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### Networks of institutional capture: a case of business in the State apparatus

EMMANUEL LAZEGA AND LISE MOUNIER

Businesses of all kinds usually try to participate in the regulation of their own activities as much as they can. One way of participating in this regulatory activity is to exercise control on State institutions which solve conflicts among businesses and discipline entrepreneurs. This participation can lead to institutional capture. In this chapter we describe and show the contribution of network analysis in measuring the level of institutional capture in a specific case. We analyze a network of business people acting as lay judges in a judicial institution, the main first-level commercial court in France. This court handles commercial litigation as well as bankruptcies. Courts are not static institutions making atemporal and purely rational decisions. They are contested terrain, the object of broader conflicts that occur outside court-houses. We use a longitudinal study of advice networks among these 240 lay judges at the Commercial Court of Paris (CCP) – judges who are elected by their business community at the local chamber of commerce – to examine a few characteristics of such an institutional capture, in particular an invisible mechanism through which the banking industry manages to dominate this court. Results illustrate the value of network studies for a renewed attention to the inner workings of institutions and for the protection of public interest in the regulation of capitalist economies, in which boundaries between private and public sectors are blurred.

#### 8.1 Joint governance and institutional capture

Business usually tries as much as it can to participate in the governance of its markets. In this chapter, we look at an extreme case of how business gets organized, collectively, to do so by capturing a judicial institution. The case is that of French commercial courts, a four and a half century-old institution. In France, the State has long been sharing its own judiciary power with the local business community. Business succeeded in 1563 in negotiating what could be called a “joint governance” agreement with public authorities: this agreement created a special jurisdiction for

commerce in which judges are lay, voluntary judges, i.e. elected business people who are not remunerated 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 bankruptcies. Their capture is the result of a complex historical and institutional process. Here we focus on the dimension of this process that is brought to light by social network analysis.

Institutional capture can be defined as “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; Kaufmann and Kraay, 2007). We suggest that this definition is too focused on individuals. We think that the definition of the process of institutional capture should be broadened to involve corporatist efforts to design or redesign institutions, to influence decision making in rule enforcement, and to obtain collective gains for interest groups in these institutions. These elements add to the capacity of collective actors to gather invisible advantages. A court can thus be captured, inasmuch as interest groups are successful in using their influence to benefit systematically from its decisions.

This institution represents a form of joint governance or a combined regime of endogenous and exogenous conflict resolution in markets. We use the label “joint” because we argue that governance is often a combination of self-regulation and exogenous regulation, a combination in which costs of control are shared. We can define the joint element in “joint governance” as the coexistence of several sources of constraint, both external and internal, that weigh on the actors in charge of solving the conflicts and enforcing the rules. Thinking about joint governance in these terms follows both an organizational and a broadly conceived structural approach to economic institutions (Lazega and Mounier, 2002; Lazega, 2009). Courts are indeed a locus of joint governance. They are not static institutions making atemporal and purely rational decisions (Heydebrand and Seron, 1990; Wheeler *et al.*, 1988). They are contested terrain, the prizes or objects of broader economic competition and conflicts that occur outside courthouses (Flemming, 1998). This is especially the case in courts in which judges are themselves business people elected by their local business community. Attempts at influencing what goes on in court from outside the court come through various angles. Fleming (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). Parties involved in that contest may not be directly concerned by all the conflicts that are dealt with by the court, but they may have indirect concerns, material

or symbolic, in the decisions of the court, and thus attempt to influence what goes on.

Flemming's categorizations help focus on specific processes of influence. We limit ourselves to the study of two such processes: position and resources (in Flemming's vocabulary) and the relationship between the forms of influence they represent. By this we mean that we look at who is allowed to become a judge and what kind of resources are made available to them when sitting in judgment and participating in governance while solving conflicts between businesses.

Indeed, collective actors involved in conflicts on markets, such as companies, whole industries (in class actions, for example), and even State administrations, may have strong incentives to influence who becomes a judge and what resources are available to these judges. For example, the more litigious these sectors are, the stronger their incentives to share the costs of conflict resolution. These collective actors are usually conceived of as external actors. Their incentives to influence the jurisdiction of the court are to protect their own interests in the long run. They may do this by helping some of their own selected members in becoming a judge. The stronger their incentives, the more they can be expected to take care of their representation among the judges. Such judges, once in a position to solve conflicts between parties, may have combined incentives to influence the jurisdiction of the court: on the one hand, they represent the law and are meant to proceed in all independence; on the other hand, they may represent, and therefore 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 these judges can be a very strong, although indirect, way of influencing the outcome of judicial decision making. In effect, collegial deliberation among judges is built into legal institutions. This deliberation – whether formal or informal – relies heavily on knowledge management by the court. This brings us to the second process (in Flemming's list above) by which influence characterizing joint governance is exercised in such organizations. One way to influence the behavior of judges is to try to set the premises of their decisions by attempting to control the information available to them while sitting in judgment. Judges coming from one sector of the economy may thus, as “judicial entrepreneurs” (McIntosh and Cates, 1997), attempt to keep particular definitions of problems alive, or promote the ideas, customs, rules, and interests that are commonplace in their sector, although not in others. Control over the premises of decisions can be assumed to influence the probability of who wins, even if this “framing control” by players is almost invisible to outside observers.

The law and the courts are aware of the fact that different types of actors in the environment of the court are involved in such influence attempts. Anticipating that

the court will be the target of such external attempts at influence, the legal system provides rules concerning conflicts of interests for judges: when they are too close to one of the parties, for example, when they sit in judgment of a competitor, sometimes even of a business in the same industry as their industry of origin, they must self-disqualify or, if this is discovered, be removed from the case by their hierarchy.

However, a structural approach to joint governance raises the issue of the success of such procedural attempts in neutralizing external influences, especially when the judges are elected. Indeed, and to summarize, given the incentives identified above, we can expect influence on judges to take a form identified in the following hypotheses. Firstly, the stronger the external stakeholders' interests and expectations, the more likely they are to invest in shaping the courthouse, especially in selecting the judges. Secondly, the closer the judges (as levers of influence) are to other judges (as targets of influence) in the same court, the more influence they have on these other judges (i.e. on their targets). In other words, being active in the social life of the courthouse multiplies opportunities to meet, discuss decisions, and therefore of being sought out for advice, thus increasing one's influence on other judges as targets.

In this chapter we test these hypotheses using a network study of the Commercial Court of Paris (CCP). Network data are used to show the existence and the determinants of this influence structure.

## 8.2 Consular commercial courts as joint governance institutions

Consular courts are operated by consular judges. Each consular judge acts both as an individual judge, and as a representative (presumably without any specific mandate) of the business community. Consular judges are voluntary, unpaid, and elected for two or four years (for a maximum total of fourteen years) at the Chamber of Commerce of their local jurisdiction, the two economic institutions supporting each other and maintaining close ties. Judges are elected after a complex procedure (Falconi *et al.*, 2005) that begins with individually obtaining the sponsorship and approval of a professional association (for example the French Banking Association, the French Hotel Industry Association, etc.). The electoral body is composed of currently sitting judges at the commercial court and of representatives of the employers' associations (some of whom sponsored the candidates in the first place). A small administrative unit of the Chamber of Commerce searches for new candidates, interviews and selects them, composes a unique list of candidates that is then submitted to the vote of the electoral body for formal rubber stamping. Although no part of a democratic government is usually allowed to self-perpetuate in that way, consular judges have thus co-opted each other for centuries.

In this institutional solution, the State, the industries or companies, and the individual judges share the costs of exercising social control of business. These judges sit in judgment one day a week to enforce law and customs among their peers. Decisions made by the court can be challenged, as in any court, and be brought to the Court of Appeal. At the Court of Appeal, judges are no longer business people, but highly selected professional judges. In such a system, there are at least two categories of such unpaid, voluntary, and consular judges: firstly, retired business people looking for social status, an interesting activity and social integration; and secondly, younger professionals, whether bankers, lawyers, or consultants, who look for experience, status, and social contacts, sometimes on behalf of their employer (who keeps paying their salary while they are practising as a judge at the Court). If the individual judge is young enough, this can help to build a relational capital (as explicitly stated in the flyers trying to attract new judges to the job) and to open doors for future positions in the economic institutions such as the *Chamber of Commerce* itself, sometimes the *Conseil Economique et Social* (an advisory board to the Prime Minister), and other honors dispensed by the State apparatus. Indeed, for younger professionals, sitting as a judge at the CCP has traditionally been considered a “chore” that would be rewarded later on with seats on prestigious committees in the economic institutions of the country. Various types of lucrative contracts and missions may also be awarded, on a discretionary basis, by the acting President of the Commercial Court to former judges to advise companies on a “prevention” basis. Consular judges can also become arbitrators in arbitration courts, once they are done with their 14 years at the public courthouse.

There are several justifications for this joint governance regime. Firstly, it is a cheaper and faster form of justice than a system with 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 first-level jurisprudence. Secondly, career judges – who are civil servants – have often been considered to be inexperienced in business and unable to understand the problems of private companies, or to monitor satisfactorily the behavior of company directors, particularly in the insolvency and bankruptcy minefields (Carruthers and Halliday, 1998). Thirdly, business law often ignores idiosyncratic norms and customs (called *usages* in French commercial courts) based on industry traditional subcultures characterizing whole sectors (Macaulay, 1963; Swedberg, 1993). The argument is that efficient conflict resolution cannot ignore these bodies of rules and conventions, that organize business practice differently in each traditional sector. Judges at the Tribunal de Commerce, since they are supposed to be experienced business people, are thus said to be specialized in their professional field, and in a better position than tenured civil servants to know about these customs; to adjust them more quickly to unstable or changing business environments; and to be 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 system, the difficulty with representing general and particularistic interests has always been the predicament of these judges. For example, when they are elected from among business people, they can be thought of as representing the State as well as their business community. They may claim that they are not “representatives” with a mandate from the industry that helped them become a judge. But they are still expected to speak on behalf of this industry and its customs by the members of this industry, and sometimes by fellow judges. The public has always suspected that patronage appointments lead to politicized elections of judges, who then fail to distance themselves from their virtual “constituency”, i.e. the industry that endorsed their candidacy for the job. Especially in small town commercial courts, litigants’ confidence in the impartiality of the tribunal’s decision is often impaired. They fear that judicial control can be exercised by competitors. The institution, however, assumes that zealous judges will be entirely virtuous, in spite of the short distance between regulator and regulatee.

### 8.3 Networks at the Commercial Court of Paris

Fieldwork was conducted at the CCP. This court is one of the four large commercial courts in the Paris region. It includes twenty-one generalist and specialized chambers (such as bankruptcy, unfair competition, company law, European community law, international law, multimedia and new technologies, etc.) which handle around 12% of all the commercial litigation in France, including large and complex cases (when they do not go to arbitration courts). There are around 150 judges each year. Socio-demographic characteristics of the judges show that their average age is 59; 87% of the judges are men; 38% are retired. Positions occupied by judges in their industry and occupation of origin (or former occupation) include CEOs (25%), vice-presidents, and top executives of all kinds. Amongst the youngest judges, there are more professionals such as company counsels, accountants, and consultants. Most of the time, they work for large business groups or medium-sized companies (that the judges do not like to name); they prefer to be discreet about their professional affiliation. Most judges are highly educated with diplomas from top French business schools, law schools, elite engineering schools (called *‘noblesse d’Etat’*).<sup>1</sup>

Fieldwork was carried out over five years. Response rate reached 90% on average at each phase of the study. A first phase took place in 1999, during which we collected socio-demographic information about the judges, ethnographic information, and

<sup>1</sup> More details about this institution are provided in (Lazega and Mounier, 2003).



observations on the operations of the court. A second phase in 2000 allowed us to interview face to face all the judges, about various issues of interest to the presidency of the court, and to include a name generator about advice seeking in the questionnaire. During the third phase, in 2002, we interviewed all the judges about their motivations, careers, and values, plus a second measurement of the advice network among the judges. Finally, a fourth phase in 2005 allowed us to collect systematic materials on the judges' jurisprudential reasoning (using vignettes and real-life court cases), as well as a third measurement of their advice network. The organizational functioning of the CCP is complex. It is not our purpose to describe it here in more detail. As mentioned above, several kinds of professionals operate these courts together: consular judges, clerks, business lawyers, representatives of the attorney general, bailiffs, experts of all kind, professional liquidators and/or "administrators" (for companies that are on the brink of bankruptcy but could perhaps be brought back to life). Judges are allocated across the large number of generalist and specialized chambers. The minimal distinction in terms of specialties is between bankruptcy and litigation. Different procedural rules are legally attached to each. But the litigation bench is then subdivided in many types of subspecialties mentioned above. There is a president of each chamber who reports to the president of the court. In each chamber, three – sometimes five – judges sit together in judgment, processing cases collegially while listening to the conflicting parties, as in any other judicial court.

### ***8.3.1 Networks in the recruitment of consular judges***

Recruitment of judges is always a difficult task. As seen above, recruitment of consular judges adds a level of complexity; it is severely controlled by the business community and its institutions. Candidates for the position are often initially contacted by sitting judges, colleagues, professional associations, or even by family members who are themselves part of this relatively closed consular milieu. Here we were able to elicit from the judges information that shows that social networks matter in the recruitment of future candidates. We asked the judges if they had had informal discussions about the idea of applying for the position before they became a judge themselves, and if so with whom. Eighty percent declared that they had had such informal discussions. In 57.4% of the cases they mentioned discussions with judges already sitting in the Court. Consular judges are thus the main recruiters of new consular judges. They play the main role in attracting new candidates using their informal relationships. Their relational work is crucial in the generally difficult task of recruiting new magistrates upstream of elections and formal co-optation.

### 8.3.2 Over-representation of the financial industry among lay judges

According to the justification of this system of joint governance, the selection of judges should produce a representation including as many sectors of the local economy as possible, especially in large commercial courts such as that of Paris. At the time of the study, economic sectors represented by the judges (i.e. in which they work or in which they used to work) were indeed very diverse. Thus, in complex cases, intelligence about a sector could be made available to the court from the judges coming from that sector. However, some industries or companies invest more than others in judicial entrepreneurship, and incur a larger share of the costs of control because they have an interest in doing so. Although in theory all employers' associations can present candidates to the elections of consular judges on an annual basis, to fill in the vacancies created by a 10% turnover at the court, in reality all do not and some do so much more systematically than others. In 2000, 29% of the judges came from the financial industry. 44 consular judges, the majority of them with a legal education, were currently employed by the financial industry or had been employed by it in the past. This industry promotes several candidates for election to the job each year.<sup>2</sup> The financial industry is clearly over-represented, in absolute and relative terms, at the Commercial Court of Paris. In effect, the sector of financial activities represents around 5% of the active population in Paris where the services industries are over-represented compared to the rest of France. In terms of value added to the economy per branch, the share of the financial services industry in the total value added to the French economy was on average 5.3% at the time.<sup>3</sup>

This industry is traditionally a very litigious sector (Cheit and Gersen, 2000). The business docket in France, probably as in most countries, is dominated by contract disputes and debt collection issues. A sizable portion of this docket involves the financial industry, for obvious reasons, which provides a strong incentive to invest in judicial entrepreneurship – for example to ensure damage control in cases involving high levels of credit. Banks and financial institutions are often creditors themselves and they stand to lose enormous amounts. Therefore they invest in penetrating the courts and maintain a high number of consular judges coming from their ranks. The financial industry, with its high amounts of resources at stake in commercial litigation and bankruptcy, is willing to play for the rules. It has an interest in trying to shape the court and impose its industry norms and practices over those of other industries. The priorities of the financial sector (such as preserving the high value of

<sup>2</sup> For example, 21 were elected as candidates of the *Association française de banque* and five as candidates of the *Association française de sociétés financières*. Among the financial companies that were the employers of sitting judges (at the CCP alone), BNP-Paribas had sent seven judges, Suez had sent four, Société Générale four, Crédit Lyonnais four, and Crédit Commercial de France four.

<sup>3</sup> Source: Institut national de la statistique et des études économiques, Comptabilité nationale, 2001 (<http://www.insee.fr>).



assets, high level of claims, and high sensitivity to the impact of corporate failures on the economy) can thus be defended in both the litigation and the bankruptcy bench. One of the likely influence processes that characterize joint governance is thus detected in the selection of judges themselves (i.e. the “positional” effect in Flemming’s vocabulary). Small employers’ associations do not have the necessary clout to lobby effectively, nor enough resources to share the costs of control. All sectors of the business community cannot participate equally actively in the contests and attempt to shape the courthouse from outside. The potential influence of each in the struggle over this kind of contested terrain varies with the resources available to promote candidates for the jobs of consular judge. Resources available are not the same in the banking industry and in less well organized sectors, such as retail.

One of the combined effects of the fact that consular judges are the main recruiters of consular judges, and of this over-representation of bankers, is that bankers, being more numerous, also attract an increasing number of bankers to the court. These descriptive results also show that judges coming from the financial industry are clearly potential levers of that industry. Influence exercised by these judges over other judges in the court would mean that the financial industry is the biggest threat to this court’s independence. In effect this over-representation allows the banking industry to be over-represented in key chambers. For example, in 2000, bankers were over-represented in bankruptcy chambers. This over-representation reaches a peak in the chamber hearing appeals against decisions made by the bankruptcy bench (a sort of internal Court of Appeal for decisions about bankruptcies): in this chamber, five out of seven judges were bankers, raising clear issues of conflicts of interest.

### ***8.3.3 Advice networks and bankers’ influence***

Using this information about “positional” influence, we can now look at whether or not judges coming from this 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 amongst all the judges of the court. We assume that advice interactions between judges are equivalent to interactions setting the premises of judicial decisions, especially since bankers with a law degree may be sought out for advice, because they have a better legal education than other lay judges. In effect, 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 among judges can thus be considered to be a bridge between structure and decision making (Lazega, 1992). Therefore, we look at the ways in which the judges transfer and exchange advice, then try to appreciate the ways in which contextual

factors can influence this process. We can 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 amongst all the judges, and then at the determinants of this centrality.

Data on advice seeking among judges was collected in 2000, 2002, and 2005 using the following name generator: “*Here is the list of all your colleagues at this Tribunal, including the President and Vice-Presidents of the Tribunal, the Presidents of the Chambers, the judges, and ‘wisemen’.* Using this list, could you check the names of colleagues whom you have asked for advice during the last two years concerning a complex case, or with whom you have had basic discussions, outside formal deliberations, in order to get a different point of view on this case?” Our very high response rate allowed us to reconstitute the complete advice network (outside formal deliberations) amongst judges at this courthouse, three times as a longitudinal dataset, and thus to measure each judge’s centrality in this network over time.

As in advice networks more generally (Krackhardt, 1990), an informal pecking order or status hierarchy emerges amongst judges. In order to look at the relationship between bankers and centrality, we included these attributes along with several other characteristics of the judges in a regression model predicting centrality in the advice network amongst judges. In addition to the main variable representing the judges sector of origin (having worked in the financial industry, 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 help a judge to wield influence, independent of the sector of origin. In addition, the other judges in the commercial court may not be the single 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 with being well connected and open to professional judges in other courts (especially the Court of Appeal, where judges are career judges). Such external ties can attract colleagues who need legal advice. The same could happen with being well connected and open to the office of the Attorney General, although surveillance and influence by the Ministry are not always welcome in consular courts. Being in activity (as opposed to retired) may also have an effect on centrality in the advice network, since retired judges may have more time and be more available than professionally active ones to discuss issues at length. Being a member of the State elite (the ‘*noblesse d’Etat*’, i.e. coming from the elite French engineering and administration *grandes écoles*, having been trained at elites schools such as *ENA* or *Polytechnique*) means that one has connections in high places, and thus might wield some authority and influence among fellow consular judges. Table 8.1 presents the analysis controlling for these effects.

Table 8.1. Key (most central) players in the advice networks among lay judges at the Commercial Court of Paris in 2000, 2002 and 2005. Linear regression model measuring the effect of lay judges' characteristics on their centrality in the advice network.

	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
Professionally active (versus retired)	-0.61	0.63	0.12	0.92	-0.26	1.02
Bankers with 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 district attorney	-1.72	0.63	-1.70	1.12	-0.25	1.22

Results expose the informal and indirect influence of bankers with a law degree over their fellow consular judges. The sector of origin of a judge, particularly coming from the banking industry and having a law degree, has a significant effect on being central in almost all three models. Bankers are over-represented at this court, and among them, bankers with a law degree exercise strong indirect influence through premise setting in this organization.

Controlling for the other variables, being active in the social life of the court has an instable 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 effect, in order to exercise such indirect influence, judges should also be strongly integrated in the courthouse, in its social life, have and use ties outside the courthouse, consult with professional judges. Notice that, in addition to being socially active in the court and to being a banker with a law degree, being senior and seeking advice from other sources (in the business community and among professional judges) are also good predictors of potential influence in this court. Notoriety of consular judges can be built inside the small microcosm of the courthouse by investments in ties to other judges, whether within or outside this specific courthouse. Notice that seeking advice from the Attorney General (who represents the State directly inside the Commercial Court of Paris) is significant and negative in 2000 (under a Socialist government): the more contact judges have with the office of the Attorney General

and its representatives, the less these judges are sought out for advice by their peers. In summary, the more socially active the judges within the court, the more open to discussions with the business community and with the legal environment – but the less open to discussions with representatives of the State – the more influential these judges are at the court.

Finally, it should be stressed that bankers' influence, particularly when they have a law degree, has consequences in terms of decision making. For example, bankers are mostly non-punitive (Lazega *et al.*, *in press*) i.e. less keen on awarding “moral” damages to plaintiffs, in cases of unfair competition.

#### 8.4 Conclusions

With increasing porosity of the boundaries between the private sector and public institutions in advanced capitalist societies, institutional capture in joint forms of governance has become a policy issue even in domains that have usually been considered closer to the core functions of the State, such as education, health, family, security, or science. Private economic actors in these market areas spend time and resources trying to structure their environment, to 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 governance. We show here how network analysis is efficient at measuring a level of institutional capture that is usually difficult to observe in complex joint governance by State and private actors (Lazega, 2003). In our case study, State captors can be representatives of the oldest incumbents, not new market entrants as in Stark and Bruszt (1998) or Hellman *et al.* (2000).

Re-examining the institutional frameworks of market governance using network analysis 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 citizens, produces consular commercial courts and specific ways of sharing the costs of social control of business. In particular, we focus on the regulatory influence and special role of the financial sector in this process: when business gets organized collectively to connect to the public sector, the dual character of this financial sector (both economic and political) and its regulatory role and influence can be brought to light. In our case study, the importance of the financial industry is measured not only by the number of consular judges that it places on the bench, but also by the centrality of its representatives in the advice network of the organization. This epistemic influence at the implementation phase of market governance provides a level of control of the institution that is difficult to acknowledge and measure without knowledge of social networks.

As joint governance increases, so does – in our view – the danger of widespread institutional capture. Our study suggests that public policy makers could benefit more systematically from organizational and structural studies of joint public–private governance arrangements by looking at such institutional arrangements through this lens. We suggest that this approach can be used in the future to rethink the notion of conflict of interests (Lazega, 1994, 2011), a dimension of relational embeddedness of economic action that has been relatively neglected both in the scientific and policy literature. Social and organizational network analysis can be very effective in detecting situations of conflicts of interest and institutional (not necessarily personal) corruption. Combined with organizational analysis, it can be an efficient method of measuring the level of capture or of independence of public office in such complex situations.