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How much should professional markets be regulated? An introduction

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The regulation of professional markets is "extensive and growing"(Kleiner, 2011) and even "growing faster" than any other "major labor institution" (Kleiner, 2006, p. 17; see also Kleiner and Krueger, 2011). Accordingly, the economic literature that analyzes regulatory practices is also growing and it provides us with a more precise understanding of their virtues and flaws. However, whether the virtues (and advantages) of professional regulation are greater or not than the limitations (and costs) remains unclear. Indeed, no clearcut, straightforward definitive arguments that would legitimate or de-legitimate these practices has been proposed. But this is small surprise, and should not be taken as a proof that economic analyses of the phenomenon are useless. What the literature tells us is that the genuine alternative is not between to regulate or not to regulate professions. There does not seem much doubt that at least some regulation is useful and even necessary. The really important question that has to be raised is rather how much regulation has to be used to control the functioning of professions? That is, should professional regulation be strong or light? This is the question to which the papers gathered in this special issue aim at answering. These papers compare two forms of professional regulation: on the one hand, a strong form of regulation (licensure, or licensing, that is also sometimes called "mandatory licensure") that implies that no one can enter the market and exert the profession without having the license and, on the other hand, a lighter form of regulation (certification, also called voluntary licensing) in which no one is prevented to practice a profession -- certification establishes no entry and not being certified does not prevent the exercise of the profession. To be more precise, the comparisons are made profession by profession: auctioneers (Elisabetta Lazzaro and Nathalie Moureau), lawyers and legal markets (Camille Chaserant and Sophie Harnay; Mario Pagliero and Ed Timons), health professions (nurses, physicians and pharmacists) (Ivy Bourgeault and Michel Grignon; Marc Law and Mindy Marks; Niels Philipsen).

Fundamentally, the opposition between licensure and certification, between strong and light professional regulation, amounts to opposing public interest and private interest arguments. The former refers to the "obvious ... need" (Slaughter, 1986, p. 241) to protect the "uninformed public against incompetence and dishonesty" (Gellhorn, 1976, p. 11). Without a strong, mandatory regulation imposed on markets, one may expect that workers or practitioners would be less competent and they therefore would supply services of a poor quality and that would be detrimental to consumers. By contrast, licensure means more skilled and competent workers and therefore also means an improved quality of the services they provide to consumers. Economically, this is justified by market-failures type of arguments. The main point here is that there are asymmetries of information between professionals and consumers (see Arrow, for

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instance, 1962; 1963) generate adverse selection (Akerlof, 1970) or moral hazard. Also, although less frequently put forward, are the market failures that result from positive (resp. negative) externalities effects that are created by high (resp. low) skilled workers. All in all, the problem is the failure of self-regulation or spontaneous, market-like arrangements between individuals to produce good results for the consumers and for the society.

But, as we, in particular economists, know there is no free lunch and every benefit comes at a certain price. Then, the question is does the society really benefit from such regulations? Or, it is important to understand what is the price to pay, or the costs to endure, to benefit from more skilled and competent workers and services of a better quality. This is precisely what discuss the defenders of the private interest arguments against a strong professional regulation. The reasoning is relatively straightforward and consists in stressing that mandatory licensure gives a monopoly right to the licensed workers or practitioners. Now, as economic theory shows, monopolies generate irretrievable losses (and no benefits). This means that regulating professions is more costly than beneficial, at least socially -- because of its impact on employment and on prices for consumers -- since the benefits are private, captured by the workers of the regulated professions under the forms of rents (Friedman, 1962; on capture and regulation, the classic reference is Stigler, 1971); as a corollary, in certain professions, insiders, established workers have been tempted to secure their rents against newcomers through an excessive, and therefore not efficient, protection (an instance is given by Rayak, 1983). Thus, costs exist and do not seem to be negligible, and even seem to exceed the benefits that the regulation of professions generate.

Theoretically, the two sets of arguments are acceptable and therefore a strong (based on mandatory licensure) and a light regulation (based on certification) are both justified. The only way to provide a precise answer is through empirical studies. This is what the papers gathered in this issue do. What is their conclusion? Do they conclude in favor of one or the other of these two forms of regulation? Actually, the answer is mildly negative. Each profession appears to be a specific case and no global answer could apply to all professions similarly. In addition, the conclusions vary with the phenomena that are analyzed. But, there nonetheless seems to be a tendency in favor of a light rather than a strong regulation. This appears when one ask the question of the existence of a positive competitive effect associated with light regulation or conversely a monopoly effect linked to strong regulation. And the answer is a yes-but.

For instance, Elisabetta Lazzaro and Nathalie Moureau analyze the case of art auctioneers in France and in Great Britain or in the USA. They show that the French heavily regulated system -- ruled by the administration, with many entry barriers about age, nationality, morality, training and the purchase of an office -- effectively protected the established commissaire-priseurs against competitive pressures but that weakened their position and lead to a dramatic decline in their market shares. By contrast, art auctioneers in Anglo-Saxon countries were freer -- regulation was closer to certification than to licensure since authorities simply required auctioneers to display their name and residence -- and Anglo-Saxon auction houses were not only able but also incited to develop various practices to attract clients and this allowed them to increase their market shares. The profession's regulation has increased the decline of the French market. It has declined relative to the international one. In 2003 the French market share was 9.3 %, the US's was 41.6 % and the UK's 28 %. But, one must qualify this conclusion. In effect, Lazzaro and Moureau also show that less control and lighter regulation

resulted in negative effects (and thus additional costs) under the form of speculation or pernicious patterns of behavior. So, competition may be more detrimental than beneficial. At least, this seems to be what happened for art auctioneers.

For their part, Marc Law and Mindy Marks show that a move towards a stronger form of regulation does not necessarily imply less competition. More precisely, there is no evidence that the shift from certification to licensure that occurred in most American states between 1950 and 1970 for nurses implied an increase in wages or in participation in the registered and practical nursing professions. For them, "the evidence from the two nursing occupations is not consistent with the hypothesis that licensing is strongly anticompetitive relative to certification" (Law and Marks, this issue). Thus, moving from a light to a stronger (strong) system of regulation, at worst, confirms Arrow's conclusions about licensing and, at best, has no effect on the functioning of the market. But, once again, this general result about the absence of competitive effect, depends on other variables that, Law and Marks claim, deserve closer study. In particular, among the conclusions they reach, it appears that the impact of licensure relative to certification on the functioning of a professional market depends on the level of skills required on this market. Thus, a shift from certification to mandatory licensure is likely to have a bigger impact in professions where workers are less skilled than in professions where workers are highly skilled. And, the impact will be more negative in professions where workers are less-skilled than in those where most workers are highly skilled and the demand for low-cost alternatives is small. In other words, do they conclude, "the welfare losses from mandatory licensure of physicians and other health professionals may be less than the losses arising from the mandatory licensure of manicurists and cosmetologists."

By contrast, Ivy Bourgeault and Michel Grignon end their article with a conclusion rather favorable to light regulatory mechanisms. They reach this conclusion by analyzing a specific but particularly interesting phenomenon: the impact of regulation on the permeability of health professional boundaries -- both inter- (between medicine and nursing) and intra-professional between domestic and internationally trained physicians) mobility in four OECD countries (Canada, the United States, the United Kingdom and Australia). Their general conclusion is that "we are witnessing an overall increased fluidity or permeability of professional boundaries both inter-professionally and intra-professionally." From this perspective, the market seems to be more efficient than state, and therefore market-oriented systems (based on light regulation) are more efficient than state-oriented systems because they facilitate (especially) inter- (but also) intra-professional mobility. Therefore, "[t]he market seems to overwhelm medical dominance under a wave of allied health professions supplying a close substitute that can be chosen freely by plans reflecting consumers' preferences. The state usually relies on doctors themselves to promote primary care reforms and lead family health teams, thus reinforcing medical dominance (or, at least, governance)." (Bourgeault and Grignon, this issue) In other words, they evidence a competitive advantage resulting from less strict professional regulation.

The same type of conclusion seems to prevail when one, as Niels Philipsen does, analyzes the situation of pharmacists, a particularly heavily regulated in European Union and some other developed countries (even in those, like in the USA, in which the health care system is relatively liberal). Compared to other professions (accountants, lawyers, architects, …), pharmacists appear to be heavily regulated. Licensing requirements are strictly defined (for example, individuals in all EU member states must have a diploma) and entry into the market may be restricted (numerus clausus,

establishment policy, …). The main insight that Philipsen lies in his discussion of the result of an ECORYS study on regulatory restriction in the field of pharmacies in each of the EU member states. The authors focus on three indicators for performance (productivity, allocative efficiency and quality). The physical restriction has negative impact on these three indicators. Firstly, the operating restriction in the pharmaceutical profession has a negative effect on productivity (defined as the efficiency of drug distribution). Secondly, allocative efficiency (defined as the operational profit margin) is negatively influenced by these operating restrictions. Thirdly, the author finds that licensing is negatively correlated with service variety (as a proxy for quality). But educational requirements are positively correlated with service variety.

When one turns to the legal market, the conclusions tend to be relatively similar as the ones found in the analyses of the health professions. Let us start with the paper written by Mario Pagliero and Edward Timmons. They propose a cross-country analysis of occupational regulation in the European legal market, in which it appears that regulation is based on licensing in all European countries but four -- Denmark, Finland, The Netherlands and Sweden -- in which where regulation is based on certification. There also exist requirements for entry into the profession. There include a law degree, a preliminary exam and a period of training. Professional associations play an important role in setting entry requirements. Pagliero and Timmons show that in countries with certification, professional associations are more powerful and obtain favorable entry regulation. Certification also has a positive effect on salaries. The fear of unqualified lawyers entering the field is a reason to implement licensing. The study shows that there are no significant differences between countries with certification and licensing. The main justification for occupational licensing is to protect consumers from unqualified lawyers. But countries with certification do not seem to have experienced entry of less qualified lawyers. To put it in different words, their conclusion is rather favorable to certification but not decisively.

Finally, the analysis proposed by Camille Chaserant and Sophie Harnay and their conclusion is slightly different. They depart from the standard perspective that opposes public to private interest arguments by assuming that the "legal market" is *not* homogenous. They argue that one should take into account the heterogeneity of the legal services provided by the different legal professions to understand how to regulate these professions. Market-based solutions may perform well in certain circumstances and not as well in others. For instance, Chaserant and Harnay "claim that a distinction should be made between legal services with search, experience and credence characteristics, leading to a pluralistic regulation of the market for legal services." (this issue). Thus, market-oriented systems can be used to "regulate" the provision of legal services with searching and experience goods. In that case, competition incites lawyers to deliver a high quality service to develop a good reputation and increase incomes in the future. Self-regulation can used when services are credence goods. But also, for certain services, they show that strong regulation is required. But, in those cases, one should take into account the asymmetries of information between regulator and lawyers. This is an original and innovative argument that shows that even when regulation is required, one should be cautious in implementing it.

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