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From double agents to bouncers: corporate lawyers and the making of the public-private state

Sara Dezalay

ANTOINE VAUCHEZ AND PIERRE FRANCE, *The Neoliberal Republic. Corporate Lawyers, Statecraft, and the Making of Public-Private France*. WHERE: Cornell University, 2020.

“Not long ago, our masters in the World Bank conducted a life-style survey of the Congo. Question: If the State was a person, what would you do to it? Answer: We would kill him.”

John Le Carré, *The Mission Song*, 2006

INTRODUCTION

Antoine Vauchez and Pierre France's, *The Neoliberal Republic*, sheds a new and fascinating light on the rise of neoliberalism around the world. Focused on France - the epitome of the “strong state” - their study traces the invention of a “public-private state” in the past thirty years.

Vauchez and France's core thesis is that the blurring between the public sphere and private interests fostered by neoliberalism is produced by, as much as it produces, an “interstitial space” - a social space sitting astride the public, and the private. Far from a return of the *République des avocats* of the late 19th century - when the legal profession and law universities were the main breeding grounds for the emerging Republican elite - they document the expansion of a *corporate* bar that displays an interest in *producing* the state. Their study has a normative import – namely, that this is fostering a “black hole” in the power structure that is corrosive for French democracy, as this public-private space is positioned in the blind spot of public oversight. In a global political context of denunciation of state capture by private interests, this political argument is made particularly strong thanks to the theoretical claims which underpin it. Through an unprecedented empirical study of what could be dubbed the “Paris corporate-state bar”, Vauchez and France confront a blind spot that permeates both the US sociology of the legal profession, and Bourdieu's field theory: the nexus between the state, businesses and legal fields.

In what follows, I unpack their core arguments, before examining the limits of this case-study *qua* a case-study: where can these transformations within the French field of state power be situated globally? I argue that confronting this question requires an interconnected socio-political and historical approach to reposition the French trajectory within imperial pasts and their contemporary revivals in the current phase of capitalism.

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From *France.inc* to the public-private state

The release of the French edition of the book (France and Vauchez, 2017) coincided with a major political crisis in French politics: the unexpected ascent to power of a newcomer, who had never run a single campaign nor been democratically elected, Emmanuel Macron. Symbolically, one of Macron's first political moves was to adopt a legislation aimed at "moralizing" politics¹ in a context mired by a succession of political scandals. A French audience might have been prompt to add their volume to the polemic on the capture of the public good by private interests in France (see Jauvert 2018). Certainly, sensitivity to the public-private divide is a French obsession. A US audience encountering the translation of the book in 2020 might be drawn to store it in the "so-what?" shelf of area studies as no more than an "extreme case" of the neoliberal wave unfurling the world over – one which simply illustrates the globalization of revolving doors as the structural variable of the US "hollow core" state (Heinz et al. 1997) under the pull of neoliberalism.

Yet - this would overlook the core *political* argument of Vauchez and France, which they unpack in the fourth part of the volume. What matters is not so much the *blurring* between the public and the private. Terms like public, private, influence, lobbying, intermediation, corruption are simultaneously what semiologists would call signified *and* signifiers. Using them as heuristic categories of classification without uncovering their social usages opens "the risk of taking over (or being taken over by) a thought of the state, that is, of applying to the state categories of thought produced and guaranteed by the state and hence to misrecognize its most profound truth" (Bourdieu 1994: 1). What matters, rather, is to trace the structural dynamics of this blurring and what they produce, socially, economically and politically.

Interestingly, as a translation, Vauchez and France's study responds to two blind spots that permeate the sociology of the legal profession in both France and the US. The first is the state. Calls for the "return of the state" or the "fight against corruption" have permeated political and legal reforms internationally and nationally in the past couple of decades – from Brazil to the backlash against investment arbitration's perceived bias in favor of businesses. Much work has been done to trace the neoliberal remaking of the state. However there continues to be a need, as Vauchez and France argue, to "look for the state in places where scholars have not been used to finding it – in the field of law itself" (2020: 6). In this, the edited volume by Cutler and Dietz published in 2017 provides, for instance, a welcome response as it explores the role played by private contracts in transnational governance. It also illustrates a still common trap: that of invoking implicitly, a "golden age" of the state - as if the nexus between the public and the private retained an objective reality despite its wavering heuristic capacity.

The second is the role played by the legal profession in the neoliberal turn. There have been ample studies on the close articulation between the progressive penetration of new public management and the repositioning of the state as regulator, be it through domestic legislation or externally induced structural adjustment programs. However the role played by corporate lawyers in producing these public-private transactions in the shadow of the regulatory state remains a blind-spot. In France, the demise of the *République des avocats* following the second World War could be related to a twofold move, both scholarly and professional, fostered by the dismissal, or confinement, of legal scholarship (and with it, legal sociology) in a position ancillary to the new administrative science of the state. Effectively, corporate lawyers remain a blind spot in French legal sociology, while the historical distancing of the bar from business contributed to positioning Paris as a "beach head" that facilitated the expansion and diffusion of the model of the "Wall Street" model of the multinational corporate law firm from the 1980s into continental Europe (Y Dezalay 1992). On the other hand, the US sociology of the legal profession largely hinges on a narrative of legal professions and law firms that positions the latter as distinct from

¹ Loi organique et loi ordinaire du 15 septembre 2017 pour la confiance dans la vie politique.

the state. For example, Halliday *et al's* (2012) legal complex is positioned as an ally or opponent to the state, while Rostain and Regan's tax shelter industry (2014) is positioned as playing a rat race both against competitors – and state regulators.

To respond to this twofold blind spot, Vauchez and France deploy a seductive and efficient research strategy. They underline the need to trace simultaneously the parallel and in many ways overlapping transformations within the political field, the economic sector and the legal field to map out the constellation of actors, organizations and forms of knowledge that circulate across the public-private fault-line of the “regulatory state”. To do so, their empirical focus is on those “which are the hands-down champions in this new cross-border game: its experts – namely, corporate lawyers” (Vauchez and France, 2020: 8). Vauchez and France's empirical strategy of “collective biography” - following the paths opened by Dezalay and Garth (2002) - pursues the twofold aim of mapping the total social space in which these agents navigate, and to gain a sense of how categories of the state are transformed in this process.

Their use of Bourdieu's field theory proves especially relevant to approach the minefield of the public-private divide. As noted by Eyal (2013: 158), “(o)ne of the crucial contributions of the concept of field is that it requires us to stop thinking in terms of entities, proper names, concrete individuals, and things and begin grasping all of these as bundles of relations”. But Bourdieu's theoretical toolbox stops short of the spaces between fields – that is, those “*interstitial* fields that develop in-between more historically consolidated ones whether at the national or transnational level” (Vauchez and France, 2020: 11).

What happens if field theory is applied not only to track down the public-private fault line, but also its specific gravitational pull, or *field effect*, that is, its capacity to transform the properties of those professionals, policies or modes of governance that traverse it? In his work on the role played by lawyers as an “intermediary” elite in the expansion of the European Union as a polity, Vauchez (2008) drew the hypothesis of a “weak” European legal field to account for the paramount role played by law in EU polity; Medvetz (2014) deployed a similar strategy to explain the pull exercised by think tanks in the US both on US politics and academe; as I did too (2016) to question the protracted weakness of the International Criminal Court despite the strength of a “common sense” on accountability for atrocity crimes. In all three sets of studies, the “weak” field functions like a hollow core – strengthened, despite its weak autonomy, by the *circulation* of agents whose main resources are drawn from adjacent, more established fields.

From *compradors* to private producers of the state

Vauchez and France's findings on the “Paris corporate-state bar” reveal something different. The “regulatory” state that emerged from the 1980s was certainly redeployed, under the umbrella of the law, as umpire of markets – but this also fostered the expansion of an intermediary space across the public sphere and private interests that developed not so much *against* state encroachments, but in symbiosis, through an imbrication and co-dependency between the public sector and private economic actors. Foremost, the flow of former civil servants and politicians towards corporate law firms does not simply serve to leverage access to public regulators: their “public” capital is also converted and reverts back into the political field.

The neoliberal turn (including the liberalization of the French legal profession itself in 1990) and financialization fostered an *aggiornamento* of the profession – specifically the corporate bar - that mapped onto both the expansion of a “private business of public affairs”, and the redeployment of the state through the public regulation of business. In this process, the figure of the “corporate lawyer” emerged in the shadow of the state: while the “public fabric of private markets’ profoundly modified the structure of economic competition (...) the major economic and financial operations of corporations (...) are now also largely legal battles, conducted simultaneously before a variety of public institutions” (Vauchez and France, 2020: 25-26). While the reach of the regulatory state has become a central stake of economic competition, “the

proximity between corporate law firms and political, administrative, and judicial authorities has become a prime field for competition between firms, (which) have developed full-blown strategies to build a reputation of “public-ness” (Vauchez and France, 2020: 34).

In addition to a couple dozen interviews, the authors built a biographical database of 217 profiles of top civil servants and politicians that have become lawyers between 1990-2015, focusing specifically on Paris and the Hauts-de-Seine bars where all the leading law firms are concentrated. These 217 “defectors” who lend their “public-ness” symbolic capital to law firms are identified as an “elite of the elite” as they predominantly built their career out of the elite platform of French civil service: *Sciences-Po*, the *École nationale d’administration*, ministry cabinets. More than a circulation enabling proximity with the political field, meanwhile, the symbolic capital of “publicness” is itself reinvested and renegotiated by the *alma mater* of the French state as a symbolic bank: the *Conseil d’État*. Repositioned as umpire of the competing interests circulating within this public-private sphere, the *Conseil d’État* itself institutionalizes the circulation of civil servants, by homologating their departure into the private sphere not simply as “pantouflage” (the French equivalent of revolving doors from the public sphere to the private sector), but as a *private* defense of *public* interests. These findings underscore the “structural banality” of Emmanuel Macron’s trajectory as a “representative agent of the field of public-private brokerage” (Vauchez and France, 2020: 156). To boot: the ongoing reform of the *École nationale d’administration*, promoted by the Macron Presidency - ostensibly to bring civil servants closer to constituents - also aims at opening the elite ladder into the state to agents drawn from the private sector, including corporate lawyers.

The Emperor’s late capitalism clothes

In an empirical study on corporate lawyers involved in the negotiation of mining, infrastructure, and telecommunication contracts between foreign investors and Francophone African States (S Dezalay 2020), I identified Paris as a core location for this professional marketplace, which is dominated by French, male, corporate lawyers operating within US and UK multinational corporate law firms. As a market described scathingly by a respondent as dominated by the “Good” (the World Bank), the “Bad” (African states), and the “Ugly” (corporate lawyers) which developed in the shadows of the *affaires* of the “*Françafrique*” - that is, the neo-colonial symbiosis between France and its former African colonies - the assertion by corporate lawyers operating within this market that they were “serving the state” by fostering development resonated with Vauchez and France’s findings – while ringing a sour bell of “same same, but different”.

Structural adjustment programs in the Global South have certainly been shown to have contributed to promoting private contracts as a primary engine of relations between African states and foreign investors by fostering a redeployment of the state through privatization and the indirect discharge of state functions to private actors (see Hibou 1999) but in a way that consolidated colonial gate-keeping politics (Cooper 2014). Meanwhile, the position of Paris as a “beach-head” for the expansion of US-led corporate legal globalization from the 1980s—and the diffusion of the Wall Street model into continental Europe - helped explain the prominence of US and UK multinational corporate law firms within this marketplace. But Vauchez and France’s findings only partially explained the prominence of *French*, male, lawyers within this market.

It is perhaps here that lies the strength of Vauchez and France’s study as a *research agenda* – but its limits as a case-study. A core driver, indeed, in the structure of this market was found in the position of Paris as a former *imperial* core. Borrowing the *know-how* of French corporate lawyers facilitated access for law firms without an imperial past to post-colonial African state elites, while allowing for a symbolic displacement away from the stigmata of the *Françafrique*. Conversely, this fleshed out the interconnectedness between the Big Bang of the French legal field from the 1980s, and imperial legacies: the expansion of the Paris business bar under the pull

of the European Single Market benefited from the continuation of economic, political, legal and foremost social links between the *métropole* and its former colonies. These insights prompt me to argue that the heuristic value of Vauchez and France's study as a research agenda will be strengthened by re-positioning the French trajectory within interconnected histories of imperial pasts and their revival in the present phase of capitalism. The stake is not only, as Bourdieu prompted in his posthumous, *Sur l'État* (2012), to comparatively trace the symbiotic relationship between the transformation of national fields of state power and legal fields. It is also to unpack the interconnected and multi-scalar drivers of the re-negotiation of the "public interest" in late capitalism.

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