

On the Professionalism and Marketization of Lawyers

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Abstract

New-quality legal technology, represented by artificial intelligence, is precipitating a series of revolutionary transformations in knowledge management, organizational models, and business paradigms within the legal profession, resulting in the erosion of its traditional advantageous position and the emergence of novel legal service models. This has engendered intense debates between professionalism and marketization in lawyering, stemming from intensifying involutory competition within the profession and escalating market competition externally empowered by capital and technological enhancements. Through discussions on professionalism and marketization, this paper posits that the legal profession inherently possesses publicness, professionalism, and autonomy, advocates that the legal services market should operate under a framework of regulated market competition, and demonstrates that professionalism and marketization in lawyering are not mutually exclusive oppositions, but rather complementary relationships characterized by dynamic equilibrium and integrated development.

Full Text

On the Professionalism and Marketization of Lawyers

Abstract: New-quality legal technologies, represented by artificial intelligence, are bringing a series of transformative changes to the legal profession in knowledge management, organizational models, and business paradigms, leading to the gradual erosion of the traditional advantageous position of lawyers and the emergence of novel legal service models. This has sparked intense debates over the professionalism and marketization of lawyers, driven by intensified involution-style competition within the profession and market-based competition reinforced by external capital and technological forces. Through an examination of lawyers' professionalism and marketization, this article argues that the legal profession possesses publicness, professionalism, and autonomy; proposes that the legal services market should be a regulated market competition;

and clarifies that professionalism and marketization are not mutually exclusive oppositional concepts but rather complementary relationships characterized by dynamic balance and integrated development.

Keywords: lawyers; professionalism; marketization; legal technology

The professionalism and marketization of lawyers constitute two crucial dimensions for understanding the characteristics of the legal profession. With the rise of capital and technology challenging traditional theories of legal professionalism, lawyers widely feel that their lofty professional ideals have been shattered by harsh reality. Should the legal profession steadfastly uphold its professionalism or embrace the market? How to balance these two aspects has become a profound issue requiring deep reflection within the legal community.

I. Are Lawyers Merchants?

Lawyers, doctors, and teachers have been regarded as professions since their inception, rather than forms of “hired labor.”[1] Max Weber further noted that the independent “practice” of doctors, lawyers, or artists represents autonomous professional specialization.[2] The professionalism of lawyers encompasses publicness, professionalism, and autonomy.[3]

From the perspective of publicness, the legal profession is characterized by public service as its core feature, with justice and public welfare as its objectives.[4] Durkheim’s sociology of law similarly emphasizes that professionalization should be oriented toward explicit public service, wherein professionals apply theoretical expertise to practical work to serve society, deriving its legitimacy from societal grant of control to the professional community. Legal professional groups with certain political functions are organizations explicitly empowered by law, thus introducing the concept of “social intermediary organizations.”[5] In other words, law firms are “organizations” rather than “companies,” possessing political functions and public duties rather than being merely commercial service enterprises.

Regarding the professionalism of lawyers, legal professionals are specialists who meet certain requirements in political quality, professional competence, professional ethics, and qualifications, forming professional groups engaged in legislation, law enforcement, judiciary, legal services, and legal education and research. In China, the legal profession specifically refers to the occupational group comprising those who have obtained the national unified legal professional qualification and serve as judges, prosecutors, lawyers, notaries, legal arbitrators, as well as civil servants in administrative organs engaged in reviewing administrative penalty decisions, administrative reconsideration, administrative adjudication, and legal counsel.[6] The resulting legal professional community constitutes the cornerstone of national rule-of-law construction, and building an independent, professional, and robust legal professional community represents an inevitable choice for achieving a society governed by law. On December 6, 2021, during the 35th collective study session of the Political Bureau of the 19th CPC Central

Committee, Xi Jinping emphasized the need to strengthen political guidance for lawyers, educating and guiding them to consciously uphold the basic requirements of supporting the leadership of the Communist Party of China and China's socialist rule of law, striving to become good lawyers satisfactory to both the Party and the people.[7] Therefore, whether through the legal professional qualification examination for market entry, the apprenticeship assessment for lawyer practice, the annual evaluation of lawyers' professional competence, the annual inspection of law firms, or the requirements of Xi Jinping's thought on the rule of law for the legal profession, all serve to maintain and emphasize the professionalism of lawyers.

Concerning the autonomy of the legal profession, the core of enabling professional groups to fulfill their ideal functions lies in their self-governance. Autonomy, also termed co-governance, allows lawyers to conduct self-management and supervision through professional associations to ensure compliance with industry standards and professional ethics. China's bar associations are autonomous organizations granted to the legal profession by law, serving as industry bodies through which lawyers maintain professional rights and exercise self-regulation. Since the restoration of the lawyer system in 1979, the legal profession has evolved from state legal workers without autonomy, to legal service providers with limited autonomy, and currently to a model combining judicial administrative guidance with industry self-discipline, demonstrating continuous evolution toward autonomy as the ultimate goal. The autonomy of the legal profession is founded on professional independence, with professionalism and sociality as core functions, where professional independence also forms the basis for professional ethics and practice rights protection. Thus, the autonomy and independence of the legal profession represent important distinguishing features that separate lawyers from legal consulting firms that possess only market attributes without professionalism.

In summary, the core elements of lawyers' professionalism include publicness, professionalism, autonomy, and independence. These professional characteristics serve as criteria for distinguishing lawyers from non-lawyers, as value judgment criteria for resolving conflicts among social public interest, client interests, and lawyers' self-interest, and as the theoretical foundation for the legal profession's social value distinct from other legal service providers. Therefore, lawyers' professionalism provides the best interpretation of the question, "Are lawyers merchants?"

II. Legal Services as a Regulated Market Competition

The marketization of the legal profession is not entirely contradictory to its social responsibility; their conflicts can be reconciled. The commercialization of lawyers is itself justifiable, as it is rooted in social practice and subject to external environmental influences and constraints. However, such commercialization must be kept within certain limits, as excessive commercialization would hinder the fulfillment of lawyers' social responsibility, necessitating an urgent search for

a balance point between social responsibility and commercialization.[8] That is, while pursuing commercial interests, the legal profession must adhere to professional ethics, avoiding damage to public interest and social responsibility caused by excessive pursuit of economic benefits.

From the perspective of market risks associated with rights and responsibilities, the marketization of the legal profession also introduces commercial risks, including intensified regulation and diversified clientele, which may affect lawyers' career development and income stability. External regulatory agencies are increasingly imposing penalties on the legal profession, with law firms facing not only significant tax risks but also compliance considerations from regulators such as the China Securities Regulatory Commission. When law firms face substantial fines or industry bans, partners must bear economic responsibilities according to law, directly leading to collective partner team departures and business contraction. Internet-promoted firms, while generating high profits, also attract numerous complaints, triggering industry disciplinary actions. These risks arising from excessively marketized professional behaviors are fermenting. Unregulated marketization brings not only penalties for violators but also erodes public trust in the legal profession.

From a cost-benefit perspective, economists argue that law firms, like all economic entities, are driven by self-interest, requiring income from legal services to sustain operations and development, with profit-making as their goal. Second, as market entities bearing tax obligations, although current tax policies are unfriendly to law firms due to their exclusion from corporate treatment, tax compliance remains a statutory duty for every firm. Finally, law firms must pay greater attention to costs and revenues, as no partner is willing or able to sustain long-term losses. Moreover, this profit motive compels law firms to continuously upgrade office spaces, software, and hardware facilities to enhance service quality and efficiency in fierce market competition, thereby attracting both lawyers and clients.

Therefore, the commercial attributes of the legal profession constitute the economic foundation for the survival and development of lawyers and law firms.

From the perspective of internationalization, foreign-related legal services constitute an important component of the socialist rule-of-law system with Chinese characteristics, requiring the cultivation of world-class law firms to enhance China's discourse power and rule-making capacity in global legal affairs. This initiative aims to provide high-quality legal protection for enterprises and citizens "going global," safeguarding national overseas interests. For China's legal profession to truly integrate into the international legal services market, it must strengthen internal development and enhance international competitiveness while confronting opportunities and challenges, all of which depend on competition in the global legal services market. For instance, under the UK's 2007 Legal Services Act, non-lawyers are permitted to own commercial entities providing legal services in England and Wales. Law firms lacking market-oriented genes would clearly struggle to adapt to international legal services market com-

petition. To grow into world-class institutions and elevate Chinese lawyers' international discourse power, law firms must enhance their commercial attributes to meet the foreign-related legal service demands of Chinese enterprises and citizens, as such services encompass not merely litigation representation and legal counsel but a broad market integrating commerce, finance, taxation, and law.

In summary, based on stakeholder theory and sociology of law, intensified “involution-style” market competition is compelling the legal profession to accelerate market-oriented deployment. However, the legal profession must necessarily be a regulated market competition behavior, requiring adherence to professional conduct norms. Only by adopting market-oriented measures such as expanding the legal services market, improving service methods, and enhancing service quality can the profession adapt to increasingly stringent regulatory market competition measures and promote the modernization of the legal profession.

III. How to Balance Lawyers' Professionalism and Marketization

The competitive yet cooperative relationship between lawyers' professionalism and marketization manifests most objectively and authentically in the legal services bidding market. Achieving a win-win situation for both the economic and social values of the legal profession, resisting involution-style competition, and forming a sound ecosystem of fairness and mutual benefit requires all stakeholders to improve the allocation of market factor resources, particularly necessitating law firms and professional associations to balance the relationship between professionalism and marketization while deepening reforms for high-quality development of the legal profession.

Internal Market Perspective

Industry self-regulation rules already permit lawyers and law firms to conduct advertising and marketing while adhering to certain codes of conduct.^[9] With the development of the live-streaming industry, new marketing models such as influencer lawyers and internet-promoted firms have emerged endlessly, with capital control over law firms even triggering continuous public opinion crises. Consequently, how to balance professionalism and marketization has become a hot issue within the legal profession. First, law firms are partnership organizations built on a foundation of human collaboration; management must convince partners that the firm is not merely a profit-generating tool but also embodies important non-financial professional ideals, enabling partners to practice according to professionalist ideals. Once this challenge is addressed, it can create stronger firm-specific capital, forming the core bond between partners and the firm, as it is based on financial and non-financial returns that only law firms can provide—returns unattainable by purely market-oriented entities such as legal consulting firms. Therefore, the market value and professional value of

lawyers can be both complementary and contradictory, with each firm needing to resolve this dynamic in its own way and achieve balance under its specific circumstances.[10] Second, law firms should strengthen capital power. Although capital investment in partners cannot be introduced, the following approaches can address capital shortages: for instance, transforming organizational forms through internal partner capital, shifting from traditional pyramid, rocket, or diamond-shaped partner structures to flat partner mechanisms;[11] or integrating small firms of fewer than 20 lawyers into hundred-person firms through “vertical integration and horizontal alliance” to achieve scale. Naturally, we also anticipate that judicial administrative organs nationwide will draw on the pilot reform experiences of Shanghai and Hainan to break through partner qualification restrictions, allowing professional institutions in finance and auditing, as well as legal technology companies, to become law firm partners, which would open entirely new capital pathways for China’s legal profession. Finally, to address both professional requirements and market demands, law firms should emphasize the research, development, and application of legal technologies such as legal artificial intelligence. Legal AI serves as a crucial production factor driving law firm modernization. Whether responding to efficiency demands from low-price competition, meeting diverse client legal service needs, or confronting technological challenges from non-lawyer commercial entities, only by embracing legal technology can law firms transform from traditional “handicraft-style” service models to modern legal service paradigms, adapting to the shift from low-frequency, high-consumption legal service markets to inclusive legal service markets. The era of legal service technological revolution triggered by legal technology has already arrived.

External Market Perspective

The greater marketization competition for lawyers originates from external market competition. First, unregulated legal consulting firms and corporate legal departments are proliferating nationwide. Despite numerous “solemn statements” issued by local bar associations and so-called “clean-up and rectification” campaigns jointly conducted with market supervision departments, these attempts to monopolize the legal services market by excluding competition lack legal basis. However, regulated and third-party audited entities such as banks, state-owned enterprises, and listed companies often require legal service providers to be qualified law firms, though this stems from their own compliance needs rather than conclusions about external market competition. Consequently, the massive non-litigation legal services market will face even fiercer competition. Second, lawyers widely perceive increasing external competitive pressure, decreasing legal fees, and rising professional regulatory requirements. Most law firm partners believe this represents a permanent structural change in the legal services market. Simultaneously, legal technology companies are amplifying this external market competition trend. Yet regardless of how intense external market competition becomes, the elements of lawyers’ professionalism remain unchanged, and neither professional values nor ideals have fundamentally shifted.

In a market mixed with genuine and fake providers, lawyers' professionalism actually highlights the social value of the legal profession more prominently. However, upholding professional ideals and confronting harsh market realities remains a constant contradiction, often easier said than done. How to balance professionalism and marketization remains an insurmountable challenge for law firm decision-makers. Finally, legal consulting firms and legal technology companies targeting C-end consumer markets and B-end private enterprise legal counsel markets are market competitors empowered by capital and technology, while most law firms are "handicraft workshops" of fewer than 20 people, lacking talent, capital, and technology. Clearly, most small law firms will be in a weak market position in this round of competition triggered by legal technology. Without reform and innovation, they will face natural extinction as senior partners age.

Therefore, how to break through and reclaim the soon-to-be-lost legal services market becomes key to balancing professionalism and marketization. Only through reform and innovation can this breakthrough be achieved. To this end, three aspects should be addressed to reconcile the contradictions between lawyers' professionalism and marketization: first, establishing a business community based on partner co-governance rights, transforming the traditional cost-sharing "cake-dividing" professional model into a partner equity-centered "cake-making" market model; second, deepening a professional community centered on material and non-material incentives, building a moat for the legal services market around professional elements such as sociality, professionalism, autonomy, and independence; and third, innovating modern law firms driven by capital and technology, shifting from traditional human capital-driven professional competition to market competition based on "capital + technology." In conclusion, as Stephen Hawking once said, "In my lifetime, I have witnessed profound social changes. Among them, the most profound and increasingly impactful on humanity is the rise of artificial intelligence."^[12] In the next decade, the era of legal AI entities will arrive, where they will no longer be mere tools and assistants but partners and collaborators for lawyers, and the contradictory relationship between lawyers' professionalism and marketization will achieve dynamic balance and integrated development in the age of legal artificial intelligence!

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Note: Figure translations are in progress. See original paper for figures.

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