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Finance in Public Service: Discreet Joint Regulation as Institutional Capture at the Paris Commercial Court

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Introduction

Businesses of all kinds are usually very keen to participate in regulation of their own sector. One way of contributing to regulatory activity is to exercise influence in the State institutions set up to solve conflicts between businesses and discipline entrepreneurs. This can lead to institutional capture, which we redefine at the institutional (not individual) level as an extreme form of joint regulation. This chapter describes and illustrates one of the ways the financial industry effectively runs a State institution through analysis of the operations of a judicial institution, the Paris Commercial Court. This is France's main first-level commercial court, and its judges are lay volunteer judges, that is, business people elected by their business community through their local chamber of commerce. The court functions as an institution of discreet joint regulation of markets, hearing commercial litigation and bankruptcy cases. It is a contested terrain, the object of broader conflicts played out outside the court buildings. We focus on how this court handles bankruptcy proceedings, observing the composition of chambers, the judges' networks, and the normative choices made by bankers when dealing with insolvency and recovery plans. The results illustrate the financial industry's domination of this institution, and its epistemic, normative and regulatory influence. This exposure of the connections between discreet joint regulation, the dual role of finance, and institutional capture more generally shows it is time to re-examine the inner organizational, structural and normative workings of economic and legal institutions, from the perspective of protecting the public interest in regulation of capitalist economies where the private/public sector boundaries are increasingly blurred.

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PROOF

Redefining institutional capture in the social control of markets

Businesses are usually very keen to participate in the governance and regulation of their markets. This chapter looks at an extreme example of collective organization to that end: capturing and effectively running a judicial institution, namely the French commercial courts, a four and a half century-old institution. France has a long tradition of the State sharing its judicial power with the local business community. As early as 1563, corporations successfully negotiated what could be considered a 'joint regulation' agreement with the public authorities, instituting a form of shared government for markets. This agreement created special courts for commercial affairs presided over by lay, volunteer judges, that is, elected members of the business community who are not paid for the job. French commercial courts are truly judicial, first-level courts. They solve conflicts between businesses or between businesses and consumers (commercial litigation). They also exercise a form of discipline on market exit by handling bankruptcy cases. Their capture has resulted from a complex historical and institutional process. The focus here is on the dimension of this process that is brought to light by social network analysis.

One definition of institutional capture is 'the efforts of firms to shape the laws, policies, and regulation of the State to their own advantage by providing illicit private gains to public officials' (Hellman and Kaufmann, 2001). We suggest that this definition is over-focused on individuals. We believe that the definition of the process of institutional capture should be broadened to encompass corporatist efforts to design or redesign institutions, influence decision-making in rule enforcement and secure collective gains for interest groups in those institutions. These factors extend collective actors' capacity to reap invisible advantages. A court can thus be considered 'captured' when interest groups are successful in using their influence to benefit systematically from its decisions.

The French commercial court system as an institution represents a form of joint governance, or a combined regime of endogenous and exogenous conflict resolution in markets. The term 'joint' applies because in practice, governance is often a combination of self-regulation and exogenous regulation, and in this combination the costs of control are shared. The joint element in 'joint governance' can be defined as the coexistence of several sources of constraint, both external and internal, restricting the actors in charge of solving conflicts and enforcing rules.

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PROOF

Seeing joint governance in these terms follows both an organizational and a broadly conceived structural approach to economic institutions (Lazega, 2009, Lazega and Mounier, 2002).

Courts are undeniably a locus of joint governance. They are not static institutions making atemporal, purely rational decisions (Heydebrand and Seron, 1990; Wheeler, Mann and Sarat, 1988). They are a contested terrain, the prizes or objects of broader economic competition and conflicts that occur outside the courts (Flemming, 1998). This is particularly true of courts where the judges are business people elected by their local business community. Attempts from outside the court to influence what goes on in court come from various angles. Flemming (1998) lists five such angles: external stakeholders can try to influence jurisdiction (the range of disputes over which the court has authority), positions (actors formally authorized to participate in the disposition of cases), resources (the capacity to influence the decisions of other actors), discretion (the range of choices available to actors) and procedures (rules governing courtroom processes). The parties involved in this contest may not be directly concerned by all the conflicts dealt with by the court, but they may have indirect material or symbolic interests in the court's rulings, and thus attempt to influence what goes on there.

Flemming's categorizations focus attention on specific processes of influence. We study the two processes concerning positions and resources (to borrow Flemming's vocabulary), and the relationship between the forms of influence they represent. This involves examining who is allowed to become a judge, and what kind of resources are made available to them when they sit in judgement, and when they participate in governance of firms through solving conflicts between businesses.

Collective actors involved in conflicts on the markets, such as companies, whole industries (in class actions, for example) or even State administrations, may have strong incentives to influence the appointment of judges and the resources available to those judges. The more litigious the sector the stronger the incentives to share the costs of conflict resolution. Such collective actors are usually considered as external actors. A concern for long-term protection of their interests provides the incentive to influence the court's decisions. They may do this by helping selected members of their own community to become judges. The stronger their incentives, the greater their desire for representation among the judges. Once in a position to solve conflicts between parties, these judges have combined incentives to influence the court's decisions: they represent the law and are supposed to be strictly

9780230355798_09_cha07.indd 164 4/17/2012 5:18:35 PM

PROOF

impartial; but they may also represent, and therefore may seek to protect the interests of, the organizations that supported their becoming a judge in the first place.

Influencing who becomes a judge and what resources are available to judges can be a very strong, although indirect, way of influencing court case outcomes. Joint deliberation by a bench of judges is a mainstay of French legal institutions. Such deliberation – whether formal or informal – relies heavily on knowledge management by the court. This brings us to the second process (from Flemming's list mentioned earlier) through which influence on joint governance is exercised in such institutions. One way to influence judges' behaviour is to try and set the premises underlying their decisions, by attempting to control the information available to them while sitting in judgement. Judges from a given sector of the economy may act like 'judicial entrepreneurs' (McIntosh and Cates, 1997), attempting to keep particular legal definitions alive, or promote ideas, customs, rules and interests that are commonplace in their sector but not in others. Influence over the premises of decisions can be assumed to affect the probability of winning a case, even though this 'framing control' by players is almost invisible to outside observers.

The law and the courts are aware that various actors in the court's environment will engage in such influence attempts. Anticipating that the court will be targeted in this way, the legal system lays down rules concerning conflicts of interests for judges: when they are too closely linked to one of the parties – for example, when they are to sit in judgement on a potential or actual competitor, they must step down from the case; if they do not and the conflict of interests is discovered, they will be removed from the case by their hierarchy. However, a structural approach to joint governance raises the issue of how far such procedural attempts succeed in neutralizing external influences (Lazega, 1994), especially when the judges are elected volunteers. To summarize, given the incentives identified earlier, influence on judges can be expected to take the form of intensive efforts by interested sectors to shape the court, especially through selecting the judges and promoting normative choices that provide overall support for their interests.

This chapter analyses the operations of a judicial institution, the Paris Commercial Court, France's main first-level commercial court. This court is staffed by lay judges, business people elected by their business community through the local chamber of commerce, and handles commercial litigation and bankruptcies. As stated before courts are not AQ1 static institutions making atemporal, purely rational decisions. They are

9780230355798_09_cha07.indd 165 4/17/2012 5:18:35 PM

PROOF

a contested terrain, the object of broader conflicts that are played out outside the courts. Through a study of the operations of this court with observation of the composition of chambers and qualitative interviews with judges, we examine some characteristics of this type of institutional capture, particularly the normative choices made by bankers judging bankruptcy cases. The results illustrate the normative and regulatory influence of the financial industry, showing a need to re-examine the inner workings of economic and legal institutions from the perspective of protecting the public interest in regulation of capitalist economies where the private/public sector boundaries are blurred.

Consular commercial courts as institutions of joint regulation

French commercial courts, also known in French terminology as 'consular courts' (*tribunaux consulaires*), are staffed by 'consular judges' (*juges consulaires*). An explanation of the term *consulaire* is in order. The *consulat* was a mode of urban government practised in the Middle Ages in the southern part of the Kingdom of France by cities with a right to self-administration and self-defence. 'Consulatus' derives from 'consul', meaning 'council'. The word referred to a community's ability to deliberate together in an assembly likewise called the *consulat*. Urban communities governed by a *consulat* could call themselves cities. All had markets and many had fairs. In a 'consular regime' the community was self-governed by way of consuls, who varied in number and qualifications. Merchants organized into socially distinct guilds occupied an important place in this regime. On the basis of the *lex mercatoria*, they managed to negotiate with the State a kind of joint regulation of their business activities within the consular framework: local self-regulation was to be founded on the State's sanctioning power. The State, given its own as yet embryonic administration, may paradoxically have seen this co-optation by local merchants as a means of further extending its central control over the country. A major component of this 'consular regime' is the *tribunal de commerce* or commercial court, whose content evolved over time.

Each consular judge acts as both an individual judge and a representative (presumably with no explicit mandate) of the business community. Consular judges are unpaid volunteers elected for terms of two or four years (up to a maximum of 14 years) through their local Chamber of Commerce. The two economic institutions (Court and Chamber of Commerce) support each other financially and politically, and maintain

9780230355798_09_cha07.indd 166 4/17/2012 5:18:35 PM

PROOF

close ties. Judges are elected after a complex procedure (Falconi et al., 2005) that begins with individually obtaining the support and approval of a professional association (e.g. the French Banking Association or the French Hotel Industry Association). The electoral body is composed of current commercial court judges, and representatives of employers' associations (some of whom supported the candidates in the first place). A small administrative unit of the Chamber of Commerce searches for new candidates, interviews and selects them, and draws up a single list of candidates (exactly as many as the number of seats to fill), that is then put to the vote of the electoral body for formal rubberstamping. Consular judges have thus co-opted each other for centuries, in a way no section of a democratic government is usually allowed to self-perpetuate.

In this institutional arrangement, the State, industries and companies, and the individual judges share the costs of exercising social control of business. The court sits one day a week to enforce law and customs among the judges' peers. Decisions made by the court can be challenged, as in any other court, before the Court of Appeal, whose judges are not business people, but highly trained professional magistrates. There are at least two categories of unpaid volunteer consular judges in the system: firstly, retired business people looking for social status, an interesting occupation and social integration; and secondly, younger professionals – bankers, lawyers, consultants – looking for experience, status and social contacts, sometimes on behalf of their employer (who continues to pay their salary while they are serving as a judge at the Court). If the individual judge is young enough, appointment to the court can help build a useful network of contacts (as explicitly stated in the brochures designed to attract new judges to the job) and pave the way to future positions in economic institutions such as the Chamber of Commerce itself, the Conseil Economique et Social (a powerful advisory board to the Prime Minister), and other honours dispensed by the State apparatus. For younger professionals, being a judge at the Paris Commercial Court has traditionally been considered a 'chore' rewarded in later years with seats on prestigious committees in France's economic institutions. Various types of lucrative contracts and missions to 'preventively' advise companies may also be awarded to former judges at the discretion of the current President of the Commercial Court. Consular judges can also become arbitrators in lucrative arbitration courts once they have served the maximum 14 years in the public court.

The consular judges see several justifications for this joint governance system. First, it is a cheaper and faster form of justice than a system with

9780230355798_09_cha07.indd 167 4/17/2012 5:18:35 PM

PROOF

career judges. Business bears more of the costs of its own regulation, backlogs are much smaller and waiting time is shorter than in traditional High Courts. For example, there is no case law at this level of the court system. Second, career judges – who are civil servants – have often been considered inexperienced in business and unable to understand the trials and tribulations of private companies, or to monitor the behaviour of company directors satisfactorily, particularly in the insolvency and bankruptcy minefields (Carruthers and Halliday, 1998). Third, business law often ignores the idiosyncratic norms and customs (called *usages* in French commercial courts) that derive from traditional subcultures marking whole sectors of industry (Macaulay, 1963; Swedberg, 1993). Consular judges argue that efficient conflict resolution cannot ignore these bodies of rules and conventions that shape business practice differently in each sector. Since they are supposed to be experienced business people, Commercial Court judges are considered specialists in their field, which means they are more knowledgeable than career civil servants about these customs and able to adapt them more quickly to unstable or changing business environments; this puts the judges in a better position to foster regulatory innovations either as experts in their field consulted by Parliament, or as members of think tanks.

In this consular court system, the judges' predicament has always lain in the difficulty of representing both general and particularistic interests. When they are elected from the business community, they can be considered as representatives of the State as well as their community. They may claim they are not 'representatives' with a clear mandate from the industry that helped them become a judge, but members of that industry, and sometimes fellow judges, still expect them to speak on behalf of the industry and its customs. The public has always suspected that patronage appointments lead to politicized elections of judges, who then fail to detach themselves from their virtual 'constituency', that is, the industry that endorsed their nomination. Especially in small towns, litigants' confidence in the commercial court's impartiality is often impaired. They fear that the court could be controlled by competitors. The institution, however, assumes that its judges will be entirely independent despite the proximity between regulator and regulatee.

Over-representation of the financial industry among judges at the Paris Commercial Court

A six-year field study was conducted at the Paris Commercial Court,[1] which is one of the four large commercial courts in the Paris region.

9780230355798_09_cha07.indd 168 4/17/2012 5:18:35 PM

PROOF

It comprises 21 general and specialized chambers (for matters such as bankruptcy, unfair competition, company law, European law, international law, multimedia and new technologies) which handle around 12 per cent of all commercial litigation in France, including large and complex cases not heard by the arbitration courts. There are around 150 judges each year. Socio-demographic examination of the judges shows that their average age is 59, 87 per cent are men and 38 per cent are retired. Positions occupied (or formerly occupied) by judges in their industry include CEOs (25 per cent), vice-presidents and top executives of all kinds. Among the younger judges, there are more professionals such as in-house lawyers, accountants and consultants. They mostly work for large business groups or medium-sized companies, but the judges prefer to remain discreet about their employers and professional ties. Most judges are highly educated graduates of France's most prestigious higher education establishments: administrative institutions such as ENA and Polytechnique, business schools, law schools and elite engineering schools (known as the *noblesse d'Etat*, literally the State nobility).[2]

The Paris Commercial Court is complex in its organizational operation. Without going into too much detail, several kinds of professionals work there together: consular judges, clerks, business lawyers, prosecuting magistrates, bailiffs, experts of all kinds, professional liquidators and/or administrators (for companies on the brink of bankruptcy that can perhaps be saved). Judges are allocated across the large number of general and specialist chambers. The basic distinction in terms of specializations is between bankruptcy and litigation, which are governed by different procedural rules. But the litigation bench is then subdivided into several specialized areas as mentioned previously. Each chamber has a president who reports to the overall president of the court. In each chamber, cases are heard by a bench of three or sometimes five judges together, who issue their decision after listening to both parties, as in any other judicial court.

According to the justification of this system of joint governance, the elected judges should represent as many sectors of the local economy as possible, especially in large commercial courts such as Paris. At the time of the study, a wide range of economic sectors was indeed represented (the judges' current or former sectors of employment). In complex cases, intelligence about a sector could thus be supplied to the court by judges from that sector. However, some industries or companies invest more than others in 'judicial entrepreneurship' and bear a larger share of the costs of control, because it is in their interest to do so.

9780230355798_09_cha07.indd 169 4/17/2012 5:18:35 PM

PROOF

Theoretically, all employers' associations can put candidates forward for the annual elections of consular judges (10 per cent of seats are up for election each year), but in practice some rarely do, and some do so much more regularly than others. In 2000, 29 per cent of the judges came from the financial industry. Forty-four consular judges, mostly with a legal background, were current or former employees of the financial industry, which puts several candidates up for election each year.[3] The financial industry is clearly over-represented, in absolute and relative terms, at the Paris Commercial Court. It accounts for around 5 per cent of the working population in Paris, where service industries are over-represented compared to the rest of France. The financial services industry's share of the total value added to the French economy was an average annual 5.3 per cent at the time of the study.[4]

The financial industry is traditionally very litigious (Cheit and Gersen, 2000). The list of cases heard in France, as probably in most countries, is dominated by contract disputes and debt collection issues. For obvious reasons, a sizeable portion of these cases involve the financial industry, which therefore has a strong incentive to invest in judicial entrepreneurship – for example, to ensure damage limitation in cases involving high levels of credit. Banks and financial institutions are often creditors themselves and since they stand to lose enormous amounts, they invest in penetrating the commercial courts and keeping the number of consular judges from their ranks high. With the high amounts of resources at stake in commercial litigation and bankruptcy, the financial industry is willing to play for influence over the rules. It has an interest in trying to shape the court and impose its own norms and practices over those of other industries.

The priorities of the financial sector (such as preserving high asset value and high sensitivity to the impact of corporate bankruptcies on the economy) can thus be defended in both the litigation and the bankruptcy chambers. One of the likely influence processes in joint governance is detectable in the selection of judges themselves (the 'positional' effect in Flemming's vocabulary). Small employers' associations lack the necessary clout to lobby effectively, and the resources to share the costs of control. Not all sectors of the business community can participate equally actively in the contests and attempts to shape the court from outside. Each industry's potential influence in the fight over this kind of contested terrain depends on the resources available to promote candidates for the jobs of consular judge – and those resources are not comparable between the financial industry and less well-organized sectors such as retail.

9780230355798_09_cha07.indd 170 4/17/2012 5:18:36 PM

PROOF

The following example illustrates the financial sector's interest in assuming a larger-than-average share of the costs of control of the French business world. In 1985, France's socialist government changed the bankruptcy laws to give priority to fighting unemployment. The changes made were obviously consistent with the interests of employees rather than creditors. The new law required judges to rule on whether the companies in question could survive if they were better managed (Guéroult, Lamotte and du Marais, 1993). If the judges decided that a company – and its jobs – could be saved, they were to appoint an administrator (trustee) to take over its management. If they decided it could not be saved, they were to order its liquidation. Banks and financial institutions were often creditors in these cases and ran the risk of losing enormous sums as soon as the new law was passed. For nine years, the French financial sector lobbied politicians to change the law.[5] A defeat in Parliament seems to have driven the sector to switch strategies, and try instead to increase the number of 'its' judges making insolvency-related decisions. In 2006, 21 years after the bankruptcy law's enactment, the financial sector finally secured an amendment in its favour.

As will be shown further,[6] bankers are also the big winners in the struggle for epistemic domination in the commercial court. Our previous results (Lazega and Mounier, 2002a, 2002b, 2011) expose the informal and indirect influence of bankers with a law degree over their fellow consular judges. A judge's sector of origin has a significant effect on his or her centrality in the judges' advice network. Bankers are overrepresented at this court, and bankers with a law degree are so central in the judges' advice network that they exercise strong indirect influence through premise-setting in its decision-making. For example, bankers are mostly non-punitive (Lazega et al., 2008, 2009, 2011): they are less keen on awarding 'punitive' damages to plaintiffs in unfair competition cases, mainly because punitive damages can reach enormous amounts; and in many cases the companies with the deepest pockets, able to pay such amounts, are financial firms. Epistemic domination helps bankers impose their discourse, rhetoric and criteria in discretionary decision-making over time.

Money talks

What are the implications of this institutional capture for decision-making in the field of bankruptcy? Qualitative interviews with the judges about their preferences with respect to bankruptcy proceedings

9780230355798_09_cha07.indd 171 4/17/2012 5:18:36 PM

PROOF

and possible recovery plans for insolvent companies show variations in discourses and representations regarding sale or continuation of businesses in difficulty that differentiate bankers from other judges and explain their influence over their peers. Analysis of the discourses on bankruptcy, liquidation or recovery plans for insolvent businesses highlights a tendency among consular judges to think of themselves as good people doing the dirty work (in Hughes' sense, 1962) of capitalism. This discourse analysis also clearly identifies three groups of magistrates expressing very different conceptions of the role of 'consular justice', how business should work and how actors should promote their regulatory interests.

The first group of judges gives very serious consideration to the social consequences of bankruptcy decisions, particularly as regards employee salaries and the fate of the entrepreneurs who own the companies. These judges always favour a continuation plan when it will save jobs, as they consider job protection (including management jobs) the primary objective of any recovery plan. A positive representation of entrepreneurs, especially in industry, presents them as the true creators of wealth and innovators in the economy. The company as a complex entity (encompassing social, human, economic and other dimensions) must be protected against financiers who care only about profits. From this perspective, the commercial court is there to protect the industrial innovator by promoting continuation of the business and safeguarding the company, perceived as a source of economic life, and its most committed members, the business owner/manager and the employees. The judges who take this stand – mostly former entrepreneurs from the building, industrial and services sectors – are highly critical of their colleagues who care only about the corporate accounts and debt reimbursement. Judges interested only in the financial aspects of a company are considered as 'gravediggers' of business, incapable of understanding the true economic value of employees and business people. This and their narrow financial logic are considered responsible for the negative image of consular justice in bankruptcy cases.

A second group of consular judges with radically different ideas clearly favours business sale plans, in other words selling off the company to an external purchaser, considering this more viable than continuation plans. Transferring the firm to a new owner brings in new cash and creates a salutary shock for the ailing company because it makes radical reorganization of the business easier. Preserving the social dimension and protecting employees is not the main aim, as it soon leads to failure of the recovery plan followed by liquidation.

9780230355798_09_cha07.indd 172 4/17/2012 5:18:36 PM

PROOF

Priority is instead given to creditors, who are considered the true developers of economic activity. The creditors are themselves companies and may be affected by their clients' difficulties, possibly to the extent of being pushed into bankruptcy themselves if debtors default on their loans, which in turn creates further layoffs. These judges consider that companies have a lifecycle beginning with birth (formation) and ending with death (bankruptcy and liquidation). Death is thus 'a fact of life' in business. Judges are merely acknowledging this and must not intervene to help companies in difficulty, as that would compromise the general operation of the market. Judges must only act to protect the interests of creditors and their capacity to keep re-injecting capital into new investments, thus driving the dynamics of the economy. This perspective is promoted by a sizeable minority of lay judges from both the financial and industrial sectors. They strongly criticize their colleagues' preference for continuation plans, which in their opinion constitute a practically destructive interference in the natural processes of the economy. The vast majority of them are in favour of selling off the ailing company, so that the market is self-regulating through competition. From this explicitly neoliberal perspective, death of the losers is part of the natural economic cycle; consular judges should not 'feed the zombies' and artificially sustain obsolete companies. Safeguarding jobs by extending the company's existence makes things worse in the long run. These judges are critical of the bankruptcy law enacted by the Left in 1985 (which considers employees as the company's primary creditors) and partly upheld by subsequent conservative governments, but also of what they consider their colleagues' sentimentality with respect to protection of jobs. They see bankruptcy as a purely financial problem: the choice of selling or continuing the business must result from purely financial reasoning, with survival at all costs not an option. The markets and competition will ensure the survival of the fittest through innovation. Favouring sell-offs is thus considered by this group of judges a realistic position that potentially avoids even worse human consequences. The social dimension of the problem must be dealt with outside the market economy:

> I think that a continuation plan must have two potentially contradictory objectives. The first is that there must be at least some chance of the company recovering; it's not worth pushing for a continuation plan if the company will be back at the court six months later. So the judge must put on his businessman's hat and ask: 'Can they make it? Do they have a reasonable chance?' And the second, which matters

9780230355798_09_cha07.indd 173 4/17/2012 5:18:36 PM

PROOF

> a lot to me, is: 'Will they not disturb the social order?' Social order for me is the whole of competition. That is: by letting a company survive with lower, easier requirements than its competitors … if a company has difficulties, we must kill it off. There are no sick companies. In the jungle, I'm only half-joking, there are no sick animals. The sick animals are all dead. There is no problem with sick animals. Of course, the problem is that this creates social problems. The true problem is social, but that can't be solved in the markets.
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> As a banker I can tell you that bankruptcy is a phase in the life of companies. Companies are created; they live and die just like human beings. For financial analysis, the death of a company is the natural fate of the economic body. The question is how to prevent there being too many bankruptcies. Personnel problems need to be treated separately, through occupational retraining.
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> J10

Protecting a company against competition is thus considered equivalent to giving it a licence not to innovate. It will stagnate with the status quo:

> There's something very frustrating here: I think we live in a society that has completely seized up. There's no attempt to be imaginative. French society is not creative enough. If a company wants to produce textiles, fine. But there will be competition. Sometimes business people know it will be hard, but they don't realize what that means. What it means is that you shouldn't start a business if you don't realize what it means. We lack imagination and creativity; we live in a society of entitlements. I think the true problem is that we believe we're protected whatever happens. We perpetuate rights that we consider absolutely unquestionable, whatever they are, whatever the environment.
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> J11

A third group of judges – the largest – is torn between these two positions and seeks pragmatic compromises tailored to the specificities of each recovery. These judges want to take all factors into account and find a solution that balances the interests of all stakeholders (owners, management, employees, creditors). They are of the opinion that such a solution is always possible. From this perspective, a judge must favour

9780230355798_09_cha07.indd 174 4/17/2012 5:18:36 PM

PROOF

neither continuation nor sale, nor must he side ideologically with business owners or employees. Laying off personnel and cancelling debt are measures that must be part of the consular judges' toolkit because they are part of the hard reality of business and markets, even if they are problematic for the judges' personal ethics. Sale to an external purchaser can also create tension, because it may sideline the founder of the company whom the magistrates would like to support. Coming from the world of business themselves, many lay judges identify with entrepreneurs in difficulty, and would like to help them:

> Our big role is in bankruptcies. First of all, it's a very diverse and interesting universe: you meet lots of different kinds of people: judges, trustees, companies, bankers, financial backers, et cetera. And then the idea is not to sanction, but be firm with poor managers and help out good ones. When you see good businessmen in insolvency proceedings because of bad luck, because of the economy, because of a thousand reasons not of their own making, I like to help them get over this crisis and get back into business if possible.
>
> J12

AQ6

> I tend to favour the owners of SMEs. I spend my time trying to save them or help them out, and that's not the attitude taken by someone with a finance background. Even if matters are sometimes riskier in a continuation plan I tend to try, even when financially, a sale plan looks better. Because the owner of an SME, it's like he's the father of the company, it's his life, that's the long and short of it! If he wants to fight back and if he wants to carry on, I won't sell it off to someone else.
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> J13

We also noticed that the hesitancy generated by the coexistence of strongly held conflicting convictions is fuelled by internal critiques within the court. For example, one former banker agreed with the critiques of positions taken by judges from her own sector, considering her professional past in banking was a handicap in bankruptcy cases, and contributed to the negative image of the institution. In her opinion, bankers spontaneously favour repayment of debt, and should therefore refuse to handle bankruptcy cases:

> As a professional banker, I'd rather not do bankruptcy work because I'm afraid that my way of working will catch up with me: look

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> at the figures and profits, regardless of the human drama behind the figures.
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> J5

In some discourses, the group of judges who systematically side with creditors is blamed for creating antagonism in the commercial court between entrepreneurs from all sectors of the economy and top executives from banking and finance:

> Bankers and entrepreneurs don't behave the same way, we don't have the same experiences, we haven't lived the same lives. When you've been through all the anxieties of a small business owner, you're more sensitive to the value of continuation than top executives from large companies who never get to know those difficulties. I think that's the big divide: between the people who know what it means to be the boss of their own company, and the rest.
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> J6

Some judges from the worlds of industry, commerce and services would even like to help failing entrepreneurs prevent takeover by purely financial buyers, who are often disliked. Other judges, we were surprised to realize through our interviews, simply prefer to keep out of bankruptcy work altogether,[7] with arguments such as the following:

> I don't do bankruptcy work because liquidating a company means laying off 15 people and I'm not made to be a liquidator or gravedigger. Quite the contrary, I'm interested in helping out a bit. In my working life, I've always been in charge of development. I develop, I don't bury. I'm interested in creation, not destruction!
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> J14

The conceptions of business and the role of consular justice with respect to bankruptcy expressed by the three groups of judges can be considered political. They should be related to the economic and political context at the time of the study: nationally famous French companies (such as SNCM, Tati, Moulinex) were filing for bankruptcy, the commercial courts were frequently in the news and the judges felt obliged to frame their discourse so as to respond to the critiques levelled against them. But these conceptions persist beyond the historical context in which they were recorded.

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In sum, members of the third and largest group of judges claim to hesitate and steer a pragmatic course somewhere between the positions of the first two groups. They often also think they should not let themselves be guided solely by their own personal preferences, but seek advice from colleagues so as to find and support the solution that is most likely to succeed. In the following section we look at two characteristics of the court that can be considered sociological indicators of institutional capture as an extreme form of joint regulation in specialized institutions. We show that in a situation of uncertainty, the majority of consular judges turn to members of the second group of judges, and thus consult with colleagues who tend to put the interests of creditors first. We then show that bankers tend to be over-represented not only in the court as a whole, but also in its bankruptcy chambers. This indicates that bankers not only make more decisions about bankruptcies than non-bankers, but also dominate the court by advising their colleagues. Given their preference for protection of creditors (since banks are the main creditors in the economy), we can infer from these analyses that any advice provided to colleagues is also likely to favour creditors.

Bankers' epistemic domination in the court

We now look at whether or not judges from the over-represented financial industry are in a position to exercise invisible influence on other judges by providing them with resources such as information and advice. We measure this influence by looking at centrality in the advice network between all the court's judges. We assume that advice interactions between judges are equivalent to interactions setting the premises underlying judicial decisions, especially since bankers – particularly bankers with a law degree – may be sought out for advice because they have more legal knowledge than other lay judges. Patterns of advice-seeking in the court show who is prepared to listen to whom when framing and defining problems at hand in the judicial decision-making process. The advice network between judges can thus be considered as a bridge between structure and decision-making, and an indicator of the bankers' ability to be the main force behind this institution by building its 'epistemic community' (Lazega, 1992). Examining how judges transfer and exchange advice helps measure the capacity of an industry to set the premises of such decisions by looking at the centrality of its representatives in the advice network between all the judges, and then at the determinants of that centrality.

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Data on advice-seeking between judges was collected in 2000, 2002 and 2005 using the following name generator:

> Here is a list of all your colleagues at this court, including the President and Vice-Presidents of the Court, the Presidents of the Chambers, the judges, and the 'wise men'. Using this list, please tick the names of colleagues whom you have asked for advice on a complex case in the last two years, or with whom you have had basic discussions, other than formal deliberations, in order to hear a different point of view on a case.

Thanks to the very high response rate, we were able to define the complete advice network (excluding formal deliberations) between the Paris commercial court judges, measuring it three times as a longitudinal dataset, and thus tracking each judge's centrality in this network over time.

As is generally the case in advice networks (Krackhardt, 1990), an informal pecking order or status hierarchy emerges among judges. In order to examine the relationship between bankers and centrality, we included these attributes and several other characteristics of the judges in a regression model predicting centrality in the judges' advice network. In addition to the main variables representing the judges' sector of origin (financial industry background, combined here with holding a law degree), a series of control variables were added to the model. Seniority, measured by the number of years an individual has served as a judge, can be understood as 'experience' and helps a judge wield influence independently of the sector of origin. Another consideration is that the other commercial court judges may not be the only source of advice and influence. Being well-connected and open to the business community can attract colleagues who need economic advice. The same is true of being well-connected and open to professional judges in other courts (especially the Court of Appeal, whose judges are career judges): such external ties can attract colleagues who need legal advice. It may also be true of being well-connected and open to the Public Prosecution office, although monitoring and influence by the Ministry are not always welcome in commercial courts. Being economically active (as opposed to retired) may also have an effect on centrality in the advice network: retired judges may have more time and be more available to discuss issues at length than working judges. Belonging to the State elite (the *noblesse d'Etat* explained earlier) means having connections in high places, with the potential for authority and influence among

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fellow consular judges. Table 7.1 presents the analysis controlling for these effects.

The results expose the informal, indirect influence of bankers with a law degree over their fellow consular judges. A judge's sector of origin has a significant effect on being central in all three models, particularly when that judge hails from the banking industry and holds a law degree. Bankers are over-represented at the Paris commercial court, and among them bankers with a law degree exercise strong indirect influence in the organization through premise-setting.

Controlling for the other variables, active involvement in the social life of the court has an unstable effect (significant in one model only) on centrality in the advice network, and thus on the capacity to set the premises of other judges' decisions. In order to exercise such indirect influence, judges must also be greatly involved in the court and its social life, have and use connections outside the court buildings, and consult with professional judges. In addition to being socially active in the court and being a banker with a law degree, being a senior judge and seeking advice from other sources (the business community and professional judges) are also good predictors of potential influence in the

Table 7.1 Bankers with a law degree as most central advisors in the network of voluntary lay judges at the Paris Commercial Court in 2000, 2002 and 2005

	2000		**2002**		**2005**	
	Parameters	**S. E.**	**Parameters**	**S. E.**	**Parameters**	**S. E.**
Intercept	–3.54	1.02	–1.11	1.65	1.08	1.61
Seniority	0.67	0.08	0.80	0.12	0.72	0.13
'Noblesse d'Etat'	1.13	0.90	3.04	1.42	1.67	1.57
Economically (vs retired)	–0.61	0.63	0.12	0.92	–0.26	1.02
Bankers with a law degree	1.33	0.71	2.93	1.09	3.14	1.32
Participation in social functions	2.36	0.92	0.23	1.30	1.80	1.31
Seeks advice:						
–from business sector	1.61	0.62	0.05	0.92	–1.43	1.14
–from career judges (CoA)	4.49	1.42	5.09	1.93	2.56	1.85
–from public prosecutor	–1.72	0.63	–1.70	1.12	–0.25	1.22

Linear regression model measuring the effect of lay judges' characteristics on their indegree centrality in the advice network in the court.

9780230355798_09_cha07.indd 179 4/17/2012 5:18:36 PM

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Paris commercial court. A consular judge's reputation can be built inside the small microcosm of the court by investing in relations with other judges from the same or different courts. Seeking advice from the Public Prosecutor (the State's direct representative in the Paris Commercial Court) is significant and negative in 2000 (under a socialist government): the more contact judges have with the Public Prosecution office and its representatives, the less they are sought out for advice by their peers. In sum, the more socially active a judge is within the court, the more open to discussions with the business community and the legal environment – but less open to discussions with official representatives of the State – the more influence he or she has at the court. AQ7

Finally, bankers' influence, particularly when they have a law degree, has effects on decision-making. For example, bankers are mostly non-punitive (Lazega et al., 2009, 2011): they are less keen on awarding 'punitive' damages to plaintiffs in unfair competition cases. In bankruptcy cases, bankers' influence does indeed have an effect on decision-making. If we now focus on bankers' involvement in bankruptcy chambers and their propensity to handle bankruptcies in a way that whenever possible favour sale as opposed to continuation of the business, Figure 7.2 represents the composition of the four chambers dealing with bankruptcies at the Paris commercial court in 2000. AQ8

The proportion of bankers among the judges in the three bankruptcy chambers is respectively 3/7 and 5/12 for the first two, with one banker belonging to both, and 4/7 for the third chamber. These proportions reflect a strong presence in chambers where bankers have a vested interest, as banks are the main creditors in the economy and their representatives are exposed to serious conflicts of interests when they make decisions concerning company liquidation and priorities of claims on assets (by workers, creditors including banks, clients, suppliers or subcontractors). The most striking proportion is in the fourth chamber, which handles 'Opposition to orders of the bankruptcy judge'. This chamber is equivalent to a small internal appeals court for parties unhappy with decisions made by the judge handling their bankruptcy (*juge commissaire*), and five of its seven judges are bankers. Over-representation of bankers thus reaches a peak in the chamber hearing appeals against decisions made by the bankruptcy court, raising clear conflict of interest issues.

This very high proportion reflects an involvement that can only be interpreted as a form of damage control by the banking industry. Judges from the financial sector are clearly potential levers of influence for their industry. In addition, they are the only group who can dominate

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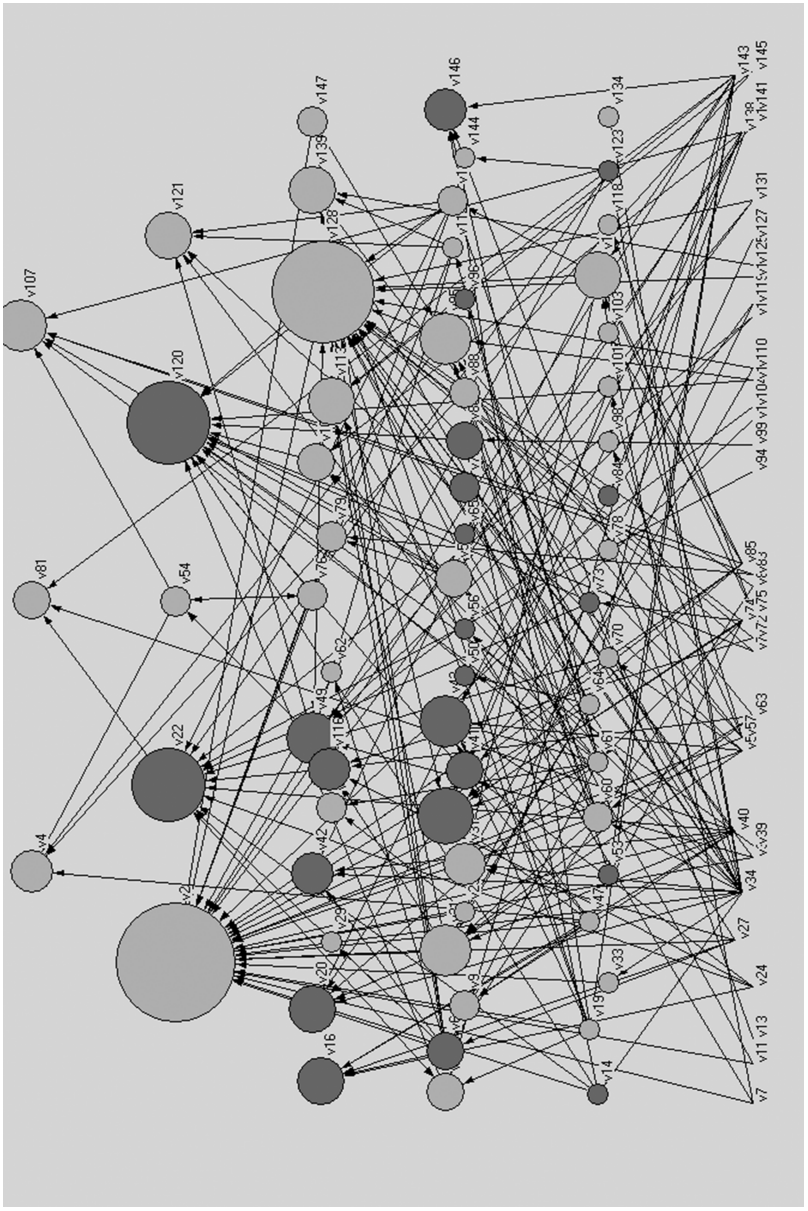

Figure 7.1 Visualization of bankers' position at the top of the pecking order among lay voluntary judges at the Paris Commercial Court

Note: This figure was obtained by focusing on the intersection of the advice networks measured in 2000 and 2002; the informal hierarchy shown here is obtained by taking out all cycles in the network. Bankers are represented in dark grey, non-bankers in light grey.

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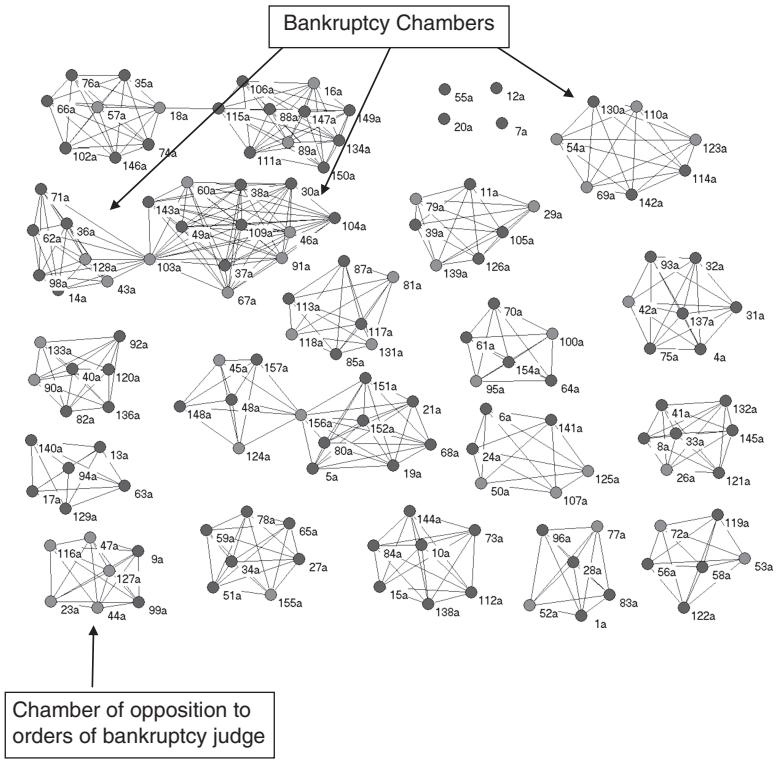

Figure 7.2 Composition of Chambers at the Paris Commercial Court (2000) and conflicts of interest
Note: Bankers are represented grey, non-bankers in black.

such an institution. Their dominant position results from their multiple forms of status – including knowledge of the law, centrality in the advice network, and intermediarity in joint regulation and 'shared' government of markets more generally – which increases their capacity, in a 'consular regime' (Lazega, 2011; Lazega and Mounier, 2011) to convince colleagues hesitating between a purely financial logic and a more industrial logic that sees a company as a collective creator of value.

Discreet joint regulation, the dual role of finance and institutional capture

Given the increasingly porous boundaries between the private sector and public institutions in advanced capitalist societies, institutional

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capture in the form of joint regulation has become a policy issue even in areas usually considered closer to the core functions of the State, such as education, healthcare, family, security and science. Private economic actors in these market areas spend time and resources trying to structure their environment, improve their opportunity structure and manage the governance mechanisms that constrain them. These efforts are often built into the operations of economic institutions, especially institutions representing joint regulation.

This chapter shows how organizational and network analyses can efficiently measure a level of institutional capture that is usually difficult to observe in complex joint regulation by State and private actors (Lazega, 2003, 2009). As our case study illustrates, State captors can be representatives of the oldest incumbents rather than new market entrants as in Stark and Bruszt (1998) or Hellman, Jones and Kaufmann (2000). Redefining institutional capture in this organizational and structural way as an extreme form of joint regulation focuses on corporatist efforts to design or redesign institutions, influence decision-making in rule enforcement and achieve collective gains for interest groups in these institutions. These factors add to collective actors' capacity to reap invisible benefits. A court can thus be captured inasmuch as interest groups are successful in using their influence to benefit overall from its decisions, even if not all rulings are in their favour.

Re-examining the institutional frameworks of market governance using organizational and network analyses can shed light on the mechanisms that facilitate institutional capture. In our case study, a complex system of cooperation between the State, local Chambers of commerce and voluntary (and militant) citizens produces commercial courts that offer a specific example of joint regulation with specific ways of sharing the costs of social control of markets. In particular, we focus on regulatory influence and the financial sector's special role in this process: when business becomes collectively organized to connect to the public sector, the dual nature (both economic and political) of this financial sector and its regulatory role and combined normative and epistemic influences can be brought to light. In our case study, the importance of the financial industry is measured not only by the number of judges it places on the bankruptcy bench of a judicial institution, but also by the centrality of its representatives in that institution's advice network. This epistemic influence at the conception and implementation phases of market regulation provides a level of remote control over the institution that is difficult to grasp and measure without knowledge of internal organizational operation, normative struggles and social networks. This

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approach brings to light the mechanics of the dual role of banking and finance, and the structural position of bankers and financiers as heavyweight intermediaries between business and the State.

As joint regulation increases, so does – in our view – the danger of widespread institutional capture by business running public institutions. This study suggests that public policymakers could benefit more systematically from organizational and structural studies of joint public-private regulatory arrangements by looking at such institutions through this lens. We suggest that this approach to the ways private and corporate actors defend and promote their regulatory interests – whether through the official political process or through the less accountable selection of private norms, even in public institutions – can be used in the future to rethink the notion of conflict of interests (Lazega, 1994), a dimension of the relational embeddedness of economic action that has been relatively neglected in both the scientific and policy literature. Social and organizational network analysis can be very effective in detecting situations of conflicts of interests and institutional (not necessarily personal) corruption. It can be an efficient method of measuring the level of capture or independence of public office in such complex situations – provided capture is redefined as a collective process, not simply an illicit individual benefit.

Notes

1. The response rate reached an average 90 per cent in each phase of the study. In an initial exploratory phase in 1999, we collected socio-demographic information about the judges, ethnographic information and observations on the operations of the court. During the second phase, in 2000, we interviewed all the judges face to face about various issues of interest to the presidency of the court, and included a name generator about advice-seeking in the questionnaire. The third phase, in 2002, consisted of interviewing all the judges about their motivations, careers and values, and added a second measure of the advice network among the judges. The fourth and final phase in 2005 was used to collect systematic materials on the judges' judicial reasoning (using vignettes and real-life court cases), and develop a third measurement of their advice network. This chapter is based on part of our qualitative data, particularly the organizational analysis and interviews with judges about their normative choices.
2. More details about this institution are provided in Lazega and Mounier, 2003. AQ9
3. For example, 21 were elected as candidates of the Association française de banque and five as candidates of the Association française de sociétés financières. Of the financial companies that were the employers of sitting judges (at the Paris Chamber of Commerce alone), BNP-Paribas supplied seven

9780230355798_09_cha07.indd 184 4/17/2012 5:18:38 PM

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judges, Suez four, Société Générale four, Crédit Lyonnais four and Crédit Commercial de France four.

4. Source: Institut national de la statistique et des études économiques, Comptabilité nationale, 2001 (www.insee/fr/indicateur/cnat annu/tableaux/t 1201 25 4.htm).
5. On the position of the Conférence Générale des Tribunaux de Commerce on the law of 1985, see Rey (2001), to be read from the distanced perspective of Commons (1924). A recent President of the Paris Commercial court from the banking world, she had a decisive impact in shaping France's new bankruptcy and business insolvency prevention bill (2007) – just as the President of the Paris Commercial Court wrote the French Code of Commerce in 1807.
6. See also Lazega et al. (2011).
7. Lay consular judges are also torn between celebrating the regulatory function of their institution and accepting the negative consequences of bankruptcy work for their public image. Some see the cost of handling bankruptcies, in terms of self-image, as higher than the benefit of being a voluntary lay consular judge, and this explains why they do not wish to sit in bankruptcy chambers. Some of their colleagues are highly critical of this attitude of malaise and withdrawal.

References

Ayres, I. and J. Braithwaite (1992) *Responsive Regulation: Transcending the Deregulation Debate* (Oxford: Oxford University Press). AQ10

Brunet, A. (2008) 'Sauvegarde, conciliation et redressement judiciaire: L'illusoire diversification des procédures destinées à sauver les entreprises en difficulté', in *Études de Droit privé, Mélanges offerts à Paul Didier* (Paris: Economica), p. 33ff. AQ11

Brunet, A. (2009) 'De l'excessive sollicitude du législateur à l'égard du banquier qui prête à une entreprise en difficulté', in *Des contrats civils et commerciaux aux contrats de consommations, Mélanges en l'honneur du Doyen Bernard Gross* (Nancy: Presses Universitaires de Nancy), p. 407ff. AQ12

Carruthers, B. G. and T. Halliday (1998) *Rescuing Business: The Making of Corporate Bankruptcy Law in England and the United States* (Oxford: Oxford University Press).

Cheit, R. E. and J. E. Gersen (2000) 'When Businesses Sue Each Other: An Empirical Study of State Court Litigation', *Law & Social Inquiry*, XXV: 789–816. AQ13

Commons, J. R. (1924) *Legal Foundation of Capitalism* (New York: Macmillan). AQ14

Dunworth, T. and J. Rogers (1996) 'Corporations in Court: Big Business Litigation in U.S. Federal Courts: 1971–1991', *Law & Social Inquiry*, XXI: 497–592. AQ15

Falconi, A. M., K. Guenfoud, E. Lazega, C. Lemercier and L. Mounier (2005) 'Le Contrôle social du monde des affaires: une étude institutionnelle', *L'Année sociologique*, LV: 451–84. AQ16

Favereau, O. and E. Lazega (eds) (2002) *Conventions and Structures in Economic Organization: Markets, Networks, and Hierarchies* (Cheltenham, UK: Edward Elgar Publishers).

Flemming, R. B. (1998) 'Contested Terrains and Regime Politics: Thinking about America's Trial Courts and Institutional Change', *Law & Social Inquiry*, XXIII: 941–65. AQ17

PROOF

Guérault, A., H. Lamotte and B. du Marais (1993) *Les garanties et le crédit aux entreprises*, Rapport du Conseil National du Crédit (Paris: Éditions de la Banque de France).

Hellman, J., G. Jones and D. Kaufmann (2000) 'Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition', *World Bank Policy Research Working Paper* No. 2444.

Hellman, J. and D. Kaufmann (2001) 'Confronting the Challenge of State Capture in Transition Economies', *Finance and Development*, XXXVIII, http://www.imf.org/external/pubs/ft/fandd/2001/09/hellman.htm, accessed on 18 May 2007. AQ18

Hawkins, K. O. and J. M. Thomas (eds) (1984) *Enforcing Regulation* (Boston: Kluwer-Nijhof). AQ19

Heydebrand, W. and C. Seron (1990) *Rationalizing Justice: The Political Economy of Federal District Courts* (Albany: SUNY Press).

Hughes, E. C. (1962) 'Good People and Dirty Work', *Social Problems*, X: 3–11. AQ20

Krackhardt, D. (1990) 'Assessing the Political Landscape: Structure, Cognition, and Power in Organizations', *Administrative Science Quarterly*, XXXV: 342–69. AQ21

Lazega, E. (1992) *Micropolitics of Knowledge: Communication and Indirect Control in Workgroups* (New York: Aldine-de Gruyter).

Lazega, E. (1994) 'Les conflits d'intérêts dans les cabinets américains d'avocats d'affaires: concurrence et auto-régulation', *Sociologie du Travail*, XXXV: 315–36. AQ22

Lazega, E. (2001) *The Collegial Phenomenon: The Social Mechanisms of Cooperation Among Peers in a Corporate Law Partnership* (Oxford: Oxford University Press). AQ23

Lazega, E. (2003) 'Networks in Legal Organizations: On the Protection of Public Interest in Joint Regulation of Markets' (Utrecht: Wiarda Institute Publications).

Lazega, E. (2009) 'Theory of Cooperation among Competitors: A Neo-Structural Approach', *SocioLogica* [*Italian Journal of Sociology Online*], Issue 1, www.sociologica.mulino.it/main. AQ24

Lazega, E. (2011) 'Four and Half Centuries of New (New) Law and Economics: Legal Pragmatism, Discrete Joint Regulation and Institutional Capture at the Commercial Court of Paris', in L. Francot-Timmermans and B. de Vries (eds) *Law's Environment* (The Hague: Eleven Publisher). AQ25

Lazega, E., C. Lemercier and L. Mounier (2006) 'A Spinning Top Model of Formal Structure and Informal Behaviour: Dynamics of Advice Networks in a Commercial Court', *European Management Review*, III: 113–22. AQ26

Lazega, E. and L. Mounier (2002) 'Interdependent Entrepreneurs and the Social Discipline of their Cooperation: Structural Economic Sociology for a Society of Organizations', in O. Favereau and E. Lazega (eds) *Conventions and Structures in Economic Organization: Markets, Networks, and Hierarchies* (Cheltenham: Edward Elgar Publishers). AQ27

Lazega, E. and L. Mounier (2003a) 'Interlocking Judges: On Joint External and Self-Governance of Markets', in V. Buskens, W. Raub and C. Snijders (eds) *Research in the Sociology of Organizations*, XX: 267–96. AQ28

Lazega, E. and L. Mounier (2003b) 'Lorsque l'Etat se retire du contrôle de l'économie, qui prend le relais?' in J. Crête (ed.) *Hommage à Vincent Lemieux: La science politique au Québec* (Québec: Presses de l'Université Laval), pp. 155–78.

Lazega, E. and L. Mounier (2003c) 'La Régulation conjointe des marchés: Le cas du Tribunal de Commerce de Paris', in B. Convert (ed.) *Repenser le marché* (Paris: L'Harmattan). AQ29

9780230355798_09_cha07.indd 186 4/17/2012 5:18:38 PM

PROOF

Lazega, E. and L. Mounier (2009) 'Polynormativité et contrôle social du monde des affaires: le cas de l'interventionnisme et de la punitivité des juges du Tribunal de Commerce de Paris', *Droit et Société*, 71: 103–32

Lazega, E. and L. Mounier (2010) 'La rhétorique des professions libérales au service de la privatisation de l'État: le cas des juges consulaires du Tribunal de Commerce français', in D. Demazière and C. Gadéa (eds) *Sociologie des groupes professionnels: Acquis récents et nouveaux défis* (Paris: La Découverte).

Lazega, E. and L. Mounier (2011a) 'Le régime consulaire de contrôle social des marchés et ses soutiens institutionnels: Le cas du Tribunal de Commerce de Paris au début du XXIe siècle', in P. Fridenson (ed.) *Marché et concurrence: droit et institutions* (Paris: IGPDE).

Lazega, E. and L. Mounier (2011b) 'Networks of Institutional Capture', in B. Vedres and M. Scotti (eds) *Social Networks and Public Policy* (Cambridge University Press).

Lazega, E., L. Mounier, T. Snijders and P. Tubaro (2011) 'Norms, Status and the Dynamics of Advice Networks', in press, *Social Networks*. Electronic version published at http://dx.doi.org/10.1016/j.socnet.2009.12.001.

Lazega, E., L. Mounier and P. Tubaro (2011) 'Norms, Advice Networks and Joint Economic Governance: The Case of Conflicts among Shareholders at the Commercial Court of Paris', in M. Ugur and D. Sunderland (eds) *Does Economic Governance Matter? Governance Institutions and Outcomes* (Cheltenham: Edward Elgar).

Macaulay, S. (1963) 'Non-Contractual Relations in Business: A Preliminary Study', *American Sociological Review*, XXVIII: 55–67.

McIntosh, W. V. and C. L. Cates (1997) *Judicial Entrepreneurship: The Role of the Judge in the Marketplace of Ideas* (Westport, CT: Greenwood Press).

Montebourg, A. and F. Colcombet (1998) *Les Tribunaux de commerce: Une justice en faillite?*, Rapport n° 1038, Commission d'enquête parlementaire de l'Assemblée Nationale (Paris: Michel Lafon).

Rey, P. (2001) *La Réforme de la loi de 1985 sur le traitement des difficultés des entreprises*, Rapport au Congrès national des tribunaux de commerce, Lyon, 23 November (Paris: Publication de la Conférence générale des tribunaux de commerce).

Reynaud, J-D. (1989) *Les règles du jeu* (Paris: Armand Colin).

Stark, D. and L. Bruszt (1998) *Postsocialist Pathways: Transforming Politics and Property in East Central Europe* (Cambridge: Cambridge University Press).

Swedberg, R. (1993) 'Economics and Custom', *Journal of Institutional and Theoretical Economics*, CIL: 204–9.

Wheeler, S., K. Mann and A. Sarat (1988) *Sitting in Judgment: The Sentencing of White Collar Criminals* (New Haven, CT: Yale University Press).

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AQ36	Lazega, E., L. Mounier and P. Tubaro (2011) is not cited in the text	
AQ37	please provide the page range after <(Cheltenham, UK: Edward Elgar)>	
AQ38	please provide the issue number after < XXVIII>	

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Book Title:	Huault
Chapter No:	Chapter 7

Queries and / or remarks

Query No.	Query / remark	Response
AQ39	Montebourg, A. and F. Colcombet (1998), Reynaud, J-D. (1989) are not cited in the text	
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