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Claire Lemerancier

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## CHAPTER V

# THE JUDGE, THE EXPERT AND THE ARBITRATOR. THE STRANGE CASE OF THE PARIS COURT OF COMMERCE (CA. 1800-CA. 1880)

Claire LEMERCIER

In a rare, succinct moment, the French Courts of Commerce were defined in the following terms: “Merchants who are freely chosen by other merchants and who judge their peers at no cost in the absence of any formalities.”<sup>1</sup> This 1796 portrayal is one of the most concise accounts of the court’s advantages in a seemingly endless debate—a debate which stretched across more than four centuries, from 1563 to 2003!—on the reform of the institution.<sup>2</sup> Still today, the Courts fear their replacement in favor of arbitration—a procedure that, as part of a supposed “Anglo-American model” for settling disputes, is increasingly favoured by major companies.<sup>3</sup> However, there was a time when at least some English-speaking jurists described the French system as both unusual and interesting. At the beginning of the twentieth century, the Courts of Commerce were praised for their expeditious procedure (a final judgement was usually entered within two months) and their capable judges,

“versed in the procedure of these Courts, and in all commercial customs and usages,” “those best fitted to be judge of the rights of parties to purely commercial transactions [...] men who in their *business* life have shown themselves upright and just, and thoroughly familiar with all manner of business

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<sup>1</sup> Villers, *Rapport*, 2. My translation. I wish to thank Robert Carvais, Amalia D. Kessler, Hélène Lemesle and especially Christelle Rabier and Stephen Sawyer for support as well as important and useful comments. Errors and approximations remain mine.

<sup>2</sup> The Courts were called *juridictions consulaires* from the 16<sup>th</sup> century to 1790, then *tribunaux de commerce*. Their judges were (and are) called *juges du commerce*, *juges consulaires* and sometimes *consuls*. About the most recent debates, see Vauchez & Willemez, *La justice*, 135-180.

<sup>3</sup> Mattli, “Private justice.”

problems.”<sup>4</sup>

One of the few French institutions that have remained nearly unchanged since the Revolution of 1789, the 184 Courts of Commerce are still made up of judges elected by representatives of all the firms in their jurisdiction. They deal with bankruptcies as well as with the myriad cases related to “commercial transactions,” e.g. unpaid bills, undelivered or damaged goods, incomplete or unpaid work. The judges are merchants, bankers or manufacturers (or top executives), not “professional judges” with law degrees. They have often been suspected of using their authority in favour of their own business, and/or knowing nothing about law. Yet there has seldom been any doubt that they are the best experts in business customs and that they judge quickly and at little or no cost (to the State, as the judges are not paid, or to the parties).

It was therefore quite a surprise for the historian to read through the Paris Court’s nineteenth-century archives, and even printed sources, from pamphlets to law textbooks, written by judges or lawyers who had first-hand knowledge of what took place there. The judges were thought to be better experts than the traditional judicial experts, providing technical knowledge free of charge and without delay. But, in all but the simplest cases, which they decided in less than one minute, they systematically used *arbitres rapporteurs* (reporting arbitrators).<sup>5</sup> The typical preliminary judgement reads as follows:

“Whereas the circumstances are not sufficiently clear, the Court, before granting the request, orders that the parties shall appear before Mr. xxx [or “the chamber of xxx”], who will ask for the documents of the case and have them duly registered, hear the parties, conciliate them if possible, or else write his report on stamped paper, close and seal it and send it to the Court’s registry.”<sup>6</sup>

The *arbitres rapporteurs* thus had to act at once as arbitrators, as accounting experts in many cases (to scrutinise the documents), and also as quasi-arbiters (as their opinion, not only about facts, but also about adjudication, was generally followed by the Court) and as technical experts—which was clearly implied by

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<sup>4</sup> Fuller, *French Courts*, 146, 145.

<sup>5</sup> When the case was about an unpaid promissory note or bill of exchange that was in the possession of the plaintiff, the defendant was immediately found guilty. Settling such simple cases accounted for 80% to 90% of the judgements. All approximate statistics given in the text on types of judgements, use of *agrésés*, appointment of different sorts of experts/arbitrators, etc. rely on an ongoing treatment of a random sample of days (with hundreds of judgements every day) in ADP, series D2U3.

<sup>6</sup> ADP, series D2U3.

the choice, for example, of an architect or the building contractors' chamber when the case was about unpaid works.

From the point of view of a member of Parliament, for example, a judge of the Court of Commerce was himself a kind of technical expert. In addition to the advantages of not paying the judges, it was the main reason why such an exceptional court (elected by merchants, without professional judges) could be tolerated in the context of a “jacobine”—egalitarian, hostile to any kind of guild—revolutionary France. One must keep in mind here that according to the laws of d'Allarde and Le Chapelier of 1791 (the abolition of guilds and the prohibition of coalitions) until 1884 with the official recognition of trade unions, the dominant political frame for understanding intermediary bodies was what has been recently defined as the prevailing “political culture of generality.”<sup>7</sup> Within this culture, any collective organisation founded upon a given interest/trade/profession was perceived as a potential threat to national unity and a product of privilege. This was especially the case if the body claimed any right to judge or to establish specific norms in a way reminiscent of the Old Regime guilds. While recent scholarship has increasingly demonstrated that France was not totally free of interest groups, as a strict reading of the law would have suggested—we now know that nineteenth-century France had many unions, coalitions, Chambers of Commerce, etc. exercising considerable influence on the economy and on professional identities—the claims for a culture of generality cannot be dismissed.<sup>8</sup> Rather, what must be understood is how the discourse on generality contributed to shaping practices, or at least their legitimisation and their more or less public character.

The Courts of Commerce present an ideal case for studying precisely this process. As an Old Regime institution based on the privileged status of merchants, the foundations of their legitimacy could not remain unchanged within the new political culture.<sup>9</sup> In this new context, the reference to merchant judges' technical expertise was the only effective means of defining their authority. The identity of the judges and the survival of the Court was thus based on the fact that they were the best experts in commercial transactions. What is striking however, is the extent to which an investigation of their daily practices leads us to question the reality of this expertise. If the judges considered themselves experts, and the Parliament concurred, why then did they need *arbitre rapporteurs* to settle complicated disputes? Moreover how was it

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<sup>7</sup> A useful phrase created by Rosanvallon, *Le modèle politique*, to avoid the too narrow term “jacobinism.”

<sup>8</sup> Lemercier, “La France.”

<sup>9</sup> Kessler, “From Virtue”, esp. 433–435 shows that the Parisian judges in fact had made this shift in discourse before the Revolution.

possible, in the context of the “political culture of generality”, that this *arbitre rapporteur* was no longer a person, but increasingly a *chambre syndicale*?<sup>10</sup>

This practice may seem awkward to a common-law jurist: in the United Kingdom or in the United States, such a dispute would have been decided either by a private arbiter, without any judgement by a Court and hence without any public enforcement of his decision, or by a “normal” Court, also dealing with non-commercial cases, with lawyers, forms and delays—and perhaps experts.<sup>11</sup> The French system—especially the Parisian system, systematically adding experts/arbitrators to the already awkward judges of commerce—thus appears to be a strange mix of public and private justice. It might also seem odd to a specialist of nineteenth-century France. At a time when any sort of guild or trade union was officially prohibited and no concept of legal person existed, how could a public court allow not only individuals, but also unions, to be both experts and arbitrators, especially when it generally followed their opinion?

Answering this question will help us understand the complicated relationships between the powers of the judge and of the judicial expert. Who really had the power to judge? Did this whole, unofficial process, which led chambers to influence judgements, recreate something like guilds governing their profession? Should we consider the choice of the right expert only as a burden for the judge, as it certainly created difficult dilemmas? Or was it also a source of power, a power rooted in the knowledge of men and trades, rather than of a specific trade?

## **The quest for the perfect expert**

The mythical image of a small court where merchant judges took the time to carefully investigate each case, conciliate parties they knew personally, using reputation as a weapon, protect the trade customs against fraud and cheaters—and probably acquire money or useful relations in the process—may have had some foundation in reality in the small Courts of Commerce. Indeed, it was only when officially asked by such courts (or by foreign courts) to choose one of them to hear witnesses or to audit books that the Parisian judges personally handled this part of the trial.<sup>12</sup>

In any event, the myth of local merchants’ justice must be treated as such,

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<sup>10</sup> I.e. a union of merchants or manufacturers of a given trade. The word “chamber” (small “c”) is used in this chapter to refer specifically to one of these *chambres syndicales*.

<sup>11</sup> Colfavru, *Le Droit*, esp. VI-XVII.

<sup>12</sup> ADP, D1U3 40.

even if many economists model it today as if it referred to a real past with small, immovable communities. This myth was created in large cities where the first Courts of Commerce were established: even in the sixteenth century, the judges of Paris, Lyons or Toulouse did not personally know all the parties. This is precisely why a Court was useful, as social control alone could not enforce commercial virtue. In this general context, the case of nineteenth century Paris remains specific, as, due to its size as well as historical changes, it was probably the most difficult time and place to find a legitimate, available and capable person to understand and try to conciliate each case.<sup>13</sup>

The eighteenth-century Court, already situated in a large, busy capital, nevertheless had ways to enforce a kind of community discipline. Even if the five judges themselves could not know all parties, they used the system of *arbitres rapporteurs* precisely with this aim in view, choosing either guild leaders or other notables who were, whenever possible, personally acquainted with the parties.<sup>14</sup> After the Revolution, there was no counterpart of the guild leader to play the role of an easily identifiable person who knew the reputation of the parties, whose authority increased the chances of conciliation, and who would accept to act as an arbitrator, which was part of the usual duties of his charge. In addition, the ideas of neutrality and objectivity were increasingly promoted, so that the choice of an expert/arbitrator who was also a witness in the case<sup>15</sup>, for example, would hardly be considered.

The judges therefore had to explore various ways to investigate the most complicated cases and ultimately settled on the use of *chambres syndicales*, which could be viewed as a new kind of guilds. Their dilemmas tell us much about nineteenth-century Paris, as well as about general problems connected with judicial expertise, such as the difficulty of reconciling requirements of cost, speed, neutrality, technical and procedural knowledge, especially when the expert had to act at the same time as an arbitrator.

## Too many cases, not enough judges

The quest for the perfect expert was not a minor issue in Paris, for a very

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<sup>13</sup> The old, medium-sized Court of Toulouse used individual experts/arbitrators only (not chambers), but on a much smaller scale: Capel, "Histoire", 588–591. The important Court of Lyons did not, but a local arbiter advised it to follow the Parisian model: Bourget, "Au Rédacteur." We lack information about the practices of the small Courts.

<sup>14</sup> Kessler, "From Virtue."

<sup>15</sup> *Ibid.*, 124.

simple, arithmetical reason. The number of cases was such that, while sitting ten hours a day, five days a week, the Court had to judge at least one case per minute. In the Civil Court of Paris, there were five times more judges and many more employees, for half the number of cases.<sup>16</sup> In 1845, the Paris Court of Commerce received 49,000 new cases, one quarter of the French total, while the Lyons Court, with half the number of judges, faced less than 10,000 cases. In the small Courts of Commerce, such as those of Mirecourt (Vosges) or Saint-Affrique (Aveyron), 6 judges settled 100 to 200 cases.<sup>17</sup>

This ratio was probably higher than it would have been if it had been related only to economic activity. Indeed, the plaintiffs were free, up to a point, to choose a Court of Commerce. Highly complex rules regarding territorial jurisdiction and the lack of clearly defined legal addresses for businesses made such crucial choices possible.<sup>18</sup> Highly differentiated Courts—in terms of their size, customs, the background of judges, etc.—made them of strategic interest. In addition, where no Court of Commerce existed, the plaintiff had to use a Civil Court, with non-merchant judges: many would want to escape this by using any kind of connection to a place with a Court of Commerce. This was the case not far from Paris, e.g. in some parts of the Seine-et-Marne and Seine-et-Oise departments, as the Paris Court's jurisdiction only covered the Seine department. Parties from the Paris region, beyond the adjacent suburbs, nevertheless seldom came to the Court. Merchants from large provincial towns were more often involved, even if they remained a minority; their cases seem to have been more frequently sent to *arbitres rapporteurs*, as they involved longer investigations.<sup>19</sup>

Let us come back to the reasons why such *arbitres* were appointed. Three judges were needed for the hearings, and there were only nine (at the beginning of the century) to thirty judges (at the end) in the Paris Court of Commerce. Moreover, they were not retired businessmen (as a majority of the judges are today), but prominent bankers, merchants or manufacturers at the beginning or top of their careers.<sup>20</sup>

They therefore needed assistance. Some of the *arbitres rapporteurs* did not know any more than the judges, but simply spent time on an inquiry in a distant town, or audited poorly kept books, or replaced the testimony of non-existent books by hearing witnesses of transactions. Others were, more strictly speaking,

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<sup>16</sup> Malo, *Pétition*; A.B., *Des réformes*.

<sup>17</sup> *Observations*.

<sup>18</sup> Nougier, *Des Tribunaux*, 2, 355–399.

<sup>19</sup> This preliminary result of my study of judgements must be taken with caution, as many of the addresses were not mentioned.

<sup>20</sup> Lemerrier, “Les carrières.”

experts. The judges used them when faced with unknown technicalities, or when they needed economic information from an outside source. For example, their question about the “normal” price of pinewood from 1 December 1838 to 29 October 1839 received a one-page answer from the leader of the unofficial union of square-sawn timbertraders, as the price depended on the quality and quantity of wood involved.<sup>21</sup>

This example shows that, even in trades where more or less official printed reference price lists existed, the Court still needed experts. Such documents could not provide an answer to any specific case, especially in the arts and crafts, with their changing fashions and unique products. And it was always necessary to discriminate between very similar goods, or between more or less skillfully executed works, which required the eye of an expert. A price list could avoid some disputes; it would not help much to settle those that had already come to the Court.<sup>22</sup> In this respect, the institutionalisation of trades and the objectivation of their know-how did not reduce the role of experts—it only made them easier to choose. The same is true for less “technical,” more “customary” rules. Even in the eighteenth century, when the “custom of Paris” and guild rules were written and officially recognised, experts (of the trade, not of law) were needed to interpret them.<sup>23</sup> On the contrary, the use of *arbitres rapporteurs* in cases where they were only required to spend time to travel and hear witnesses, or to read poorly kept books, was linked to a specific state of knowledge and justice. The second task may be viewed as resulting from the incomplete professionalisation of merchants themselves, or from an incomplete division of labour with accountants.<sup>24</sup> The first task was the direct consequence of too few judges in Paris.

Whatever their real degree of knowledge of their trade, the *arbitres rapporteurs* were rarely appointed as “experts” (in the terms of the law) by the Paris Court of Commerce, because it would have necessitated formalities, including an oath before a judge. This would have taken too much time and was not possible at all when the *arbitre rapporteur* was in fact a firm (“Baudoux brothers or one of them,” for example<sup>25</sup>) or a chamber. Oaths were seldom required at the Court and mainly concerned veterinarians asked to investigate the cause of the death of cows.<sup>26</sup> Considering the expert as an arbitrator offered

<sup>21</sup> ADP, D1U3 40, 29 October 1839.

<sup>22</sup> See e.g. *Peinture*.

<sup>23</sup> Lafon, “L’arbitre.”

<sup>24</sup> This evolutionary, critical vision was that of many of the actors involved: see e.g. DIU3 45, 1868 printed letter to lawyers.

<sup>25</sup> ADP D2U3 2236, 9 March 1854, Case 167.

<sup>26</sup> ADP, D1U3 40.

two important additional advantages. The procedure was simpler, as neither his mission nor the contents of his report had to be clearly defined. In addition, there was always the possibility of a successful conciliation, lightening the Court's task. The whole process stood on the borderline of what was permissible under the Code of Civil Procedure, with its sharp distinction among experts (who only had to provide precise, technical answers to a few precise, technical questions), arbitrators (or mediators, who were supposed to reconcile the parties by proposing a compromise, being free under principles of equity to ignore the letter of the law) and arbiters (who were to decide the dispute strictly according to the law and whose judgement was binding).<sup>27</sup> In addition, whereas most jurists would have agreed that expertise and arbitration were generally collective processes and the Court of Commerce could theoretically choose three experts/arbitrators for each case, it almost never did, as it was already difficult to find one.

The fact that this process was both informal and widespread helps to explain why it left few traces in the sources. Reports were largely destroyed and few of them were printed—as opposed to the many expert reports for non-commercial Courts that may be found in the *Bibliothèque nationale de France* as *facta*, some of them dealing with trade, as industrial property, fraud and many product adulterations fell outside the jurisdiction of the Court of Commerce. In addition, the fact that it was difficult to distinguish among the roles of expert, arbiter and arbitrator led to fluctuating statistical reports to the Ministry of Justice, depending on each year's choice of definition.<sup>28</sup> It is nevertheless possible to understand, at least partly, how the *arbitres rapporteurs* were chosen and what their existence implied<sup>29</sup>—and to state that, in the middle of the century, they wrote about 3,000 reports every year.

Alternative solutions to the disproportionate number of cases for the number of available judges were tested from the 1800s to the 1880s, while the average number of cases per year rose from 15,000 to 75,000: increasing the number of judges; allowing lawyers to settle disputes; appointing “professional” (salaried) experts/arbitrators; asking for the help of voluntary fellow merchants; and legitimising the chambers as quasi-ancillary courts. Each of these solutions was criticised, so that the Court never reached any institutional equilibrium—as an economist would put it.

Increasing the number of judges was hardly an option for the government,

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<sup>27</sup> Le Hir & Jay, Manuel, 20; Kessler, “Enforcing,” note 45.

<sup>28</sup> ADP, D1U3 45.

<sup>29</sup> On the contrary, 16 boxes in ADP, D6B6 keep reports of the second half of the eighteenth century—but no explicit discussion among judges about the choice of arbitrators. They are the sources of Lafon, “L'arbitre,” and Kessler, “Enforcing.”

which kept giving delayed and limited answers to this endless request.<sup>30</sup> Their reasons are not obvious, as the cost of such judges was close to zero. The idea of not making an exception (or too large an exception) for Paris, by giving e.g. 50 judges to the Court of the capital when most of the others had less than 10, had some weight. Indeed, the Court already enjoyed a special status, even if it remained informal: for example, clerks of smaller courts often wrote to ask for models and advice.<sup>31</sup> Making this break in the normal order of judicial hierarchy too visible by increasing the Court's size was in all likelihood considered inconvenient.

But this reluctance is probably also related to the refusal to acknowledge any kind of organisation of private interests, especially in the capital. Courts of Commerce survived the Revolution and Chambers of Commerce were re-established in 1802, but they were supposed to embody the abstract interest of the national economy ("commerce"), not to be spokesmen for particular trades. They were elected as a whole, not by categories of trades.

It would therefore have been impossible to organise parallel hearings at the Paris Court of Commerce, depending on the trade involved in the case. The only court that allowed such a representation of separate trades was not, strictly speaking, a court. The *Conseils de prud'hommes* (conciliation boards of employers and wage-earners—another "exceptional" nineteenth-century French institution with a strong guild flavour) were not courts, the *prud'hommes* did not have the status of judges, but they judged disputes related to labour, after having tried to conciliate the parties, often with success; their judgements were enforced like any other. Four different *Conseils* were established in Paris. Each one specialised in a group of trades (metal, cloth, chemicals, other industries), and they were divided into sections, so that each judge was in fact elected by a few connected trades (e.g. "spinners and cloth-makers" or "milliners and capmakers.")<sup>32</sup> Even if the judgements were entered collectively, each judge made investigations related to his own trade, which was possible in the first decades of the *Conseils* because of the small number of cases.

It is easy to understand why the *prud'hommes* refused to appoint the type of experts used by the Court of Commerce: they actually were both judges and experts. Some of them therefore considered the *Conseils de prud'hommes* as a return to the original, pure concept of the Courts of Commerce.<sup>33</sup> This institution was born in 1806 in Lyons, one of the towns that maintained the most guild-like organisations throughout the nineteenth-century, because it was dominated by

<sup>30</sup> ACCIP, III-3.70(3).

<sup>31</sup> See esp. ADP D1U3 1.

<sup>32</sup> Edict establishing three new *Conseils* in Paris, 9 June 1847.

<sup>33</sup> Lemercier, "Prud'hommes."

one trade (silk), which was organised as a typical industrial district (*fabrique*).<sup>34</sup> On the contrary, it was not until 1844–47, after heated local and national debates, that *Conseils* were created in Paris. One of the main reasons for this reluctance was the fear that quasi-guilds would be too ostensibly re-established.

### Costly experts vs. non-available voluntary merchants

If it was not possible to increase the number of judges, a second option to ease the Court's task involved *agrées*, a small group of specialized lawyers who were permanently authorised to represent plaintiffs and defendants at the Court of Commerce.<sup>35</sup> Although such representation was theoretically considered an exception, no more than 15% of the parties pleaded for themselves (but the proportion steadily increased during the nineteenth century). And in the 1800s-1810s, an old custom seems to have been reinstated:<sup>36</sup> it was said that lawyers usually conciliated the parties in their office, and that the Court merely approved their decision.<sup>37</sup> This practice was sharply criticised, as it was contrary to the very *raison d'être* of a Court of Commerce. It was no longer mentioned in the following decades, when alternative ways of dealing with the most complex cases developed, involving experts who were not lawyers.

Before 1848, the main choice for the judges seems in fact to have been between paid and unpaid experts. The paid ones (who were called *arbitres salariés*, although they were not paid by the Court, but by the parties, with the Court simply seeing to it that their fees were not too high) were often criticised, even by the judges themselves.<sup>38</sup> They were nevertheless used quite often, at least from the 1820s onwards. Some of them received a handful of new cases every day over more than a decade, while others were never chosen. They fought for their inclusion in the informal and later printed list of experts/arbitrators, even though the Court, as early as 1829, had tried to forbid the use of the title of “arbitrator of the Court of Commerce.”<sup>39</sup>

It seems that salaried experts were more often chosen in cases concerning notes and bills (implying the time-consuming reading of merchant books), and, in the 1850s and 1860s, in the increasing number of cases involving haulage or railway companies. Some of the other cases, dealing with particular trades and

<sup>34</sup> Cottereau, “The Fate” and “Industrial Tribunals”; Vernus, “Regulating.”

<sup>35</sup> Guibert, *Recueil*; Fuller, “French Courts.”

<sup>36</sup> Renouard, *Idées*, 34.

<sup>37</sup> ACCIP, III-3.70(3).

<sup>38</sup> ADP, D1U3 6.

<sup>39</sup> Guibert, *Recueil*, 29 December 1829.

products (delivery problems, disputes about the sale of a business or the payment of work), were also transmitted to *arbitres salariés*, even those who had declared no speciality in the printed list.

The 1859 list mentioned, along with 38 building managers and liquidators (dealing with bankruptcies), 3 firewood quantity surveyors (*mètres de bois à brûler*), 5 book-keepers, 6 translators, 9 veterinarians, 9 civil engineers (with a speciality: mechanics, railways, etc.), 13 building inspectors (*vérificateurs de bâtiments*), 36 architects, and 32 *arbitres*, with a speciality for 13 of them (from banking to railways, cereals, leather and gas).<sup>40</sup> These numbers were much lower than in the 1840s (with e.g. 66 non-specialised *arbitres* and 24 book-keepers in 1844), as some of the judges constantly complained that many of the names were never really chosen, but only kept on the list to please their bearers.<sup>41</sup> It actually seems that, even in the 1850s-1860s, only a few of the veterinarians, architects and building inspectors were regularly chosen as experts/arbitrators—with exactly the same appointment clause as the less-specialised ones, meaning that they had to try to conciliate the parties and provide a general report on the case, and not merely answer a few precise, technical questions. The judges were free to choose any *arbitre salarié*, without any obligation to consider the trade(s) involved in the case.

What was the background of these *arbitres salariés*? Most of them had some experience in business and/or law, but it had not always been successful. The idea of admitting bankrupt merchants on the list was seriously considered in 1840. There were in fact so many candidates that the Court could choose its *arbitres* and refuse those who most ostensibly sought a second, less risky career: in 1847, for example, 95 candidates were rejected. Recommendations by a judge or another authority often influenced the choices. The backgrounds of paid arbitrators included a former broker, a lawyer who had worked as accountant for a merchant, another lawyer with special knowledge of maritime insurance and all types of transportation—even though it was normally forbidden for lawyers to be paid as arbitrators—and a former employee of a former judge, who was also a close relative of another judge.<sup>42</sup>

The *arbitres salariés*—“a parasitical legion,” according to the lawyer Malo—were often criticised for their greed, which made justice not only expensive, but also slow.<sup>43</sup> In addition, it seemed unfair that non-elected, informally appointed experts’ reports could influence judgements the reports of non-elected, informally appointed persons. We recognise here traditional

<sup>40</sup> Tribunal de commerce, *Arbitrages*.

<sup>41</sup> ADP, D1U3 6.

<sup>42</sup> ADP, D1U3 6.

<sup>43</sup> Malo, *Pétition*; Nougier, *Des tribunaux*, 1, 190–193.

criticism of any kind of judicial expert;<sup>44</sup> but they were probably even more bitter in the context of a supposedly cheap, fast and expert Court, that had earned its right to exist because of these very advantages. Projects for professionalising the *arbitres salariés* (in order to guarantee, at least, their honesty and their knowledge of law and business) therefore had little chance of succeeding.<sup>45</sup> But the salaried experts survived even when chambers seemed to provide a more consensual solution to the dilemmas of expertise. They actually were—like the *agrées*—experts of the Court itself, of its particular customs. This kind of expertise is rarely officially recognised, but many institutions partly rely on it.<sup>46</sup>

The judges often described the appointment of *arbitres salariés* as a poor solution, but a solution they had to use because of the reluctance of their fellow merchants to accept their appointment as unpaid experts/arbitrators.<sup>47</sup> This reluctance is hardly surprising: who would agree to spend time conciliating parties and/or gathering data about the past price of a product, for example, and then writing a report, without any reward?

Furthermore, the choice of such voluntary experts/arbitrators was not easy: it was difficult to ensure their neutrality and availability, and there were no guidelines (such as lists, official criteria, diplomas, etc.) to certify their competence.<sup>48</sup> A retired merchant was probably less biased, but less aware of the current prices or even customs than a younger one. A man who really understood the technicalities of the case was probably too busy to accept, and/or a friend, an enemy or at least a rival of one of the parties. Merchants would not want to make enemies among their peers by acting as quasi-judges, or state rigid principles that could later be turned against them.<sup>49</sup> The Court sometimes tried to solve the problem of availability by choosing a firm as an *arbitre rapporteur*. It nevertheless often had to appoint a new person after the first had refused, which required a new judgement—a costly solution, in terms of time and money, which explained that even some of the parties came to prefer *arbitres salariés*.<sup>50</sup>

Merchants had few incentives to accept such a time-consuming role. The French, especially Parisians, were famous for their love of *fonctions*

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<sup>44</sup> Chauvaud & Dumoulin, *Experts*. The most typical pamphlet in the case of Courts of Commerce is probably Fenet, *Guerre aux abus*.

<sup>45</sup> E.g. Rosaz, *Projet* (supported by the *Gazette des tribunaux*); Durand, *Observations*.

<sup>46</sup> Chatriot, *La démocratie*, 143-168.

<sup>47</sup> ADP, D1U3 6.

<sup>48</sup> Such dilemmas were also described in similar, more explicit discussions at the Chamber of Commerce: Lemerrier, *Un si discret pouvoir*, 309.

<sup>49</sup> Nouguier, *Des tribunaux*, 1, 193.

<sup>50</sup> Esp. ADP, D1U3 6, 4 January 1840.

*gratuites*—voluntary, semi-public positions in the Chambers or Courts of Commerce, municipal councils, organising committees of industrial exhibitions, philanthropic associations, etc.<sup>51</sup> But the role of expert/arbitrator lacked many of their charms: it did not offer any direct contact with the administration or with other influential businessmen (always useful in terms of information, reputation, social capital, etc.); nor was it a way to earn distinctions such as the *légion d'honneur*.

In the 1840s, the judges tried to create the hope that accepting to act as an expert/arbitrator would help individuals to remain on the list of voters for the Court, and eventually become judges—but they did not succeed. The creation of a printed list of experts/arbitrators is doubtless to be understood in the same way, as creating a kind of symbolic reward.<sup>52</sup> These lists, probably established at the beginning of the 1830s in a very unofficial way, then printed annually and circulated outside of the Court in the 1850s, mentioned the salaried experts in the final pages, but also, from the end of the 1840s onwards, a growing number of merchants.

The 1859 list contained more than 700 names, many of them appearing several times. It was a practical device for the judges, who could find experts/arbitrators in more than 250 specialities, from *acières en barres* (steel bars) to wine, but also as a way for the Court to try to create incentives for voluntary experts/arbitrators. The successive lists, and debates surrounding them, also help the historian to see the departure from the kind of spatial proximity between arbitrator and parties that Amalia D. Kessler had found in the eighteenth century. In the case she studied, parish priests were chosen as arbitrators, because they knew their parishioners and could testify to their reliability. She understood this choice as related to a sense of community and the idea of the arbitrator as an expert on the soul.<sup>53</sup> Parish priests were no longer used as such after the Revolution, and by then, even mayors of the smaller towns of the Seine department, who were still praised by some judges in 1844 for their knowledge of “the parties’ morals,”<sup>54</sup> were rarely appointed. From 1850 onwards, the list was organised solely according to trade specialities: entries for suburban towns were suppressed, as were references to suburban voluntary arbitrators, except for a few merchants. In terms of identities and interests, trade seemed to prevail over location in the culture of the judges.

As in the case of *arbitres salariés*, it is obvious that, if an expert had to be an authoritative person in his trade, becoming an expert (or, more precisely, being

<sup>51</sup> Lemercier, *Un si discret pouvoir*, 74–75.

<sup>52</sup> ADP, D1U3 6.

<sup>53</sup> Kessler, “Enforcing.”

<sup>54</sup> ADP D1U3 6, 9 January 1844.

listed as such) also helped to increase his authority and legitimacy. The voluntary experts, like the salaried ones, could hope that their unofficial, but printed status would increase their reputation, and/or that it would be the beginning of a more rewarding institutional career in terms of information, influence and distinctions. At least twenty of the unpaid arbitrators/experts on the 1859 list became *prud'hommes* in the following years and twenty-five entered the Court of Commerce as judges between 1859 and 1869—to be contrasted with the thirty-three new judges that were not listed as experts/arbitrators that year and who had shorter careers in the Court than the aforesaid twenty-five. It nevertheless seems that most of the men on the list were never actually chosen as experts/arbitrators, or only in a few cases every year. It was still difficult for the Court to find a voluntary expert who was at once capable, unbiased and available.

### **Unions and experts: the *chambres syndicales***

In spite of the time spent by judges exploring these various possibilities in their choice of experts, the Court still faced a difficult situation, especially in the middle of the nineteenth century, when the discrepancy between the number of cases and the number of judges was greatest. It proved impossible to increase the number of judges sufficiently. Using salaried experts/arbitrators was considered slightly less shocking than allowing lawyers settle disputes, but it could only be a last resort, as it contradicted the very basis of the Court's own legitimacy. The judges theoretically preferred appointing unpaid fellow merchants, but in most cases they actually did not do so. In this context, it is possible to understand why the Court, especially after 1848, often chose unofficial chambers as collective experts/arbitrators, and thus became one of the forces that helped new trade organisations to spread and finally to be legalised.

### **A complex, illegal and efficient solution**

What happened after the Paris Court of Commerce appointed the chamber of flower-makers and feather-dyers as *arbitre rapporteur* on Friday, 13 August, 1869, in the dispute about 80FF of unspecified merchandise between Ernest Nuce, a merchant established rue du Caire, and Durst Wild brothers, merchants in the same street?<sup>55</sup>

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<sup>55</sup> Case 304, 13 August 1869, ADP, D2U3 2558. The street was famous for its many

This was a very small amount: about 16 days of salary for a skilled male worker, slightly more, probably, than the total cost of bringing the case before the Court (including official fees and the payment of the two *agrésés*). The intervention of the chamber was itself not free, but it was definitely cheaper than that of a salaried expert (ranging from 15FF to 500FF)<sup>56</sup>: the parties only had to pay a *droit de chambre* of 3FF to the organisation. In other trades, the chamber's conciliation/expertise was cheaper, or even free, for its subscribers.<sup>57</sup>

The chamber of flower-makers and feather-dyers, created in 1859, was part of a complicated structure. It included subscribers/members: a few hundred individuals or firms among about 1,000 operating in the capital in this typically Parisian trade. They paid 30FF every year to join what was not officially an association, as trade associations were still forbidden, even though many were tolerated by the Paris police. The word "chamber," strictly speaking, referred to the part of the organisation that acted as expert/arbitrator for the Court. It was a group of 15 men elected by the subscribers—although the flowers chamber had many female subscribers, they were never chosen. They met every month to settle disputes that subscribers spontaneously presented to them and cases transmitted by courts, mainly the Paris Court of Commerce.

The flower-makers' chamber, in turn, was part of a wider organisation, the National Union of Commerce and Industry (*Union nationale du commerce et de l'industrie*, UNCI), that had been officially established by Pascal Bonnin, a lawyer, as a commercial partnership. The UNCI provided services to the subscribers of all chambers that belonged to it (12 in 1861, more than 100 in 1884), especially legal advice and inexpensive technical expertise (in chemistry, engineering, etc.), thanks to a handful of employees, but also cheap and easy credit. It was not supposed to interfere with the role of each chamber as expert/arbitrator.<sup>58</sup> In 1864, the 42 chambers united in the UNCI had 4,000 subscribers and dealt with approximately 750 cases—about 10% of the cases sent by the Court of Commerce to any type of *arbitre rapporteur*—, conciliating about 90% of them—the general rate for all sorts of experts/arbitrators being only about 60%.<sup>59</sup>

Other chambers were not part of the UNCI. The older chambers of butchers, bronze-makers, wood, coal or wine merchants had already been tolerated or even officially used by the administration in the 1820s-1840s. The wine

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shops and workshops of *articles de Paris*: artificial flowers, imitation jewellery, etc.

<sup>56</sup> Nouguier, *Des tribunaux*, 1, 190-193; Malo, *Pétition*.

<sup>57</sup> ADP, D1U3 54.

<sup>58</sup> Nord, *The Republican Moment*, discusses the political role of the UNCI. On its early years and especially on the flowers chamber, see Lemerrier, "Articles."

<sup>59</sup> *Union*, N°119, 8 April 1865.

chamber alone received more than 700 cases every year from the Court of Commerce in the 1860s—as did the butchers’ chamber in the 1870s. The powerful chamber of cloth had been created in 1848, three decades after the chambers of the building industry, that were known as *les chambres de la Sainte-Chapelle*, as a reference to their common location. Finally, smaller chambers were established during the Second Empire and created another association, the Central Committee of *Chambres Syndicales*.<sup>60</sup>

Some of these chambers required no payment when they acted as experts/arbitrators, others were more expensive than the flower-makers’ chamber, and this issue was often debated.<sup>61</sup> Some of the chambers, such as the upholsterers’ or the chamber of heating and lighting, conciliated hundreds of cases every year in the 1860s—some of them involving amounts of more than 100,000FF,<sup>62</sup> were efficient lobbyists for their trade and had laws or tariffs changed according to their customs and interests. Others had fewer subscribers and/or less influence, or stated that lobbying was more important than conciliation, such as the chamber of metals, that nevertheless discussed 75 cases in 1869 and conciliated 45 of them.<sup>63</sup> But they all followed the same scheme when they acted as experts/arbitrators.

This judicial role of the chambers has been underestimated by historians, for many reasons, including the bias of looking into the past for the main features of contemporary unions.<sup>64</sup> The “employers unions” would have found their origins in the will to counter strikes and workers’ unions or to agree on low salaries: this was indeed often the case, but not for all chambers.

The role of the chambers as experts/arbitrators was in fact often mentioned: in their statutes, in their leaders’ writings, in pamphlets about the Court of Commerce, and even in dictionaries. It was well known in the business community and among the few jurists interested in commercial law. And it was a possible solution to the Court’s quest for experts/arbitrators. The chambers’ intervention was inexpensive and fast; at least, a chamber was cheaper than a salaried expert and it always accepted the case, unlike voluntary arbitrators. In addition, it was a sort of court, in that it would decide collectively, which might enable less biased reports than in the case of a single expert/arbitrator. “Corporate bodies always offer a higher degree of morality than individuals,” or so stated the former judge at the Court of Commerce and founder of the

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<sup>60</sup> Lemerrier, *Un si discret pouvoir*, 212–215.

<sup>61</sup> E.g. *Union*, N°171, 9 June 1866, 1.

<sup>62</sup> *Union*, N°12, 30 November 1861 (chamber of leathers).

<sup>63</sup> *Recueil*, 37.

<sup>64</sup> With a few exceptions, esp. Vernus, *Les organisations*.

chamber of upholsterers Alexandre Compagnon.<sup>65</sup> The chamber collectively knew all the technicalities and customs of the trade, or if it did not, it could call upon one of the subscribers to supplement its information (as most of the statutes explicitly permitted).<sup>66</sup> Most of the chambers paid considerable attention to the necessity to include all sub-specialities of their trade in the group of 15 that would act as expert/arbitrator.

Finally, many hoped that the creation of collective organisations would gradually lead to an attenuation of disputes—or at least to a smaller proportion of disputes coming to the Court. Putting a case directly before the chamber, rather than before the Court, without *agrées*, bailiffs, etc., would be cheaper and faster; the members of the chamber, all well known in their trade, would conciliate many cases; and no one would dare to act contrary to their decision (even if it would only be a private arbitration), because this would harm reputations.<sup>67</sup> A few chambers even stated that in such a case, the subscriber would be expelled, meaning that he or she would no longer benefit from other services, which, especially in the case of the UNCI, was probably a good incentive.

We recognise here the will to reconstruct a part of the guild system. For some actors such as Compagnon or Bonnin, it was part of a deliberate attempt to return to what was considered fairer and more efficient in the old system, without restoring what was still condemned as unfair (such as any kind of professional closure) or inefficient (such as rules forbidding technical innovation).<sup>68</sup> Others less consciously thought in terms of guilds, but tried to promote a certain way of doing business, which led them to rediscover such institutional forms. Most of the first UNCI subscribers ran medium-sized Parisian businesses, with family or a few skilled, apprenticed employees and many complex forms of subcontracting, often in the wider Paris region, for the less skilled parts of production. In their trades, of which flower-making is an extreme example, reputation, information, design, fashion, chemical innovation were key words.<sup>69</sup> This implied building relatively consensual rules, especially about industrial property and terms of payment; laws and official courts were needed, but merchants who too often sued their fellows were also a problem.

Building a sort of open guild could be the beginning of a solution: in their early years, chambers had no legal authority but there were real incentives to

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<sup>65</sup> Compagnon, *Les classes*, 162.

<sup>66</sup> ADP, D1U3 54.

<sup>67</sup> *Union.*, e.g. N°1, 15 December 1860, 5.

<sup>68</sup> About differences between nineteenth-century unions and the guilds that they considered as models, see the path-breaking paper by Crowston, “Du corps.”

<sup>69</sup> Lemercier, “Articles.”

use them for settling disputes. At least, this was true for their members. They indeed had to confront common cases where the plaintiff or the defendant was not involved in their trade, or was not Parisian.<sup>70</sup> In spite of Pascal Bonnin's early efforts to find provincial subscribers<sup>71</sup>, the UNCI did not really become "national" until the 1900s.<sup>72</sup> In any case, the role of collective expert/arbitrator that had been rebuilt around the Court of Commerce in the nineteenth century did not fit with a non-local organisation, as it implied frequent meetings of active merchants. The chamber of mechanics even explicitly stated in its 1852 statutes that it was not obliged to hear cases involving defendants from outside the Seine department.<sup>73</sup>

It is nevertheless easy to understand why the printed lists of experts/arbitrators mentioned the chamber after every product heading—when there was a chamber in the trade—and why a growing proportion of the *arbitres rapporteurs* actually appointed by the Court of Commerce after 1848 (e.g. more than half of them on certain days in 1869) were in fact chambers. It could be a reasonable choice, from the point of view of the Court as well as the parties, although it was not exactly legal or in keeping with the "jacobine" political culture. The Ministry of Justice actually issued an instruction stating that this practice was illegal—but only in 1875, although "this custom had existed for half a century." In the following years, the Court simply appointed one of the leaders of the chamber instead of explicitly giving the collective name.<sup>74</sup>

Some well-known French jurists were at the same time writing about the advantages of this use of chambers.<sup>75</sup> Shortly after, the 1884 law that legalised trade unions stated that these unions could be asked for advice about any dispute related to their speciality, including cases put before a court. In the 1890s and in the 1910s, the use of *arbitres rapporteurs* at the Court of Commerce faced serious attacks in the press, in law books and even in the Parliament, but with few consequences.<sup>76</sup> The system evolved, due to the professionalisation of experts and the institutionalisation of trade unions, but was not formally abolished.

<sup>70</sup> See e.g. *Union*, N°27, 28 February 1863, about the problems caused by infringement in New York.

<sup>71</sup> *Union*, N°39, 30 January 1864.

<sup>72</sup> Vernus, *Les organisations*.

<sup>73</sup> ADP, D1U3 54.

<sup>74</sup> Block, *Dictionnaire*, 382–384.

<sup>75</sup> Dalloz & Vergé, *Les Codes*, 1042.

<sup>76</sup> Lafon, "L'arbitre," 270.

## The birth of a new institutional system

This customary and later official role of unions in expertise had repercussions on their development. While their more visible actions of lobbying, lock-out, etc. made them vulnerable to the usual criticism of interest groups, their role as experts, both in the loose sense of the word (giving advice to Chambers of Commerce, ministers, etc.) and in its original, judicial sense, was more discreet and easier to legitimate, on the basis of the common sense idea that each trade had its own particular techniques and customs, and therefore its own particular expertise. All this finally led to a new institutional system giving an important, semi-official role to employers' unions in the French economic and social policy-making—a system that has proved quite stable until today. Local unions of unions (such as the UNCI, or nowadays the local circles of the Medef, Movement of the French entrepreneurs) choose the judges at the Court of Commerce and the members of the Chamber of Commerce (who give advice to the administration and provide various services to local firms). They are actually elected by the firms, but there is usually only one list of candidates chosen by the unions. This has been the case in Paris since the end of the 1860s.<sup>77</sup> In addition, since the end of the nineteenth century, national advisory bodies have been created,<sup>78</sup> and unions have become increasingly organised and influential, but the basic scheme has remained the same.

This institutional change—from prohibited unions to unions choosing the judges of an official Court—did not take place without doubts or conflicts. Even in Paris, the newly created chambers had to ask for recognition by the Court, which was not granted to all of them. The Court scrutinised the list of the first members: they had to have a good reputation. It is in fact this evaluation that created one of the sources analysed in this chapter, as the chambers sent their constitutions, including the names of their founders, to the Court, in order to be included in the printed list of *arbitres rapporteurs*. The judges left marginal notes on constitutions, such as “honourable composition” or “Mr. Calla!” (a well-reputed mechanic). This archival file also shows that in its first year, they expressed doubts about the UNCI. Would it not be a purely commercial business, defending the views and interests of the lawyer who created it, rather than the voice of the merchants?<sup>79</sup>

In addition, the birth of a chamber was obviously never a natural process. It required a definition of the trade, which involved matters of identity as well as of interests and technique, and a group of voluntary leaders. In some trades,

<sup>77</sup> Lemercier, *Un si discret pouvoir*, 236–237.

<sup>78</sup> See this volume, Alain Chatriot's chapter.

<sup>79</sup> ADP, D1U3 54. See also *Union*, N°3, 20<sup>th</sup> February 1861.

such as toy-making in Paris, there were none: they long remained unorganised and probably, therefore, institutionally disadvantaged, whereas the wine, bronze and flower-makers's trades, for example, had more opportunities to promote their interests. Conflicts about the definition of trades were often strongly linked to the role of the chambers as judicial experts. Cases involving two different guilds were already problematic in the eighteenth century;<sup>80</sup> at least, it was difficult then to create a new guild, and there was a hierarchy of trades that sometimes allowed a simple, if inequitable from our twenty-first century point of view, adjudication of disputes. Things were much more uncertain in the nineteenth century.

For example, the chamber of raw material for coach-building argued that the already existing chamber of coach-building did not include any real expert in raw material, and therefore was not the right collective expert in cases between a raw material seller and a coachbuilder, as the commodity involved in the dispute would be raw material.<sup>81</sup> The long 1860s conflicts between the chamber of jewel-makers and the chamber of jewellery (which included both makers and sellers) were related to opposite interests regarding regulations on the quality of gold, but also to similar discussions about the choice of the best expert.<sup>82</sup> Cabinet-makers and upholsterers, on the contrary, successfully negotiated their respective arbitral jurisdiction: they had felt the need to do so early on.<sup>83</sup> Even inside chambers, the representation of each speciality had to be negotiated: "I would not trust an embroidery designer to appraise a wallpaper design, and vice versa," said the secretary of the chamber of industrial artists.<sup>84</sup>

Receiving cases from official courts may sometimes have allowed chambers to exercise a kind of moralizing influence on the practices in their trade, but it is more likely that it offered them an important tool for legitimisation, that helped them to find new subscribers as well as to become credible partners for the administration. For the historian, disputes such as the jewellers' are a useful reminder of the relativity of the definition of trades, in their different dimensions—products used, skills needed, identities, interests—, and therefore of expertise.

For the economic historian or the economist, the strange case of the Paris Court of Commerce may also help to add a bit of subtlety to debates about "commercial law."<sup>85</sup> It has often been argued, with evidence based on game-

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<sup>80</sup> Kessler, "From Virtue", 183–5.

<sup>81</sup> ADP, D1U3 54; *Union*, N°6, 27 May 1861, 4.

<sup>82</sup> *Union*, esp. N°58, 31 October 1863.

<sup>83</sup> *Union*, N°7, 29 June 1861.

<sup>84</sup> *Union*, N°18, May 1862.

<sup>85</sup> For a good introduction: Aoki, *Toward*, 59–94.

theory, that merchants did not need civil courts, because it was more efficient for them to use other kinds of incentives and sanctions (involving reputation, social networks, etc.) to counter cheaters, and they needed fast, simple justice rooted in business expertise rather than law. The case of the French Courts of Commerce—and especially of their relationship with chambers in nineteenth-century Paris—does not easily fit in this picture, for at least two reasons.

On the one hand, the Courts of Commerce were official courts established in the context of a civil law system and required to apply Codes (of Commerce, of Civil Procedure), as their judgements could be appealed before professional judges (even if this seldom happened), and entitled to use public officers to enforce these judgements. The fact that they used chambers as experts/arbitrators and often followed their advice did not change this situation. Some leaders of the chambers indeed complained that few merchants came directly before them.<sup>86</sup> The use of the official Court probably gave the parties something more, in terms of un- (or less) biased and more enforceable decisions.

On the other hand, the fact that the Court had to use experts, and that, even after the creation of many chambers, it continued to appoint individual experts (salaried ones and a few voluntary merchants), even in some of the cases involving wine or cloth—trades that had powerful chambers—, points to the complex character of “expertise.” The fact of being a merchant was not considered sufficient to be an expert in any sort of business—even if schedule problems also explained the growing use of experts by the judges of commerce. There was never a single “Commercial Law.” Nor were there well-defined trades with their ahistorical, purely technical customs and their natural experts;<sup>87</sup> and ambiguity, conflict and negotiation were all the more important in a society that officially refused to talk in terms of organised trades.

Defining the trade involved in a case, naming the know-how related to the trade and choosing the right person were not only problems of information and individual availability. Identities, interests and conflicting groups were always at stake, which explains why many different possibilities were tried, some of them quite far removed from those recommended by the Code of Civil Procedure.

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Who is the right expert? No doubt this question was often asked in the

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<sup>86</sup> *Recueil*, 36.

<sup>87</sup> As innovative research about customs has begun to show: e.g. Cottereau, “Droit;” Vernus, “Regulating;” Stanziani, “Escaping”.

nineteenth-century Paris Court of Commerce. Although, when confronted with outside criticism of in the institution, its judges would have agreed that they were the best possible experts (as well as cheaper and more efficient than any judicial expert), they had to devote time every year to appointing new *arbitres salariés*, updating the printed list of voluntary experts and deciding which chambers they would support by referring cases to them—and every day to finding the right expert for a few dozen new cases.

This points to what could be considered a kind of expertise in its own right: the art of finding capable, unbiased, available people in a world where official guilds did not provide a ready-made, institutional (if not truly satisfactory) answer. The judges were the experts of the world of merchants, in the sense that they were recognised as legitimate and able to find judicial experts, and even implicitly authorised to print lists of such experts—lists that were used by other institutions when they were asked to “give names,” especially by the Chamber of Commerce.<sup>88</sup>

It has often been pointed out that one of the most important skills of a large-scale merchant or banker in early modern times was the ability to gather information about reputations.<sup>89</sup> At least up to 1848, many members of the Paris Chamber and Court of Commerce, coming from this social group, were experts in such matters. The creation of chambers, along with the specialisation of firms (for example the separation of banking from long-distance trade), gave birth to a new kind of more collective, institutionalised “expertise on experts,” that can still be found nowadays inside the Paris Court of Commerce.

One would think that, at the beginning of the twenty-first century, expertise (given by a physical person appointed for a short length of time) would often have been replaced by the use of books or other forms of stabilised knowledge, incorporated in one tool or another. For example, since 1982, the registry of the Paris Court of Commerce keeps printed *usages* (customs, especially about terms of payment and delivery conditions) that are provided by national unions (e.g. the Union of platurgy) and are supposed to replace their direct advice in cases related to the particular features of their trade. One would also think that the birth of professions and disciplines—accounting, chemistry, etc.—and of professional bodies of judicial experts from the 1880s on, would have put an end to any kind of expertise by merchants on “really technical” matters.<sup>90</sup>

The situation is indeed very different from what it was in the 1860s, but the judges still make considerable—and informal—use of the knowledge possessed

<sup>88</sup> E.g. ACCIP, Minutes, 24 March 1848 (experts to value goods left as a pledge at the discount bank) and 18 January 1850 (experts for Public Assistance procurement).

<sup>89</sup> Esp. Hirsch, *Les deux rêves*.

<sup>90</sup> Chauvaud & Dumoulin, *Experts*.

by their fellow judges on various customary as well as technical matters.<sup>91</sup> Since the number of judges has finally increased—there are about 150 in Paris for about 120,000 cases per year—, this collective, informal expertise now takes place inside the Court. In any case, a restaurant owner still considers it useful to ask for a colleague-specialist’s advice when he or she is confronted with a complex case in the computer industry. Many judges say that they prefer to do so, because outside, professional experts are slow and expensive. One of the most experienced judges is officially the expert on experts in the Court, the person whom the others ask when they have to choose one. It happens that he was also, at two different points in time when this question was posed to all the judges, one of the two judges most often asked for unofficial advice. The expertise on experts definitely seems to be an interesting source of influence, as well as a necessary tool in this kind of institution.

This is naturally truer in Paris than anywhere else in France—and was even more so in the nineteenth century, when most of the statistical investigators abandoned the idea of describing the Parisian economy, because of its complexity as well as its size.<sup>92</sup> Knowing who could provide the technical answer in the big city was rare and valuable knowledge. On the other hand, the Paris Court influenced many changes in the Code of Commerce—concerning bankruptcies and company law as well as attachment.<sup>93</sup> It kept its special place and nationwide influence throughout the twentieth century: the customs in its registry, for example, are national ones. While the size of the city mechanically multiplied the number of cases, and therefore the use of outside, unofficial experts in the nineteenth century, the special status of the Paris Court gave greater weight to judgements that were often prepared inside the quasi-illegal *chambres syndicales*.

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<sup>91</sup> Lazega et al., “A Spinning Top Model.”

<sup>92</sup> Lemerrier, *Un si discret pouvoir*, 307–362.

<sup>93</sup> *Quatre années*.

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