

PROOF

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3 **Markets and States: Forms of**
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Banks as Masters of Debt, Cost Calculators and Risk-Sharing Mediators: A Discreet Regulatory Role Observed in French Public- Private Partnerships

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External, top-down regulation by public authorities is increasingly being combined with endogenous bottom-up regulation by private actors to produce various forms of 'joint' regulation (Lazega, 2003). The financial sector – banking in particular – plays a central role in this joint regulation. This chapter looks at a case in point, describing the central but discreet role of the banking sector in the construction of a new institutional system combining public procurement and private markets through the promotion of PPPs (public-private partnerships) in France.

Businesses usually try to participate as much as possible in the governance of their own markets. They try to shape their opportunity structures, design their environment and uphold the social mechanisms allowing them to cooperate. At the inter-organizational level, at least two different sociological traditions deal with the issue of market governance, one stressing the formal and often exogenous aspects of this governance, the other the informal and often endogenous character of self-governance. In the first tradition, with its socio-legal outlook, exogenous governance or 'regulation' (Ayres and Braithwaite, 1992; Hawkins, 1984; Hawkins and Thomas, 1984; Shapiro, 1984; Weaver, 1977) is provided by government agencies backed up by courts. The relevant studies focus on questions such as the decision by government agencies whether to prosecute deviant companies. Such decisions are not clear-cut and often result from trade-offs between official inspectors and company managers. This is especially the case when companies are

1 facing risks such as large-scale losses or layoffs, and sometimes bank-
 2 ruptcy, should the law be strictly enforced. The second tradition focuses
 3 on inter-firm arrangements promoting self-governance benefits for
 4 firms in their inter-organizational transactions and more informal con-
 5 flict resolution mechanisms. Precisely because litigation is costly, firms
 6 prefer informal dispute resolution whenever possible, especially when
 7 they have long-term continuing relationships (Macaulay, 1963; Raub
 8 and Weesie, 2000). In this second tradition the focus is on pressures to
 9 conform, exerted by one organization on another. Pressures are based
 10 on resource dependencies and reputation (Raub and Weesie, 1993).
 11 Each tradition thus focuses on a different kind of actor intervening in
 12 governance and incurring the largest share of costs of control: mainly
 13 the State and/or companies themselves – the latter sometimes through
 14 industry representatives or through selection of contracting partners
 15 (Blumberg, 1997). In reality, the two governance systems combine in
 16 variable ways. One example is provided by Ayres and Braithwaite in
 17 their analysis of ‘responsive self-regulation’, which shows the existence
 18 of ‘enforcement pyramids’ that exist between state regulatory agencies
 19 and corporate actors. Such pyramids express the possibility, for industry
 20 representatives and law enforcers, to escalate from persuasion to warn-
 21 ing letters to civil penalties to criminal penalties to licence suspension
 22 and revocation. Actors know that such enforcement pyramids exist.
 23 They know that each way of enforcing contracts is only one of several,
 24 and that an escalation can be deliberately triggered. This is why
 25 firms continue to use formal institutional litigation, both as plaintiff
 26 and as defendant, despite the costs involved (Cheit and Gersen, 2000;
 27 Dunworth and Rogers, 1996; Galanter and Epp, 1992) and why con-
 28 flicts follow the pyramid transforming informal complaints into court
 29 filings and formal judiciary decisions (Felstiner, Abel and Sarat, 1980).
 30 Following the idea that the two forms of governance are connected,
 31 we explore this connection further. We think it is possible to identify
 32 a form of ‘joint’ governance, a combined regime of endogenous and
 33 exogenous regulation. We use the label ‘joint’ because we argue that
 34 the governance mechanism is a combination of self-regulation and
 35 exogenous regulation, and in this combination the costs of control are
 36 shared. Over the last generation, such joint regulation has emerged in
 37 various forms with the increasing financialization of neoliberal capital-
 38 ism. This chapter presents one example: the emergence of PPP contracts
 39 and the system that makes them enforceable.

40 France’s Partnership Contract (Contrat de Partenariat) is a recent
 41 legal instrument introduced in 2004¹ to promote new links between

1 public authorities and private partners. It has created a structure for
2 economic relationships between private and public sectors that has yet
3 to be closely observed. These relationships are embedded in a system of
4 heterogeneous actors: public authorities, private industrial companies,
5 banks, lawyers, lobbyists and consulting firms. Studying this system
6 of actors, which supports the emergence and development of the PPP
7 contract, boils down to exploring a new discreet regulation process. The
8 PPP is a legal innovation that fills a technical vacuum but also paves
9 the way for a new type of regulation – a joint regulation bringing pub-
10 lic preoccupations and private management together in a New Public
11 Management-type approach.

12 13 **PPPs in France**

14
15 At the beginning of the millennium, the French government was
16 inspired by the UK's Private Finance Initiative (PFI) experiment to
17 imitate its neighbour and create its own contract for public-private
18 partnership (PPP). Promoters such as Osborne (2000) stress that the
19 growth in the numbers and importance of PPPs is an international
20 phenomenon – in the US they are 'central to national and state-govern-
21 ment initiatives to regenerate local urban communities', while within
22 the European Union they are 'an essential mechanism both to combat
23 social exclusion and to enhance local-community development'.

24 Different arrangements such as the *délégation de service public* already
25 existed in France. But the new Partnership Contract created by the
26 French public authorities was intended to be a flagship initiative to
27 develop a new market with new types of relationships between the pub-
28 lic and private sector. What is the spirit of this new kind of Partnership
29 Contract? How are actors seizing this opportunity? And how do they
30 self-organize? These three questions are explored further.

31 32 **The legislative framework**

33 The legislative framework for the French Partnership Contract derives
34 from the Order of 17 June 2004 and the Law of July 2008, and has been
35 reinforced by the 2009 Recovery Plan. This new contractual instrument
36 can be used for financing, construction, maintenance and operation of
37 public buildings for a minimum of five years and a maximum of 30.
38 Payment of private partners is spread over the term of the contract and
39 linked to achievement of performance objectives. Despite this legal defi-
40 nition, the scope of such partnerships remains difficult to define. It differs
41 from public contracts in its long-term perspective. For example, payment

1 of the investment is spread over time, taking the form of rental payments
2 to the private entity. The establishment of a PPP involves all the phases of
3 a project from financing to construction to maintenance. The main dif-
4 ference between a public contract and a PPP therefore rests on a link with
5 time: overall management of a project is possible, from beginning to end.
6 This involves funding and brings private investors to the forefront.

7 PPPs can only be used in France when the urgency and/or complexity
8 of the project can be demonstrated (Bergère et al., 2006). The 2008 law
9 introduced a third criterion: the Partnership Contract may be adopted if
10 it is economically more advantageous. This third, economic criterion –
11 otherwise known as ‘best value for money’ – is becoming the dominant
12 reason for using a PPP. French practices are inspired by the UK’s PFIs and
13 the British emphasis on the advantages of PPPs, seen primarily in eco-
14 nomic terms (Ball, Heafy and King, 2007; Weil and Biau, 2006). Today,
15 the relevance of France’s own new legal instrument – the Partnership
16 Contract – is founded on an economic evaluation criterion, namely the
17 question of project funding, cost and profitability (Campagnac, 1997;
18 Kirat, Marty and Vidal, 2005). In this sense, it represents a learning
19 process for public authorities as regards economic and financial man-
20 agement of a long-term project (Campagnac, 2001).

21 To date (November 2011), the French PPP market consists of 100
22 signed contracts, including around 20 with the national government.
23 These contracts are primarily for public buildings in national projects,
24 and for urban equipment (particularly street lighting) in local authority
25 projects.² Many more projects are currently being set up. There is clearly
26 a strong desire to develop this type of contract, but the market is see-
27 ing a slow start due to the current financial crisis. The State therefore
28 implemented a guarantee fund in 2009 to support such projects and
29 reassure investors.

30 **The PPP negotiation process**

31 The description of the system of actors in PPPs shows that the contracts
32 are complex, but so are the interdependencies between the stakehold-
33 ers. Various forms of expertise (legal, technical and financial) compete
34 over definition of the terms of the exchange, and PPPs comprise a
35 sequence of temporal phases (legitimation, signing the contract, adjust-
36 ment, construction and operation).

37 Negotiation of French PPPs takes place in a sequence of steps, each
38 possessing a certain complexity. Figure 5.1 describes this sequence.

39 The first phase initially demonstrates the validity of the contract
40 through documents such as the ‘functional programme’ or the ‘prior
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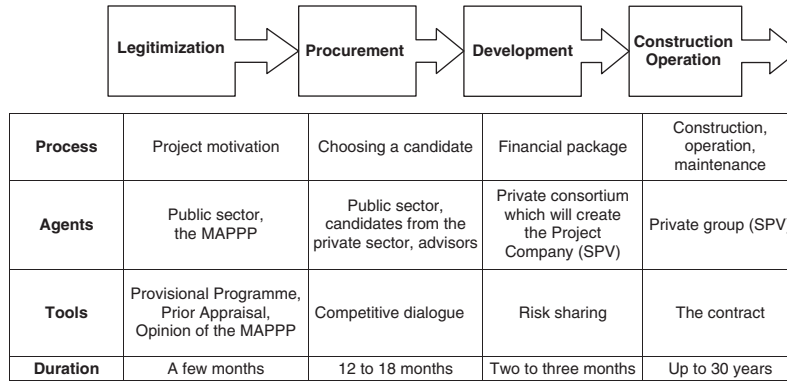


Figure 5.1 The sequence of a PPP in France

appraisal'. The public sector is very active, especially through its 'Support Mission' for PPPs (Mission d'Appui aux PPP – MAPPP), which gives an opinion on the projects. However, it does not completely take on the role of the client because other actors, such as legal and other advisors, are very actively involved during definition of its needs. The public sector thus switches from the status of contracting authority to that of 'buyer' (Campagnac, 2009). Other studies (Gilbert, 2002) show how the public authorities can find themselves excluded from the negotiation process in highly complex and risky situations. The following excerpt illustrates how the magnitude and complexity of a PPP project may appear to deprive the authorities of their expertise:

On the public agents' side, there's a big problem; they don't understand what a consultant is. [...] They don't know what to do or what to expect from consultants. The main added value of consultants is partly to be project manager and partly to support the public authorities; not because they are stupid, quite the reverse, but they have no experience, it's always their first project. The main task of a consultant is to hold the public agent's hand. They do everything, the civil servants do very little. We have to force them to make decisions and tell them that in this instance, we can't make such and such a decision for them.

Interview with a legal advisor

The project then goes into the procurement phase of the contract. The competition between candidates from the private sector is known

1 as the ‘competitive dialogue’, and can last up to 18 months. This pro-
2 cedure is longer than the more standard tender procedure, and more
3 unwieldy for the private sector candidates. The role of legal consult-
4 ants and financial and technical advisors becomes crucial at this point.
5 They speak on behalf of the public partner and – in the case of highly
6 specialized problems – may even become omnipresent and lead the
7 negotiation:

8
9 In fact it isn’t the public agent who actually speaks at these meetings,
10 it’s his three advisors. This is an interesting point. I personally find
11 it interesting to see the public interest from the perspective of the
12 public agent. And unlike what happens in traditional public procure-
13 ment contracts, we the advisors really are the negotiators. And this
14 negotiation process [competitive dialogue] is not at all carried out
15 the old-fashioned way, in a black box. Candidates have to open the
16 bonnet of their car, dismantle the engine, etc. Everything gets exam-
17 ined. We know the candidate’s entire set of margins, the way they
18 structure their prices. It’s extremely interesting for the advisors.

19 Interview with legal advisor

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21 A two-to-three-month period of adjustment and development fol-
22 lows, to allow the successful applicant to finalize the draft project with
23 investors. This phase only involves private actors; the financiers are
24 dominant and impose their conception of risk sharing. Failure of the
25 final adjustment phase can be a significant let-down for public agents:
26 for instance, when a deal agreed with industrialists is not approved by
27 the banks and they have to start all over again. The interviews reveal
28 tensions at this phase, as illustrated by the following comment:

29
30 There’s a phase known as the adjustment phase. As soon as the win-
31 ner is declared and the contract is signed between the public agent
32 and the industrialist, the real lender comes in [...] This funding con-
33 tract [the interviewee’s current project] will be the most complicated
34 contract that I’ve ever seen in my life! Once we win the project, we
35 have to arrange the financing and that’s a negotiation phase that is
36 carried out entirely by the private sector; it’s all amongst ourselves.
37 The public agent’s no longer there. When it gets very complicated,
38 we sometimes have to go back to the client, and argue that we can’t
39 do it because of such and such a clause in the contract that is deemed
40 too big a risk by the banker.

41 Interview with an industrialist

1 Much remains to be learned about the public/private sector relation-
2 ships that develop during the execution, construction and continuation
3 of projects in the long run, particularly when banks start withdrawing
4 from the projects by selling them or their debt on secondary markets.
5 However, the projects in this emerging market have not yet progressed
6 far enough to allow us to study these phases at the present time.

7 8 **The system of actors in PPPs**

9 Once the sequence of PPPs is identified, it is possible to specify the role
10 played by the many actors involved. AQ4

11 It is interesting to note that SMEs – too small to carry the procure-
12 ment phase and the long competitive dialogue – are de facto ruled out
13 of this type of contract. The same goes for independent architects.

14
15 [PPPs] will marginalize SMEs, because they have neither the technical
16 capacities nor the financial and legal capacities to implement PPPs;
17 this will bring them back to a subcontractor role.

18 Interview with a banker

19
20 When an ad hoc company is created to run the PPP, the economic
21 strength of the architects isn't big enough for them to take their
22 share of the financial risk.

23 Interview with a public service agent

24
25 The public partner is present during the first stages of the PPP and
26 states the legitimate grounds for the PPP project (with the MAPP);
27 in that sense, it legitimates it, before selecting a candidate during the
28 lengthy competitive dialogue phase. During these two phases, the pub-
29 lic partner must acquire the know-how required for long-term contract
30 management. It must also understand financial reasoning based on risk
31 and return factors. The challenge for a public entity is to successfully
32 transfer these skills from the private sector to the public sector:

33
34 One of the issues would be for [...] the administration to be reformed
35 and become efficient. This would require a transfer of skills which I
36 believe will not occur. It should be a criterion!

37 Interview with a financial advisor

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39 The private partner joins the cast of players during the competitive
40 dialogue; it then participates in the financial arrangements during the
41 adjustment and development phase, and manages the construction,

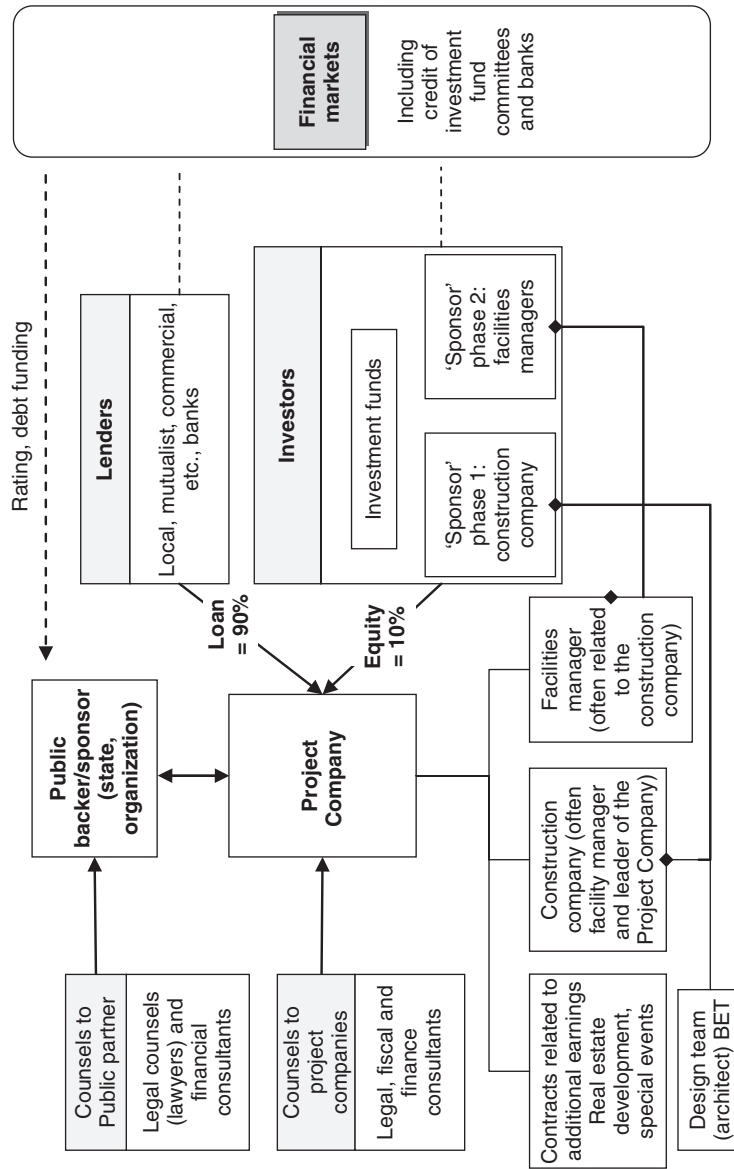


Figure 5.2 The system of PPP actors in France
Source: Deffontaines (2010: 4).

1 operation and maintenance of the project through a Project Company
2 formed as a Special Purpose Vehicle (SPV). This SPV is responsible for
3 integrating, coordinating and organizing – over a long period of time –
4 the design, construction, operation and maintenance functions, and
5 fund-raising for the PPP. Usually, a construction firm is the commercial
6 agent and leader of the Project Company. Facility managers (mainte-
7 nance professionals) are generally related to the construction firm.
8

9 On the private partner side, the candidates are groups, consortia and
10 so on. In practice, this company will be created when the contract
11 is signed by the main private agents: the builder, the maintenance
12 agent, possibly an investment fund, a bank. Banks may intervene
13 directly as financier, with an equity contribution through an invest-
14 ment fund. Or they may be involved in the complete assessment
15 of the loan that will be made, and borrowings by the private part-
16 ners. So it's all very variable; it depends on the projects. There's
17 still the idea of a single private partner, and unified private partner
18 responsibility.

19 Interview with a ministry attaché
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21 The most striking fact in this system of actors is undoubtedly the
22 role played by agents from the finance world, in particular banking.
23 The public partner, like the private industrial partners, deals with
24 private financial advisors throughout the negotiation. Beyond this
25 advisory role, the bank plays a key lender role. Investment funds are
26 also involved in the loan, but for a much more modest portion of the
27 financial package.
28

29 Today there is a category of actors who are involved in equity
30 funds, which are the investment funds, and these investment funds
31 couldn't care less whether they carry the debt, because in any case,
32 they don't have a balance sheet to consolidate! So the debt ends up
33 with them, but it isn't registered anywhere.

34 Interview with a financial advisor
35

36 The financial and legal advisors who work with the public entity
37 during the prior appraisal phases and the competitive dialogue play
38 an essential role. They provide assistance to the government or local
39 authorities in the partnership contract negotiation and drafting process
40 with the private partner, usually a large company in the construction
41 and public works sector, that is, an entity well versed in the techniques

1 required for such a negotiation, namely risk calculation and evaluation
 2 of project profitability. These advisors often come from major inter-
 3 national audit firms, but can also be from the banks' advisory services
 4 departments. The role of financial advisors is crucial: they act as 'inter-
 5 preters' between the private and public actors during the screening,
 6 prior appraisal and competitive dialogue phases.

7
 8 We have an educational mission to explain how each and every actor
 9 works ... But above all to explain their behaviour, in other words,
 10 everyone's sociological habits. This is important for us as advisors:
 11 explaining how the person across the table behaves. It's a strategic
 12 choice on both sides.

13 Interview with a financial advisor

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 15 Then the negotiation begins and the advisor's role is to assist the
 16 public agent during the negotiation. More than that, it's not the
 17 public agent who speaks; in practice the three advisors are the ones
 18 who speak.

19 Interview with legal advisor

20
 21 Compared to conventional public contracts, a PPP comes across as
 22 a particularly complex deal, understood by the private partners as an
 23 investment project. Yet financial theory and practice define any asset
 24 or investment project in terms of two criteria: the expected return and
 25 associated risk. As the PPP price is constructed, the contract is progres-
 26 sively defined by these two financial criteria (profitability and risk). This
 27 typifies the regulatory process in this case: the actors are trying to estab-
 28 lish new practices for public services based on another norm related to
 29 private financial values, and this explains the centrality of financial
 30 techniques in negotiation and evaluation of these complex contracts.
 31 It also explains why the French government had to create a new type
 32 of contract, rather than using regulation based on the previous *délégation*
 33 *de service public* arrangements. The existing framework could not
 34 encompass or drive the intended normative and institutional change.

35 36 **A qualitative and quantitative study**

37
 38 The aim of this study is to understand the social construction of the
 39 French PPP market, especially the promotion of the new 'partner-
 40 ship contract' created in 2004. Qualitative and quantitative empiri-
 41 cal work was carried out based on two main kinds of data: firstly, an

1 interview campaign with key actors, and secondly, a network analysis
2 questionnaire.

3 The interviews were based on an extensive review of the literature:
4 for example, reports, presentation brochures, manuals, websites, news-
5 letters, etc. This preliminary work was necessary to define the bounda-
6 ries and identify the key players in this new market. It also enabled us
7 to reconstruct the main events in the market since the creation of the
8 partnership contract in 2004. This led us to specify PPP stakeholders in
9 France and identify 94 organizations considered important and influen-
10 tial. Those organizations belong to the categories involved in contract
11 negotiation and performance as presented previously: industrial actors,
12 builders, maintenance agents, consultants, investors and bankers, as
13 well as certain public bodies which play a decisive role in the continu-
14 ation of PPPs, namely training bodies and lobbyists. Although some of
15 these actors do not sign the Partnership Contract, they make its nego-
16 tiation possible for public and private partners. The PPP also generates
17 subcontracts for areas such as consulting or training, which must be
18 taken into account in order to understand the joint regulatory process.

19 Once this exploratory analysis was complete, we conducted 22 semi-
20 directive ethnographic interviews with well-known key players from
21 the inner circles of the PPP world in France (five from the public sector,
22 five from the banking sector, four industrialists, three corporate law-
23 yers, three business consultants and two lobbyists). These interviewees
24 enabled us to size and understand the system of actors behind the PPP
25 market in France, especially the negotiation process leading up to a
26 contract, during which actors meet and try to reach an agreement.
27 Thirty-two additional interviews were also conducted to fine-tune our
28 investigation questionnaire. Lastly, and simultaneously, we attended
29 some professional symposia on PPPs in order to capture something of
30 the informal atmosphere of this small world.

31 This ethnographic step led to construction of our second quantitative
32 device: a questionnaire aimed at reconstituting the social networks
33 of this milieu. The interviews showed that the PPP milieu is com-
34 plex and heterogeneous, and we wanted to understand how these
35 actors interacted. Social network analysis is an appropriate method
36 to report on and model such interactions. We decided to identify the
37 discussion, business and advice networks between the actors, as these
38 relationships were necessary resources for promoting and signing PPPs.
39 These social networks could also be the place where new normative
40 practices of contracting between public and private actors are defined
41 (Lazega, 2003).

1 Proceeding with network analyses required clearly defined system
2 boundaries: in other words a list of members was necessary. We identi-
3 fied them under a two-mode approach, starting with organizations,
4 then finding individuals who represent them (Breiger, 1974; Eloire,
5 Penalva-Icher and Lazega, 2011; Lazega et al., 2007). This provided a list
6 of 100 people (belonging to the 94 organizations previously identified),
7 all members of the French PPP milieu performing the diverse roles cited
8 earlier. The survey and the list were tested during the 32 interviews,
9 when the interviewees were asked for their opinion on some of our
10 quantitative questions about what they thought a PPP should be. They
11 checked, modified, completed and altogether enhanced our nomina-
12 tive list through their personal knowledge of the system. Anyone not
13 previously included in the list but named by two of the 32 interviewees
14 was added to the list. Between September 2009 and April 2010, 88 mem-
15 bers of the PPP milieu answered our questionnaire during face-to-face
16 interviews.

17 The questionnaire began by identifying the sociological profile of
18 members of the list: their role in the actors' system, the organization
19 they worked for, their background before PPPs, how and when they
20 joined the milieu, their career and qualifications, etc. Next, in order
21 to define their possible normative practice, we examined the actors'
22 representations of a PPP contract and what they considered PPP best
23 practices, which form the substance of the regulatory process studied.
24 Lastly, we traced the different relationships and asked the actors to
25 name their contacts using several name generators, accompanied by
26 the nominative list. We chose three kinds of interactions: discussion,
27 business and advice. The discussion network was reconstituted with
28 the question: 'With whom do you have the opportunity to discuss PPPs
29 seriously on a one-to-one basis?' The business network was identified
30 with the question: 'With whom are you currently doing business?' And
31 finally the advice network was established with the question: 'Have you
32 ever sought advice about legal, financial, or technical issues related to
33 PPPs, informally or formally, but free of charge, from a person in this
34 list? If so, could you please tick their name?'

35 The discussion relationship corresponds to the huge amount of activ-
36 ity generated by the novelty and complexity of the PPP. As a PPP con-
37 tract requires several forms of expertise, a general form of collaboration
38 is woven based on exchanges through discussion. This relationship is
39 an indicator of the social life in which PPPs are embedded. The business
40 relationship is economic in nature, with a narrower choice of partners.
41 Because the PPP milieu is very competitive and secretive, it refuses to

1 give researchers access to signed contracts or projects in progress. We
2 believe that business network analysis helps trace the reality of the
3 French 'Partnership Contracts' system, and also the cascade of contracts
4 signed downstream. Sometimes the SPV project company is like a shell
5 that hosts the main contract but also hides other relationships within
6 its private circle. The business relationship question was in fact the most
7 sensitive question we asked: a few interviewees refused to answer it. The
8 third relationship is the advice relationship. We chose to exclude 'billed'
9 advice and instead show social advice interactions in which actors trust
10 an epistemic authority with a socially constructed and legitimated
11 reputation, rather than relying on the consulting market that is emerg-
12 ing in the business network. We consider advice relationships highly
13 significant.

14 Finally, to understand the role of each type of actor in the regulatory
15 process, we cluster the heterogeneous actors into six categories accord-
16 ing to the organizations they represent: private companies (n = 16),
17 public authorities (n = 21), lobbyists (n = 8), consultants (n = 15), cor-
18 porate lawyers (n = 15) and bank representatives (n = 13). The structural
19 position of these categories will help us understand their importance
20 and their influence in the process.

21 **The visible but discreet action of the banks**

22 Our results show how the PPP system of action is relationally structured,
23 and how the banks play a predominant role. Acting as a discreet regula-
24 tor, banks influence and may even determine the partnership contract's
25 financing rules (i.e. the extent of private debt in the public investment)
26 and measurement rules (i.e. costing of a partnership contract).
27
28

29 **The relational structure of the PPP system**

30 This network analysis makes it possible to examine the banks' role in the
31 new system created by the partnership contract, at an individual level.
32 More precisely, we study the impact of bankers, that is, the individuals
33 belonging to a banking company, who at aggregate level represent the
34 banking sector. The position of these individuals can be summarized by
35 centrality measurements, especially 'indegree' centrality scores, that is,
36 the number of choices received in the network (Wasserman and Faust,
37 1994). Indegree centrality measurement can be interpreted as a measure
38 of prestige. An actor benefiting from a high indegree score often has
39 enviable resources or a good reputation. 'Outdegree' centrality counts
40 the number of relational choices made by an actor, that is, the number
41

1 of people the actor considers as his or her contacts. This figure could be
2 interpreted as a measure of local knowledge and action in the milieu.
3 A high outdegree score reflects high activity and a good grasp of the
4 environment. It could also show that the individual seeks information
5 through many ties, especially in the case of an advice network. A low
6 outdegree score could indicate that the individual does not know where
7 to seek resources, or does not have access to those resources. Together,
8 indegree and outdegree shape an actor's degree of centrality, which
9 reveals the actor's general level of activity within a network. In addition
10 to these three main centrality measurements, 'betweenness' centrality
11 is an indicator of the capacity to act as an intermediary (a 'broker')
12 between all the other actors in the network.

13 We begin our network analysis in Table 5.1 by examining individual
14 action in each category of actors, with individual degree measurements
15 at micro-level.

16 Firstly, the fact that lawyers and consultants are behind banks and
17 lobbyists is surprising. Business lawyers and consultants, with their legal
18 and/or financial expertise, might have been expected to be central in
19 this milieu, but instead have low scores in the business and advice net-
20 works. This indicates that they are being sidelined by the new system of
21 action created by the Partnership Contract: legal expertise is apparently
22 not the key competency for a PPP contract. In comparison, bankers play
23 an important role, strongly legitimizing financial expertise as the 'PPP-
24 maker'. Closer examination shows they are not very central in the dis-
25 cussion network (only two bankers in the ten highest indegree scores),
26 but they have established themselves as the leading players on the PPP
27 market in terms of business. For instance, in the business network out-
28 degrees (choices sent), there are two bankers in the ten highest scores
29 and seven in the 20 highest scores. In the advice network, one banker is
30 very prestigious, appearing as the most sought-after advisor of all actors;
31 at the same time, three bankers are in the top ten outdegree scores in
32 the advice network. Last but not least, lobbyists are very visible in this
33 extensive, dense network, registering four of the ten highest indegree
34 scores. The betweenness degree on this line highlights the fact that
35 lobbyists mask bankers' centralities, especially in neutral, widespread
36 relationships such as discussions. The centrality of lobbyists in the PPP
37 system may be explained by their *raison d'être* itself: their work is to
38 promote PPPs, and discuss with and advise others (cf. their high inde-
39 gree scores for discussion and advice). Also, extensive advice-seeking is
40 necessary to do their job. Their high centrality scores can thus easily be
41 explained by their organizational role in the PPP system.

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Table 5.1 Network activity of key players in the PPP system in France

	Indegree Discussion Network	Outdegree Discussion Network	Indegree Business Network	Outdegree Business Network	Indegree Advice Network	Outdegree Advice Network	Betweenness Discussion Network	Betweenness Business Network	Betweenness Advice Network
Bankers	25.5	28.9	12.2	16.8	6.8	6.0	0.01	0.01	0.01
Lawyers	20.3	21.9	8.2	10.3	6.0	3.7	0.01	0.01	0.01
Consultants	17.9	14.9	8.4	6.3	3.8	2.7	0.00	0.00	0.00
Lobbyists	29.9	24.5	11.4	11.9	7.4	12.0	0.01	0.01	0.03
Public Authority representatives	20.7	20.4	9.0	7.7	4.6	4.9	0.00	0.00	0.00
Private Company members	20.4	22.0	8.4	6.1	4.2	5.4	0.01	0.00	0.01

1 Some bankers are in a more unusual position; their structural central-
2 ity in the business network tells us that they play a key role in the PPP
3 system, as if they were conductors orchestrating this emerging sector.
4 Their outdegree scores in the discussion and business networks show
5 good knowledge of their environment; they are very active and have
6 many contacts. Furthermore, their betweenness centrality in the advice
7 network shows that they are unavoidable 'brokers' of thinking on best
8 practices. In other words, bankers are not only there to finance con-
9 tracts, they form the relational and normative core of the business struc-
10 ture, able to spread opinions on how to practice PPP in France. To sum
11 up, this structural representation of the different relationships between
12 PPP actors suggests that bankers are the discreet regulators of this milieu
13 alongside the strong, visible influence of lobbyists, who are mostly act-
14 ing on the bankers' behalf. Although it was created for political ends by
15 the government with activist support from lobbyists, the PPP market can
16 thus be considered economically and normatively dominated by banks.

AQ5

17 For a better understanding of the actors' role in these networks,
18 Table 5.2 shows the normalized average indegree score by category,
19 aggregating the links between individuals belonging to the same types
20 of organization. The networks are partitioned and reduced to aggregate
21 links: the resulting inter- and intra-categories are normalized according
22 to the number of individuals in each category. We then compute the
23 choices received to obtain an average indegree score per category rather
24 than per individual. This makes it possible to cross-check the reputa-
25 tion of certain individuals, and understand the role of banks in the
26 PPP milieu. At the meso-level, this measure gives an idea of the level of
27 activity of the different categories of actors in this milieu. This comple-
28 ments the previous individual analyses and shows that as a category,
29 banks are even more central.

30 Table 5.2 confirms our first analysis: it shows the surprisingly weak
31 position of law firms and, to a lesser extent, consulting agencies, but also
32 the strong action of lobbying agencies (scores of 13.43, 34.83 and 9 for
33 each network respectively). Finally, the role of banks in the PPP process is
34 confirmed: the highest scores in Table 5.2 show that the most cited part-
35 ner in the business, discussions and advice networks is the bank (scores
36 of 17.23, 39.62 and 9.74). For all three networks, the organizations
37 represented by the most central actors come from the financial sector.
38 This means that at the aggregate level, the banks' interests are over-
39 represented and dominate the making, but also the regulation, of the
40 PPP process. It appears that although bankers use their relational capital
41 discreetly, without taking centre stage, they are able to self-organize at

1 *Table 5.2* Average indegree score by category of actors in the discussion,
 2 business and advice networks of key players in the PPP system in France

	Business network	Discussion network	Advice network
5 Private Companies	9.42	22.57	7.21
6 Public Authorities	7.82	18.6	4.12
7 Lobbying Agencies	13.43	34.83	9
8 Consulting Agencies	12.9	25.95	7.7
9 Law Firms	10	20.65	4.7
10 Banks	17.23	39.62	9.74

11
 12
 13 the meso-level in order to dominate the discussion, business and advice
 14 networks. In other words, the organizations are very visible; the involve-
 15 ment of the individuals representing them is more discreet.

16 Analysing the structure of the PPP networks reveals the central-
 17 ity of the banking actor’s role in the PPP process, but this important
 18 role is played out in the background and is not immediately obvious.
 19 Discreetly but surely, in practice the banks dominate the PPP process.
 20 Their structural position helps them define and set the rules. Banks
 21 have thus been able to change both the financing rules – that is, the
 22 proportion of private debt in the public investment – and the measure-
 23 ment rules, that is, for long-term costing of a partnership contract. This
 24 understanding of the banks’ regulatory power brings us to grasp not
 25 only their consequences for the public investment market, but also the
 26 banks’ ability to ensure their own interests prevail.

27
 28 **The regulatory power of banks**

29 This first analysis of the PPP network deconstructs a complex, ideologi-
 30 cal regulatory process in which the banks impose a ‘consensus’ based on
 31 their own definition of risk, cost and the way they are shared. They play
 32 a crucial role throughout the contract negotiation, particularly during
 33 the adjustment phase.

34
 35 I have a maintenance contract that’s finalized and all of a sudden
 36 there’s another team [from the same bank] that tells us, no, the
 37 financial advisor is only the financial advisor. They tell us that they
 38 are the lenders, they have all the lenders’ rights and they remind us
 39 that without them, we wouldn’t have our funding! And it starts all
 40 over again. If you forget any detail, it can be very hard.

41 Interview with a builder

1 the builder, manages to impose its plans. By mediating risk sharing,
2 the banking sector discreetly silences the debate over the legitimacy
3 of PPPs. Structurally, this sector 'owns' the means of estimating what
4 constitutes the cost of a PPP, for itself as well as the community. The
5 public sector, with its long-term view, has projects requiring expertise
6 in building, maintenance, but also financing: that expertise involves a
7 significant economic and financial component, presently held by the
8 banking sector. The regulatory process, which leads to definition of best
9 practices for a PPP, seems to be based on the questions of project costing
10 and the definition, valuation and allocation of risks attached to these
11 long-term projects.

12 13 **Conclusion**

14
15 Our initial results show that a new type of public contract is emerging
16 in France, in which public investments financed by PPP contracts are
17 structured by a complex system of actors dominated by banking and
18 finance. These two sectors have come to control PPP contract negotia-
19 tions, long-term risk allocation and costing intrinsic to these long-term
20 investments. With this financialization of the contract, quality-oriented
21 regulation is being superseded due to domination by the banks' action
22 as a discreet regulator at the core of the contracting process. Financial
23 returns and risk criteria are essential during the prior appraisal, competi-
24 tive dialogue and adjustment and development stages of a PPP. At each
25 step of the process, banks can intervene as consultants for the public or
26 private partner, as well as lenders or investors. This gives them an influ-
27 ential position in the regulatory process and helps them to promote
28 their own regulatory interests.

29 Finally, private-public partnerships are long-term contracts and
30 should be studied over the long term accordingly. The banks are unde-
31 niably masters of debt, cost calculators and risk-sharing mediators
32 holding a position that currently enables them discreetly to regulate
33 the French Public Contracts milieu, but even they may be unable to
34 shape long-term, global coherent public policies providing a lasting
35 public asset. As Coulson (2005) noted for the British experience: 'That is
36 likely to prove a serious underlying problem for many PFI/PPP partner-
37 ships – we do not know what will happen over 25–30 years, but we may
38 surmise that in many cases partners will fall out, either among them-
39 selves or with their clients, and it will be very difficult then to deliver
40 the promises that have been made.' The current lack of strong political
41 will at both French and European level regarding the acknowledgement

1 and clear registration of debt makes stakeholders 'sorcerer's apprentices'.
 2 The PPP market is built and growing on a foundation of hidden debt,
 3 unfortunately heralding a future public finance crisis equivalent to the
 4 subprime crisis of 2007.

6 Notes

- 7
 8 1. Order no. 2004-559 of 17 June 2004.
 9 2. Source: www.ppp.bercy.gouv.fr.

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