat* into the business world and the impact of that shift on the already unequally distributed economic pie, could be a bit more difficult to resolve.[229]

CONCLUSION

Virtually all members of the profession are in agreement that the scope of the *avocat's* activities needs to be broadened, at least to some degree. A somewhat limited response to modern needs has already begun to occur, as is illustrated by the proliferation of group practice in France. Sole practitioners continue to predominate in France, but a noticeable drift toward group practice has materialized. The average number of lawyers associated in group practice is approximately five, but larger firms have begun to appear in those areas involved with business. Certain *avocats* have proposed the merger of existing firms to enhance competence and to promote more efficient utilization of resources within the existing firms.[230] In addition, novel programs have been introduced to inform the French public of the ability of the *avocat* to assist in the area of counseling.[231]

Two important factors point toward an eventual rejuvenation of the French Bar. First, young people have been entering the ranks of the profession at an increasing rate, and thus, in the past twenty years, the average age of the *avocat* has declined from sixty to thirty-five.[232] Second, the emphasis in France today is on producing a

228. *See* Ribs, *supra* note 1, at 10.

229. Maître Philippe Jacob, a "reformist" and a respected member of the Paris Bar, acknowledged that the danger of widening the gap between the rich and the poor in the legal profession by a concentration of law firms "*à l'américaine*" does exist, but he also said that, in the long run, examples are contagious and that the change will be beneficial to the French legal community as a whole. Interview with Maître Philippe Jacob, *supra* note 216.

230. *Id.*

231. *See supra* note 146. Special programs to establish contacts between the *avocats* and corporations also have been organized. However, the response of *avocats* to the latter programs is still lukewarm.

232. Interview with Maître Philippe Jacob, *supra* note 216.

more internationally oriented *avocat*. A questionnaire sent to 900 young *avocats* of the Paris Bar indicated that ten percent of them had received international training.[233] This desired "internationalization" of the *avocat* is, without a doubt, an outgrowth of France's pride in its role in the development of the European Economic Community. As the youthful and more cosmopolitan *avocats* begin to take on the leadership roles within the bar, they perhaps will push harder for liberalization of those rules they view as obsolete. In this particular respect the laws of other Common Market countries, of which the modern *avocat* must be increasingly aware, will have a profound effect on the thinking of entrants into the *avocat* profession. As parochialism recedes into the past, the *avocat* may see it as an advantage to become more like the *conseil juridique*; such a choice might well serve as the climacteric precedent to a thriving era for the French Bar. Hopefully, if the *avocat* decides to pursue this course of action as a means of reviving the profession, the bar will no longer require the *avocat* to renounce his bar membership.[234] The bar can play an important role in facilitating a renewal of the prestige its membership yearns to regain.

233. *Id.*
234. Decree No. 72-468, *supra* note 15, art. 61.

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