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Citation for final published version:

Dezalay, Sara 2018. Lawyers in Africa: brokers of the state, intermediaries of globalization: a case study of the 'Africa' bar in Paris. *Indiana Journal of Global Legal Studies* 25 (2) , pp. 639-669.  
10.2979/indjglolegstu.25.2.0639

Publishers page: <http://dx.doi.org/10.2979/indjglolegstu.25.2.0639>

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## Lawyers in Africa: brokers of the state, intermediaries of globalization

### *A case-study of the 'Africa' Bar in Paris*

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Forthcoming in *Indiana Journal of Global Legal Studies*, 25(2), 2019

#### 1. Introduction

Africa is the 'Global Economy's Last Frontier'! Certainly, recent global developments have seemed to lend credence to this claim by Kingsley Chiedu Moghalu, the deputy governor of the Central Bank of Nigeria.<sup>1</sup> In the last fifteen years the African continent has emerged as an untapped boon for energy commodities: in 2013, fuel and mineral exports reached \$397 million, fifteen times more than development aid into the continent.<sup>2</sup> Particularly since the 2007 financial crisis, multinational corporate law firms have also shown an unprecedented interest in branching out into the continent, be it to set up 'Africa' offices in rising African hubs - Casablanca, Johannesburg or Abidjan - or in global financial capitals and former *métropoles*: New York, London or Paris. Yet, this 'Africa rising' picture contrasts sharply with the Afro-pessimism image of a continent seen to be doomed by the 'resource curse,' poor governance, weak legal institutions, corruption, violent conflict and political instability. To boot: it is also in these 'new frontiers,' like the Eastern parts of the Democratic Republic of Congo, where global capitalism 'finds minimally regulated zones in which to vest its operations,'<sup>3</sup> that the Far-West like rush for extractive boons has been most pronounced from the 1990s.

While historically inaccurate – the central role played by the African continent in the constitution of modern states and trade systems has long been established – this imaginary of the 'new frontier' is not just perplexing. Narratives that continue to portray Africa as disconnected and non-global continue to have important political effects – not least because they shape knowledge and scholarly hierarchies about legal, political and social developments

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<sup>1</sup> K. Chiedu Moghalu, *Emerging Africa: How the Global Economy's 'Last Frontier' Can Prosper and Matter* (London, Penguin, 2014).

<sup>2</sup> See T. Burgis, *The Looting Machine. Warlords, Tycoons, Smugglers and the Systematic theft of Africa's Wealth* (London, Harper Collins Publishers, 2015).

<sup>3</sup> J. Comaroff and J. L. Comaroff, *Theory from the South. Or, How Euro-America is evolving toward Africa* 13 (Boulder, London, Paradigm Publishers, 2012).

across the continent. This is especially true for legal and economic globalization dynamics in Africa.

Indeed, while law itself often still conjures the image of failed colonial legacies and transplants, there is still an exceptional knowledge gap on legal professions compared to other regions.<sup>4</sup> Reflecting the ebb and flow of policy pulls, research on law and legal institutions, thus does not escape a protracted dependency lens. When under focus, lawyers are either hailed as missionaries of the rule of law<sup>5</sup> or they are the new mercenaries of neo-colonial corporate interests.<sup>6</sup>

The researcher interested in the role of lawyers in extractive economies is also confronted with another set of challenges. Should the corporate lawyers involved in extractive deals be considered as an object of inquiry? Certainly not, *a priori*, if the focus is restricted to the highly technical intricacies of the law they produce: competition, M&A, project-finance. This technical barrier of entry is not the only hurdle, not only because extractive contracts remain for the most part sealed under a veil of secrecy, but also due to the nature of extractive economies. The role of extractives in European colonialism across Africa, and for the expansion of modern global capitalism has long been studied. Extractive *infrastructures* themselves are increasingly recognized as a driver shaping social and political change in the *longue durée*.<sup>7</sup> The microcosm of Bonny, in the Niger Delta in Nigeria is a striking example, among many others: it has switched over time from slave trade, to palm oil, to crude oil by building on similarly entangled shadow and official economic routes and social networks.<sup>8</sup> Yet the still predominant focus on the ‘resource curse’<sup>9</sup> - seen to be affecting resource-rich African countries by impeding economic and societal development due to wealth capture by corrupt political elites - remains for the most part surprisingly a-historical and state-centric. This is problematic given the now intensely globalized and financialized character of extractive value chains: on what *scale*, indeed, or *level*, should the analysis be focused?

To go beyond these contradictory images - and challenges - this article suggests a

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<sup>4</sup> With few exceptions, e.g.: É. Gobe *Les Avocats en Tunisie de la colonisation à la révolution (1883-2011). Sociohistoire d'une profession politique* (Paris, IRMC-Karthala, coll. « Hommes et sociétés », 2013); S. Dezalay *Les juristes en Afrique: entre trajectoires d'État, sillons d'empire et mondialisation* 138 POLITIQUE AFRICAINE 5 (2015).

<sup>5</sup> E.g. T. C. Halliday, L. Karpik and M. M. Feeley (eds), *Fates of Political Liberalism in the British Post-Colony. The Politics of the Legal Complex* (Cambridge, Cambridge University Press, 2012).

<sup>6</sup> E.g. Burgis *supra* note 2.

<sup>7</sup> On the role of extractive infrastructures, see D. Acemoglu and J. Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (New York, Crown Publishers, 2014).

<sup>8</sup> See S. Ellis, *Season of Rains. Africa in the world* (Chicago, The University of Chicago Press, 2012).

<sup>9</sup> P. Collier, *The bottom billion. Why the poorest countries are falling and what can be done about it* (Oxford University Press, 2007).

research agenda that emphasizes the interconnectedness,<sup>10</sup> across time and scale, between dynamics of legal, political, economic and social change across the African continent, and global transformations in capitalism and governance. Embracing the recent global turn in historical studies to ‘re-globalize’ the African continent,<sup>11</sup> this article builds on an ethnographic approach that emphasizes these interconnections as flows and ‘counter-flows’<sup>12</sup> between African settings, former *métropoles* and global markets.

The case-study that provides the empirical bulk of this article stems out of an apparently *counter-intuitive* example: the ‘Africa’ Bar in Paris, which has emerged as a key site in which extractive deals between multinational corporations and African states are negotiated. Yet, tracing the individual trajectories and professional strategies of the lawyers operating within this social microcosm underscores the enduring double position of Paris: as a former colonial *métropole*, and also as a beach-head in the expansion of US- and UK-led globalization of corporate law towards Europe from the 1980s, and now towards Africa. The analysis of the social relations at play in this microcosm provides an entry-point to trace how the relationship between extractive economies, state transformations and the position of Africa in globalization are negotiated in the *longue durée*. It is also a crucial site to map out law’s entanglement with social networks, politics and economics, across time, and across space.

This article proceeds in three steps: section 2 underscores the relevance of using lawyers’ trajectories and professional strategies as an entry-point to trace state transformations and global dynamics on the African continent; section 3 details the case-study of the social microcosm of the ‘Africa’ Bar in Paris; and section 4 offers concluding remarks opening up towards a wider research agenda.

## **2. Lawyers and extractive economies: an entry-point to trace the uneven and unequal relationship between Africa and the world**

The first dimension of the research strategy suggested here follows the path opened by a political sociology that underscores the roles of lawyers as power brokers in the formation of the state, and globalization. This approach underscores the position of lawyers as ‘intermediary elite’ or ‘double agents’ through their capacity to juggle contradictory social,

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<sup>10</sup> S. Subrahmanyam, *Explorations in Connected History. From the Tagus to the Ganges* (New Delhi, Oxford University Press, 2005).

<sup>11</sup> See F. Cooper, *Africa in the world. Capitalism, Empire, Nation-State* (Harvard University Press, 2014).

<sup>12</sup> B. Ibhawoh, *Imperial Justice. Africans in Empire’s Court* (Oxford, Oxford University Press, 2013).

political and economic interests. Meanwhile, this entry-point contributes to explaining transformations of state power and patterns of globalization.<sup>13</sup> This approach has proven particularly fruitful to study contemporary African contexts.<sup>14</sup>

Thus, far from anecdotal evidence, details of lawyers' trajectories help uncover their continuous strategies of double games. Ernst Kantorowicz<sup>15</sup> and others in his wake have shown that while at the service of power holders - and thus playing a central role of legitimation of state power - lawyers also needed to distance themselves from politics, as a condition to protect the autonomy of the law, and with it their professional practices. Indeed these strategies are inscribed in the very structure of the law. From Renaissance Italy,<sup>16</sup> thus, the law has been shown to be 'a way to get access to and draw strength from a sovereign administration (such as the city states); to gain an academic and physical distance from state power; and to serve as a go-between for different sovereign administrations and interests'.<sup>17</sup> Between the state lawyer - e.g. the *jurisconsulte* of a national diplomacy - and the 'merchant of law' at the service of corporations, there is a community of situation, defined by the promotion, arguably multifaceted but in the end converging, of legal competency as a necessary condition to negotiate conflicting social interests.<sup>18</sup> Thus, the 'fluidity of the title' of lawyers<sup>19</sup> enables a capacity, varied according to periods and spaces, to play a multiplicity of social and professional roles between different sectors at the national level - politics, economics and administration<sup>20</sup> as much as across the local, the national and the global.

Conversely, there is now a wealth of research emphasizing the role played by raw commodities in the consolidation of European empires in the long 19<sup>th</sup> century and the expansion of contemporary capitalism.<sup>21</sup> This interest for the *longue durée* not only recalls that the post-colonial 'nation-state' is a modern political outcome of imperial legacies. It can also help understand the role played by extractive resources in the uneven and unequal

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<sup>13</sup> See Y. Dezalay and B.G. Garth, *The internationalization of palace wars. Lawyers, economists and the contest to transform Latin American states* (Chicago, The University of Chicago Press, 2002).

<sup>14</sup> S. Dezalay *supra* note 4.

<sup>15</sup> E. Kantorowicz, *Les Deux Corps du Roi* (Paris, Gallimard, 1989).

<sup>16</sup> See L. Martines, *Lawyers and Statecraft in Renaissance Florence* (Princeton, Princeton University Press, 1968); J. Brundage, *The Medieval Origins of the Legal Profession* (Chicago, University of Chicago Press, 2008).

<sup>17</sup> Y. Dezalay and B.G. Garth, *State politics and legal markets* 10 *COMPARATIVE SOCIOLOGY*, 38, 53 (2011).

<sup>18</sup> A. Vauchez, *The transnational politics of judicialization, Van Gend en Loos and the making of EU polity* 16(1) *EUROPEAN LAW JOURNAL* 1 (2010).

<sup>19</sup> L. Willemez, *La République des avocats: le mythe, le modèle et son endossement*, in M. Offerlé (ed.), *Profession politique XIX<sup>e</sup>-XX<sup>e</sup> siècle*, 201 (Paris, Belin, 1999).

<sup>20</sup> A. Vauchez, *L'avocat d'affaires: un professionnel de la classe dirigeante?* 19 *SAVOIR/AGIR*, 39 (2012).

<sup>21</sup> J. Burbank and F. Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton, Princeton University Press, 2010).

connections between Africa and the world, over time.<sup>22</sup> However, while recent research is underlining the role played by private actors – such as lawyers – and contracts in transnational governance,<sup>23</sup> and that of law in global value chains,<sup>24</sup> there is little research focusing specifically on the roles of lawyers in extractive economies.

The renewal of the debate on empires and their legacies opens up a second and fruitful avenue for the research strategy suggested in this article. Underscoring law as a central feature of European colonial empires,<sup>25</sup> this scholarship has paved the way for research exploring these multifaceted contributions of lawyers as intermediaries of the state and of globalization over time.<sup>26</sup> Negotiating sovereignty as ‘shared out, layered, overlapping’<sup>27</sup> in imperial settings, lawyers could thus be seen to navigate between corporate and state power, the colony and the *métropole*, inter-imperial confrontations, and across colonial and post-colonial time and scale. Imperial and post-imperial legal realms were indeed particularly favourable to the positions of lawyers as both collaborators and opponents.<sup>28</sup> These imperial legacies have also enabled the continuous circulation of lawyers, and their roles as go-betweens across sector, time and scale in the postcolonial trajectories of the state: between politics, society and the market, local, national and global fields. These multi-layered double games are illustrated in the case-study of the ‘Africa’ Bar in Paris.

This article suggests precisely that the subjectivities of lawyers – their individual trajectories, resources, and strategies – provide an entry-point to trace the interweaving between the local, the national and the global, as well as the interplay between knowledge, law, economics and politics in the fabric of extractive value chains. Focusing on the ‘Africa’ Bar in Paris also provides a way to ‘zoom(s) in and out’<sup>29</sup> from the microcosm of the social relations that make up this Bar towards wider legal, political, social and economic transformations.

Indeed, the ‘Africa’ Bar in Paris, just like other ‘corporate’ legal marketplaces is a

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<sup>22</sup> Cooper *supra* note 11.

<sup>23</sup> C. Cutler and T. Dietz (eds.), *The politics of private transnational governance by contract* (Abingdon, Oxon, Routledge, 2017).

<sup>24</sup> The IGLP Law and Global Production Working Group (Including: Ferrando, Tomaso), *The role of law in global value chains: a research manifesto* 0 LONDON REVIEW OF INTERNATIONAL LAW (2016) 1.

<sup>25</sup> L. Benton and R. Ross (eds.), *Legal Pluralism and Empires, 1500-1850* (New York, New York University Press, 2013).

<sup>26</sup> See S. Dezalay *supra* note 4; building on P. Bourdieu, *Sur l'État. Cours au Collège de France (1989-1992)* (Paris, Seuil, 2012).

<sup>27</sup> Burbank and Cooper *supra* note 21 at 17.

<sup>28</sup> See C. Oguamanam and W. Pue, *Lawyers' Professionalism, Colonialism, State Formation and National Life in Nigeria, 1900-1960: "the fighting brigade of the people"* (2006), available at SSRN:

<http://ssrn.com/abstract=953313>.

<sup>29</sup> Cooper *supra* note 11.

‘crossroads’ space in which positions are distributed according to corporate power, politics and social capital.<sup>30</sup> Recent waves of corporate legal globalization, particularly from the 1980s in France and continental Europe, help explain the prominence of UK and US corporate law firms in this small professional market. But this ‘Africa’ Bar is not just a ‘corporate’ Bar. It is a space that is offshore, as it is located in Paris; yet it is deeply connected to power structures in African settings.

Indeed, this Bar is dominated by predominantly *French*, White and male lawyers. It is deeply embedded in the corporate, political and social networks that tie Paris to its former colonies, and it has been deeply shaped by the boon of extractives, over time, from the colonial era to the present. This double geographical trope of Paris - as a beach-head of a US/UK led legal corporate globalization, and former *métropole* - has defined the structure of this Bar: that is, the resources that are valued to gain access and be granted status within it.

To build the empirical basis of this article, I have traced the careers and professional strategies of lawyers operating within this ‘Africa’ Bar in Paris. I have relied on a qualitative methodology that can be described as relational biography.<sup>31</sup> Asking respondents *who* they are, that is exploring not only their professional and educational background but also their social characteristics, is a way to trace how successful their strategies could be in entering and positioning themselves within this small professional market. Beyond, it is a way to map out the configuration of this space across time and space. In the following case-study, I build on exemplary trajectories of lawyers operating within this small professional market to trace the structuration of this Bar over time, and its on-going transformation under the impetus of global regulatory pushes and financialization.

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<sup>30</sup> A. Vauchez, *Élite politico-administrative et barreau d'affaires. Sociologie d'un espace-frontier* 140 *Pouvoirs* 71 (2012).

<sup>31</sup> I have conducted about thirty interviews with lawyers from corporate law firms as well as other members of the Bar in Paris. Except for William Bourdon and Pascal Agboyibor, whose portraits are drawn below, and whose trajectories have been extensively documented in the media, I have used pseudonyms for all my other respondents. I have built this fieldwork incrementally, based on my previous research (in the context of my PhD and postdoctoral work) on the transformation since the Cold war of militant fields of human rights; the institutionalization of international criminal law; as well as the social and professional structure of international dispute settlement mechanisms. Concerning the ‘corporate’ lawyers operating in Africa, from Paris, I used what could be described as a ‘swarming’ technique: based on professional rankings of multinational corporate law firms, participant observation at professional conferences, and interviews so as to identify informants, and key players within this small market.

### 3. The ‘Africa’ Bar in Paris: offshore, yet connected

Due to the sulphurous legacy of the *Françafrique*, the reputation of lawyers involved in extractive dealings in former parts of the French Empire in Africa has been tainted with phantasms and denunciations. Large corruption cases have unveiled some of the shadow dealings of the *Françafrique* - like the ‘Elf case’ which erupted in 1994 and revealed major misappropriation of funds, while the French government, under the Mitterrand presidency, was involved in theatres of war in its enlarged ‘*pré carré*’ in Central Africa.<sup>32</sup> Lawyers as the discrete but all the more powerful advisors of African heads of state also often occupy the front page of these political-economic scandals: the French-Lebanese lawyer Robert Bourgi, who accused former president Chirac among others - both to the right and the left sides of the French political spectrum - of having received cash (‘*valises à billets*’) from African heads of states,<sup>33</sup> the late Jacques Vergès, as the shadow advisor of Moussa Traoré in Mali and Abdoulaye Wade in Senegal, or François Bozizé in the Central African Republic...

Yet, the originally extremely select ‘Africa club’ of Paris - comprising a handful of lawyers operating within a couple of French corporate law firms and a few UK and US corporate law firms - has recently grown into an enlarged though still restricted market of about twenty lawyers, controlled by a dozen Paris offices of US and UK corporate law firms. But this small market remains dominated predominantly by *French* male lawyers. The trajectory of a prominent member of this Bar provides a first explanation of this transformation, which followed what could be described as a revamping of legal deals in the continent - but only, though, through a slight symbolic displacement.

#### **From ‘White marabout’<sup>34</sup> of the *Françafrique* to Advocate of the social responsibility of corporations**

‘My specialty now is crisis management. Today, there is not one single country where there is not a risk of coup. But the risk is not only jurisdictional, it is also reputational.’<sup>35</sup> This corporate lawyer, based since 1998 at the Paris office of the UK corporate law firm Herbert Smith Freehills and now a partner, is the head of the firm’s Africa practice, predominantly in the energy and mining sectors. He is also the mentor of the bulk of the new generation of corporate lawyers operating in Africa, from Paris offices and growingly from offices based on the continent. After studying law in France, ‘Antoine’ left for Vanuatu, as a ‘conscientious

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<sup>32</sup> See P. Péan, *La République des mallettes. Enquête sur la principauté française du non-droit*, (Paris, Fayard, 2011).

<sup>33</sup> V. Hugué and B. Thioly, *Les riches secrets de la Françafrique* L’EXPRESS (14 October 2011).

<sup>34</sup> V. Hugué, *La Françafrique fait de la résistance. Communicants, journalistes et juristes français à l’heure de la deuxième décolonisation* 105 POLITIQUE AFRICAINE 126 (2007).

<sup>35</sup> Author’s interview with ‘Antoine,’ Herbert Smith Freehills, Paris, 7.4. 2015, my translation from French. Subsequent quotes in this portrait are derived from this interview.



objector,<sup>36</sup> where he became public prosecutor at the country's independence in 1980. He then studied international law in Australia, 'a rare vocation' at the time. After working at the Crédit du Nord for two years in financing, he moved to Gabon, as an associate at Fidafrica, the legal branch of PricewaterCoopers (PwC), where he worked until 1998. In this capacity, he became the counsel of Samuel Dossou Aworet - Gabon's 'Mr Oil.' 'In Gabon I did everything: social security law, labour law. You needed to be able to deal with emergencies, relentlessly. (...) Twenty-five years ago, when I started, people were telling me: "he is doing tam-tam fusions". (...) I became a project lawyer once back in France. But I had carved out this competency with the knife and the d\*\*\* ('*la bite et le couteau*'). The new generation, they have not really ever been in Africa. They will never be "real" Africans. This does not mean they don't do good work. But I would like to see them in crises situations (...). Crisis management: it starts with me. In 95% of cases, the dispute is solved through settlement, especially in Africa. (...) These young lawyers, I would like to see them in a crisis situation. At some point, you need to stand straight, respectfully, and return to the law.'

The conversion of this 'White African' into an advocate of the 'social responsibility of corporations,' notably as a member of the Corporate Social Responsibility Committee of the American Bar Association, can be explained by external shocks - politically and economically driven. Those have tended to reinforce, generally, the prominence of lawyers in extractive deals from the 1990s: to negotiate extractive contracts, reform national mining codes and taxation regulations, advise foreign corporations against political, social and economic risks, and increasingly local populations in their contests over the impact of extractive projects. But they have also contributed to revamping, albeit symbolically, the social structure of this small niche of counsels to extractive corporations and African heads of state. Indeed, the slight enlargement of this microcosm reflects in part the increased financialization of markets for extractives, and with it the growing technicality of extractive deals.<sup>37</sup> In this, corporate law firms, with their collective *know how*, from the negotiation of contracts to arbitration, can be better positioned. The Enron scandal in 2002, which shed light on the conflicts of interest of accountancy firms like PwC, until then the most widely pre-positioned in the African continent, also opened new opportunities for corporate law firms towards emerging economic markets in Africa.<sup>38</sup>

Further, incentives for the global regulation of dealings between foreign corporations and resource-rich states in Africa, though for the most part a set of soft law that are non-binding on corporations, have had an increased impact on the operations of corporations on

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<sup>36</sup> The technical alternative to the military service.

<sup>37</sup> See UNCTAD, *Don't blame the physical markets: financialization is the root cause of oil and commodity price volatility* 25 POLICY BRIEF (September 2012).

<sup>38</sup> See *Attack of the bean counters* THE ECONOMIST (21 March 2015).

the continent, due to their reputational costs.<sup>39</sup> Extractive deals in the African continent are also heavily impacted by development policies and the role of invisible actors sitting at the negotiation table - the World Bank, and bilateral development agencies - a trilateral relation between development donors, corporations and states that is specific to the African context. Many lawyers in this 'Africa club' thus got their introduction to the developing continent by working on sovereign debt restructuring in the 1980s. The waves of privatization of extractive industries - spearheaded by the World Bank through the 1980s opened up opportunities for corporate lawyers, and so did the promotion of 'public-private partnerships' from the early 1990s, as they place the contract and the lawyer at the heart of the relation between the public sector and the private sector.<sup>40</sup>

Driven foremost by the need to stabilize investments for foreign corporations - against challenges to extractive contracts, like national fiscal policies of 'upwards adjustments' (so-called 'resource nationalism'), and jurisdictional contests, recent international policy endeavours have sought to 'level the playing field' between foreign corporations and African states. For example, the CONNEX Initiative<sup>41</sup> spearheaded by the German government during its presidency of the G7 in 2014 aims at drafting a 'code of conduct' to 'strengthen advisory support to low-income country governments in their negotiation of complex commercial contracts.'<sup>42</sup> The African Legal Support Facility set up in 2010 in Abidjan under the umbrella of the African Development Bank - and the sponsorship of the NGO Transparency International - similarly endeavours to provide assistance to African states to strengthen their legal expertise and negotiating capacity in debt management and extractive contracts. For both initiatives, the explicit aim is to restructure legal services to African states away from a charismatic market of shadow advisors, towards an enlarged - and more transparent - market of services to states.

Yet, it is impossible to understand the position of this 'White African' without taking in two other connected dynamics: the structuration of the corporate Bar in Paris; and the threads of relations between France and its former colonies. Both define the access and the distribution of positions in a space whose structure has been transformed under the impetus of

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<sup>39</sup> In particular, the growing reach of the 1977 US Foreign corrupt practices Act (FCPA) against corruption, and the Extractive Industries Transparency Initiative. See E. Rich and J. Moberg, *Beyond Governments. Making collective governance work. Lessons from the extractive industries transparency initiative* (Greenleaf Publishing Limited, 2015).

<sup>40</sup> Vauchez *supra* note 20 at 79.

<sup>41</sup> Strengthening Assistance for Complex Contract Negotiations.

<sup>42</sup> See Code of Conduct of the G7 CONNEX Initiative, [http://www.bmz.de/g7/includes/Downloadarchiv/150505\\_CONNEX\\_Code\\_of\\_Conduct\\_final.pdf](http://www.bmz.de/g7/includes/Downloadarchiv/150505_CONNEX_Code_of_Conduct_final.pdf) (last accessed 29.5.2016).

the ‘Wall street’ law firm model, but whose boundaries remain defined by the capacities to access and juggle with poles of power - economics, politics, social - that have been shaped by the relations between Paris and its former African colonies.

This is illustrated by the two series of portraits below, of prominent members of the ‘Africa’ Bar in Paris. These biographies highlight the types of resources - legal, but also political, and social - that play into the configuration of this microcosm. The first series of portraits, respectively of William Bourdon and Pascal Agboyibor, underlines connexions – both spatial and temporal – that remain otherwise invisible in the contemporary period if the focus is restricted to a national scale, or sectors, be it the technical *know how* of corporate lawyers, or the legal-political portfolio of human rights advocates. There is indeed a community of situation between Bourdon the ‘human rights’ lawyer, and Agboyibor, the most prominent ‘African’ corporate lawyer within the ‘Africa’ Bar in Paris: both navigate between political and corporate interests with a combination of resources – *know how* and *know who* – built out of both imperial legacies, and corporate legal globalization.

**William Bourdon and Pascal Agboyibor: building legal *know how* out of imperial legacies and corporate legal globalization**

*William Bourdon, Sherpa* - The head of the NGO Sherpa, created in Paris in 2001 to ‘protect and defend victims of economic crimes,’<sup>43</sup> William Bourdon is a prominent advocate of the criminalization of corporate crimes: this lawyer became known for the amicable settlement he struck in 2005 on behalf of eight Burmese who had lodged a complaint against the French firm Total for forced labour; more recently, he endorsed the cause of whistle-blowers as the lawyer of Antoine Deltour - the alleged source of part of LuxLeaks -, Edward Snowden, Hervé Falciani (ex-HSBC) and Stéphanie Gibaud (ex-UBS). While Vice-secretary general (1994-1995) and Secretary general (1995-2000) of the French human rights NGO International Federation for Human Rights (FIDH), he was one of the vocal proponents of the Rome Statute for the International Criminal Court throughout the 1990s; the initiator, on behalf of the FIDH, of the complaint for crimes against humanity lodged against Hissène Habré in Senegal in 2000, which triggered a wave of universal jurisdiction complaints against African former heads of state (see Seroussi 2008); he was also one of the drivers of diverse complaints against sitting and former African heads of state for their ‘ill-gotten wealth’ in France, on behalf of Sherpa and Transparency International; and the defender of two French detainees at Guantanamo...

But William Bourdon is also the counsel of private corporations - though his notoriety, as he explained, has driven some US and UK corporations away: ‘I think they are wrong, they are wrong in thinking that being a cause lawyer prevents me from having a cynical and manipulative side. I can be as cynical as they are.’<sup>44</sup> What he described in his legal practice as ‘a constant juxtaposition, this medley between politicians, the powerful and the wretched of the Earth’ is not simply a question of accommodating economic constraints by ‘playing on different fronts.’ It is a capacity of circulation that can be explained by Bourdon’s background

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<sup>43</sup> See <https://www.asso-sherpa.org/accueil> (last accessed 8.1.2018).

<sup>44</sup> Author’s interview with William Bourdon, Paris 21.12.2012, my translation from French. Subsequent quotes in this portrait are derived from this interview.

and trajectory, and his positioning at the intersection of multiple poles of power in France - politics, economics, militant. In this, his family capital played an instrumental role: he is the grand-son of the engineer in chief at Michelin, and the great-grand son of one of the founders of Michelin, the rubber tire corporation grown into a transnational and powerful corporation out of rubber plants in Vietnam and other parts of the French colonial Empire. Originally targeting a diplomatic career (Sciences-Po, the French administrative school, *l'École nationale d'administration* and the Quai d'Orsay), he ended up studying law and registering to the Paris Bar in 1980. He started his career by interning with two tenors of the Paris Bar: Philippe Lemaire, a criminal lawyer and one of the proponents of the abolition of the death penalty in the 1970s, and Marc Barbé, a founder of one of the first French corporate law firm, BCTG et Associés, set up in Paris in the early 1970s with a portfolio of powerful corporate clients built up by Barbé while at Stephenson Harwood in London (Nike, Cadbury...). Bourdon then set up his own law firms from the mid-1980s. He described his stint at the FIDH as a 'parenthesis': 'all this very strong engagement in international criminal law, it spurred jealousy, envy, petty manoeuvres...I believe there is a pernicious cancer that constantly threatens NGOs...it's bureaucratization...we strive to pave a way between the naivety of part of civil society which gets privatized through public subsidies, co-opted into public administrations - a dangerous partnership - and their near-systematic ideologization which denounces any corporate endeavour.' 'If economic actors tell you that they are losing market shares in Africa, you need to hear the argument. This is what enables me to circulate between spheres of power and conflicting interests.'

*Pascal Agboyibor, Orrick Herrington & Sutcliffe LLP* - Arms folded on a grey suit and blue shirt - the obligatory uniform of the corporate lawyer, Pascal Agboyibor hints by an imperceptible smile the triumph that brought him to the cover of the monthly issue of *Forbes Afrique* in February 2015.<sup>45</sup> This 47-year old Togolese lawyer is one of the very few – there are but a handful – Africans working at major multinational corporate law firms in Paris, what more, as a sitting member of the administrative council of the US firm Orrick Herrington & Sutcliffe LLP, and the head of its 'Africa' department in Paris. He is hailed as a 'shadow power broker' of transactions between states and foreign corporations in the African continent. With a 60 people strong department, Orrick, he claims, invests a huge proportion of its activities - 20% - in Africa.

'I was taught very early on that I would become a lawyer.'<sup>46</sup> The law, for Agboyibor is an acute political and family matter. His father, Yawovi Agboyibo, former president of the Lomé Bar, political opponent and prime minister in the transition between the Gnassingbé regimes (in 2006-2007) has been a prominent figure of the transition of Togo to a multi-party system in 1991. Yawovi Agboyibo had also turned to corporate law in the early 1970s by integrating the very first law firm of the country,<sup>47</sup> after studying law in France. During an era when the newly independent state of Togo was massively recruiting into the administration, this choice appeared like an anomaly. Investing in corporate law had indeed enabled the conversion of the resources of this royal family, evinced from local power since the 1930s<sup>48</sup> by the French colonial administration, towards the political and economic networks tying the country to its former *métropole*. One generation later, this proximity has contributed to propel Pascal Agboyibor within the very close-knit corporate Bar in Paris, first in 1993 at Jeantet et

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<sup>45</sup> M.E. Ngisi, *Pascal Agboyibor, l'avocat qui murmure à l'oreille des grands*, FORBES AFRIQUE 33 (February 2015).

<sup>46</sup> Author's interview with Pascal Agboyibor, Paris, 22.5.2015, my translation from French. Subsequent quotes in this portrait are derived from this interview.

<sup>47</sup> Founded in 1937 by the French lawyer Raymond Viale.

<sup>48</sup> Through a continuous re-invention of tradition, the family was recently reinstated as chief of canton by presidential decree under its 'royal' name, Tobgui Messan Agboyibo V, in May 2014.

Associés, one of the French pioneers of corporate law, before joining the Paris branch of the UK firm Watson, Farley and Williams in 2000, whose teams integrated with Orrick, Herrington & Sutcliffe LLP in 2002. He became a partner at Orrick in 2003. After studying law in Lille, Pascal Agboyibor built up his portfolio of African relations during a secondment at the African Development Bank in Abidjan in 1996, and on introductions from his father - notably to take on the latter's arbitration disputes between the Democratic Republic of Congo and 'vulture funds'.<sup>49</sup>

Agboyibor's trajectory thus unveils a 'layered' habitus pointing to the multiple historical strata of legal globalization on the African continent as much as their connexions with local struggles and political hierarchies. But it also points to the wider transformation of corporate legal markets since the 1990s and the prominent yet ambiguous position of Paris in these developments. When he started, Agboyibor strategically invested heavily in securitization, positioning himself in the financialisation of commodities markets, before reinvesting fully his African portfolio in the wake of the 2008 financial crisis, which prompted the search of multinational corporate law firms for new markets in emerging economies, including Africa. While only 10% of his practice involved dealings on the continent in 2008, it now accounts for 99% of his time. Though, when he entered Jeantet in the early 1990s, there were but a handful of Africans in corporate law firms in Paris - and elsewhere. His first 'African' case involved the Chad-Cameroun pipeline. 'It was the old argument at the time. They needed an African to sit at the table. There is a deep symbolic violence behind all this. This is probably what made me leave Jeantet. There is a huge difference between French and Anglo-Saxon firms on this.' But the stormy setting up of a branch of Orrick, orchestrated by Agboyibor, in Abidjan in the fall 2014 - it triggered an outcry by the Bar in Abidjan<sup>50</sup> - also emphasizes the difficult, thorny dynamic of this new wave of legal globalization on the continent. 'I am an accident,' explained Agboyibor, 'if it is only me, in Paris, it is not sufficient. You need African-focused lawyers who are involved, and not just legal mercenaries... Training African lawyers by internationalizing them, that can amount to a form of parachuting.'

These two portraits offer a first explanation of the *offshore yet connected* characteristic of the 'Africa' Bar in Paris, due to the embeddedness of the capital in imperial legacies. Indeed, the politics of the Cold war both reinforced the symbiotic and reciprocal relation between the field of state power in France, and that of its former African colonies, economically, legally, politically and relationally. They also confirmed the strategic position of Paris as an offshore site to deal with distribution conflicts over extractive resources. Thus, the International Chamber of Commerce had been set up in the early 1920s in Paris as an 'offshore' site for the arbitration of disputes between corporations and states aimed specifically at shielding these conflicts away from political and diplomatic interests. Until the

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<sup>49</sup> N. Teisserenc, *Pascal Agboyibor, le 'béliet noir' à forte tête* JEUNE AFRIQUE (7 March 2014). He acts as a counsel for Gécamines, one of the jewels of the mining industry of the Democratic Republic of Congo, which won in 2012 a long lasting legal battle against the US investment management firm FG Hemisphere.

<sup>50</sup> N. Pierrepont, *Orrick's new Abidjan office sparks harsh words from local bar* THE AMERICAN LAWYER (3 November 2014).

expansion of the market for arbitration from the 1980s<sup>51</sup> and throughout the bulk of the Cold war, the conflicts spurred by the nationalization of oil and other strategic resources of the 1960s and 1970s in the newly independent states were managed through diplomacy, the threat of gun-boats, and personal political relationships between political elites in France and its former colonies, while extractive deals were negotiated in the quiet corridors of the *Françafrique*. The politics of the ‘cultural Cold War’ - including the anti-US stance of Presidents De Gaulle and Mitterrand - were also a key driver in the configuration of the ‘Africa’ Bar across politics, corporate interests and human rights. Political struggles, notably around the Algerian war of independence, were thus instrumental in defining the political and ideological distribution of positions within this microcosm – as illustrated in the trajectory of Bourdon. Emblematically, the Paris Office of the Secretariat International of Amnesty International was set up in Paris in 1978 precisely due to the enduring links between Francophone African political elites and the former *métropole* and the position of the French capital as a harbour for political opponents. Amnesty was thus *de facto* involved in dynamics of ‘reciprocal assimilations of elites’<sup>52</sup> whereby West African political elites would be in turn defended as opponents or denounced for their human rights violations by the organization.<sup>53</sup>

These connections are particularly evidenced in the socialization of legal elites in former French colonies on the continent. It is but a truism that from a juridical point of view, decolonization was a very slow process. While French magistrates continued to be seconded to former colonies throughout the 1970s - due to the relative lack of trained lawyers locally - these webs of relations are still instrumental: be it for the training of new legal elites, in France, and the endorsement of new law professors in Francophone Africa through the ‘agrégation’ still to date chaired by French professors; or the mentor-pupil relations that shape the marketplace for international investment arbitration.<sup>54</sup>

These developments have deeply shaped the barriers of entry into the ‘Africa’ Bar in Paris: new entrants come either from a corporate platform (such as by using the platform of a corporation like Total), a political or a militant background. The best positioned however are endowed with all three types of resources simultaneously, such as in the case of Bourdon,

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<sup>51</sup> Y. Dezalay and B. G. Garth, *Dealing in virtue. International commercial arbitration and the construction of a transnational legal order* (Chicago, The University of Chicago Press, 1996).

<sup>52</sup> J. F. Bayart, *The State in Africa. The Politics of the Belly* (2nd ed. New York, Cambridge University Press, 2009 [1989]).

<sup>53</sup> S. Dezalay, *Gérer un conflit armé comme une cause judiciaire: l'exemple d'Amnesty International en Côte d'Ivoire* 36 *CRITIQUE INTERNATIONALE* 55 (2006).

<sup>54</sup> S. Dezalay (with the collaboration of Y. Dezalay), *Professionals of international justice. From the shadow of state diplomacy to the pull of the market of arbitration*, in A. Nollkaemper, J. d'Aspremont, W. Werner & T. Gazzini (eds.), *International Law as a Profession*, 287 (Cambridge, Cambridge University Press).

who is all the better positioned to hail as a vocal proponent of the criminalization of corporate crimes, that he is well connected to corporate *milieux*. The same applies on the other end - militant - of the spectrum. The *Comité Catholique contre la Faim* (CCFD), one of the drivers of the complaints for the ‘ill-gotten wealth’ (*biens mal acquis*) of African heads of state in France - lodged by Bourdon - was also built out of French missionary colonial networks on the African continent.<sup>55</sup> Tracing the social background of Agboyibor on the other hand is instrumental to understand that the prominent position he occupies within the ‘Africa’ Bar built out of a strong family and social background, a portfolio of corporate, political networks in Africa, and corporate legal *know how* acquired through positions in US corporate law firms.

In turn, to explain the prominence taken by US and UK corporate law firms within this microcosm, it is also necessary to take into account the history and transformation of the corporate Bar in Paris. The demise of the ‘Republic of Lawyers’ following the Second World War translated in a gradual replacement of lawyers as the main state elites, with an administrative-political elite. The relatively recent ‘return’ of the profession to politics - illustrated by the move of former politicians to legal practice - has opened up a ‘contiguous’ space of circulation between the legal field and the political field.<sup>56</sup> This was favoured by changes in the regulation of the French legal profession, notably the widening up from 1991 of the rules regulating the access to the profession, and foremost its *aggiornamento* from the 1990s under the influence of US and UK corporate law firms.<sup>57</sup> The impact of this globalization of corporate law - notably the managerialisation of the French legal field as a whole to adapt to the model of the Wall street law firm was all the more powerful given the long-standing shunning of business and corporate matters within a legal profession more willing to endorse ‘political’ causes. Indeed, in the 1950s there were only a handful of corporate law firms. The growth of a corporate legal market in France, foremost in Paris, followed the drive of these pioneers, like Fernand-Charles Jeantet themselves converted to the Wall street law firm model based on their experiences in the US and the UK, in the context of the emergence of the European economic market.<sup>58</sup>

Certainly, part of the success of US and UK corporate law firms in dominating the ‘Africa’ Bar in Paris also stems out of the huge capacity of firms - as opposed to single legal

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<sup>55</sup> See S. Dezalay, *SRevamping Law by Circumventing the State. Non-governmental organizations in the international management of social violence on the African continent*, (PhD of Laws, European University Institute, Florence, 2011).

<sup>56</sup> Vauchez *supra* note 20.

<sup>57</sup> Y. Dezalay, *Marchands de droit. La restructuration de l'ordre juridique international par les multinationales du droit* (Paris, Fayard, 1992).

<sup>58</sup> Vauchez *supra* note 30.

practice - in dodging the volatility of markets for extractives (and with them, legal markets), including by waging multi-front legal strategies: from the negotiation of contracts to arbitration or litigation. As underscored by a respondent: ‘the difference between Agboyibor and others is the structure of the firm: it is better than having lone lawyers doing all the work.’<sup>59</sup> Yet - it is also no accident that predominantly *French* lawyers operate within this marketplace. This enables these firms to build on a symbolic displacement, away from the stigmata of the *Françafrique*, while still also benefiting from the *know who* of these lawyers. The US corporate law firm White & Case, for example, secured a foothold in Francophone Africa in the 1990s when it represented Algeria in the restructuring of its external debt - the choice of a US firm being then a decidedly anti-French and anti-colonial stance on the side of the Algerian government.

The second series of portraits - of four other lawyers within the Africa ‘Bar’ in Paris - underscores the endurance of the web of the relations - political, economical, social - built out of imperial legacies within this corporate legal market.

**From the tenors of the ‘Africa Club’ to the New Guard: revamping the terms of the relationship between Africa and the world?**

‘Julien,’ McDermott, Will and Emery - ‘Julien’ receives me in his spacious office - the first time during this fieldwork: a room with softened light, strewn with African masks, fabrics, a picture on the wall showing the basketball team of Zaïre in the 1970s - featuring a young ‘Julien.’ A friend of ‘Antoine,’ and the mentor of ‘Pierre’ (see portrait below), ‘Julien’ is hailed as the ‘historical Godfather’ of the ‘Africa Club.’ This amiable French, white, lawyer, now well into his eighties, explained that he entered the field ‘by accident.’<sup>60</sup> ‘My trajectory is unusual. I obtained a scholarship from the US Officers’ Wives Club after the second world war to go study in the US’. After obtaining a JD, he entered the US corporate law firm Duncan Allen & Mitchell, before being dispatched by the firm in 1974 to Kinshasa, the capital of then Zaïre. The firm wanted to set up a local office: ‘The associate there was an American “with big boots,” the son of an infrastructure entrepreneur. He did not have the sensitivity to work for Africans. At first, I was not interested, but I decided to stay. At the time (in New York) there was hardly any international work, I never saw clients. There I could combine the two.’ The context was also that of the ‘white elephants’ infrastructure projects in Zaïre.<sup>61</sup> ‘Mobil, Texaco, First National Citibank: business was booming.’

‘Julien’ went back to Paris at the end of the 1970s as an associate of the US corporate firm Coudert Brothers. ‘A month later, I was contacted by Air Zaïre, to be the advisor of the (Congolese) presidency. As counsel to the presidency, he undertook the reform of the pharmaceutical sector, and was also in charge of military contracts and the negotiation of bank loans. ‘I came back to Paris. I was then inevitably branded with an “African” label. Due to my Zaïran background, I have always done mining law. But I became a generalist “African.”’ He developed Coudert’s Africa practice - with, and that was exceptional at the

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<sup>59</sup> Author’s interview with ‘Martin,’ Fair Links, Paris 2.7.2015.

<sup>60</sup> Author’s interview with ‘Julien,’ McDermott, Will and Emery, Paris, 5.5. 2015, my translation from French. Subsequent quotes in this portrait are derived from this interview.

<sup>61</sup> See B. Verhaegen, *Les Safaris technologiques au Zaïre*, 18 POLITIQUE AFRICAINE 71 (1985).



time, a team of African lawyers. ‘At the time, Coudert was the only firm to do international law. If you came to Paris (to work at the Paris office of a US/UK corporate law firm), it was, as a Frenchman, automatically to do international law. After the disbanding of Coudert in 2006, he moved to the Paris branch of the US firm Dewey and Leboeuf and then that of the Canadian firm Fasken Martineau. Moving along the fast moving transformation of the market for corporate law (due to mergers etc.), he also brought with him his teams, and is now striving to re-constitute the ‘Africa’ teams he had developed at Coudert. ‘We do not do off-shore law. But we do not need to work with local lawyers. Anyway, if clients contact us, we can do the work, we do not need to go through local lawyers.’

‘Pierre,’ *Jeantet et Associés* - ‘Pierre’ was admitted to the Bar in Paris in 1991, before entering *Jeantet & Associés* in 1992. As an associate and chair of the Energy, mines and infrastructures department - focused predominantly on Africa - at this French corporate law firm, ‘Pierre’ is also an academic. With a research master of laws in international law and international trade law in 1981, a master in international and comparative energy law in 1982 from the University Paris I-Sorbonne, a visiting scholarship at Berkeley in 1983-1985, and a PhD of law from the University Paris XIII on ‘contracts related to the exploitation of natural resources,’ he now is also a law professor at the University Paris II, where he heads the diploma on international economic law in Africa. This academic profile is a specificity of the *alma mater* of French corporate law firms, *Jeantet et Associés*. Founded in 1922 by Pierre Lepaulle, the first Frenchman to obtain the *Scientiae Juridicae Doctoris* at Harvard, joined by Fernand-Charles Jeantet after the Second World War, himself a law professor at Harvard and a specialist of competition law.<sup>62</sup> In the framework of the Marshall plan, the firm played an instrumental role to foster the implantation of US corporate law firms in Europe - through Paris - and to develop European community law.

Before entering *Jeantet*, ‘Pierre’ had worked for five years at Coudert as well as at Total, the French multinational oil corporation: ‘the preparation of files (contracts, project finance), it has a snowball effect. Reputation is difficult to establish, but once it’s there, it’s there.’ Once at *Jeantet*, ‘I set up the energy structure in 1993. It was the only one, focused on energy and natural resources, to provide for the whole gamut of services: contract negotiation all the way through to arbitration. We have a single team that can deal with both. So if the market shifts, one of the poles can compensate for the other.’<sup>63</sup> ‘When I started, I was derided. Everybody was criticizing the endeavour (...). We were the only law firm with a local office in Africa, from the colonial era, then in Algiers, because *Jeantet* was from there. I innovated, I brought in an African to the office (it was Pascal Agboyibor).’ ‘Pierre’ is now orchestrating the setting up of a local branch of the firm in Casablanca, in Morocco - with the idea of ‘developing the practice of the firm’ in Morocco.

‘Dominique,’ *Jones Day* - Hailed as one of the prominent corporate lawyers operating in dealings in Africa in the 2015 rating of *Jeune Afrique*,<sup>64</sup> ‘Dominique,’ of counsel at the Paris office of the US corporate law firm *Jones Day* since 2010 predominantly advises corporations - recently for the negotiation of a concession for the airports of Antananarivo and Nosy Be in Madagascar, on behalf of a consortium led by Bouygues and Aéroports de Paris; as well as states, as the counsel of Guinea in the Simandou project for the extraction of iron ore by the Australian mining corporation Rio Tinto. Upon obtaining a master in public and administrative law in Paris, he did a stint at the European investment bank, before working at Herbert Smith Freehills - under the mentorship of ‘Antoine’ - between 2001-2010. ‘I did not turn to Herbert Smith Freehills by accident. At the time, it was the only law firm which

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<sup>62</sup> See Vauchez *supra* note 20.

<sup>63</sup> Author’s interview with ‘Pierre,’ *Jeantet et Associés*, Paris, 28.4.2015, my translation from French. Subsequent quotes in this portrait are derived from this interview.

<sup>64</sup> *Les avocats qui ont marqué 2015*, JEUNE AFRIQUE (20 December 2015).

provided services to both states and corporations in Africa.’<sup>65</sup> ‘I have a background in public law. Administrative law is a supporting science in France. I did not want to be a “support” lawyer. I wanted to do transactions.’ ‘Most of my experience is for the private sector; but I am starting to work also for the public sector, but it is less lucrative. (...) It is not an altruistic stance. Upstream (before projects are negotiated), you have an increased involvement of development actors. Millions of pages have been written on public-private partnerships, but there is a tendency to ritualize these tools. It’s the problem of transplants.’ However, ‘relations with local lawyers (in Africa) are extremely complicated. In Bangui, we simply had to “create” our local respondent, because there were simply no corporate lawyers. (...) In some countries, our local respondents do not want to take orders. There is a locking-up of the local legal market.’

‘Bruno,’ *Eversheds* - ‘Bruno,’ a partner at the UK corporate law firm Eversheds LLP where he heads the ‘Africa Group’ of the firm’s branch in Paris - obtained masters in common law and corporate law, before working for Total in 1995, and Landwell PwC (PwC’s legal office in Paris) between 1995-2000, where he worked for a while under the aegis of ‘Antoine.’ ‘I left in 2000 because I was looking for a smaller structure. I developed Eversheds’ practice in Africa between 2000-2007. I managed to convince colleagues of the relevance of working on Africa.’<sup>66</sup> After launching the ‘Africa Group’ of the firm in 2007, he contributed to developing its ‘Africa Law Institute,’ a network designed to enable members of its 38 partner organizations in Africa (in both Francophone and Anglophone Africa) to access legal training. With now eight local offices on the continent - in Casablanca, Johannesburg, Mauritius, Morocco, Tangier and Tunis<sup>67</sup> - the firm has also been at the fore-front of the development of the *Organisation pour l’harmonisation en Afrique du droit des affaires* (OHADA) system in West Africa, including through an OHADA law diploma delivered to Francophone - French and African - students by the Universities Panthéon-Assas and Paris 13 since 2014. ‘I think a lot of firms advertise an opening towards Africa, but they are very far from having achieved it. We took risks. Some individuals work predominantly on oil, minerals. I have had a much wider portfolio of activities, from the start. As a firm, we provide the full range of services.’

These four portraits underline how the embeddedness of the ‘Africa’ Bar in the fabric of French-African relations shaped the clientele - states and corporations - of law firms operating in Africa. ‘In the 1970s Elf had its own legal services. They would never even have had the idea of hiring corporate lawyers. These inside advisors were from the *Corps des Mines*’<sup>68</sup> explained a long-term French associate within the Paris office of Cleary Gottlieb Steen & Hamilton.<sup>69</sup> Further, ‘banks orient dealings in Africa, mainly US and UK banks. The French have always done business in Africa. Though they rarely invest. For Anglo-Saxon law

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<sup>65</sup> Author’s interview with ‘Dominique,’ Jones Day, Paris 9.4.2015, my translation from French. Subsequent quotes in this portrait are derived from this interview.

<sup>66</sup> Personal interview with ‘Bruno,’ Eversheds, Paris, 8.4.2015, my translation from French. Subsequent quotes in this portrait are derived from this interview.

<sup>67</sup> H. Gannagé-Stewart, *Eversheds and Norton Rose Fullbright ramp up in Africa with local alliances*, THE LAWYER, (25 February 2015).

<sup>68</sup> The Corps des Mines is the technical Grand Corps of the French state, which trains the state engineers of the mining sector.

<sup>69</sup> Author’s interview with ‘Claude,’ Cleary Gottlieb, Paris, 29.4.2015.

firms (having an Africa department) is certainly a marketing strategy<sup>70</sup> towards a corporate clientele of newcomers into the continent. An American partner at the Paris office of Clifford Chance Europe LLP explained: ‘if you look at law firms’ expansion, it is through project finance, and generally development and financing. At the moment, almost 100% of my time is on Africa (...). We turned to Africa in the context of the crisis, in the late 2000s. I am not sure they will stay after the market picks up, because it is certainly a lot easier to do business in New York. (...) The firm recognizes that its business in Africa is not the most lucrative. But we want to be a blue-chip firm that corporations look to.’<sup>71</sup> A partner at Jones Day explained how this ‘blue chip’ strategy worked, in terms of specialization within this small market: ‘when you look at the corporate side, you find a lot more firms. It is the same for everything else: you do one transaction and then you become a specialist (in mining, oil, infrastructure). But when you look at the government side it’s completely different.’<sup>72</sup>

Yet, these portraits also underscore a clear generational break between the tenors of the ‘Africa club,’ and a younger generation - both more technically savvy and more concerned with the stakes involved in developing the operations of their firms on the continent - including the need to co-opt and train local, i.e. African, interlocutors. Indeed, it is perhaps on the side of services to states that the transformation of the ‘Africa’ Bar in Paris is the deepest. This was outlined by ‘Julien,’ the ‘Godfather’ of the ‘Africa’ Bar: ‘we still work a lot for states, but it is mostly private practice. The practice of counselling for states has evolved. It is more transparent, more open. Now it works a lot on the basis of tenders. Before it was through encounters. Presidents and political advisors would meet their counsels by chance encounters, in restaurants. Now - except for counsels to Presidents, where it is different, it is all on the basis of tenders.’<sup>73</sup>

Initiatives such as CONNEX, or the African Legal Facility mentioned above, aim precisely at taming the still very charismatic nature of the market for services to African states. However, the prominence taken by international financial institutions in this restructuring is also strengthening the role of development actors and policies in the transformation of the connexion between Africa and global markets. As explained by a respondent: ‘African governments make a mistake when they do not have a counsel of a sufficient calibre’<sup>74</sup> during the phase of negotiations: ‘they look for the best bidder. It is only when there is a crisis, when

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<sup>70</sup> Author’s interview with ‘Julien,’ McDermott, Will and Emery, Paris, 5.5. 2015, my translation from French.

<sup>71</sup> Author’s interview with ‘Fabrice,’ Clifford Chance, Paris, 5.5.2015.

<sup>72</sup> Author’s interview with ‘Louis,’ Jones Day, 1.4.2015 (by phone).

<sup>73</sup> Author’s interview with ‘Julien,’ McDermott, Will and Emery, Paris, 5.5. 2015, my translation from French.

<sup>74</sup> Author’s interview with ‘Fabrice,’ Clifford Chance, Paris, 5.5.2015.

the dispute goes to arbitration that they call in the big shots. The law then is dealt with at the highest levels (...). CONNEX: it is an intelligent initiative. But the sticking point was that the Germans (just as other development partners) wanted services to states to be *pro bono*. Why ask law firms to do *pro bono* work? It's beautiful, but it's neo-colonial. If you want to restructure the market, you need to do it right.'<sup>75</sup>

This points to one of the stakes of this impetus to restructure the 'Africa' Bar in Paris: the competition for access to the African continent, in a context of acute global competition for extractive boons, and corporate legal markets. Opening the market of services to African governments - including through *pro bono* endeavours - has been a key strategy of some US and UK corporate law firms, especially in areas of the continent where they could not rely directly on the social networks of imperial legacies. As explained by a partner at Jones Day and one of the promoters of the CONNEX initiative: 'you cannot make a career on Africa. 'Africa' work is either for corporations or governments. For corporations it is primarily energy, project finance. You can do that full time. But you cannot do government work full time. It does not pay. There is no way you can make billable hours working for a government. It is a different way of doing business. If I have a corporate client, they will call me and ask me for the costs, then they will call back, and they will say: "let's move." With the governments, they never pay. There is always an international organization that pays. They always have a tender process that takes months, a technical proposal, a financial proposal that will take forty hours. And this, you cannot bill. My credentials are pretty well known. For instance, when GIZ (the German development agency) call, they know me, but still it takes months.'<sup>76</sup>

The difference indeed, lies in the *know who*: '(t)hen you have those people who have the *know how*, like Pascal Agboyibor, who can also speak to heads of state. That is something else. It is also a question of positioning.'<sup>77</sup> *Pro bono* initiatives thus would tend to displace slightly the inter-personal relations between Paris-based lawyers and their political counterparts in African settings, towards the framework of development assistance. But this still reinforces the stronghold of agents with capacities of access built out of a portfolio of political, economic, social and legal resources, such as Agboyibor. Yet, the position of the latter, and his difficulties in setting up a local branch of Orrick in Abidjan also highlight the thorny path of this new phase of globalization into the African continent. As the Godfather of

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<sup>75</sup> Author's interview, 'Martin,' Fair Links, Paris 2.7.2015.

<sup>76</sup> Author's interview with 'Louis,' Jones Day, 1.4.2015 (by phone).

<sup>77</sup> Author's interview with 'Martin,' Fair Links, Paris, 2.7.2015.

the ‘Africa’ Bar explained: ‘International law firms are scared to be outpaced by local lawyers.’<sup>78</sup> The offshore – yet connected – structure of the Africa Bar in Paris could thus be an enduring feature - depending on the pace of development and varied structure of national legal fields on the African continent.

#### **4. Conclusion. Extractive economies in Africa, a petri-dish of layered and connected histories of legal globalization**

In media and specialist accounts, talks of the end of the commodities ‘super cycle’ - and with it, the fear of African states plunging into the debt crisis of the 1980s - have re-ignited the ‘resource curse’ or ‘Dutch disease’ debate which connects the vulnerability of resource-rich African economies to the weakness of domestic governance mechanisms<sup>79</sup> and the desirability of governing trade and financial flows globally.<sup>80</sup> In policy, media and many scholarly accounts, this weakness of Africa economies has been linked to the failure of the legal systems inherited from colonization.<sup>81</sup> The need to reform - if not reinvent - political, legal and economic institutions continues to be heralded as a way to check the tendency towards personal, tyrannical and anti-entrepreneurial governance.<sup>82</sup>

Yet, the thriving of private foreign investments in the very countries hailed as ‘failures,’ like Angola or the Democratic Republic of Congo<sup>83</sup> opens a much more complex image than the mere economic dependency of the continent - notably with the expansion of a ‘Beijing consensus’ freed from political conditionality, and outside the scope of US imperial politics.<sup>84</sup> This renewed prominence of the African continent as a boon for extractive resources also comes in a context that contrasts markedly with the ‘new extraction’ in Latin American contexts a decade earlier.<sup>85</sup> The mining boom of the last two decades was most pronounced in Latin America, with a growth of the global share of Latin America in mining

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<sup>78</sup> Author’s interview with ‘Julien,’ McDermott, Will and Emery, Paris, 5.5. 2015, my translation from French.

<sup>79</sup> See Collier *supra* note 9.

<sup>80</sup> See Rich and Moberg *supra* note 39.

<sup>81</sup> World Bank, *Doing business 2004. Understanding Regulations* (World Bank, the International Finance Corporation and Oxford University Press, 2003).

<sup>82</sup> D. Acemoglu and J. Robinson, *The Colonial Origins of Comparative Development: An Empirical Investigation* 91 AMERICAN ECONOMIC REVIEW 1366 (2001).

<sup>83</sup> J. Ferguson, *Global shadows: Africa in the Neoliberal World Order* (Durham, NC: Duke University Press, 2006).

<sup>84</sup> S. Halper, *The Beijing Consensus: How China’s Authoritarian Model will Dominate the 21<sup>st</sup> Century* (Basic Books, New York, 2010).

<sup>85</sup> See K. Deonandan and M.L. Dougherty (eds.), *Mining in Latin America. Critical Approaches to the New Extraction* (Abingdon, Oxon, Routledge, 2016); A. Bebbington, *The new extraction : Rewriting the political ecology of the Andes* 52(5) NACLA REPORT ON THE AMERICAS 12 (2009).

investment from 10 to 25% between 2003 and 2012, while to a large extent the rush is yet to come in Africa where mineral reserves remain for the most part untapped. In Latin American contexts the new extraction has been accompanied by strong political and social movements fostering a radical agenda of post-extractivism and asserting indigenous rights of local communities over extractive resources, notably through the increased exercise of the right to free, prior and informed consent institutionalized in various international legal instruments since the 1980s. By contrast, the rush for extractive minerals in African contexts, particularly in conflict-rife Democratic Republic of Congo over the 1990s and elsewhere on the continent, came at the tail-end of structural adjustment programs, spearheaded by International Financial Institutions, which engineered the privatization of extractive economies to foster the regulatory strength of private actors and markets against political elites and weak governance. Not only did these policies did little to curb the Far-West like rush into Africa, they also unleashed acute levels of violence.

‘It is precisely this dialectic that has pushed Africa (...) to the vanguard of the epoch, making (these old margins) at once contemporary frontiers and new centres of capitalism - which, to reiterate, in its latest, most energetically voracious phase, thrives in environments in which the protections of liberal democracy, of the rule of law, of the labour contract, and of the ethics of civil society are, at best, uneven.’<sup>86</sup> Indeed, as this article has attempted to highlight: the renewed – advocated or contested – prominence of the African continent in the global competition for extractive resources opens an opportunity, and needed inquiry, to assess the relationship between capital investment, politics and law in these transformations, and specifically the (re)definition of transnational landscapes of law in these shifts.

The position of the ‘Africa’ Bar in Paris underscored the relevance of looking at the past to understand these changes, and how ‘Africa’ is being built into a new legal market. Paris, thus, is a nexus of ‘connected histories’: US-led corporate legal globalization, colonial and postcolonial relations, and currently the global competition between the US, Europe and powerful new economic and political centres, like China, over raw commodities. These connected and layered developments help understand historical change, including legal developments, in sequence, as a ‘revival’ where ‘the colonial imprint of law provides the core that defines the revival.’<sup>87</sup> Indeed the rich and recent scholarship on empires has traced paths to define a future research agenda to connect state and legal developments, with economic

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<sup>86</sup> Comaroff and Comaroff, *supra* note 3 at 19.

<sup>87</sup> Y. Dezalay and B. G. Garth, *Asian Legal Revivals. Lawyers in the Shadow of Empire 2* (London, University of Chicago Press, 2010).

models of extraction on the African continent and transformations in the structure of the global economy.

Arguably - the era of European colonial empires in Africa was exceptional - both in scale and time, but there was a remarkable gap between the ambition of 'modern' colonialism in terms of social, technological innovations and the limited spaces of deployment of colonial rule.<sup>88</sup> Indeed, compared to other regions, such as Asia, one perhaps singular specificity of the colonial enterprise in the African continent was its extreme diversity - between colonies of settlement, of extraction, etc. This uneven and patchy colonial enterprise left fragmented societies and great diversities of economic conditions in their wake. While 'legal pluralism' as the legal vehicle to accommodate diversity and meagre colonial resources became a constant and general fix of colonial rule,<sup>89</sup> the legal institutions and professions that emerged out of the colonial era were vastly varied across regions, even sometimes in the same countries, according to the specificities of colonial legal, economic and political strategies at the local level.<sup>90</sup> Thus, the boon of extractive economies from the slave trade, through to the 'modern' colonial era, make them a paradigmatic site, to reiterate, to trace the uneven and unequal connections between Africa and the world.<sup>91</sup> This is the case not only because of the symbiotic relationship in the development of modern capitalist economies in the *métropoles* that built out of their imperial synergies<sup>92</sup> and the colonial roots of the contemporary legal and economic international system, but also because of the way the impetus for extraction shaped the colonial and post-colonial field of state power in African settings.

Tracing this colonial imprint is instrumental to map out the postcolonial trajectories of African states, economically, politically – and legally. Cooper's image of the 'gatekeeper state'<sup>93</sup> is a useful entry-point to look at this evolution both at the domestic level - in the legal, political and social ramifications of extractive economies nationally - and in the relation between resource-rich states with global markets, former *métropoles* and the capitals of finance, development institutions and foreign corporations. Thus, the logic of 'ring-fencing' the oil industry in Angola, away from the wider economy of the state<sup>94</sup> contrasts with the economic path taken in South Africa from the turn of the twentieth century, which tightly articulated the exploitative dimension of the mining industry with a wider social development

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<sup>88</sup> Burbank and Cooper *supra* note 21.

<sup>89</sup> J. R. Schmidhauser, *The European origins of legal imperialism and its legacy in legal education in former colonial regions* 18(3) INTERNATIONAL POLITICAL SCIENCE REVIEW 337 (1997).

<sup>90</sup> See S. Dezalay *supra* note 4.

<sup>91</sup> Cooper *supra* note 11.

<sup>92</sup> See B. Etemad, *De l'utilité des Empires. Colonisation et prospérité de l'Europe* (Paris, Armand Collin, 2005).

<sup>93</sup> F. Cooper, *Africa Since 1940: The Past of the Present* (Cambridge, Cambridge University Press, 2002).

<sup>94</sup> Ferguson *supra* note 81.

project.<sup>95</sup> These two contrasted economic models - replicated in varied modes across the continent - impact on the 'resource curse' of the dependency on primary commodities for the wider national economy. They have also contributed to shaping the routes, shadow and official, of capital flows, as much as the dynamic of capitalist expansion within the continent.

On the other hand, the structure of markets for extractives and their evolution from the pre- and colonial eras (from the slave trade onwards) has continuously played into contests at the local, national and international levels, which were also heavily mediated by lawyers, often from the *métropoles* but also in some settings like Ghana and Nigeria, by local lawyers: between merchants, colonial administrations and local elites.<sup>96</sup> These layered connections and contests have shaped the subsequent waves of restructuring of extractive economies nationally - from the post-independence waves of nationalization, to the 'neo-liberal' privatizations of the 1980s through to the current re-instating of the state as a development partner in 'public-private partnerships.' They are also at the core of contests over the definition of 'development', as a responsibility of private extractive corporations, development institutions and NGOs, or that of the state. Further, the highly fragmented structure of the global market for minerals, which gives the upper hand to private corporations (mostly Northern) in the production, pricing and investment decisions, while allowing for the multiplicity of intermediaries, from local chiefs through to red-neck extractive companies less vulnerable to reputational costs, plays into the, relative, breadth and scope of global regulatory frameworks, themselves shaped by intense economic and political struggles between the US and Asia.

Law is at the core of these developments. Initiatives aiming at transforming the asymmetrical relationship between African states and private Northern corporations - like CONNEX or the African Legal Facility - stem from the need to stabilize foreign investments, away from the costs - economical, political, reputational - of the re-negotiation of extractive contracts, and their contests in arbitral and jurisdictional settings, including by third parties like local communities. The vindicated challenge thus, of 'levelling the playing field,' is also to foster the emergence of trade-oriented national state elites as much as to control, rationalize and open up the small markets of insiders - such as the multi-positioned members of the 'Africa Club' in Paris away from the stigmata of *affaires*. What made the 'Africa'

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<sup>95</sup> K. Breckenridge, *Special rights in property, why modern African economies are dependent on mineral resources*, in C.A. Bayly, V. Rao, S. Szreter and M. Woolcock (eds.), *History, Historians and Development Policy: A Necessary Dialogue* (Manchester, Manchester University Press, 2011).

<sup>96</sup> See R. Luckham, *Imperialism, law and structural dependence. The Ghana legal profession* 9(2) DEVELOPMENT AND CHANGE 201 (1978).



Bar in Paris offshore yet deeply connected was the tension between the need to rely on local structures of power to do business on the continent, and the strategy of evading local legal institutions - deemed inefficient, corrupted. But at stake is also the intense competition at play in this new wave of globalization into the continent, with international corporate law firms vying to secure their turf in a volatile and fragile market, against local competitors. The stake now, in the next step of this research agenda is precisely to zoom in onto these local legal markets to trace their transformation over time in relation to national fields of state power, regional dynamics and their connexions with former *métropoles* and new poles of global power.

### **Abstract**

Africa is the 'Global Economy's Last Frontier'! Images of the African continent as a boon of mineral riches, and a new legal Far West pervade media and scholarly accounts. Yet these images tend to reflect the protracted political and development 'dependency' of African states, with lawyers involved in corporate dealings on the continent either denounced as mercenaries at the service of neo-colonial 'looting' or idealized as missionaries of the rule of law. This article suggests a research strategy that moves away from these ideological and political accounts. It uses lawyers' trajectories and professional strategies as an entry-point to re-'globalize' the *longue durée* of the unequal and uneven connexions between Africa and the world. The 'Africa' Bar in Paris - the empirical focus of this article - emerges as a microcosm of such interconnected and enduring histories of globalization. Offshore, yet connected, this Bar is a 'cross-roads' space across politics and economics, shaped by the legacies of the ties between Paris the *métropole* and its former African colonies, and earlier waves of corporate legal globalization.

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