

**Fortresses and intermediaries of joint regulation:
The case of an inner circle promoting public-private partnerships in France**

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Introduction: Inner circles of joint regulation

Businesses usually try as much as they can to participate in the regulation of their markets. They try to shape their opportunity structure and their own normative environment. At least two different and early socio-legal traditions deal with the issue of regulation of markets, stressing either the exogenous aspects of this regulation, or endogenous character of self-regulation. For a first socio-legal tradition, exogenous regulation (beginning for example with Ayres & Braithwaite, 1992; Hawkins, 1984; Hawkins & Thomas, 1984; Shapiro, 1984; Weaver, 1977) is provided by government agencies backed up by courts. These studies focus, for example, on the decisions by government agencies to set standards, deliver public services, delegate specific tasks to private companies and prosecute deviant companies when the latter do not abide by the law. Such decisions to prosecute are not obvious and they are often derived from tradeoffs between official inspectors and business managers, whether public or private. 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. A second early socio-legal tradition focuses on interfirm arrangements promoting self-regulation benefits for firms in their interorganizational transactions and usually more informal conflict resolution mechanisms. Precisely because litigation is costly, firms may prefer informal dispute resolution whenever possible, especially when they have long term continuing relationships (Macaulay, 1963). Here the focus is on self-regulation by pressures to conform by one organization on the other. Pressures are based on resource dependencies and threats to reputation (Raub & Weesie, 1993, 2000).

In reality, the two regulation systems combine in various ways, as in the case of industry-associations self-regulation with some oversight and/or ratification by the State (Grabosky & Braithwaite, 1986). To further explore this connection, we identify a form of “joint” regulation as a combined regime of endogenous and exogenous regulation of markets in which large private interests are present and represent themselves (Falconi et al., 2005; Lazega, 2003; Lazega and Mounier, 2002; 2003). We use the label “joint” because we argue that this regulation mechanism is a combination of self-regulation and exogenous regulation in which the definition of rules and costs of control are shared. The concept of joint regulation developed by the French sociologist Jean-Daniel Reynaud (1989) –and extended by Lazega (2003) to the inter-organizational level– fits well with the general argument that a web of private actors takes part in the regulation process. This mechanism is not only a way to share the costs of regulation but it is also a means to take advantage of the experience of multiple stakeholders, of their knowledge of the business world, in order to implement the social control of markets. In such a process, State authorities and financial actors in particular coordinate their efforts, allowing to combine – in a more or less conflicting way – exogenous regulation and endogenous self-regulation (Edelman and Suchman, 2007; Lazega and Mounier, 2003). In a context of growing liberalization and declining power of the State (Dobbin and Sutton, 1998), the endogeneity of law tends to be more intense and the process can sometimes take the form of a power struggle between financial institutions and the State. The coercive pressure of the State, expressed in “hard law” competes with more flexible and informal rules and standards known as “soft law”. The choice of norms is thus object of conflict and of permanent deliberation. In these struggles, the most powerful have often the

capacity to impose their vision and to make their interests prevail by finding ways of promoting their priority values (Selznick, 1957). In such a situation, external regulation by State authorities and self-regulation cannot be analysed separately.

Our use of the concept of joint regulation of markets qualifies contemporary relationship between business and public authorities. The combinations that joint regulation represents can take many forms. We can redefine this joint element in “joint regulation” as the coexistence of a complex form of socio-economic discipline between heterogeneous actors and of several sources of constraint, both external and internal, that weigh on these actors, especially on those with socio-economic status in charge of defining and enforcing the rules of these markets. We define this discipline as a set of social processes that help actors manage the dilemmas of collective action (Lazega and Mounier, 2002). The model of joint regulation that we use accounts for relationships between government and giant private actors. Their collective action requires forms of coordinated involvement by these players that are located at the heart of the economic system. We believe that looking at this socio-economic discipline using a neo-structural approach provides a sociological perspective on joint regulation that enriches early socio-legal traditions dealing with the relationship between government and private business.

Joint regulation characterizes the wide institutional context of a political economy that brings together business and the State, a context that Levi-Faur (2005) calls regulatory capitalism. Jordana and Levi-Faur (2004) have provided systematic evidence that, since 1980, states have become rather more preoccupied with steering and less with rowing. Yet progressive withdrawal of the State from direct control of the economy and the neo-liberal turn at the global level did not prevent non-state regulation from growing even more rapidly. So it is not best to conceive of the era in which we live as one of the Regulatory State trying to tame neo-liberalism, but as one of Regulatory Capitalism where the corporatisation of the world is conceived both as a product of regulation and as the key driver of regulatory growth, indeed of state growth more generally. The reciprocal relationship between corporatisation and regulation creates a world in which there is more governance of all kinds (Braithwaite, 2008).

The regulatory arena thus emerges as a result of interactions, conflicts and cooperation, between a multiplicity of actors, either public or private. Studying regulation, i.e. the rule making process, requires understanding financial products, organizations, regulators and experts as elements of an interconnected system (Lazega and Mounier, 2002; Lounsbury and Hirsch, 2011). In this view, private actors do not only enforce the rules created by the State, they can be their very designers too.

This joint regulation has been a favorite playground for corporate elites in this new political economy. The issue of a more precise definition of joint regulation is indeed a central issue of contemporary sociological contributions to political economy. Most analyses of the relationship between corporate elites and the State frame the issue by looking at how the state regulates business. In this literature, public authorities create the rules of the game for private actors, the latter being simple objects of regulation in the regulator-regulatee dyad. In this paper we argue, along with François and Lemercier (2014) and Dudouet, Grémion and Vion (2014), that there is more reciprocity in the relationship between business and the state: public authorities try to shape the private sector, but the latter also tries to shape the public sphere

and, by doing so, to control its own opportunity structure. We argue that the boundary between private and public is a moving one and that this is made more visible during the past decades, especially with the emergence of governance as a system in which non state actors such as business contribute to shape the provision of public services. This provision is now very visibly regulated by a complex set of public and private actors interacting with each other in a complex way made of cooperation and competition. Indeed private actors contribute to a “joint regulation” system in which they participate in the definition of the institutional and normative framework of the economy from *within* the inner circle¹.

Financial and professional actors in particular play an important role. Key private players, especially financial, in this joint regulation have become “discrete regulators” –in the sense of exercising a ‘discreet power’ similar of that of Consular institutions in France (Lemercier, 2003) – of themselves and of the economy at large, i.e. of the whole system. Finance as a ‘discreet regulator’ (Huault and Richard, 2012) means that there is a permanent balancing of the powers of the State and the financial actors in the design, organization, and regulation of markets and society. Private players manage strategically their interdependencies with public authorities so as to not only enforce the rules that are imposed on society but design and formulate these rules. Thus they have a capacity to move the boundaries between the public and the private sphere and exercise an influence on major institutional and legal changes while always arguing that they work for the definition and defence of public interest. These regulators are discrete because in general the heterogeneity and multiplicity of their professional, economic and social forms of status are not very visible. Without really hiding, they do not try to be visible, often working in the backstage, in the shadow of the visible business world. Their respective official positions, the powers that they wield formally, are not necessarily spectacular but their capacity to regulate the markets and even society discretely, gives them an influence that is included in the notion of joint regulation.

Joint regulation through PPP contracts in France

The wider context

Before we study this inner circle around PPP contracts, it important to mention that this approach to the role and hegemonic ambitions of financial actors is consistent with work by economic sociologists using data on board interlocks. The latter have provided analyses of the broad context for identification of inner circles and for the analysis of complex position and roles of financial actors, more specifically banks, in contemporary economies. Mizruchi (2013:111), for example, reminds us that in the post WWII period in the U.S., “banks were seen as playing a primarily advisory role –similar to lawyers and accountants– at most a site of mediation rather than a source of power”. In the post WWII era, Mizruchi argues, banks played three important roles: brokers of information to the rest of the business community; source of normative consensus in this community, as well as source of sanctions against

¹ We borrow this formulation from Useem (1984), but extend it beyond corporate boards.

irresponsible behavior; and source of cognitive range promoting “breadth of outlook for the larger business community as well as the larger society” (2013:129). However, the centrality of bankers in the business community today, he argues, has an entirely different meaning. Financial institutions have regained at the beginning of the XXIst century the power over other firms that they had at the beginning of the XXth century, the era of the *Finanzkapital* (Hilferding, 1910).

This “resurgence of bank control” (qualified by Mintz and Schwartz’ (1985) as a renewed form of hegemony) applies also in a context that is very different from the US context. In the French context, a relatively similar evolution took place with the same contemporary breakdown of postwar consensus. But the specificity of the French history and setting is such that it has remained a very centralized country in which the State and government still play a central role in spite of two main trends. The first is the increase in power of European institutions. The second is the process that we measure, i.e. the emergence of a specific kind of joint regulation with finance at the heart of an inner circle of joint regulation with a divided corporate community.

In their definition of French capitalism and criticism of the assumptions and rhetorics of State capitalism and *dirigiste* interventionism of the French State in the economy, François and Lemercier (2014) propose that the French system is of general interest because it represents a form of “status capitalism” that creates a stable and combined public and private system. Using data on interlocking directorates over a century and a half, they show that the stable and hierarchical structure of the French corporate network is based on the existence of corporate elites that mix the public and the private sector with a strong revolving door. The French setting is characterized by close relationships between the State and big business especially through circulation of elites from one world to the other, i.e. especially career transitions of high level civil servants into high level positions in the largest business enterprises, a notorious practice called *pantouflage* (see Suleiman, 1979 and many others). A class perspective on political and economic elites (François, 2010) explains the broad mechanisms behind this circulation.

Additional insights are provided by Dudouet and Grémion (2007, 2010) who show that this circulation has increased as the state was withdrawing from direct control of the economy. The French economy has recently undergone an increased financierization similar to that of the Western world more globally. Dudouet, Grémion and Vion (2014) argue that banks now dominate the economy in general because they have a key monetary role, a role of valorization on financial markets that is important well beyond debt and participation in the capital and boards of other firms. This monetary role hinges on the creation financial instruments, including printing money. This suggests that control by the French State of the institutional environment in which large corporations operate has decreased. .

Both ‘status capitalism’ and bankers’ use of increased monetary powers are necessary to understand the formation of inner circles of joint regulation. to derive from these observations an understanding and how both State agencies and private actors operate as systems of exchange of political services between government and business to jointly maintain their position of power in public management. Here we use the French case and data on socio-economic networks and contractual activity related to contemporary public procurement –i.e. data different from interlocking directorates– to look at an economic system

promoting a special kind of contract called PPP. We show that banks are indeed both discrete hegemon, and as part of their hegemony, central players in socio-economic networks in which intermediaries of joint regulation sometimes facilitate cooperation with public officials. This approach contributes to the debate about the kind of capitalism –and perhaps the kind of democracy– that has developed in contemporary economies. Analysis of our socio-economic network data around PPP contracts shows that, as part of their participation in the inner circle of joint regulation, banks occupy a position of, and act as, discrete regulator, in particular in its struggle with public authorities to transfer to the latter the most controversial risks associated with these contracts.

Public-Private Partnership contracts in France

Our case study of the French system of PPPs uses network analyses to represent and analyse the system of socio-economic interdependencies and collective action at the heart of the PPP milieu to explore the exchanges that takes place in it as an analyser of this current form of joint regulation. Such social exchanges are not just defined as collective access to information, but as collective elaboration and sharing of “appropriate” information that is often kept private by the players. Network analysis as a method, we believe, is needed to look at the complex system of interdependencies between the players as a form of social discipline between interdependent, and often rival, business and institutional entrepreneurs.

The main pattern that comes out is not the towering State of cross regulation, nor insulation and marginalization of public authorities, but a new form of hyper-centralization with the core of the system, the inner circle of joint regulation, accommodating politically driven public agencies, private investors, hybrid institutions acting as discreet regulators, as well as the usual professionals focused on business (corporate lawyers, consultants, lobbyists). We argue that joint regulation as both a formal and informal political mechanism of interest representation helps stakeholders reach a consensus on the delivery of public infrastructure and public service based on the exchange of new policies for the strengthening of shared centralized control –as the outcome of a new form of Colbertism².

We first provide a description of our empirical setting, in particular the system of actors involved in the promotion of PPPs in France between 2008 and 2010, as well as a qualitative analysis, based on documentary work and in depth interviews, of their respective role in the main steps of the contract negotiation process, including their definitions of risks associated with very long term contracting and uncertainties. These actors include mainly representatives of the Ministry of the Economy, the banking sector, a special and hybrid financial institution (the Caisse des Dépôts et Consignations, or CDC), the building industry, lobbyists, corporate lawyers, and business consultants. Next, we present a network study of discussion, advice and contracting relationships among the 88 key individual actors –

² Colbertism is the doctrine that rationalizes the interdependencies between the centralized State and business by creating national champions. By “New Colbertism” we mean that government is now forced to share its power with private actors, including its former “creations”.

representing the inner circle– in this system at the time. We provide an exploratory structural analysis of these networks by looking at who learns from whom in this system, we tease out, from the pattern of relationships, general characteristics of joint regulation. Finally we illustrate this form of joint regulation by looking at the consensus that comes out of the system with respect to risk allocation among the main parties in the PPP contracts. We conclude by raising normative questions about the ways in which joint regulation as theorized and observed in this case does indeed deliver public services.

An inner circle of joint regulation: Social and business networks promoting French PPP contracting

As identified here, PPPs are specific types of contracts (*Private Finance Initiative* (PFI) in the UK, *Contrat de Partenariat* in France) in which public authorities delegate to consortia of private investors and industrial companies the responsibility for designing, building public infrastructure and running public services taking place in such infrastructures over very long periods of time, sometimes over thirty years. These consortia use a mix of public and private capital to realize, manage and make profits from infrastructure equipment (such as schools, bridges, prisons, etc.) and services. In this system, the State has become a public client. The financial investor is usually a set of banks and third party financial institutions. The business consulting sector (including corporate lawyers, accountants, and lobbyists) and design professions provide the scheduling. Building firms or facility managers carry out the tasks and deliver the service to the end user. Important problems emerge in the design and management of such complex projects, such as, for example, identification and allocation of risks, calculation of costs and management of debt. Over such long periods of time, new problems are bound to emerge, hence the debated issue of monitoring and loss of control. Government and business are meant to be in dialogue in most phases of such projects: tendering, ‘competitive dialogue’, design, identification of risks and pricing of such risks, agreements on the deal and sub-deals, financing, building, operating and maintaining, price reviewing, etc. PPPs and underlying issues of accountability in NPM are therefore good cases for exploring the characteristics of contemporary joint regulation and new systems of action bringing together big business and the State.

The exchanges of socio-economic resources, measured here as sharing private information, are explicitly presented in the literature as a crucial one for PPPs. In PPPs, partners must act in a listening, information sharing, and understanding mode (Gerencser et al., 2006). Joint arrangements designed to run such operations are local, and hence experimental. This means that actors must monitor them and learn from them. Sharing private information is meant to lead to cost reduction and better level of service, indeed to a capacity to run public services and to renegotiate the contracts over time. But social exchange is also a survival necessity for stakeholders participating in contract negotiations, especially when information about the market is tacit, i.e. when struggles over sharing of costs, risks and profits of delivering public services over such long periods of time generate instability, high levels of uncertainty and lack of predictability that require from partners specific efforts of coordination and adaptation to each other. In particular, public authorities are expected to develop a strong design, selection, contract negotiation and follow up apparatus. Because of

their long term nature, their scope and sophistication, infrastructure projects are, however, vulnerable to miscalculations and to changes in the socio-technical context. Consequently contractual arrangements must ensure constant monitoring and evaluation of the process in order to detect any mishaps or flaws very quickly. This is the foundation of effective social exchange (Aubert & Patry, 2005; Aubert et al., 2005).

Indeed since PPPs require a much broader and closer kind of cooperation between business and the State than in privatization policies conducted during the past generations (Skelcher 2005), some firms become government insiders. In this new context, social exchange between all parties involved, including by citizens who want to exercise external control on government-business dealings (Pesqueux, 2010), becomes a crucial matter. This approach to interdependencies as an important dimension of joint regulation in PPP is heuristic because in writing these contracts, the “game” is focused on the negotiation of the sharing of risks among stakeholders over two generations. The main incentive to exchange and learn for these stakeholders is assumed to be the fear of losing out in these negotiations, thus in incurring the largest share of the costs in (the likely) case that something goes wrong during that long period of time.

Because this type of contracting was introduced by political actors as a top-down innovation, it forced its own public administrations to learn new rules that were different from the newly refurbished public procurement laws. Indeed, the PPP partnership agreements were established in 2004 (Ordinance N° 2004-559 of 17 June 2004 on partnership contracts), following the British example of PFI (Private Finance Initiative). Among a variety of classical administrative contracts, PPPs short circuit the French public procurement law (*Code des Marchés publics*) by turning around its main prohibition, i.e. its clauses of postponed payment (*clauses de paiements différés*). It is usually forbidden for public authorities to disguise their debt by postponing its reimbursement. PPP financing is thus different from ordinary public procurement. Additional consequences include, for example, the fact that subcontractors are no longer paid by public authorities directly, but by the main, single PPP contractor (banks and other investors leading the consortium). Architects are side-lined, SMEs – too small to carry the procurement phase and the long competitive dialogue – are de facto excluded from this type of contract, prices increase considerably, and the allocation of risks is negotiated with captive public authorities risk by risk. In traditional public procurement, risks were incurred by the private company. With PPPs, the sharing of risks is renegotiated for each new contract.

Risk identification and allocation in the contract are two central elements in PPP contracts (Froud,2003). This distribution of risks is supposed to take into account the capabilities and competencies of the parties. It is modeled in a « risk matrix », a template that specifies, lists, quantifies and allocates the risks that a project may face in the future to specific parties in the contract. It is meant to create a ‘balanced’ contract. Froud argues that the notion of risk is thus central to the evaluation of PPP and definition of a successful PPP, and that it can lead to contractual arrangements that are inappropriate for the provision of many public services over a medium-term horizon. Framing the definition and allocation of risk are one of the major purposes of the mobilization of knowledge and competencies during such contract negotiations.

The social exchange process can thus be considered an important component of PPP operations. Yet the literature on interdependencies among actors involved in government – business dealings is based mainly on board interlocks and circulation of elites. To our knowledge, little research is devoted to the process of accessing tacit information and skills through personalized ties, as in many other sectors of activity such as, for example, science. Especially in the French case, where PPPs can be compared to a long and rich tradition of delegation of public services and infrastructures to private companies through legal instruments such as ‘mixed economy’ companies (*sociétés d’économie mixte*), actors’ influence capacity based on their relational capital becomes a crucial test in the evaluation of PPPs as politically constructed markets (Cazavan-Jeny and Richard 2010) in the face of skepticism related to the regulatory framework designed for such operations (Weil and Biau, 2003; Shaoul 2005).

We therefore examine the practical and informal socio-economic exchanges and influence that characterize an emergent PPP industry by looking at discussion, advice and business ties between individual actors at the inter-organizational level in the emergent ‘PPP industry’ in France. We first identify the players involved in PPP negotiations, then map their interdependencies in this system.

Members of the circle involved in PPP negotiations

The conditions under which a public project can use the PPP approach are specified. It needs preliminary evaluation and approval from the MAPPP (*Mission d’Appui aux PPP – MAPPP*). Indeed public authorities are not allowed to sign a PPP contract without obtaining the green light from the MAPPP, a special service embedded in the Ministry of Finance, in charge of both evaluating the appropriateness of a PPP (as compared with more pedestrian and ordinary public procurement contracts) and of promoting this kind of contracts –an obvious situation of conflict³. It is the MAPPP that decides whether a project is to go PPP or remain within the more ordinary public procurement process. Public authorities are not an homogenous block. They are composed of representatives of the ministries in charge of infrastructures, of the ministry of finance, of representatives of local authorities, and of agencies in charge of providing technical and legal support to local authorities. One of these agencies is in a situation of conflict of interest inasmuch as it is both in charge of evaluating the appropriateness of using a PPP contract in each specific situation, and of promoting this kind of financing among public authorities in search of funding for their projects.

The public partner is present during the first sequences of the PPP and motivates the PPP project especially for the selection of a candidate during the lengthy phase of “competitive dialogue”. During these two phases, it must acquire the know-how, or “make do”, of long-term contract management. For this, it must comprehend the logic of financial reasoning based on the profitability and risk factors. The challenge for the public entity is also to succeed in this transfer of skills from the private sector to the public sector:

³ A lawyer: “The role of the MAPPP went astray. It was set up as a sentinel and it now gives the power to the big players. They are the main target of the lobbyists. You should look at the career of all these people at the MAPPP after they leave”.

The private partner comes into play during the competitive dialogue. It then participates in the financial set up during the adjustment and development phase and manages the construction, operation and maintenance of the project through the Project Company. The latter has the responsibility to integrate, coordinate and organize the functions of design, construction, operation and maintenance. It is usually a construction firm that is the commercial agent and leader of the Project Company. The facilities managers (maintenance professionals) are generally tied to the construction firm. Large industrial firms are corporations specialized in building, engineering, or transportation.

The most striking fact in the analysis of this system of actors is undoubtedly the permanent presence of agents from the finance world, in particular banking. In such contracts, with a financing structure such as that of the '*société de projet*' (SPV), with 90% of debt and 10% of own capital, power is in the hand of the lender, i.e. banks. This financial side of the system is also complex. It is composed by the private banks leading the consortia, but also by hybrid (public/private) financial institutions such as the CDC and banks that the CDC has itself directly or indirectly created (such as the now bankrupt Dexia bank that was heavily involved in PPP projects), including insurance companies covering various kinds of risks for specific actors in the system. The public partner as well as the private partner therefore deals with financial advisers throughout the negotiation. Beyond an advisory role, the bank moreover plays a key role in the awarding of the loan. Investment funds and insurers are also involved, but for a much more modest portion of the financial package. Apart from meeting at the negotiation table, public civil servants, bankers and industrialists meet and communicate at public events, conferences dedicated to PPPs (organized by academics and sponsored by banks and industrial companies), meetings of professional associations, public events such as the *Rencontres internationales du PPP*. Their transactions are reported in magazines such as *Le Moniteur*, which needs advertising revenues from these private actors. When these players do not know each other personally, they are introduced by lawyers, consultants and lobbyists. These smaller actors punching above their weight provide expertise (legal and financial/accounting, as well as lobbying skills) and act as intermediaries. They translate decisions made by bankers, industrialists and public authorities into contracts, accounting documents, technical planification. They create the practical synergy between the three big players. With lobbyists (often the same persons performing two, even three of these functions), they create flexible teams of go betweens assisting with negotiations of contracts, but also in the regulatory process: their lobbying work is not necessarily focused on attributing this specific market to this specific company; it is focused on changing the texts in favour of entire categories of actors.

Management consultants, lobbyists and legal advisers often come from major international audit firms but can also be representatives of banks as part of their consulting activities. The role of financial advisers is crucial because it is similar to that of a "translator" between the private and public actors during the phases of screening, prior assessment and competitive dialogue. The financial technique flows through a "chain of translation" between the private partner and the public partner. Legal, financial, but also political, advisers play a role of "translator" (Callon, 1986) between the private and the public partner during the drafting and negotiation of the contract. In addition to management consultants and corporate lawyers, lobbyists are special intermediaries in the French PPP system. Many are former high

level civil servants⁴ and politicians, including former mayors who now act as go between. For example, one interesting rule in French politics allows former elected members of parliament (who lost the elections) and their parliamentary assistants to automatically become lawyers without going to law school and passing the Bar exam; they can thus become partners in large law firms in charge of lobbying on behalf of their clients in finance and industry. Lobbyists manage public relations with the media, express official discourse (*langue de bois*) and organize a meeting in the office of the *Ministre* if needed, provide the MAPPP with the arguments they need to authorize PPPs. They often belong to private organizations (both for profit firms and non profit organizations) specializing in training and explicitly promoting PPPs. One club, for example, is closely dependent upon a firm specializing in public relations and communication for politicians, and one PPP Institute is directly funded by corporations. Lobbyists are often related to banks as clients of their PR or political communication firm.

Last but not least, as already mentioned, a powerful actor bridging across the public-private divide is the Caisse des Dépôts et Consignations (CDC)⁵. CDC is a public institution with public missions and operational activities (concentration of the country's savings, banking services, territorial development, etc.), but its subsidiaries can be private and get involved in market activities just like any other bank. This hybrid character concentrates State and market powers because it can act as a banker or insurer, as a consultant or as a public official. CDC is transverse : it signs PPP contracts as an investor, it is associated with large banks as a co-investor, and it advises the State in its dealings with private investors. Itself a heterogeneous institution bringing together different professions and services, the CDC operates on both sides simultaneously, including as a supplier of legal and accounting expertise to public authorities, as well as lobbying help to business professionals. CDC is both an economic tool for public authorities and a political actor which drafts and sometimes provides financial guarantees for contracts, but not from the same perspective as purely private banks and creditors. Its technocrats observe what bankers do and often suggest to bankers what to do. They have sophisticated research outfits and fund investigations that concentrate decisive economic and political knowledge. The CDC cuts across the usual boundaries. As a bank it interacts with other banks to form investment syndicates. Ministries are represented in its boards and oversee its activities. It has a consulting branch. Some of its executives are also former civil servants with

⁴ Top civil servants also become high level executives in private firms or consultants. This creates a revolving door that helps private operators see through public authorities, and access and negotiate with the right interlocutors on the public side from a position of strength. In fact, there is an entire social milieu –and a very intense circulation of these elites from one position to the other– at the intersection of this public private boundary.

⁵ A corporate lawyer explains: « CDC is the natural relay for the State. When public authorities want to talk with bankers, they meet in clubs such as *Le Cercle*, or *Le Siècle*. When they have special technical questions because the devil is in the detail, they can turn to CDC personnel, who discuss these issues with the bankers and report back to the State. CDC is on both sides simultaneously. It is a bank, an economic instrument, but above all a political authority. (...) Their top level technocrats watch the bankers and often tell them what to do. They know everything. The Ministry of Finance has of course administrators on the CDC board. Many of CDC men act in the shadow, they are exceptionally intelligent, you never see them, and they never leave traces ». Exactly how CDC plays all these games at once remains to be researched.

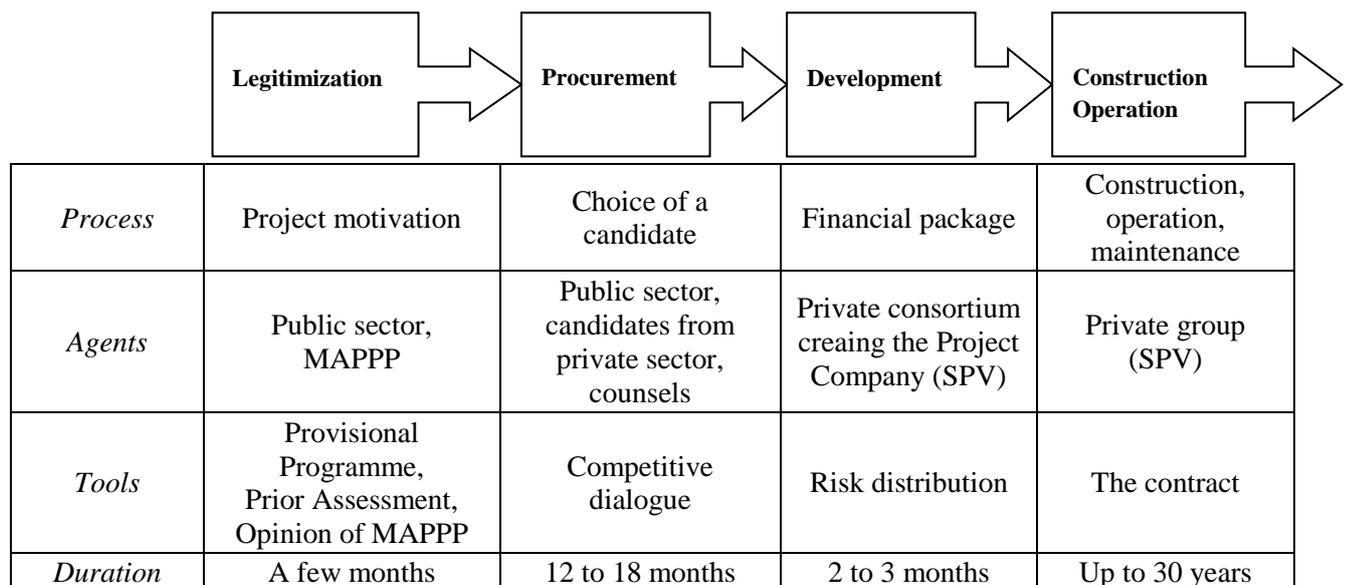
careers in banking, insurance companies, in corporate law firms and/or in large subcontractors for the building sector (such as engineering firms involved in PPPs). This revolving door also helps this institution in promoting PPPs. It signs PPP contracts as a partner in the contract; it acts as a banker; and it advises the State.

Actors' functional interdependencies in the French system of PPP contracting

To date (May 2014), the French market for PPPs⁶ boils down to 534 contracts⁷. These contracts concern mainly public buildings (for the State) and urban equipment (street lights, etc. for local authorities)⁸. More projects are put together. The description of the system of actors in the realm of PPPs shows that if contracts are complex, so are the interdependencies between the stakeholders. Various forms of expertise (legal, technical and financial) compete to define the terms of the exchange and the temporality of the PPPs is sequenced with many feedback loops.

The negotiation of PPPs takes place in various steps, each possessing a certain complexity. Figure 1 describes the sequences of the negotiation of partnership contracts.

Figure 1: The sequences of a PPP



The first phase initially demonstrates the validity of the contract. It is based on documents such as the “functional programme” or the “prior appraisal”. In France, the public sector is an heterogeneous category. It is represented by actors at several levels of public decision making (national, regional departmental, local): in our fieldwork, we met with public actors who sign PPP contracts in ministries; expert civil servants heading departments

⁶ We only count here the PPPs that correspond to the French ‘Contrat de partenariat’ as specified above.

⁷ Official MAPPP figures from the Ministry of Economy and Finance.

⁸ Source : <http://www.ppp.bercy.gouv.fr>

advising elected politicians who want to sign such contracts; others watching, following and helping in the development of this kind of contracting in various ministries (education, justice, interior, defence, transportation), the best example being the “Support Mission” to PPPs that writes opinions on the projects to authorize them.

It should be mentioned that public authorities do not completely take the role of the ‘client’ because other actors, such as legal counsels, consultants and lobbyists are very present during the definition and specification of the public sector’s needs. It moves from the status of contracting authority to that of “buyer” (Campagnac 2009; Biau and Weil, 2002, 2003). Other studies (Gilbert 2004) showed how the public administration can even find itself locked out of the negotiation process in highly complex and risky situations. The size and complexity of a PPP project may appear to deprive the public agent of its expertise. The project then goes into the procurement phase of the contract in which the competition between candidates from the private sector is known as the “competitive dialogue”, which can last up to 18 months. This procedure is longer than the tender and more burdensome for the private sector candidates. The role of legal consultants and financial and technical support becomes crucial. They speak on the behalf of the public partner help the private side and may even – in the case of highly specialized problems – become omnipresent and lead the negotiation.

A 2-to-3-month tense period of adjustment and development follows, which allows the successful applicant to finalize the draft project with investors. This phase is only for the private actors. The financiers dominate it and impose their specification of expected returns, prices and risk sharing arrangements. Failure at that stage can cause significant misunderstandings and damage downstream, for governments and for others. There is solidarity between all the players to develop the PPP, and after that, depending on the topic, each player plays their own part.

Socio-economic networks of PPP contracting in France

In this context, we used discussion, advice and contracting networks as indicators of resource interdependencies in which stakeholders manage these uncertainties. Network analysis is used here as a method of measurement of specific interdependencies among the key individual players in the PPP system. In particular, networks are not assumed to be a specific kind of actor or mode of coordination but a methodological artefact for measuring interdependencies and using these measurements to model generic social mechanisms helping actors manage the dilemmas of collective action (Lazega, 1996, 2001, 2012).

The milieu that promotes the emergent PPP sector in France was identified by listing all the organizations involved in the PPP contracts signed during the period, and then by interviewing representatives of these organizations (their Mr or Ms PPP) about their inter-individual and inter-organizational networks in this milieu. The list of individuals to be interviewed was created using a linked design approach (Breiger 1974, Lazega *et al.*, 2008). Data were collected from representatives of these organizations using face to face interviews between January 2009 and April 2010. Firstly, ethnographic fieldwork allowed us to carry out qualitative interviews of various kinds of actors in this field. Open and semi directive interviews focused on tasks carried out between actors, interdependencies between individuals and between organizations, the cost of PPPs, financial calculation and distribution of risks.

We also conducted in depth archival research (newsletters, reports, manuals, observation of professional meetings, analyses of internet sites, etc.). Based on this first phase we were able to draw the boundaries of this milieu and identify the key players in this new market, i.e. 94 organizations involved in the sector and their representatives. The second phase in the research was devoted to the collection of network data from these representatives or key players, as well as systematic information on allocation by these players of key risks in the system. We kept 100 active persons in our final population at the individual level (representing the original 94 organizations), out of whom 88 responded to our questionnaire: industrial actors, builders, maintenance companies, consultants, investors, bankers, but also public authorities involved both as clients and as regulators, as well as training and lobbying firms.

Based on the abovementioned qualitative analysis of this system of action, actors intervening in the phases described above were categorized into six kinds of key players: industrial and operational actors (n=16); public authorities, i.e. the 'clients' (n=18); lobbyists acting for the development of the PPP market in France (n=8), business consultants (n=15), and corporate lawyers (n=15); private bankers (n=13), and three 'hybrid' bankers representatives of the CDC, for the financial function. These 88 persons participated in the different phases of elaboration of contracts at the time: upstream of contracting to legitimize and promote them in France; during negotiations and drafting of contracts; and finally downstream with individuals supervising realization of contracts in building, running and maintaining the facilities. Their roles sometimes overlap during the different phases.

We use network analytical tools by looking at who exchanges with whom in this system, focusing in particular on discussion, advice, and business (contracting) relationships. We interviewed all actors about their informal discussions and advice relationships, but also about their contractual relationships with paid experts who formally sell advice. Of course, once a contractual relationship has been established with experts, actors could also add informal ties to their consultants and lawyers and seek informal discussions with and advice from them in ongoing and social relationships. Indeed paying, for example, for training sessions is not only a way of learning directly, it is also a way of building a network of acquaintances and to increase one's familiarity with the milieu and its social makeup. In each type of interaction, actors get a chance to exchange appropriate and strategic information.

Name generators identified, for each focal actor, the names of contacts from whom they had an opportunity to learn about PPP contracting in each of the three networks. With respect to risks identification and distribution, qualitative interviews showed that a basic principle oriented actors' reasoning in that field. Those who know how to deal with the risk, who have the expertise to manage it, will take this risk. However, actors also noted that some among them did not accept to take responsibility for the risks in their own areas of expertise. We therefore used a questionnaire designed to elicit a distribution of risks from all the members of this population and to identify possible variations, disagreements and controversies in the milieu with respect to this central issue.

The nature of bank centrality in the PPP inner circle of French joint regulation

Table 1 in the Appendix shows the results of analyses of normalized frequencies of the relationships between all categories of actors in this system, across all networks, as measured in our study, i.e. for each of the three networks separately, as well as for the combined networks, including the stacked network aggregating the three, then the triplex network constituted by the intersection of the three, and finally the duplex network constituted by the intersection of the discussion and advice network without the contracting network. The structure emerging from these analyses is very dense. This view of the relational structure of the system is simplified but it is a pattern that can be found across the analyses of each of the three networks separately and the analysis of all three networks together. All exchange with all. Banks cannot be said to be mediators between actors who are directly in touch with each other.

The pattern emerging from the data is based on the partition of the stakeholders into six categories of actors presented above and on the aggregation and normalization of the number of ties between them observed in the responses to the sociometric questionnaires. We can look at the structure of the network by segmenting this population based on the kind of organization in which each individual belongs. Following a linked design approach (Lazega et al., 2008), these individual actors, being key players, can be considered to represent their respective groups. We can thus aggregate their individual choices to work at the level of groups. Analyzing these three networks provides an overall view of resource interdependencies in this milieu. The aggregated network, in which there is a tie between any two actors if they have at least one tie in any one of the three networks observed networks, represents a very general measurement of actual interactions between members that are focused on PPP contracts. Each of these interactions is a situation in which members access information about the negotiation process and the negotiation context. Descriptive analyses of the networks indicate that the structure of this system tends to be of a ‘bank centered’ category represented in Figure 2 below, with the private financial institutions in the middle of the structure as the only core.

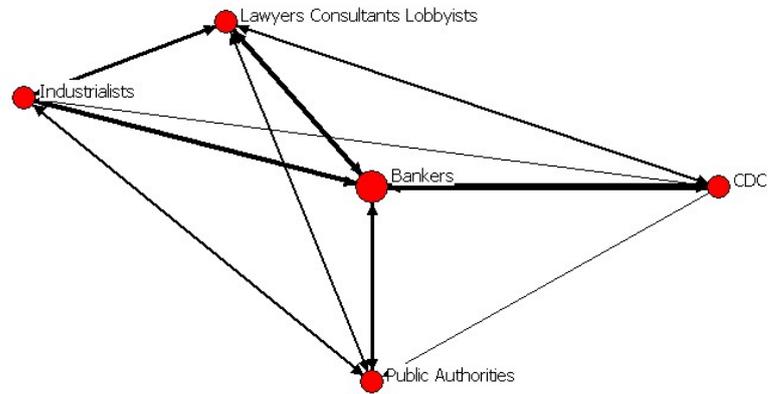


Figure 2. Stylized picture of the dense, bank-centered structure (aggregating information, advice and contract ties)

Figure 2 visualizes in a stylized way the pattern of ties in the triplex network, i.e. the a partition (normalised) based on the number of senders and receivers in each sub-group of organizations in which individuals are affiliated. Ties between these categories of actors are as shown by Table 1. The PPP milieu is a strongly connected inner circle and many members know each other well. Measurements of social status based on indegree centrality in this network indicates that bankers are always the most central actors in the system. This is a structural representation of the fact that banks are the discreet regulators of this milieu (Huault and Richard, 2012). The strongest triplex ties are between bankers and CDC representatives. Indeed the careers of the CDC bankers all exhibit mobility across that boundary and long periods of employment in private banks, industry and consulting firms. From the triplex, most “demanding”, network showing the structure of relationships between actors with all three ties (they discuss, and seek advice, and negotiate contracts with the same alters), the strong ties between private banks and CDC hybrid bankers emerge as one important feature of the system. The weakest between CDC and Public authorities (a trivial outcome since there are no “business transactions” between the two)⁹.

In the bank centered pattern of ties, public authorities (the ‘clients’) interact much less intensively with everyone than all other categories of actors, but especially with industrialists

⁹ Analysis if discussion and advice separate from business shows that when the State needs information, whether sensitive or technical, its agents feel more comfortable seeking advice and interacting with this hybrid structure.

carrying out the tasks, building infrastructure and managing the delivery of services to end users. Several other features of this pattern are worth mentioning. Firstly, intermediaries of joint regulations such as lawyers, consultants and lobbyists tend to play for industrialists the same role as the CDC for public authorities. Their strongest relationships are with bankers and industrialists but they are in touch of representatives of the “other side”. Experts on both “sides” (public and private) are in touch with each other.

The relational embeddedness of PPPs and joint regulation is thus a complex system of interdependencies above all characterized by bankers’ activity and centrality and relatively less strong interaction between public actors and industry. In addition, public authorities do not interact much with each other, sharing little appropriate information amongst themselves. From qualitative interviews, we gathered that each PPP project is screened off from other projects, which suggests that public actors capitalize very little on each others’ experience, thus becoming even more dependent upon the private sector with respect to learning¹⁰. The relationship between bankers and industrialists is the strongest relationship industrialists have¹¹.

The more public authorities delegate through PPPs, the more they depend upon bankers and CDC experts, i.e. players whose role is to share with them the minimal amount of knowledge that they need to make their decisions. Without CDC and business professionals, the intermediaries of joint regulation, many civil servants in charge of monitoring the system would be relatively isolated and strongly dependent upon “private bankers only” for their information. The position of public authorities relative to business partners in the discussion, advice, and contracting networks built by the actors of this inner circle of joint regulation provides a structural advantage to banks, especially in their exchanges of funds for public policies. This analysis confirms that the inner circle of joint regulation system is characterized by bank hegemony, i.e. the presence of fortresses among which banks are the most connected and pivotal; and by the strong influence of intermediaries of joint regulation, in particular hybrid public/private entities such as the CDC that plays a transverse discrete regulatory and political role of initiating, prodding, advising, rewarding, and –according to interviews– of sidelining unwanted participants or opponents.

¹⁰ This is shown by the following excerpt from an interview that stresses the need for the public sector to use consultants: “Indeed public authorities are strongly advised to recruit specialized consultants to help them with all the proceedings because it is quite a complex and new process that used tools that are not the usual tools” [Interview with a representative of a public structure].

¹¹ This is what is indicated in the following quote: “Today the key factor to the success of an operation is a good banking partner and the best rates [...] It is true that everything turns financial. When you design and build, you try to optimize at the technical level so as to have the lowest price. You cut architects’ and consultants’ fees and try to have the lowest maintenance price.”[Interview with an industrialist]

Risk transfers and negotiations in the PPP inner circle

The amount of uncertainty surrounding such projects is very high. Each PPP is a complex legal and financial bundle of contracts between fortresses and between fortresses and intermediaries of joint regulation, but also the outcome of mobilization of the social dimension of this inner circle. . The large number of actors involved means huge stakes and incentives for all to protect their investments and take strong precautions in contractual matters, including confidentiality safeguards surrounding cooperation and terms of exchange. Social ties are crucial in such situations.

In this context, actors base their claims associated with risk on different types of knowledge (financial economic, technical, legal, political, etc.) and seek advice and support for their knowledge claims in this inner circle. As in many other domains, finance theory proxies uncertainty by risk and shows that it is possible to decrease uncertainty by diversification of risk¹² (Flinders 2005). As such, they raise important issues of risk management, transparency, accountability, and innovation. Next we look into the question of the implications of this structure for risk allocation by this inner circle. If bankers are at the centre of the pattern of interdependencies in this system of contracting, what are the implications of this central position? In this section, we argue that this strong position helps banks promote their interests in the management and sharing of long term risks that come attached to PPP contracts. Not surprisingly, banks do not attribute these risks in the same ways as the public sector. The pattern in the data shows that intermediaries of joint regulation play an important role in the allocation of the two most important risks associated with PPP contracts.

We first use the data collected with our risk allocation survey to identify controversies with respect to this definition. Second, we look at the direction in which the pattern of interdependencies steers influence with respect to this allocation among actors involved in PPP contracting. Our first result is that a relatively high level of consensus was measured between the heterogeneous actors with respect to framing risk allocation¹³. Table 2 identifies variations in the definition and allocation of risks emerging from the nine types of risk in the questionnaire: environmental risk (for example ground risk); withdrawal risk (i.e. a situation in which public authorities give up on a project); disclosure risk (i.e. a situation in which the terms of the negotiations of the contract are made public during the negotiation process); building permit risk; maintenance risk associated with obsolescence of equipment, emergence

¹² See for example the Capital Asset Pricing Model (Markowitz, 1959; Sharpe, 1964).

¹³ A corporate lawyer : « *Le grand jeu c'est pour le public de transférer les risques au privé, pour le privé de transférer les risques au public. Qui gagne, ça dépend : quand l'Etat négocie, il négocie bien. Quand c'est une collectivité locale, elle négocie moins bien. C'est pour ça que la MAPPP a un rôle si important. Elle donne le pouvoir aux gros. Il faut bien comprendre qu'on ne fait pas un PPP comme ça. Il faut une évaluation préalable par la MAPPP. Les conditions de recours au PPP sont listées. Or le rôle de la MAPPP a été dévoyé. Certains projets passent en PPP alors qu'ils ne devraient pas. La MAPPP a été conçue comme une sentinelle et elle mange à tous les râteliers. Ils sont invités tous les jours. C'est eux qui sont la cible principale des lobbyistes. Il faudrait regarder la carrière de tous ces gens.* »

of new technologies requiring updating; tax change risk; loan risk (i.e. the risk of its renegotiation) ; interest rate risk, and demand risk.

-Table 2 about here-

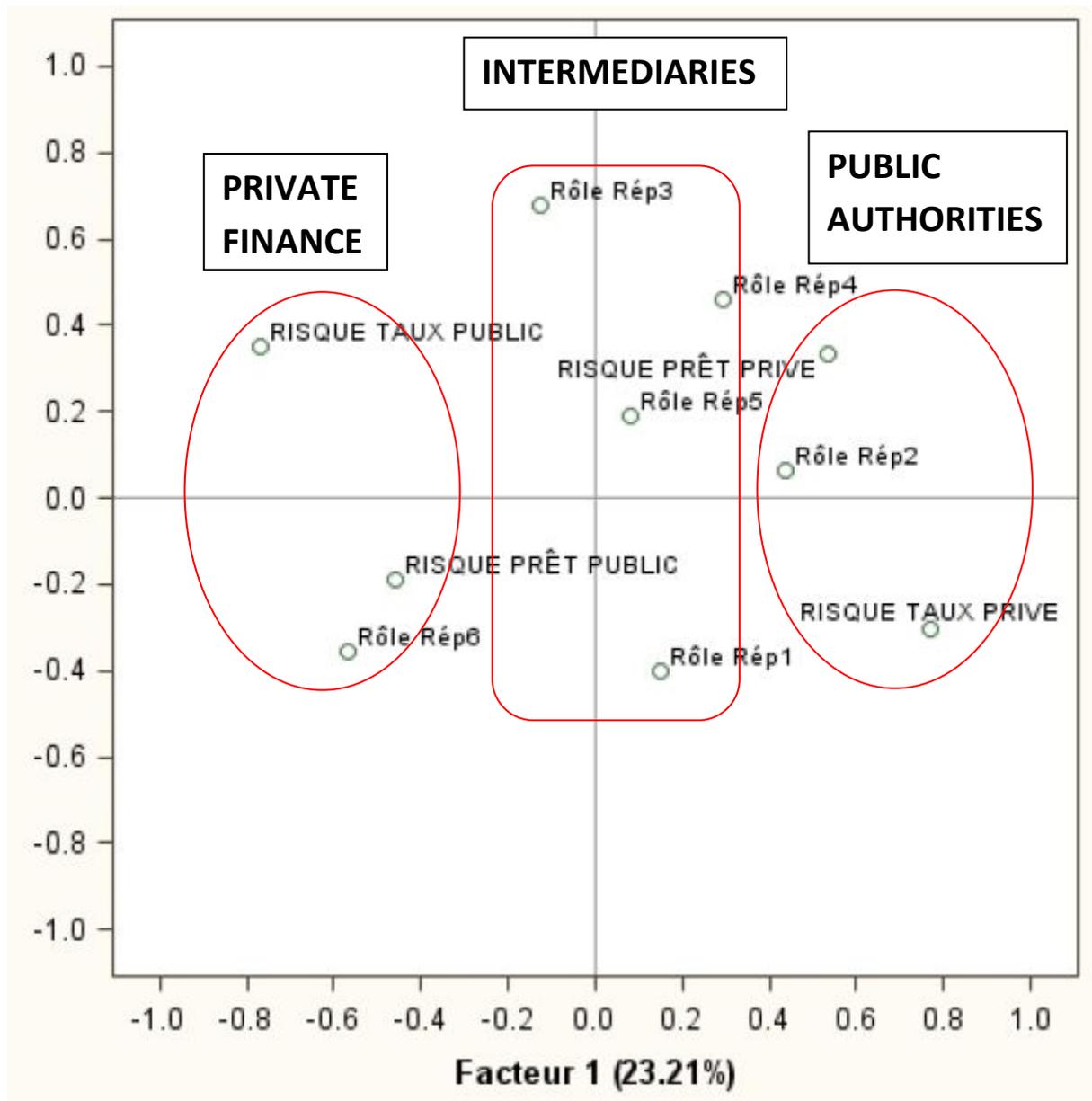
Out of these nine kinds of risks, five concern a divergence as to whether the risk should be taken by public authorities or by the private sector (see Table 2, bold characters and figures): environmental¹⁴, building permit, interest rate, loan and demand. Table 3 and Figure 3 summarize what kind of actor¹⁵ allocates which of the most controversial risk to the public sector and which to the private sector.

-Table 3 about here-

Figure 3: Factor analysis and visualization of differences between the actors in the allocation of interest rates risk and risk of renegotiation of the loan

¹⁴ Many civil society associations however challenge the idea that consensus at this level really represents guarantees of environmental performance.

¹⁵ Since the Caisse des Dépôts et Consignation is formally part of the public sector, we aggregated its members with all the civil servants of the Public partner. Based on qualitative information, however, we take into account the specificity of their actions in the interpretation of the outcome of this analysis.



Legend: 1 Industrialists; 2 Civil servants; 3 Lobbyists; 4 Business consultants; 5 Corporate lawyers; 6 Bankers. This analysis shows that civil servants tend to think that both controversial risks should be allocated to the private sector and that bankers believe that both risks should be allocated to the public sector. Industrialists, lobbyists, lawyers and consultants tend to be divided about this issue.

However, Table 3 shows that the main controversy between the public partner and the private partner are about the *interest rate risk* and the *risk of renegotiation of the loan*. PPP contracts are surrounded by the controversy about the cost of their private funding, which is secret and generally assumed to be much more expensive for taxpayers than public funding would be (if made available) for the same infrastructures and services. Financial risks associated with changes in interest rates and loan renegotiation have a direct influence on the cost of the contract in the long run, and less easily reinsured. Indeed if interest rates increase,

costs of borrowing will increase exponentially (multiplicative effect). Not surprisingly, in spite of a strong level of general consensus observed in this milieu, fortresses of the inner circle of joint regulation think orthogonally: public authorities think that the private sector should take charge of these risks and the private sector wants public authorities to be responsible for them. With renegotiation processes being still unclear, the main partners obviously try to pass the buck to each other. This controversial issue is at the heart of PPP funding and, given the pattern of relationships characterizing this milieu, bankers are in a position to play a strong, if discreet, regulatory role with respect to the fundamental issue of defining what a successful PPP actually is (Penalva, 2012). For bankers to take up risks is not necessarily dramatic. When bankers take risks, they protect themselves against them by using insurance companies, and they charge all the other actors dearly for the premiums that this coverage costs them. Finally, professionals such as corporate lawyers and lobbyists tend to be less consensual about their risk allocation, except for lawyers who would attribute interest rate risks to the public partner. It is interesting to notice that banks and lobbyists share generally the same point of view, and especially allocate the financial and environmental risks in the same manner.

However Figure 4 shows that intermediaries of joint regulation have a special role in the negotiation of the most controversial risks. Being at the centre of the Figure shows that their role is precisely to help the parties with finding political compromises rhetorically based on “expertise”. Public authorities tend to think that they are responsible for the risk of demand, perhaps because they know how to model it reliably. Bankers seem undecided and lobbyists would mainly allocate it to the public sector. Based on initial thinking about PPPs, the private sector builds the infrastructures, for example swimming pools and museums, and public authorities bring people in and carry the risk. But bankers and private partners seem to hesitate about this, perhaps with an eye on the benefits that can be generated from a strong turnout in these facilities.

To sum up, bankers are indeed in a position to arbitrate in this controversy in this market that was constructed by political diktat (Cazavan and Richard, 2012). Insurers, together with banks, cover for many risks such as environmental risks or bankruptcies. But with rate drifting, for example, or bankruptcy, it is the State that is bearing the ultimate risk as a lender of last resort. Such a scenario is perhaps included in the PPP contract itself since banks are now trying to sell their PPP holdings to other financial institutions after six or seven years at very high repurchasing costs¹⁶. Over time, banks behave here as they behave with

¹⁶ A lawyer for the CDC reports : “After 6-7 years, banks have *touché le gras du contrat* and they try to sell the contract. There are clauses in the contract concerning repurchasing. If you want to repurchase a PPP contract you must say : there are that many years left and it is worth that much. And that is where you lose power because you are not allowed to repurchase at just any price. After this first period, the contract becomes a classical contract in terms of interest rates that are very high during the first six years. Even then, the price of repurchasing is very high. Public authorities have already started repurchasing”. Based on the British experience, Weil and Biau (2003) show that, just when buildings are delivered, i.e. when big risks tend to disappear, refinancing negotiations are turned by banks (who lead the consortia) into attempts to get rid of their debt This means that they are not really interested in long term contracts and risk taking, raising questions about the very meaning of PPPs. At that stage, profits are said to

other assets: they may sell their holdings in a partnership, on a secondary market, to other financial institutions at very high repurchasing costs, when the risk elements change as the projects develops. It is in such a situation of uncertainty that intermediaries of joint regulation seem to be the key players of political negotiations in the inner circles.

Discussion and conclusion

In sum, this paper identifies a specific joint level of regulation of the economy and uses a broadly conceived structural and inter-organizational approach to study PPP contracts in France in 2010 as an analyser for one current form of such joint regulation. In France, the State has been sharing its own power with large private actors for centuries (François and Lemercier, 2014). It has recently increased –in a neo-liberal vein– the level of its sharing by creating such PPPs in which delivery of public services is meant to last over a period of 30 years. In the PPP institutional solution, the State delegates the provision of public services to one main key player (a bank as head of consortium) and monitors the work of the private sector directly and via intermediaries of joint regulation. Thus this system represents a particular combination of external regulation and self-regulation.

Reconstitution of the formal procedure between decision makers who negotiate the contracts shows that deliberation and access to information is organized within a complex formal procedure. However, this formal procedure does not account for the social embeddedness of such contracts and informal interactions that take place between the key players of this market upstream of the formal procedures. To look at this informal dimension of public procurement we look at this milieu as a socio-economic network and focus on the reconstitution of interdependencies and social exchanges that take place between the key players in discussion, advice and contracting networks. The main categories of actors identified here are “fortresses” (government officials, bankers, industrialists) and intermediaries of joint regulation. We teased out a dense, bank-centered structure that shows that influence as measured by access to private information through personalized interactions in social networks is strongly controlled by investors and financial institutions. In addition, a hybrid institution, the CDC occupies a special position in the complex social structure that comes out of the analysis. Mapping these networks together brings to light the structure of the core of the milieu or business community that promotes PPPs in France, one of many inner circles of joint regulation, as well as its model of cooperation between the State and big business. We provide a first analysis of these networks that maps central position of banks in this industry. By looking at similarities in the ways actors in this field define risks and combine this allocation of risks, we were also able to illustrate the likely role of intermediaries of joint regulation.

be so high –but secrecy surrounding these transactions does not allow the public to have reliable figures– that any benefits from posterior work and responsibilities in maintenance and provision of the public service now pale into insignificance in comparison.

This case in point explored some of the characteristics of joint regulation by looking at the ways in which actors involved in this system access private information that is crucial for coordination in the delivery of public services by giant private companies. Networks of social exchanges help indeed in the negotiation and enforcement of these very risky contracts covering long term delivery of public services. Indeed an emergent PPP industry can be represented as highly strategic, uncertain, and constantly changing and multilevel –local, national and global– action system in which actors have to operate and make decisions based on their definitions of these uncertainties. This dense, bank-centered pattern has implications for the controversies surrounding the definition and allocation of risks in the contractual negotiation. An unstable –and costly to taxpayers– ‘risk game’ between public authorities and private actors, and among private actors themselves, is identified – including the risk of defection of private stakeholders, which government cannot do –and evaluated according to unstable rules that the private sector controls much better than public authorities. The accountability of private actors in this inner circle is also a complex issue; for example, industrial actors may report to banks before they do so to governments, and banks establish reporting and notification ties with regulators at the Ministry of Finance who are in fact small units in charge of controlling and endorsing PPP projects (closed deals between public sector actors and private sector actors are usually not compatible with national and international procurement rules), on the one hand, but also of advocating and promoting them, on the other hand (Kettl 1993).

The upshot of this work is that joint regulation works as a very flexible and dynamic system. When public authorities are deeply indebted and can no longer borrow for new operations within the framework of the law, joint regulation is used with its sharing of power between fortresses with circulating elites through revolving doors; and with use of intermediaries including hybrid institutions such as lawyers, business consultants, lobbyists and CDC bankers. At the core of this system, public and private institutions reinforce each other’s power, including by using instruments such as PPPs. The opacity of these instruments suggests that they do so at the expense of taxpayers. Public controversy around this type of contract concerned the fact that, in toxic loans to local communities and the State, too many risks were taken by the public partner and most benefits went to the private partner. In the Colbertist tradition, this is done for two reasons: first to strengthen large French public works companies and turn them into large multinational companies capable of competing with foreign companies; second to bypass the prohibitions attached to getting into debt for public authorities, both by national law itself, and by European policies. Another source of controversy was that financial institutions were trying to build a secondary market for these contracts, thus trying to get rid of them after charging especially high interest rates during the first six years of the contract.

This experience may shed light on joint regulation, its complexities and limitations. With respect to the latter, our contribution is only based on the French case of PPP contracting with its specificities. Appropriation of this tool by the public sector in France has been slow, in view of drift and criticism emerging abroad (United Kingdom, Canada) in the mixed financing of public projects¹⁷, especially in terms of final quality and respect of the initial

¹⁷ On the financial cost of PPP, much has been said, for example, on borrowing as more costly for private partners than for public ones. Coulson (2005) argues that “the proponents of PFI

budgets. This could give intermediaries of joint regulation such as lobbyists a special role in the French system that they might not have in other countries with a different institutional system. A second limitation comes from the fact that we are not yet in a position to observe the evolution of these French PPP contracts over a long period of time. Given the relatively recent emergence of PPP in France, we were only able to conduct a one-shot term observation of the socio-economic interdependencies and formal negotiation processes for these complex contracts. If the joint regulation process in this inner circle is a medium to long term process, our time horizon may have been too short to observe it properly. There are many occasions when the public partner could bring itself closer to the centre of the core of this inner circle: the long-term debt could be renegotiated (duration, rates), new regulations could arise at the national, European or international level; or the harmonization of public and private accounting rules may emerge. The outcome of any of these developments is likely to depend on the socio-economic structure of this inner circle and on the complex political compromises brought to light by socio-legal approaches.

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have been at pains to present it as “simply one way of delivering better public services” (Bingle, 2004). The main critiques have been that borrowing by the private sector is more costly than by the State; that profit has also to be paid to the private investors; that much of the profit is achieved by poorer terms and conditions for the workforce than would be paid by the public sector; that there may be lack of flexibility if conditions change over the long life of the contract; and that there have been serious problems in the design of many PFI projects, such as schools and hospitals.”

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Table 1: Analysis of triplex structure

	Lobbyists, Biz Consultants and Corporate Lawyers	Industrials	Bankers	Public Authorities	CDC
Lobbyists, Biz Consultants and Corporate Lawyers	3,39	2,30	5,67	2,49	2,63
Industrials	3,62	2,34	5,29	2,43	2,08
Bankers	3,24	3,37	4,14	4,70	7,69
Public Authorities	2,19	1,74	2,99	1,23	0,00
CDC	1,75	2,08	5,13	1,85	0,00

	Outdegree
Lobbyists, Biz Consultants and Corporate Lawyers	3,30
Industrials	3,15
Bankers	4,63
Public Authorities	1,63
CDC	2,16

TRIPLEX

	Indegree
Lobbyists, Biz Consultants and Corporate Lawyers	2,84
Industrials	2,37
Bankers	4,64
Public Authorities	2,54
CDC	2,48

Table 2 – Controversies about risk distribution (N = 88)

<i>Distribution of Risks</i>					
	Public Partner	Private	Both	N/A	Total
	%	%	%	%	%
	(N)	(N)	(N)	(N)	(N)
<i>Environmental risk</i>	37.5	43.2	17.0	2.3	100.0
	(33)	(38)	(15)	(2)	(88)
<i>Risk that the public partner withdraws</i>	78.4	20.5	0.0	1.1	100.0
	(69)	(18)	(0)	(1)	(88)
<i>Risk of disclosure during the competitive dialogue procedure</i>	70.5	17.0	11.4	1.1	100.0
	(62)	(15)	(10)	(1)	(88)
<i>Risks associated with obtaining a building permit</i>	31.8	54.5	12.5	1.1	100.0
	(28)	(48)	(11)	(1)	(88)
<i>Risks associated with the big maintenance, new technologies, the obsolescence of facilities</i>	3.4	79.5	15.9	1.1	100.0
	(3)	(70)	(14)	(1)	(88)
<i>Risks associated with a tax change</i>	73.9	19.3	4.5	2.3	100.0
	(65)	(17)	(4)	(2)	(88)
<i>Risk that the loan be renegotiated</i>	26.1	59.1	12.5	2.3	100.0
	(23)	(52)	(11)	(2)	(88)
<i>Interest rate risk</i>	42.0	52.3	4.5	1.1	100.0
	(37)	(46)	(4)	(1)	(88)
<i>Demand risk</i>	50.0	42.0	5.7	2.3	100.0
	(44)	(37)	(5)	(2)	(88)

Table 3 – Risks and Actors

		Private compies	Public partner	Lobby	Consul- tants	Lawyers	Bank
		N	N	N	N	N	N
<i>Interest rate risk</i>	Public partner	9	4	3	5	10	6
	Private cies	1	15	5	9	5	7
	Both	1	2	0	1	0	0
<i>Loan risk</i>	Public partner	8	3	1	3	5	3
	Private cies	6	15	7	9	8	7
	Both	1	3	0	3	2	2
<i>Demand risk</i>	Public partner	7	12	5	7	7	6
	Private cies	8	7	2	8	5	7
	Both	0	1	1	0	3	0
<i>Environmental risk</i>	Public partner	2	6	4	9	4	8
	Private cies	8	11	3	6	7	3
	Both	4	4	1	0	4	2
<i>Building permit risk</i>	Public partner	5	6	3	7	4	3
	Private cies	9	11	3	8	9	8
	Both	1	4	2	0	2	2

For clarity we do not report a column for the N/A, but the number of observations is still 88.