Acknowledgements

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Businesses of all kinds usually try as much as they can to participate in the regulation of their markets. They try to shape their opportunity structure, to structure their environment, and to uphold the social mechanisms allowing them to cooperate in an ‘organizational society’. At the inter-organizational level, at least two different sociological traditions deal with the issue of regulation of markets, stressing either the formal and often exogenous aspects of this regulation, or the informal and often endogenous character of self-regulation.

For the first tradition, a socio-legal one, exogenous regulation (see for example Ayres and Braithwaite, 1992; Hawkins and Thomas, 1984; Shapiro, 1984; Weait, 1993; Weaver, 1977) is provided by government agencies backed up by courts. These studies focus, for example, on the decision by government agencies to prosecute deviant companies. Such decisions are not obvious and they often come out of tradeoffs between official inspectors and company managers. This is especially the case when they face risks such as large-scale losses and layoffs, and sometimes bankruptcy, should the law be strictly enforced. The second tradition focuses on interfirm arrangements promoting self-regulation benefits for firms in their interorganizational transactions and more informal conflict resolution mechanisms. Precisely because litigation is costly, economic firms may sometimes prefer informal dispute resolution whenever possible, especially when they have long term continuing relationships (see for example Macaulay, 1963, 1986; Raub and Weesie, 1993, 2000; Rooks et al., 2000; Buskens et al., 2003). Here the focus is on pressures to conform by one organization on the other. Pressures are based on resource dependencies and reputation. Thus, each tradition focuses on a different kind of actor intervening in regulation: mainly the State and/or companies themselves – the latter sometimes through industry representatives or through selection of partners.

In reality, the two forms of regulation, or conflict resolution, systems combine in various ways. One example of combination is provided by Ayres and Braithwaite (1992) in their analysis of ‘responsive self-regulation’. This analysis shows the existence of ‘enforcement pyramids’ that exist between State regulatory agencies and corporate actors. Such pyramids express the possibility, for industry representatives and for law enforcement, to escalate from persuasion to warning letters to civil penalties to criminal penalties to license suspension and revocation. Actors know that such enforcement pyramids exist. They know that each way of enforcing contracts is only one way among several others, and that an escalation can be triggered. This is why, in spite of the costs of litigation, firms do use formal institutional litigation both as plaintiffs and as defendant (Galanter and Epp, 1992; Dunworth and Rogers, 1996; Cheit and Gersen, 2000) and conflicts do follow the disputed pyramid transforming informal complaints into court filings and formal judiciary decisions (Felstiner et al., 1980).

Following the idea that the two forms of conflict resolution are connected, I further explore this connection. I identify two forms of ‘joint’ regulation or a combined regime of endogenous and exogenous conflict resolution in markets by looking at professions and consular courts. I use the label ‘joint’ because they represent regulation mechanisms that combine self-regulation and exogenous regulation. The combinations of the two can take many hybrid forms. The joint element in ‘joint regulation’ is thus defined as the coexistence of several sources of constraint, both external and internal, that weigh on the actors in charge of solving conflicts and enforcing rules. These actors can be identified as third parties when they sit in judgment and make decisions about how to solve conflicts related to market activities between a first and a second party. Saying that such third parties are constrained by external and internal forces is equivalent to saying that they have to deal with influences coming from various stakeholders in the conflict resolution process.

Thinking about joint regulation in those terms follows both an organizational and a broadly conceived organizational and structural approach to economic institutions (Lazega and Mounier, 2002, 2003), an approach in which network analysis is used to study systematically and empirically actors’ resource interdependencies. Here I use these organizational and structural perspectives to contribute descriptively to the study of economic and legal institutions that represent a combination of exogenous and self-regulation of markets. On the basis of empirical network studies, I first criticise the usual solution in corporate law firms for solving the problem of a conflict of interest, namely Chinese walls within the law firm. Although I do not provide evidence of lack
of impartiality by corporate lawyers using such walls in specific cases, I describe ways in which the formal and informal organization of their practice raise unanswered questions about their capacity to represent issuers. Here I take the case of conflicts of interests not in large multinational accounting firms, but in New England's corporate law firms. I look at the market for legal services in New England as described in one of the above-mentioned Chinese walls. I describe the market of the law firm as an organization, and the individual lawyers themselves to whom I refer as agents. We can then define the role of agents in a firm, for instance, legal defense litigation against clients from two large insurance companies. 

I try to provide evidence of the fact that reliance on the capacity to self-regulate through professionalization and consular institutions should be matched with renewed State and citizens' capacity to monitor more closely issues such as conflicts of interests, and thus with renewed capacity to sanction accordingly. I will argue that in strong partnerships, conflicts of allegiance divide actors invested with some discretion and trust. These professions have traditionally been part of social control mechanisms for protecting confidentiality and secrecy in the relationship between the professional and the client. However, the problem of conflicts of interests is a classical ethical preoccupation for many professions: for lawyers who represent successively or concurrently potentially competing clients; for medical doctors who, for instance, have to manage the transfer of organs, or own a laboratory in which they send their patients for medical screening. And so on: the problem looms large when conflicts of allegiance divide actors. 

Case One: Conflicts of interests in New England corporate law partnerships

Multiple representation and self-regulation by the legal profession

In the case of the legal professions, self-regulation is the form of social control exercised on members by entities other than the State and its agencies. If we focus on lawyers, self can be the profession (represented by a bar association), the law firm as an organization, and the individual lawyers themselves. I define a lawyer of a firm, for instance, as a firm representing New England law firm names.

2 The Andersen team handling the Enron audit directly contravened the accounting methodologies 

3 By social discipline, I mean the social processes such as solidarity, control and regulation that are possible by relational investments by members of a collective (Lazega and Mounier, 2002). This definition of social discipline goes beyond simple statements of embeddedness seeking to prove the economic efficiency of the existence of social ties, or 'social capital'. This approach identifies more accurately the processes of control of commitment and oligarchic negotiation of 'precarious values' (Selznick, 1957; Lazega, 2001).

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Access to inside information through situations of conflict of interests may even be considered to be one explanation among many others for the economic and political influence of the legal professions in many countries (see for example Sellers, 1991).

Practices of unfair competition. At Spencer, Grace & Robbins, attorneys will have to choose which side they are on. They may not represent both firms on this matter. Especially for professionals involved in adversarial practices (for instance on the other side), they may use the information of the most lucrative clients as a basis for their representations.

Lawyers mobility within the profession (modern career paths), the fact that many firms are multi-city, the complexity of many financial transactions, and the likelihood of cross-ownership of firms are not so much increasing but rather decreasing the influence of the ethical dilemmas related to conflicts of interest. Conflicts can arise in most interesting situations where the firm is divided into two sides. The importance of the dividing line between the two sides is the legal entity of the firm. If a lawyer is a partner in the firm, the lawyer must conduct these two checks for all former clients of every lawyer in the firm. In such cases, the lawyer's mobility may be constrained.

It is difficult to study the 'decision to disclose' and the methods of disclosure, but there are many incentives not to disclose (just like for the decision to prosecute by inspectors enforcing external regulation, as shown by Hawkins, 1984).

One interesting ramification of this is that large law firms themselves incorporate these potential conflicts, and that clients are often willing to waive conflict issues in most areas except litigation, or when they are going to be sued. The reason for which the clients are willing to waive conflict issues is related to the fact that the firm sets up a Chinese wall between the lawyers who represent the potentially conflicting sides.

The pragmatists say that because conflicts are imputed throughout the firm, a conscientious lawyer would have to conduct these two checks for all former clients of every lawyer in the firm. In addition, they would have to do this usually without knowing the precise information to look for. With the knowledge that the firm is divided into two sides, they may become next to impossible. That more or less forces the firm to look for other explanations for the economic and political influence of the legal professions in many countries (see for example Sellers, 1991).
England State in which I conducted this study in the early 1990's, there were approximately ten medium-sized firms in relatively small State. As most of the lawyers I interviewed admitted, conflicts of interests were everywhere, and the managing partners or other attorneys had to make decisions regarding the grey area of conflicts as often as three times a week. Clients spread their business around, firms expanded and took on an increasingly broad use of a client because of a conflict with another client was increasing. Some managing partners said that they would not allow a conflict with a current client to expand beyond the limits of the State. At the time, there was enough business and there were enough old clients willing to tolerate such representation. But managing partners did not seem to prevent their firms from growing (in spite of building pressures to do so). For example, Flood (1988; Flood & Halley, 1991) showed that there were no formal agreements for four firms (which were the hundred lawyers, not the firms) to go beyond the limits of the State. This research was designed in two steps: a first step during which I interviewed 40 managing partners, department heads, lawyers, and managerial personnel of firms, about their formal structure and their professional policies. And a second step involving the information collected during fieldwork that focused on the organization of law firms that limit the efficiency of Chinese walls. The extent to which all clients have to accept such a clause, however, remains unknown.

Aspects of the organization of law partnerships that limit the efficiency of Chinese walls

7 It is not necessary to completely restate too much. Here I use the word "as the criterion". For instance, were the lawyers not used to the Chinese wall, and what they call "as the criterion" for us, as the criterion, as the criterion, as the criterion. As the criterion, a law firm can try to prevent the emergence of conflicts, such conflicts, such conflicts could not make a priority. Another aspect of the organization of work that is important for us is the workforce, particularly the intake of new firms, which is not the workforce, particularly the intake of new firms, which is the workforce, particularly the intake of new firms.
very often decentralized. Formal structure attempts to coordinate the work process. In its effort to organize its practice, the firm formally regulates intake (mainly, who decides whether or not to take in a case, based on what criteria) and assignment (mainly, who will do the work). There are many reasons for implementing an intake policy. The firm wants to be sure that it is not using its resources on work that is either less interesting or less profitable than other work that it might be able to get. This means that the firm is also preoccupied with situations which are not technical conflicts of interest, but which are not desirable in business terms. Intake procedures are always somewhat flexible. Flexibility, at least in the implementation of intake, seems to be imperative because workflow depends on the nature of the practice. In some areas, clients usually come directly to the lawyer. In others, lawyers may work on files because they were given these files when they were associates and they stayed on these files. Many large firms are well established and corporate clients are passed down from partner to partner over the years. Clients come to partners through referrals from other lawyers in the community or through cross-selling by partners from another area of practice.

According to firms’ intake procedures, new clients should be cleared with the managing partner. But this requirement is not systematically respected. Some partners did not even seem to know about it. Lawyers in general do not like to turn work away. Some of the most intense fights about which attorneys tell Goffman-like stories in these firms were about lawyers who had to give up a client, either to another lawyer, or to just let the client go, after it appeared that there might be a conflict that could not be handled. Law firms are professional firms, with thick carpets and a quiet atmosphere, where members try to avoid such conflicts. In two firms out of six, department heads checked every Monday the list of new clients for the firm; in two other firms, the list was published in the newsletter; in the rest of the other firms, partners had the summary at the monthly partnership meetings. But everything was done in a way that encouraged a pragmatic attitude toward conflicts: the underlying assumption was that ‘if we opened a file, that means that the client is cleared by the technical conflict check and that there is no matter conflict’. Partners did not enjoy challenging other partners’ intake behaviour, and the Managing Partner only intervened when there was a problem with a client or when asked to by a partner.

Another policy that was important from this point of view was the compensation policy. As firms adopted a more entrepreneurial approach to their practice, there was a trend toward compensation systems that weighed ‘merit’, client responsibility, and productivity more heavily than other factors. This meant competition not only between firms, but among partners within the same firm. This was an organizational setting in which members had strong incentives to use the organization for their personal benefit more than for the interests of the organization as a whole, including its ethical reputation. There was another incentive here, it seems to me, to be very pragmatic about potential conflicts, and to make all sorts of efforts to stretch the ‘matter’ criterion in a way that was favourable to the individual lawyer, or not to disclose the potential conflict to the client, or to disclose it in such a way that it did not seem threatening.⁸

I could continue with other policies, such as the fact that marketing tended to be seriously organized (when it was organized at all) only at the departmental level, not at the firm level, and as a result even generalist firms did not make a conscious effort to prevent putting themselves in situations of conflict. Or the fact that a formal peer review system was a very sensitive matter (i.e. no one wanted a formal peer review committee that would look into each partner’s ethics). Or the fact that the relationship between partners and associates was not a purely hierarchical one. Intellectual challenges were very much valued. In this environment, partners always found ways of talking about a matter with screened colleagues, for training purposes for instance. In addition to all this, the lawyers who moved from one firm to another often had a good dose of resentment for the firm that they were leaving. They did not have many personal allegiances and incentives not to use information that they gathered in a previous workplace. This information was part of their human and social capital. Maintaining and cashing in on such forms of capital is almost what corporate law firms are all about (Gilson and Mnookin, 1985; Flap et al., 1998). And new forms of collegiality seemed to accommodate opportunistic behaviour much better than previous forms.

All these organizational features of law firms, in my opinion, question the efficiency of the screening solution and of joint regulation. I would like now to use some results of a network study of a New England corporate law partnership to question even further the efficiency of the Chinese walls.

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⁸ See Kenneth Mann’s (1985) book on how corporate lawyers manage information in their relationship with their client.
Can collegial organizations make costly and unfriendly decisions on a day-to-day basis?

One of the firms in this research agreed to a network study. This study produced a clear picture of the social discipline that helps this kind of collegial organization operate on a day-to-day basis. The description of this social discipline is relevant to my purpose here. Figure 1 provides a picture of members’ informal resource interdependencies in this firm. These interdependencies are the basis of this social discipline.

Let us go back to the example of Aetna insurance and ITT Hartford. Let us take a potential conflict in which we (Spencer, Grace & Robbins) are suing our own client, but the two cases are different matters. For instance Aetna insurance gives us litigation work but now one of our partners also decides to represent a real estate company with which Aetna had invested a lot of money in a common project. Tensions arise because, after having committed itself to invest in this project, now Aetna threatens to withdraw from the deal unless changes are made in the project (the example was taken from the Hartford Current). The two matters are totally different, the actors involved are different, and the pragmatic view supports the idea that ‘there is no conflict, as long as there is a Chinese wall between the lawyers in our litigation department who do the insurance defence work, and the lawyers in our real estate department who handle the deal matter.’

So let us look at this internal boundary between the litigation department and the corporate department at Spencer, Grace & Robbins. Aggregating all the choices made by all the lawyers in three intra-organizational social networks shows, as pictured in Figure 1, that the firm has developed informal mechanisms to counter the centrifugal effects of its internal boundaries (such as differences in practice, status, and office). These mechanisms are important for its internal cohesion. In each of the three networks, attorneys cluster in small social niches. These niches are themselves embedded in a system of niches in which strong work ties cut across the status boundaries, strong advice ties cut across office boundaries (or geographical and market distances), and strong friendship ties cut across practice boundaries.

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9 For the reconstitution of co-workers, advice, and friendship networks (among others) in this firm, all the attorneys were presented with a list of all the other attorneys of their firm. They were asked to check the names of their strong co-workers, advisors and friends (for detailed name generators, see Lazega 2001).

Figure 1
Can collegial organizations make costly and unfriendly decisions on a day-to-day basis?

This picture represents ‘social niches’ and resources interdependencies among attorneys at Spencer, Grace & Robbins, a New England corporate law firm. Simply visualizing the three networks together provides a picture that is too complex to be informative. This figure is a reduction representing the pattern of relationships between positions of approximately structurally equivalent members (see Burt, 1991) across the three networks of all attorneys in the firm. Boxes represent positions of partners. Circles represent positions of associates. Thick lines represent mutual exchanges of a specific resource. Thin arrows represent unreciprocated transfers of a specific resource. Black lines represent the co-workers’ network. Grey lines represent the advice network. Dotted lines represent the friendship network. All the positions are social niches, with two exceptions: the dotted circles representing Positions Four and Eight mean that the latter are not social niches. Source: E. Lazega (2001), The Collegial Phenomenon: The social mechanisms of cooperation among peers in a corporate law partnership, Oxford: Oxford University Press.
In France, the role of commercial courts is to resolve conflicts between market entities, mainly businesses, and to enforce a form of combined regulation between market participants and exchanges. Institutional solutions found for such problems vary within and between countries. Data on French commercial courts are particularly useful to my argument because a specific form of combined regulation between market participants is a frequent phenomenon in France. In effect, a special jurisdiction is provided with the local business community. This makes the official support of the local community (the members of the Chamber of Commerce) a major factor in the success of the judge's work. The two economic institutions support each other and maintain close ties. The French commercial court is a case of business and civil society doing something important in the State apparatus.

Case Two: A French consular jurisdiction as a form of joint regulation

Another type of legal organization can be used to explore the issue of conflicts of interests from our perspective. Courts are natural places to examine in order to identify joint forms of regulation. They are not static institutions making a-temporal and purely national decisions. They are contested terrain, the prizes of which are objects of broader economic competition and conflicts that occur outside court houses (Flemming, 1998). This is especially the case in commercial courts, which are used for the early resolution of disputes between businesses. In France, such commercial courts are the main formal conflict-resolution mechanisms available by law to business people.

10 The State has long been sharing its own judiciary power with the local business community. In effect, a special jurisdiction exists for commerce, and these commercial courts are operated by commercial judges elected by the local Chamber of Commerce. These judges sit in judgment once a week, on a voluntary basis, to enforce the law among their peers, both in matters of commercial litigation between consumers and businesses, or between businesses, and of bankruptcy. The strength of this institution lies in its enforcement of the law and sanctioning of deviant behavior in the business community. Decisions made by these courts cannot be challenged, as in any court, 10 Arbitration and mediation operations also exist as formal avenues of conflict resolution for businesses. But, usually much more expensive and less formal, they are generally limited to large and multinational firms.

11 For the characteristics of the French system of commercial courts as an instance of combined external and self-regulation, see for example Chaput (2002), Hennequin and Monier (1985), Flament et al. (1987), Hervé (1985), Hervé (1990), and more recently, the Foundation for the Promotion of Research on the French Economy (2001). These commercial courts, which are operated by commercial judges elected by the local Chamber of Commerce, and which are often more informal than other French courts, are used for the early resolution of disputes between businesses. In 1998, around 50,000 cases of insolvency issues (Ministry of Justice figures for 1998; www.justice.gouv.fr/publicat/tc1807.htm).
Thus the French ‘Tribunal de commerce’ has specific features that make it comparable to that of other jurisdictions. A small percentage of cases (around 5%), for example, are resolved by the parties in French commercial courts. Thus this system represents a particular and self-regulation of local business communities. In such a system, there are several types of such unpaid, voluntary, and consular judges. For example, there are retired business people looking for status, an interesting activity and social integration, but also younger professionals, who look for experience, status, and contacts. These consular judges can be exercised by competitors. The institution, however, assumes that zealous and fast judicial decisions will enable these judges to be effective in such a system. In general, the business community wants speed and decisiveness from the courts, and personal patronage from judicial decision making, and as much neutrality as possible. But with consular courts, entire sectors of the business community, represented by their professional associations, feel that they are represented or at least protected. 

The argument is that efficient conflict resolution cannot ignore these bodies of rules that organize business practice differently in each traditional sector. The authors of this paper, who are supposed to be experts in the fields of business law and economics, try to understand the problems of entrepreneurs or to monitor satisfactorily the behaviour of company directors, particularly in the insolvency and bankruptcy mine fields (Archibald, 1998: 431). Indeed, the financial industry considers that these courts are much more able to handle their affairs concerning corporate liquidation than the traditional courts of the courts if they perceive these courts to be incapable of or opposed to their interests. The courts must often conform to the

12 The same is true for in English and American history. In bankruptcy cases, delay permits the remaining assets of the bankrupt corporation to run down, or to force the liquidation of the corporation, thus impairing the chances of corporate reorganization. A system of mutual accommodations and exchanges of favours brought all the players in the system into a tight coalition of mutually protective practitioners. Judges were necessarily part of this ‘bankruptcy ring’ (Grabosky, 1986: 53).
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expectations of the financial industry or lose much of their business (Carruthers and Halliday, 1998: 488). The ‘quality of justice’ as defined by the financial industry (limit risk and permit failures, or extend credit and aid reconstruction) is a significant factor in the strategy of this industry. Second, it signals to the constituency that the leaders of their syndicat are working hard at promoting the interests of the profession. Increases in the number of judges sent to the commercial court makes the apparatchiks look good.

Thus, from the perspective of each industry, consular judges are more than simple judges. They are judicial entrepreneurs (McIntosh and Cates, 1997) representing the sensitivity of the syndicats patronaux and organized interests that helped them into the courthouse in the first place by endorsing their candidacy. This is true in part of the fact that many judges are now managed by their employers. Large banks sometimes control their judges. They are no longer the employee of the court but the employee of the bank or insurance company, which has institutional and financial incentives to control the work of those who represent it in court. Judges have become symbols of their employers’ business community, representing them in their business, rather than in their professional capacity as judges. They have become agents for their business, rather than for their legal profession.

Fieldwork was conducted at the Tribunal de Commerce de Paris (TCP) in 2000 (wave 1) and 2002 (wave 2). This court is one of the four large commercial courts in the Paris region (along with the courts of Nanterre, Bobigny, and Créteil). The court includes twenty-one generalist and specialized chambers (such as bankruptcy, unfair competition, company law, European community law, international law, multinational and new technologies, etc.) that handle complex cases (when they do not go to arbitration courts). The list of judges included 157 names, of which 147 judges who were active in the tribunal as judges at the end of 2000, plus 10 wise men, i.e. former judges who remain in the tribunal as advisors after they decided to resign as judges; they are thus former judges to whom sitting judges can turn for advice in complex cases.

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13 Socio-demographic characteristics of the judges in 2000 show that 87% of the judges were men. Average age was 59 (minimum 36, maximum 78, standard deviation 8 years). On average, women judges were slightly older than men (62 versus 56), and 52% of the judges have been with the Tribunal for ten years or more; 36% were elected between 1991 and 1995, 12% since 1996, 38% are retired.
A second type includes 13% of the judges. 65% of the latter are medium-sized companies (as opposed to 34% in the whole population of TCP judges). Members of this category are young, professionally active, and they tend to value their identity of entrepreneurs. Half of them are women. The hotel, restaurant and retail industries are over-represented here. A third type includes 36% of the judges. Most are retired, former in-house counsels or former managers in large business groups. In depth interviews with all the judges show that the categories described here make sense to the judges themselves (Lazega, Mounier & al. 2003).

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. Among the young judges, judges, accountants, and consultants. Most of the times, they work for large business groups or medium-sized companies. These three industries are traditionally very litigious sectors (Chelt and Gersen, 2000). The business docket in France, as probably in most countries, is dominated by contract disputes and debt collection issues. A sizable portion of this docket involved industries with an interest in enforcing high levels of one specialty could be made available to the court from the judges coming from that specialty. However, although all the syndicates can present candidates to the elections of consular judges on an annual basis, little did so much more systematically than others. 29% of the judges came from the financial industry or had been employed by the financial industry or had been employed by the financial industry or had been employed by the financial industry or had been employed by the financial industry. Banking and chemical industries, as well as elite French business schools, are over-represented here (compared to their proportion in the total population of TCP judges). In depth interviews with all the judges show that the categories described here make sense to the judges themselves (Lazega, Mounier & al. 2003).

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The organizational functioning of the TCP is complex. It is not our purpose to describe it here in detail. Several kinds of professionals operate these courts together: consular judges, clerks, business lawyers, representatives of the attorney general, bailiffs, expert witnesses, and other professionals, as in any other court. Recall that, according to the justification of this system of joint regulation, the selection of judges should produce a representation including as many different economic sectors represented by the judges (i.e., in which they work) or which they used to work) were indeed very diverse. Thus, in complex cases, intelligence about one specialty could be made available to the court from the judges coming from that specialty. However, although all the syndicates can present candidates to the elections of consular judges on an annual basis, little did so much more systematically than others. 29% of the judges came from the financial industry or had been employed by the financial industry. Banking and chemical industries, as well as elite French business schools, are over-represented here (compared to their proportion in the total population of TCP judges). In depth interviews with all the judges show that the categories described here make sense to the judges themselves (Lazega, Mounier & al. 2003).

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Data on advice seeking among judges were collected in waves 1 and 2 using the following name generator. Here is the list of all your colleagues at this courthouse, including the President, Vice-President, and wise men. You may check the names of colleagues with whom you have asked for advice during the last 2 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 high response rate allowed us to reconstitute the complete advice network outside formal deliberations among judges at this courthouse, and thus to measure the premises of judicial decisions by looking at the centrality of judges in this network. We measured the capacity of an industry to set the premises of decisions by looking at judges' and their collective competence that is managed formally and informally. Formalized or professionalized, this competence is not a purely institutional capacity. It is distributed, capitalized in the way in which judges share knowledge and experience. Informally,lay judges also master consultancy services, and each other in areas of law and economics: they may not master judicial skills associated with a local social discipline. We measured the judges' centrality in the advice network, and we measured the influence of each judge in the set of judicial decisions, in order to study the influence of each judge in the organization.

The judges described their work to us from the perspective of learning and permanent adaptation to a changing business world. This ethnographic data will not be presented here. For more details see Lazega, Mounier et al. (2003).

In wave 1, data display a social network in which, on average, each judge sought advice from eight colleagues in the past year, outside formal deliberations. In wave 2, a social network of collective learning is considered to be a bridge between structure and premise setting. The advice network among judges is considered to be a bridge between structure and premise setting. The advice network among judges is considered to be a bridge between structure and premise setting.

One of the likely influence processes that characterize joint regulation is the way in which the financial industry are clearly potential levers of that industry and that influence over other judges in the court would mean that the financial industry is a threat to this court's independence.
stable structure that is characterized, in particular, by a small elite of ‘reference judges’ that are visible at the top of the picture. These judges are consulted much more often than the others without being formally identified as official advisors. A specific form of deference comes attached to their intellectual authority. Bankers are over-represented in the top two layers of this informal stratification.

Formal structure and informal hierarchy do not capture all the variations observed in the choices of advisors among TCP judges. Descriptive statistics (Lazega, Mounier & al., 2003) show that obvious attributes of judges do not constitute strong bases for homophilous choices. Judges without a law degree, for example, do not seem to consult with judges with a law degree more than they consult with each other. Coming out of HEC, the French top business school, or from Polytechnique, the French top engineering school, are not much more discriminant.

Judges coming from one sector of the economy do not consult more frequently judges coming from their own sector than judges coming from other sectors. This result tends to show that interdisciplinarity exists quite strongly in this court – an argument supporting one of the self-justifications of this kind of consular institution.

Judges from the same class (in terms of year of becoming judge and entering this court), although scattered in different Chambers, do however consult with each other more often than they consult with judges of other classes. It is all the more obvious for classes including very central judges (classes of 1992 and 1993). Employment status is also a discriminant factor: judges active in the business world seek each other more than they seek retired judges; retired judges tend to behave in the same way and do not seem to seek younger judges’ fresh competencies avidly. An even more socially subtle form of social homophily characterizes advice seeking among these judges: one that is connected to these judges’ career trajectory. Differences among judges with respect to career are also bases for homophilous choices of advisors (based on wave 2 data). Men at the end of their career consult with each other more than with

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22 Correlation between centrality scores in wave 1 and 2 measurements of the advice network is 0.9. This stability may reflect the process in which giving advice creates a reputation that attracts more advice seekers. Thus the pecking order may, in part, be the visible outcome of this process.

23 This absence of simple effects may be due to the rotation mechanism allocating judges across chambers. The rotation can prevent visible regularities from emerging.

24 Made with Pajek software (Batagelj and Mrvar, 2003).
In wave 1, controlling for the other variables, being active in the social life of the court does have a robust effect on centrality in the advice network, and thus on the capacity to set the premises of other judges’ decisions. The sector of origin of a judge, particularly coming from the banking industry, has no effect on being central. Notice that, in addition to being socially active, judges have, as part of their job, being in touch with professional judges, often bankers, may have less seniority at the court, less time to interact with other judges, socialize with them, and thus less centrality as advisors. But, secondly, the social integration of bankers at the court is relatively weaker than that of judges coming from other industries precisely because the banking industry is defensively perceived to be a substitute for the State, once the latter has withdrawn from direct control of the economy. This was illustrated to us by a judge who is himself a former banker: ‘les commerçants détestent la banque’ (shopkeepers despise the bank).

### Table 1

<table>
<thead>
<tr>
<th>Independent variables</th>
<th>Parameter estimates (Wave 1)</th>
<th>Parameter estimates (Wave 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>-3.45 (1.13)</td>
<td>0.02 (0.14)</td>
</tr>
<tr>
<td>Number of years as a judge</td>
<td>-0.29 (0.77)</td>
<td>0.98 (1.11)</td>
</tr>
<tr>
<td>Speciality (bankruptcy vs. litigation)</td>
<td>0.69 (0.62)</td>
<td>1.51 (0.12)</td>
</tr>
<tr>
<td>Having worked in the banking sector</td>
<td>0.00 (0.37)</td>
<td>0.28 (0.04)</td>
</tr>
<tr>
<td>Seeking advice from economic sector</td>
<td>1.55 (0.62)</td>
<td>-0.42 (0.17)</td>
</tr>
<tr>
<td>Seeks advice from professional judges</td>
<td>0.68 (0.88)</td>
<td>2.37 (0.93)</td>
</tr>
<tr>
<td>Currently employed (vs. retired)</td>
<td>-0.65 (0.64)</td>
<td>-0.16 (1.06)</td>
</tr>
<tr>
<td>Member of the noblesse d’Etat (ENA, X)</td>
<td>0.94 (0.31)</td>
<td>2.10 (1.33)</td>
</tr>
</tbody>
</table>

**Linear regression model measuring the effect of the judges’ characteristics on their centrality in the advice network. Standard deviations in parenthesis. N=147. R-sq=0.38 and 0.34.**
26 For example, seen from the perspective of Article 6 ECHR, French commercial courts are biased and vulnerable to criticism, both on paper and based on our results. Recognizing this, attempts to carry out reforms in France in recent years. These reforms, however, are not implemented to this date.

29 Another indicator is that judges coming from the financial sector are almost systematically elected with the smallest number of votes. Using a broadly conceived structural and organizational approach to conflict resolution in markets, it is possible to see that joint regulation raises problems of conflicts of interests in commercial courts just as it does in the professions. Organized business interests, particularly the financial and banking sector, try to exercise indirect control on commercial courts and thus on the financial industry. Thus, judges in this court. ‘Consular’ judges coming from the financial sector are not more central than judges coming from other sectors in the advice network, in which they can obviously set the premises of other judges’ decisions. This, however, gives us an idea about the accessibility of the operations of economic institutions, public interest and public service at stake. Work presented here in an increasingly organized society is particularly important that is important for the protection of the common good, but the kind of participation.

Joint regulation and the need for more transparency in market activities

In conclusion, I have considered the case study of joint regulation in two case studies of joint regulation. I examined aspects of the social discipline characterizing two organizations in charge of joint regulation, and its implication for the control of public interest. The two case studies show that attempts to control the ‘Tribunal de Commerce’ by the financial industry is both evident and challenging from within the court.

27 See for example Bruinsma (2003, chapter 4, p.53) on ‘Alternative dispute resolution Dutch style’, with the example of the Arbitration Council for Construction Disputes (Raad van Arbitrage voor Bouw). Here as well as in other countries, the financial industry is both an issue of conflicts of interests and gaining away from this industrial control. Being in a situation of conflict of interests, and getting away from it, provides access to important information and helps weak actors in punching above their weight. By signing into the operations of economic institutions, public interest and public service at stake, work presented here increasingly organizes the common good.

28 Countries also vary in the extent to which they are sensitive to the issue of conflicts. In common law countries, for example, the appearance of conflict used to be as bad as conflict itself. In civil law countries, this has not necessarily been the case up to now. However, as different as they may be, the two cases raise the same issue: that of the delegation of powers by the State to organizations and institutions and the risk of joint regulation. Countries also vary in the extension to which they are sensitive to the issue of conflicts. In common law countries, for example, the appearance of conflict used to be as bad as conflict itself. In civil law countries, this has not necessarily been the case up to now. However, as different as they may be, the two cases raise the same issue: that of the delegation of powers by the State to organizations and institutions and the risk of joint regulation.
For many sociologists of governance, contemporary States are no longer the main source of regulation, for example because large multinational companies can escape country-level regulation. I would like to argue that the more the State ‘loses direct control’ of the economy, the more different forms of regulation of these economies are multiplied, the more this State needs to impose at least more transparency in market activities so as to help protect the common good. The situation described by the cases examined here is not a situation in which the State has spread its tentacles over civil society in a totalitarian manner, overlooking constitutional checks and balances. It is a situation where so much power over common goods (the rule of law, for example) and so many privileges are transferred to business and civil society via professionalization or consular institutions, that increasing the transparency of economic actions and their regulation becomes, in my view, a public service. Sociologists, with organizational and structural approaches, can contribute to this public service.

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