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# Conventions at Work: On Forensic Accountant's Intermediation

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The way business is shaped by conventional norms and controlled by legal regulation has been the object of much investigation. Neo-institutional studies have offered in-depth inquiries into organizations to show how accepted social conventions modulate competition and the interactions between economic partners within the business world (Rizza 2008). *Economics of convention* (in short EC), despite its difference with neo-institutional approaches (Favereau 2011), has insisted on the importance of these conventions (Diaz-Bone/Thévenot 2010), to understand the models of firms, the stock market exchanges, the functioning of market professionals or recruitment. This has also proven true concerning the practices of accounting and business management (Hopwood/Miller 1994; Chapman/Cooper/Miller 2009; Chiapello/Gilbert 2009). More recently, economic sociology as EC had developed their interest for the role of law and the articulation between conventions and legal rules. Swedberg (2009) introduce comments to a special issue of this newsletter, proposing two topics that need to be better understood, Roman law and financial law, two legal environments that we develop exactly in our contribution. Towards EC and derivating from the observation that firms are not legally grounded (contrary to societies and labor), recent works develops the necessity to rethink the great deformation of firms, their legal responsibility and who own them (Favereau 2012). Other works analyze the role of intermediaries as lawyers or judges, and how such specific professional markets are working or transformed in last years (on business lawyers, see Bessy 2012 in this issue).

The aim of this study is thus to examine the often overlooked and yet essential category of forensic expert witnesses in accounting, finance and business management known in France as French forensic experts in economics

("FFEE"). As professionals in business litigation, these experts are regularly appointed for business valuations, asset accounting and profitability analyses, inquiries into partnership disputes and business misconducts, criminal financial flows tracking, such as unfair competition: their reports are summoned to inform and advise judges on the facts underlying a business dispute. Because they are regularly appointed by the judges<sup>1</sup> and provide, directly or not, an assessment of the fairness of business practices, this paper will show that FFEE are also key players in the definition of the conventions governing business in France. They are not only specialists inscribing an expertise within a specific field of Justice. They are at the very heart of business and already have a professional activity as accountants, statutory auditors, finance managers, and so on. By focusing on FFEE and their activities, this study illuminates the role and practices of unknown but key actors, symbolizing typically "intermediaries of law" highlighted by the contributions in Bessy, Delpeuch and Pélisse (2011) and participating to the elaboration and transformation of business and judicial conventions.

## 1. Methods, data, theoretical framework

To analyze who the accredited forensic experts really are and what they really do, several methods and types of data were used in an initial comparative study on forensic expert witnesses in economics, psychiatry and linguistics (Pélisse/Charrier/Larchet/Protais 2012). Sent to nearly 1000 FFEE identified through the 35 lists of the appeal courts and the supreme court, a detailed questionnaire was returned by 144 experts. Regarding the information readily available on the lists concerning the age, sex, seniority and location of all the accredited experts in finance economics of France, these 15% appear as broadly representative of the whole.

A second type of data was obtained through extensive interviews with 15 experts on the lists of the appeal courts of Aix-en-Provence, Lille, Lyon, Paris and Versailles. Five judges, three of them were responsible for the experts listed by the appeal court, were also interviewed to gather the views of the courts.

We used the theoretical framework of the EC to illuminate these data. Indeed, this perspective allows us to understand how, in each trial and mission, FFEE have to manage, help and equip the ways one or many conventions “pass a test” and contribute to the evolution, stabilization or changes of the convention(s). In this sense, forensics in economics are not only intermediaries. They are also active mediators between the judge and the parties and the aim of this paper is to enter into the ways they assume and develop this role which transforms them as depositary of conventions of business (for the judge) but also conventions of justice (for the litigants). In this sense, this position makes forensics in economics more than a filter and rather a turntable and an analytical key entry point to study the intertwined business and judicial conventions of economic life, if we consider conventions as “general principles of good and fair, grounded in provisions which allow to evaluate situations” (Eymard-Duvernay 2009).

## 2. The French legal forensic model: a lack of conventions?

For over two centuries now, judges in France have relied on specialists in economics, commerce and finance, to answer their queries and help them determine economic facts under litigation (Charrier 2007; Charrier/Labelle 2009). In 1913, these specialists formed an association of forensic accountants next to the *Trial Court of the Seine*, before forging several other associations, such as the largely dominant national association of forensic accountants (CNECJ), the national association of forensic experts in business and technical services (CNEACT) or the national association of experts in finance and business auditing (CNEFD). As Dumoulin (2007) has clearly shown, the activity of the members of these associations is largely codified by law. The rule of law is thus the first influence on the practices of forensic witnessing, since it builds the institutional framework of forensics and defines the ideal expert.

In the German context, all forensic experts are civil servants. In general, in the Anglo-Saxon context, each party provides their own experts. Because of this, the legal framework of forensic witnessing in France is considered as very specific (Jasanoff/Lynch 1998; Prichard 2005; Labelle/Saboly 2008; Charrier/Escobosa/Leclerc 2011). Indeed, it articulates the continental position, which relies on expertise initiated, controlled and conducted solely for the benefit of a judge, while at the same time depending on an accredited pool of specialists from each area of exper-

tise that a judge may require. The three main features of this unique system emerge from the texts of the various codes framing French procedures and justice (Moussa 2008; Dumoulin 2007).

The first feature is that forensic experts are, above all, technicians, hired to assist judges on technical and non-legal issues. Because they have the adequate specialized and scientific knowledge, they are able to forward learned opinions and to collect, organize and assess information, by adequately managing the evidence adduced by the complainants and defendants. Unlike Anglo-Saxon experts, however, they cannot make a profession out of treating the financial aspects of litigation.

The second feature concerns the existence of lists of experts, from which judges can freely draw. Every year, the French courts of appeals compile and update these lists, accrediting for five years specialists by field of activity: medicine, construction, psychiatry, economy & finance, etc.; and then by sub-specialty: neurology, acoustics or corporate finance, for example. Anglo-Saxon experts, on the other hand, do their best to be identified by lawyers, even if they cultivate objectivity and technical competence to be admitted as genuine forensic experts, and not just as witnesses before a judge (Dwyer 2008).

The third important feature concerns the extremely detailed jurisprudential and procedural framework within which forensic examinations are to be carried out. Without detailing the whole procedure here, one can note that, at the term of their missions, FFEE must submit a report to the judge. In civil and criminal cases alike, these reports are theoretically purely informational: they may be brought to bear witness during a trial or they may be purely and simply shelved. Moreover, the experts are not commissioned to attempt to reconcile the parties involved, even though their work may eventually do so. Again, the situation of Anglo-Saxon experts differs: most of their work takes place in court, while they are publicly supporting their reports or answering the questions of the adverse party during cross-examination.

Finally, a series of normative texts draw up a model for forensic expertise, which typically resembles the “decisionist” model of expertise defined by Habermas (1978). “Based on an axiological divide between the one who decides and the one who advises, and taking for granted the subordination of the second to the first, it has become an archetypal form, a sort of pre-theory spontaneously

mobilized to describe forensic expertise and more broadly any kind of expertise" notes Dumoulin (2007, p. 26). At a European level too, as goes to show a decision by the *Court of Justice of the European Community* (Penajora, March 17, 2011), forensic experts are plainly defined as experienced service providers. Such definitions keep expertise under strict control, by ultimately imposing an absolute subordination of all experts to their missions.

In sum, what draws the legal framework of expertise in France is an expert who help the judge by illuminating the facts – and only the facts –, without any role of qualification neither interpretation. In this view, there is finally no conventions in this activity, which is absolutely framed by the rule of law, letting to the expert a sole technical expertise grounded on his professional skills and his specific knowledge of accountant, finance manager or economist.

### 3. A practical and ambiguous status oscillating between various representations

Yet, as L. Dumoulin (2007) has also shown, the model represented in the legal texts, supported by the expectations of magistrates and by the expert associations, is neither empirically nor heuristically valid. Indeed, FFEE necessarily express, more or less openly, several technical options, which are also choices having conventional background. The missions resulting of trials are peculiar occasions for the specialist of accounting or economy appointed by a judge to open the black boxes that are the figures or other measures considered as objectifying or describing the reality of firms or business relations. Experts have to seek information, evaluate their relevance, put to test them and make numbers talk, even unmask realities beyond arguments and columns of figures. In other words, FFEE express the conventional nature of the management tools and the reductionist operation, which transmutes reality into figures.

By making this activity, FFEE import value judgments, which have several possible effects. They have to present written reports characterized by neutrality. For that, they conclude often their demonstration by relating two or more options for the judge, letting him the decision, even if the experts can highlight or even influence one reasoning more than one other. Experts stage-manage their neutrality by presenting the plurality of possible judgments depending how they consider the facts, e.g how they interpret them and the information they have for their mission.

As to the judges, though they are indeed the only judges and are in no way legally bound by the expertise, they are nonetheless dependent of the reports they have commissioned and are submitted, at least in part, to the authority of science and specialized knowledge. The conventional role of forensic in economics is thus not only inscribed in their activity but also real through the influence they could have on the judge, that is to say on the judicial decision and finally the law.

Even the recent and important decision of Penajora mentioned above reveals more ambiguous than the simple expression of the decisionnist model of expertise. Indeed, the *European Court of Justice* questioned if the French forensic expert could influence the judicial verdict of the judge. Its negative answer is explicitly due to Mr. Penajora specialty (translator and interpreter), which is, for the main experts and judges, not real legal experts (see chapter 4 written by Larchet in Péglise 2012). In other words, the question is of great interest for main forensic experts, showing that their participation to the verdict needs to be asserted, despite the codes prohibitions of such possibility. The present status of forensics is thus really debated, revealing how various conventions could regulate this activity.

It follows that the general figure of FFEE oscillates between two opposite representations. The first and most common is that of a technical specialist, a connoisseur of the habits and customs of his art, a provider of skills for the benefit of justice. From the perspective of legal specialists (Frison-Roche/Mazeaud 1995), the "decisionist" model leads to identifying the expert as a fair-minded professional, anxious to serve the institution. The second common representation of the expert is that of a judge's delegate, a person in charge of the resolution of the dispute from a technical perspective. From this point of view, the FFEE conclusion settles the factual dispute between the parties. Experts can thus be accused of usurping the role of the judge and benefit from the legitimacy of the judiciary. They become notables, identified by their unique social position rather than their professional skills.

Such opposing representations are of particular importance when it comes to specialists in accounting, management and finance. Indeed, is it not said today that finance governs society? Even the law and its institutions must today be economically efficient. This economic rationale implies that every decision, every ruling has a cost – if not a price – and is thus of the competence of accountants. It can be imagined that FFEE could play the first role within the ex-

pert/judge couple. To rise these opposite representations or even fears, the perspective of EC could exactly be fruitful. Indeed, it offers theoretical concepts, tools and reasoning which allow to understand what are doing concretely the experts, how they play a role of intermediary and active contributor of the conventions, if we define them as "collective frameworks upon which the players are supported in their conflicts and assessments in public" (Diaz-Bone/Thévenot 2010). Experts influence particularly the ways legal compliance is considered, defined, and used by the parties and the judges (Edelman/Stryker 2005). Because the sense of compliance is intertwined between business sphere and legal norms, forensics in economics are discrete but key actors, with others, whose contribute to the managerialization of the law and the legalization of the business (Edelman 2011). But what are concretely doing the experts?

#### 4. What are experts doing? From a business to a craft

The judicial missions given to FFEE are various, though most involve monitoring and verifying the standards of business relations. Three main types of mission thus structure the activity of FFEE.

The first one consists in establishing the accounts between litigious parties; that is to say, to observe and quantify the liabilities of both. Such missions can require a high level of technical accounting, such as when quantifying the respective business activity of partner companies. 33% to 50% of all missions fall into this category (including or not divorce and inheritance cases) and  $\frac{3}{4}$  of the experts reporting it as 1 out of 2 appointments by year. This first type of mission should be distinguished from another type, which essentially calls for the intervention of an accountant: this is the case in 5.4% of missions during which FFEE are summoned to comment on the quality of annual accounts. Missions tracing financial flows likely to be of a criminal nature (abuse of corporate assets) are a third type, representing 2.5% of cases. It is thus already obvious that missions requiring pure accountancy skills represent but a minority of all missions, yet accountants represent the majority of the experts engaged in forensic economics (see below). These forensic missions can be highly complex affairs, which reach into the very heart of the business world. An expertise and its conclusions thus contribute to the definition of the standards of good business conduct and to how conflicts between parties can be resolved.

Yet, in 1 out of 3 cases, experts are commissioned to compute economic damage due to partnership dissolutions, industrial incidents, family disputes, construction litigations, unfair competition and so on. This type of mission, during which financial specialists contend with accountants, is at the heart of expertise. More explicitly than in the "settling the accounts between parties" type of mission, experts must enquire into the way business strategies are managed, can be predicted, are anticipated, are built.

Auditing of companies represents the last and least frequent type of mission commissioned by judges (13%). This involves the possible intervention of several competing groups of experts, each offering a different way of broaching business valuation. The perception the judges have of such cases and their judicial decisions will thus depend on the specializations and particular competencies of the experts involved and on the ways and means of their audits. But, most of the time, what makes a difference – and also clearly indicates what is expected of experts in general –, has less to do with the specific professional abilities of experts in accounting or those in finance, than to the skills and knowledge that either can have.

Like for forensic accountant in common law, skills and activities needed for these missions are not those that the professionals make use of most in their usual professional activities. As shows the way judges appoint indifferently specialized experts, the real skills expected from FFEE have very little to do with their professions. In other words, different and specific conventions are used and performed by accountants and auditors when acting as legal experts. For example, timeliness is of importance, as 40-hour missions can take up to 18 months to accomplish. According to FFEE having answered the questionnaire, a quarter of all missions last between 4 and 6 months, while another quarter last between 13 to 18 months, and this regardless of the number of hours of the mission itself. This spread in time implies strict scheduling, requiring from the expert a capacity to build, stick and report an agenda that depends largely on the attitudes of litigious parties, and not, as in accountancy and auditing activities, on predictable season from one year to the next. Beyond their technical knowledge and regardless of their professional skills as accountants, auditors, managers in banking or finance, experts must also have organizational, procedural and relational skills and knowledge.

These skills are different from those required in professional context: accountants keep and organize accounts, assist

companies in implementing the good management and legality of its daily practice, develop budgets and forecasts, book annual accounts of corporations, audit them, and so on. It is a very organized occupation, which uses software tools and paper procedures, framed by standard attitudes and tasks and guaranteed by the periodic quality controls of the order of accountants (Ramirez 2005). It is also an occupation that “produces” without the need for much contact with clients. Moreover, though accountants must be able to justify their recommendations in the face of the law, their work remains somewhat opaque. This is also true for auditing, an activity occupied by most accountants and forensic experts. Auditing is even more “invisible” than accounting and even more standardized and empowering, and is in no way limited to certifying accounts, or sitting on board meetings. The time scales of their missions, destined to reach their term with an audit report or the closing of the accounts, are also very marked. The high degree of normalization, the importance of technical and computer-assisted accounting and auditing tools, the responsibilities of these professionals who have an obligation of discretion concerning their work, encourage the deployment of a bureaucratic organization and industrial conventions. Set methods, the division of labour, delegation, reporting are the daily means of the professional practice of such experts in their main activity (Power 1997). Experts involved in management, business valuation or finance, know all about these issues and some are even engaged in similar industrialized organizations during their usual professional activities.

Forensic expertise, on the other hand, is quite different. In the French legal system, the accused must be able to contradict the allegations they face, transforming any expertise into a collective affair, led by the commissioned expert, but influenced by the lawyers of the parties or the parties themselves. Indeed, experts depend wholly on information that the parties are willing to give them. Moreover, the contradictory principle requires dialogue. Experts, even though preceded by their reputations or experience, are under the obligation to hear the arguments exchanged, to explain their own reasoning and to specify the sources of the usages they base their recommendations on. Each and every mission is conditioned by situations, which are absolutely unique. This uniqueness is also true in the eyes of the law and is guaranteed by the involvement of lawyers supporting their customers. In forensic matters, unlike accounting, only the objective is known at the onset of the mission, the means of achieving this goal is not normalized.

Consequently, forensic matters are difficult to delegate, as all missions require in-depth knowledge of a technical field, practical experience and the ability to enter the judicial arena. Communication skills could well be the key to FFEE, who must be able to skillfully handle requests for extensions in deadlines or for further financial support, when briefing judges on the opposite claims and in order to secure the payment of their own fees. Recourse to a court order, when a party is recalcitrant to transmit the information required, is not, however, a common practice. 26% did say they resorted to a judge’s summons, while 56% stated explicitly that they refused to do so. Finally, the specific technical, procedural and social skills, necessary to any forensic activity implies that FFEE are personally invested in the management of their missions: they are the master craftsmen appointed by judges. In other words, as their professional milieu is governed by the logic of the industrial convention and requirements, FFEE are rather engaged in a regime (in the sense developed by Thévenot 2006) mixing the logic of the *domestic convention* dominated by personal commitment or even tradition, and the logic of the *network convention* where specific, relational, and procedural more than economics skills are very important to obtain missions, be commissioned by judges and influence business and judicial ways used to solve conflicts.

## 5. Who are experts? A milieu crossed by professional conventions

To understand the conventional roles and the conventions structuring this milieu of experts itself, it is thus necessary to describe sociologically, even if shortly, these professionals. Despite variegated individual trajectories and differing stakes within the worlds of finance, accounting and management in economics, forensic experts form a relatively homogeneous group. They are generally accountants, who have had some form of legal training during their higher education: 71% of FFEE are marked as specializing in accounting, and more than 1 in 5 of those having answered the questionnaire had some form of legal education. The strong dominance of accountants is accompanied by a certain uniformity in the individual profiles in terms of gender (91% are male), age (the average age is 57) and qualifications (most had postgraduate degrees, 4 or 5 years of higher education, and some even had a PhD). Finally, the forensic experts questioned work, for their vast majority, in an independent practice (86%), removed from all technical networks or associations (77%), employing fewer



than 10 people and with a small turnover (51%). The clientele of these practices is qualified as nondescript (79%), generally consisting of small or very small businesses (64%), most of which were family run (61%). There are, however, some experts employed by bigger companies, financial institutions, or academic institutions. These are mainly the experts in finance, who operate in such environments as senior executives or managers specialized in a banking or actuarial activity. Some experts also mentioned a clientele of very large groups and international companies (23%) and 17% of them reported belonging to a consortium of law firms (4%) or to a network (13%).

The field of financial experts in common law countries differs from the one identified. Working naturally within a team and organizing their work according to their specialties and not as a secondary activity, forensic accountants are specialists within a professional group, rather than a caste within a professional body (Williams 2002). On the contrary, being a FFEE is, for the vast majority of all experts, a secondary activity, incidental to a main occupation. Only a few experts, often accredited by the French supreme court, are engaged in a greater number of missions and at a much larger scale than average. They have made themselves known by engaging in the transmission (training) and management (associations) of the know-how and social networks of their specialty and they have banked on accreditation by a public authority. These common traits to the actors of FFEE promote certain mimetic practices, imposed by the formal distance maintained between judges and experts, and by a small set of technical procedures shared by all forensic experts. Expert associations, bringing together more than two out of three FFEE, play a role in the matter, by filling in the uncertainty in which experts are left concerning the expectations of the law. Skills are shared and to some extent formalized, but most knowledge is transmitted during regularly held informal exchanges among peers, and sometimes in the presence of magistrates, by these associations.

Finally, we see the necessity of conventions at three stages of this activity of FFEE. The legal framework, even if it formally prescribes a very strict decisionist model subordinating totally the experts to the judge, doesn't allow for understanding the real activity of FFEE and actual, even unknown, influence on the trial, its temporality, argumentative structuration or, sometimes, final decision. In other words, informal but structured conventions are used by the judges (in the formulation of their mission and what they are waiting) as the experts (in their actual activities and

how they write their reports) to use the expertise at the benefit of the judicial truth and close litigation. One can thus understand the conventional way adopted by the judge to choose whose expert he needs from the FFEE list, that is to say why the judges appoint embedded and well-known professional in the milieu of forensic expertise. Through this social milieu and its very shortly description, we show finally how the conventions and the definition of what is legal compliance, at the intersection of business worlds and judicial institutions, are diffusing between FFEE and from them to the judges. In sum, forensics in economics bears and translates business conventions to the judges and help these conventions to be reinterpreting in terms of judicial decision. But they translate also reciprocally judicial conventions towards the world of business.

## 6. Conventions at work: the forensic translator's role from business conventions toward judicial decision... and reciprocally

Indeed, the first movement described above is more or less evident, even if we show how and through what sort of mediation or mechanisms (like actual activity very different of the classical activity of the professional or a very singular social milieu), the business conventions are translated into the judicial world of trial and rules of law. But what we aim at showing to conclude is the reciprocal role developed by FFEE to translate the judicial conventions into the business world, during the "little trial" which is the expertise.

Expertise is the time for dialogue between the expert, the parties and lawyers in the identification of appropriate financial evidence. But it is also a doubt period: sometimes the expert is faced with a dilemma when he "feels" technically the damage, but at the same time he thinks that the trial rules will not favor the "victim." For example (coming from personal survey of one of the authors, involved in the field), a publisher wrongfully terminated the contract binding him to an advertising agency. A lower court and then an appellate court conclude that such a termination was wrongful. A chartered accountant is given a mission to quantify the increase in customers contractually promised, and to estimate the loss suffered by the advertising agency. The expert calls numerous meetings notably because the conduct of the expertise is slowed by delays, due either to the agency (reluctant to disclose detailed forecasts and information concerning its sector of activity) or to the editor (who only provided figures, when summoned to do so, on the years under its new advertising agency). To over-

come the blockage, the expert directed questions straight to the trade association, which circulates very general information. During the meetings, the expert presents tables with the information he has managed to gather, noting their deficiencies, and commenting at each time what he has had to deduce. During the final meeting, the expert explains that ultimately, the advertising agency had hardly uncovered any customers under the terms of the contract but that it had managed to very quickly compensate this loss in profits after the contract was broken. The discussion at this meeting is very heated, the advertising agency noting that the publisher would not be punished for his wrongful termination on the grounds that the agency had managed to cope with the incident. After final submissions, the Expert concludes that there was virtually no loss of benefit for the agency, given the way its affairs developed afterwards. But his report also assessed, in case the court was interested solely in the contractual relationship between the parties, which benefits the agency might have made had such benefits not escaped it.

This example identifies several characteristics of financial expertise. Indeed one can see the expert asks the methodological framework in which he asks the parties to prove their claim. He leads them by this methodological framework to do calculations and document their claims against a judicial perspective that takes into account the economic knowledge of the company. The expert has also led to implement pro-active means for collecting information despite reluctance of the parties: there are characteristics of the managerial dimension of expertise and the fact that the expert works anymore by methodological means than by technical means. The debate at the last meeting also reveals the gap that can exist between an economical approach (*market convention*) and a judicial approach (*civic convention*), which is driven by the legal expert. Indeed the expert assessed that the victim made losses because of the guilty according to financial criteria, he also quantified that the victim was able to achieve such profits despite the fault of the guilty. The expert, in charge of legal dimensions, links the losses and profits that the victim realized, with respect to a unique enterprise perspective. As a result the expert notes that the victim did not suffer injury. Nevertheless it is a form of windfall to the guilty because the victim was initially damaged and was able to compensate by reorganizing its firm. And we notice that the expert, perhaps uncomfortable with this situation, chooses to report the judge what would be the loss quantum if the judge was sticking to the only relationship between the two parties, without taking into account the

ability that the victim had to cope with the injury suffered. This case reveals thus how the forensic expert is not only about informing the judge with business conventions (financial losses and profits); but also about guiding parties with judicial conventions or the civic convention (enterprise compensation). And this role of guidance is perhaps as important as the information for the judge: we have indeed to remember that judges are always free to reject the analyses and conclusions of the commissioned experts. Dumoulin (2007) has stressed the strategic use that judges make of forensic reports, which involves an ability to “pick and choose”, undermining the apparent influence of forensic experts. Moreover, by law, very few experts receive a copy of the ruling following their reports.

Finally, as mentioned by FFEE in the questionnaires and interviews and confirmed by the judges, contacts between judges and experts during missions are rare. These are limited almost exclusively to procedural issues concerning the confidentiality of certain documents, the reluctance of a party to provide necessary information, a discussion on the scope of the mission, the deadline and budget of the expertise. All the technical issues are left to FFEE. Thus, though experts know that they are acting on behalf and under the supervision of judges, they also understand that this control does not concern their technical expertise, and that this will generally not be commented by the judge, whether the latter is satisfied or not. FFEE are thus quite free to fulfill their missions, as they feel fit. Is this not, however, how one distinguishes an expert from a very knowledgeable person: the fact that he or she is also capable of bringing interlocutors to an acceptable solution without needing to call on the commissioner?

The story described above has also shown an expert active in his relationship intermediation, which suggests another argument to the judge giving him the relevant technical information. This pro-activity is also observed for market damages (an injury that judges seem insensitive and whose experts are trying to take over the calculations of the parties) and audit methodology (when expert considers the damages evidence from the review of the organization and procedures of the company more than through the documentation of traces).

We can thus conclude that the conventional dimensions of this activity and milieu of expertise are essential to understand how business and justice meets in France. This role and this activity are – as other intermediaries – very essential to structure and evolve the conventions regulating business



relations, particularly when their conflict dimension deports the actors to the courts. With a radiating influence, beyond mere legal rules governing business relations and also affect the current uses, forensics in economics contribute clearly to the changing conventions on which economic actors can use to interact.

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## Endnotes

<sup>1</sup>Following Durand-Barthez and Langlart (2012), the global turnover of FFEE exceeds 500 million \$ per year.

## References

- Bessy, Christian, 2012: Law, forms of organization and the market for legal services, in: *Economic Sociology – European Economic Newsletter*, this issue.
- Bessy, Christian/Thierry Delpeuch/Jérôme Pélisse (eds.), 2011: *Droit et régulations des activités économiques. Perspectives sociologiques et institutionnalistes*. Paris: LGDJ.
- Chapman, Chris/David Cooper/Peter Miller (eds.), 2009: *Accounting, organizations, and institutions: essays in honour of Anthony Hopwood*. Oxford: Oxford University Press.
- Charrier, Emmanuel, 2007: De la reddition des comptes des commerçants à l'appréciation du gouvernement de l'entreprise: l'évolution du rôle des experts comptables judiciaires depuis le Code de commerce de 1807. In: Perette Rey (ed.), *Bicentenaire du Code de commerce 1807-2007 – les actes*. Paris: Dalloz, 135-153.
- Charrier, Emmanuel/Labelle, R., 2009: Expertise comptable de justice et juricomptabilité. In: Bernard Colasse (ed.), *Encyclopédie Comptabilité Contrôle Audit*. Paris: Economica, 773-781.
- Charrier, Emmanuel/Francisco Escobosa/Guylaine Leclerc, 2011: *L'expertise en comptabilité finance*, colloque L'expert de justice en Europe, Compagnies près les Cours d'Appel du Grand-Est, Reims, 8 avril, <http://www.canal-u.tv>.
- Chiapello, Eve/Patrick Gilbert, 2009: La gestion comme technologie économique. In: Philippe Steiner/François Vatin (eds.), *Traité de sociologie économique*. Paris, PUF, 325-366.
- Diaz-Bone, Rainer/Laurent Thévenot, 2010: La sociologie des conventions. La théorie des conventions, élément central des nouvelles sciences sociales françaises. In: *Trivium* 5. URL: <http://trivium.revues.org/3626>. German version: URL: <http://trivium.revues.org/3557>.
- Dumoulin, Laurence, 2007: *L'expert en justice: De l'invention d'une figure à ses usages*. Paris: Economica.
- Durand-Barthez, Pascal/François Langlart, 2012: *Choisir son droit. Conséquences économiques du choix du droit applicable dans les contrats internationaux*. Paris: L'Harmattan.
- Dwyer, Deirdre, 2008: *The judicial assesment of expert evidence*. Cambridge: Cambridge University Press.
- Edelman, Lauren B., 2011: L'endogénéité du droit. In: Christian Bessy/Thierry Delpeuch/Jérôme Pélisse (eds.), *Droit et régulations des activités économiques*. Paris: LGDJ, 85-110.
- Edelman, Lauren B./Robin Stryker, 2005: A sociological approach to law and the economy. In: Neil J. Smelser/Richard Swedberg (eds.), *The Handbook of Economic Sociology*. New York: Russell Sage Foundation.
- Eymard-Duvernay, François, 2009: Les enfants des cités en économie. In: Marc Breviglieri/Claudette Lafaye/Dany Trom (eds.), *Compétences critiques et sens de la justice*. Paris: Economica, 173-186.
- Favereau, Olivier, 2011: "New institutional economics" vs "economics of conventions". In: *Economic Sociology – European Electronic Newsletter* 13(1), 22-27.
- Favereau, Olivier, 2012: Chapitre 1: synthèse des travaux. In: Roger Baudoin (ed.), *L'entreprise, formes de la propriété et responsabilités sociales*. Lethellieux, pp. 17-104.
- Frison-Roche, Anne-Marie/Denis Mazeaud, 1995: *L'expertise*. Paris: Dalloz.
- Habermas, Jürgen, 1973: *La technique et la science comme idéologie*. Paris: Gallimard.
- Hopwood, Anthony/Peter Miller, 1994: *Accounting as social and institutional practice*. Cambridge: Cambridge University Press.
- Jasanoff, Sheila/Michael Lynch, 1998: Contested identities: Science, law and expert practise. In: *Social Studies of Science* 28(5/6), 675-686.

- Labelle, Réal/Michèle Saboly**, 2008: Forensic accounting in France: Emergence and development. In: *Journal of Forensic Accounting* 9(1), 83-94.
- Moussa, Thierry**, 2008: *Droit et pratique de l'expertise*. Paris, Dalloz.
- Pélisse, Jérôme/Emmanuel Charrier/Caroline Protais/Keltoume Larchet**, 2012: *Des chiffres, des maux et des lettres. Une sociologie de l'expertise judiciaire en économie, psychiatrie et en langues*. Paris: Armand Colin.
- Power, Michael**, 1997: *The audit society: Rituals of verification*. Oxford: Oxford University Press.
- Prichard, Fred**, 2005: *Experts in civil cases: An inside view*. New York: LFB Scholarly Publishing.
- Ramirez, Carlos**, 2005: *Contribution à une théorie des modèles professionnels. Le cas des comptables libéraux en France et au Royaume-Uni*. Thèse de doctorat en sociologie. Paris: EHESS.
- Rizza, Roberto**, 2008 : Néo-institutionnalisme sociologique et nouvelle sociologie économique: quelles relations? In: *Revue Interventions économiques [online]* 38. URL: <http://interventionseconomiques.revues.org/292>
- Swedberg, Richard/Laura Ford**, 2009: Law in economy and society: Introductory comments. In: *Economic Sociology – European Electronic Newsletter* 10(3), 3-8.
- Thévenot, Laurent**, 2006: *L'action au pluriel*. Paris: La Découverte.
- Williams, John W.**, 2002: *Playing the corporate shell game: the forensic accounting and investigation industry, law, and the management of organizational appearances: Ph. D. in Sociology*. York University: Toronto.