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Corporations, Democracy, and the Public Good

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EDITORS' SPECIAL

Corporations, Democracy, and the Public Good

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Organizational theorists have had much to say about how environments affect organizations but have said relatively little about how organizations shape their environment. This silence is particularly troubling, given that organizations, in general, and corporations, in particular, now wield inordinate political power. This article illustrates three ways in which corporations can undermine representative democracy and the public good: promoting legislation that benefits corporations at the expense of individual citizens, the capturing of regulatory agencies by those whom the agencies were designed to regulate, and the privatization of functions that have historically been the mandate of local, state, and federal governments.

Keywords: *privatization; lobbying; private military firms*

Ten years ago, Bob Stern and I published a short article in the *Administrative Science Quarterly* entitled, "Organizations and Social Systems: The Neglected Mandate." Our agenda was to encourage the students of organizations to pay more attention to the role organizations, in general, and corporations, in particular, play in our society. "Organizations have not only become prominent actors in society," we wrote, "they may have become the only kind of actor with significant cultural and political influence" (Stern & Barley, 1996, p. 148). We also suggested that the intersection between corporations and government would be a fruitful area for organization studies to explore:

> So powerful have large corporations become that their decisions affect the welfare of entire states and nations. Democracy itself has increasingly become the province of organized action. Although officials are still elected by a plebiscite, elections are disproportionately financed by organizations to which candidates must appeal for support. Battles over legislation are fought by an army of lobbyists employed by organizations claimed to represent the interests of groups of citizens. (p. 147)

Today, I'd like to return to this theme and to the concerns that Bob and I shared. Specifically, I want to raise the possibility that the shift to an organizational or, better yet, a corporate society has placed representative democracy as outlined in the Constitution of the United States in jeopardy. I will confine my remarks to the United States because it is the system I know best. I suspect, however, that similar developments are occurring elsewhere. The place to begin, as in all debates—whether one-sided or not—is with definitions.

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According to *Wikipedia* (http://en.wikipedia.org/wiki/Representative_democracy), a *representative democracy* is

> a form of democracy founded on the exercise of popular sovereignty by the people's elected representatives. Voters choose (in free, secret, multi-party elections) representatives to act in their interests, but *not* . . . necessarily according to their wishes, but with enough authority to exercise initiative in the face of changing circumstances.

The *Oxford English Dictionary* (*OED*; Simpson & Weiner, 1989) tells us that a *corporation* is "a body corporate legally authorized to act as a single individual; an artificial person created by royal charter, prescription, or act of the legislature, and having authority to preserve certain rights in perpetual succession." Please note the phrase "artificial person." What this notion means is critical to my story. Although the *OED* captures the essence of what it means to be a corporation, I prefer Ambrose Bierce's (1911/1999) definition from *The Devil's Dictionary*: "an ingenious device for obtaining individual profit without individual responsibility."

Finally, the *OED* defines the public good simply as the "common good." Had an economist written the *OED*, it might say that the public good is where externalities happen. At least since Plato, the idea of the public good and the idea of a republic have been intimately tied. My thesis is that in our republic, people are now separated from their representatives by an asteroid belt of organizations, and among the most powerful of these are corporations and their trade associations.

How did this happen? The story has been well told in a half dozen recent books on the rise of the corporation in the United States. Today, I just want to cover the essentials of the plot (Bakan, 2004; Hartmann, 2002; Nace, 2003; Perrow, 2002; Prechel, 2000). It is a Pinocchio-like tale of legal legerdemain during which an "artificial person" is transformed into a "natural person"; except in this story, liars' noses don't grow.

FROM ARTIFICIAL TO NATURAL PERSON

Any telling of this story must begin by acknowledging that many of the colonists who fought the American Revolution and several of the founding fathers who wrote the Constitution were not particularly fond of corporations. At the time, corporations were scarce. Most were trading companies and the most important of these was the East India Company. Because the Crown and members of Parliament owned stock in the East India Company, they had granted it a monopoly on trade with a sizable hunk of the world, including the colonies. In India and the Far East, the Crown let the East India Company not only govern but maintain its own standing army and navy to enforce its monopolies. The East India Company even had its own flag.

In the American Colonies, Parliament granted the Company favors in the form of taxes and tariffs to restrain the colonists' ability to trade when and with whom they wished. The Townsend Acts of 1767 and the Tea Act of 1773 were the most notorious and important because they incited the rebellion that became the American Revolution. The Boston Tea Party was nothing more or less than a protest against the East India Company's monopoly on the tea trade. In response, Parliament closed Boston Harbor, and relations between the colonies and the Crown from that point on gradually deteriorated into war on April 19, 1775.

Little wonder, then, that some of the founding fathers, especially Madison and Jefferson, hoped to outlaw what they called "monopolies" and "corporations." In fact, Jefferson and Madison wanted to do so in the Bill of Rights. In 1787, 2 months after signing the Constitution, Jefferson wrote to Madison (cited in Hartmann, 2002),

> I will now tell you what I do not like. First, the omission of a bill of rights, providing clearly, and without the aid of sophism, for freedom of religion, freedom of the press, protection against standing armies, restriction of monopolies, the external and unremitting force of the habeas corpus laws, and trials by jury. . . . (p. 70)

Jefferson continued to push for "freedom of commerce against monopoly." That he and Madison did not succeed in outlawing monopolies or in precluding the United States from forming a standing army with the Bill of Rights is testimony to the political power of Alexander Hamilton, George Washington, and other Federalists.

Madison had opportunities to express his antipathy toward corporations in the debate surrounding the incorporation of the Second Bank of the United States. In 1817, Madison wrote to his friend James K. Paulding (cited in Hartmann, 2002), "Incorporated Companies with proper limitations and guards, may in particular cases, be useful, but they are at best a necessary evil only. Monopolies and perpetuities are objects of just abhorrence" (p. 82). Madison's perspective reflected policies of the day. During the early colonial period, states granted corporate charters only when legislators believed that doing so ensured the completion of a project that served the public good, such as building a road or a canal.

Madison lost the battle over the Second Bank, but the dispute continued until it reached its crescendo in the 1830s. Renewal of the Bank's charter was a major issue in the election of 1832. Andrew Jackson, who stood against the Bank, made rechartering a campaign issue. In his State of the Union Address of December 1833, Jackson remarked (Woolley & Peters, 2005),

> In this point of the case the question is distinctly presented whether the people of the United States are to govern through representatives chosen by their unbiased suffrages or whether the money and power of a great corporation are to be secretly exerted to influence their judgment and control their decisions.

Thirty years later, Abraham Lincoln, who had done much (first as a lawyer and then as president) to transform railroads into the first modern corporations, voiced similar concerns. As the Civil War drew to a close, Lincoln wrote to Colonel William F. Elkins (cited in Hartmann, 2002),

> We may congratulate ourselves that this cruel war is nearing its end. It has cost a vast amount of treasure and blood. . . . but I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. As a result of the war, corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed. I feel at this moment more anxiety than ever before, even in the midst of the war. God grant that my suspicions may prove groundless. (p. 88)

Perrow (2002), Prechel (2000), and Nace (2003) have documented how, over the next three decades, the number of corporations grew exponentially as state legislatures and courts altered in piecemeal fashion the "legal structure defining the corporation as an institution" (Nace, 2003, p. 69). The enthroning that Lincoln feared did not occur, however, until 1886 when the Supreme Court heard a case over a property dispute involving fences bordering railroad easements in *Santa Clara County v. Southern Pacific Railroad Co*. In the "Statement of Facts" prefacing the Court's decision, the court reporter wrote that Chief Justice Waite had told the lawyers before their opening arguments that he didn't want to hear the argument that corporations should be treated as persons under the 14th Amendment, because the "court was of the opinion that it does." Furthermore, in the headnotes to the Decision, the reporter also wrote (Nace, 2003),

> The defendant Corporations are persons within the intent of the clause in section I of the Fourteenth Amendment to the Constitution of the United States, which forbids a State to deny any person within its jurisdiction the equal protection of the law. (p. 103)

Despite the fact that Waite did not apparently intend for his comment to be treated as a resolution to the issue of corporate personhood and despite the fact that in 1937, the Supreme Court ruled that headnotes are not to be part of the Court's opinion, the notion that corporations were protected as if they were natural persons under the law passed into judicial history and has been subsequently used by U.S. Courts to decide cases and grant corporations additional rights.

It is ironic that the 14th Amendment was written primarily to ensure the liberty and citizenship of slaves freed after the Civil War. Even more ironic, Chief Justice Waite apparently believed that the committee that wrote the amendment had corporations as well as slaves in mind and that, for this reason, they had deliberately chosen to speak of persons rather than citizens. Former Senator Roscoe Conkling, who had previously testified before the Court on a related case, had led Waite to this belief (Nace, 2003). Conkling had been a member of the committee that drafted the 14th Amendment and was legal counsel for the Southern Pacific Railroad at the time of his testimony. He argued before the Supreme Court that he had kept personal journals during the committee's deliberations on the 14th Amendment and that these journals showed that the committee had specifically chosen wording that would allow the Amendment's application to corporations. Apparently, Waite did not ask to see the journals nor, unfortunately, was Conklin afflicted with Pinocchio's curse. In the 1930s, Stanford law librarian Howard Graham found Conklin's notebooks and proved that Conklin had lied to the Court. But by this time, it was too late. An entire body of law had been written assuming that corporations are natural persons that deserve the same rights as any other citizen under the Constitution. As such, corporations found an institutional status that altered the notion of representative democracy in the United States.

There are at least three ways that corporate influence can be said to have undermined the concept of representative democracy and, by extension, the public good. The first is by promoting legislation that benefits corporate citizens at the expense of individual citizens. Second, corporations have found ways to hamper or redirect agencies created to protect the public good from the acts of corporations and the externalities they create. Third is the privatization of functions that have historically been the mandate of local, state, and federal government. Although one can point to many cases that demonstrate each of these three types of influence, I will illustrate them respectively with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the Prescription Drug User Fee Act (PDUFA) of 1992, and the increased outsourcing of military functions to private firms since the end of the Cold War. Each case offers organizational theorists much to contemplate.

BENEFITING CORPORATE CITIZENS: THE BANKRUPTCY ACT OF 2005

On April 20, 2005, George W. Bush signed into law a bill known as the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA). The bill garnered little attention in the daily newspapers or popular magazines before or after it passed. Considerable discussion occurred, however, in the financial press, especially in the financial industry's trade journals. Perhaps it is not surprising that BAPCPA received so little attention outside the world of finance. The issues involved were relatively boring and of no apparent relevance to the vast majority of Americans. Furthermore, the financial community had been trying to push the legislation through Congress since 1994.[1]

BAPCPA put into place rules and procedures that make it more difficult than in the past for individuals to file for bankruptcy under Chapter 7 of the Bankruptcy Code. Under Chapter 7, debtors are essentially absolved of their debts. Most creditors get nothing. BAPCPA set conditions on Chapter 7 bankruptcies, including a means test, designed to push more debtors into Chapter 15. But, BAPCPA did not significantly alter the rules for Chapter 11 bankruptcies, the business equivalent of Chapter 7.

BAPCPA was good news for creditors. Proponents argued that it would also be good for citizens because it would lower taxes and prices. Advocates also claimed that BAPCPA would make it more difficult for wealthy people to use the bankruptcy laws to avoid paying debts. But the data on both of these benefits are thin. What is empirically well-established is that the majority of debtors who apply for Chapter 7 are people of relatively modest means who have experienced a sudden change of circumstances such as a costly illness, divorce, or job loss (Himmelstein, Warren, Thorne, & Woolhandler, 2005; Jacoby, Sullivan, & Warren, 2001; Sullivan, Warren, & Westbrook, 2001; Warren, 1998).

BAPCPA represented a fundamental change in the philosophy of American bankruptcy law. The original philosophy was articulated in the Bankruptcy Act of 1898, which granted debtors the right to "unconditionally discharge" their debts. Congress's reasoning was as follows (Jensen, 2005):

> When an honest man is hopelessly down financially, nothing is gained for the public by keeping him down, but, on the contrary, the public good will be promoted by having his assets distributed ratably as far as they will go among his creditors and letting him start anew. (p. 489)

Why this philosophy would move toward one of "when citizens owe they should pay regardless" and how BAPCPA came to pass is a story of how corporate persons have shaped legislative processes in a representative democracy. It is also a story that can be told using simple network analysis.

In 1997, as Congress began revising bankruptcy legislation, financial firms and their trade associations founded two nonprofit advocacy organizations dedicated entirely to bankruptcy reform: The Bankruptcy Issues Council (BIC) and the Consumer Bankruptcy Reform Coalition (CBRC). Visa and Mastercard led the BIC, which also represented other large credit groups including MBNA, Chase Manhattan, and Citicorp. The American Financial Services Association (AFSA) founded the CBRC, and Jeffery A. Tassey, its senior vice president for governmental affairs, served as the CBRC's executive director. Over the 8-year process of crafting bankruptcy legislation, the CBRC became the National Consumer Bankruptcy Coalition, then the Coalition for Responsible Bankruptcy Laws, and finally the Coalition for the Implementation of Bankruptcy Reform. Figure 1 shows, as a network, which firms (the sources) were members of which trade and advocacy organizations (the sinks).

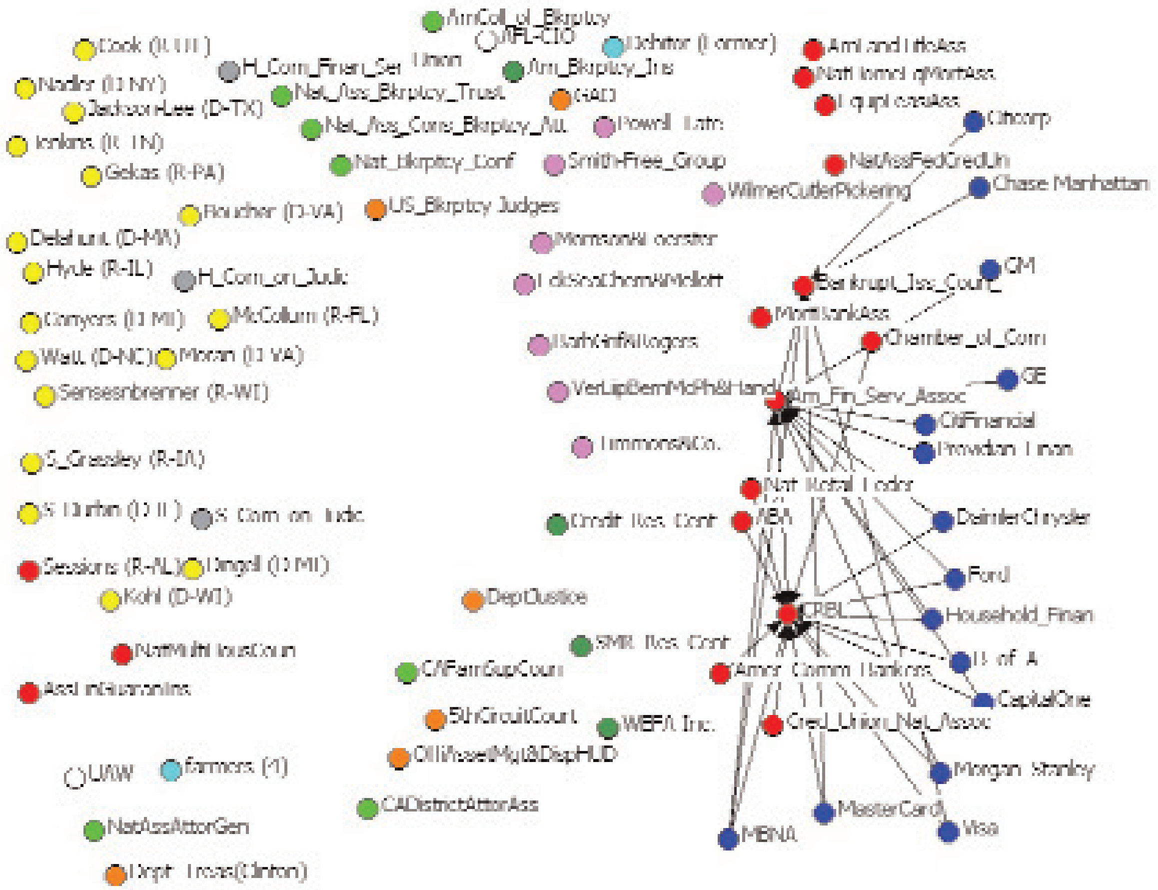

Figure 1: Network of "X is a member of Y"

The BIC and CBRC, in turn, hired lobbyists and commissioned research organizations to conduct studies that supported their stance. Figure 2 adds relationships to lobbyists and research organizations to the network. Some of these lobbying firms employed or retained well-connected people who subsequently worked Capital Hill on behalf of the financial industry's advocacy groups. Former Secretary of the Treasury Lloyd Bentsen, former Senate Majority Leader George Mitchell, and former Texas Governor Ann Richards were among those who lobbied the Democrats. Haley Barbour, former Republican National Committee chair and close friend of Senate Majority Leader Trent Lott, lobbied the Republicans, as did Ed Gillespie, who became the Republican National Committee chair in 2003 (Jensen, 2005).

George Wallace, a bankruptcy lawyer and partner in the law firm of Eckert, Seamans, Cherin, & Mellott, which the AFSA retained in 1997, drafted the language of the bankruptcy bill (HR 2500) that Bill McCollum (R-FL) and Rick Boucher (D-VA) brought to the House in September 1997. The language of this bill eventually became the backbone of BAPCPA. In other words, the credit industry wrote the legislation. Realizing where legislative power was concentrated, the American Financial Services Association and several of the lobbying firms hired staffers who had worked in the offices of Senator Dingell (D-MI) and Representative McCollum. Figure 3 shows which members of Congress sat on Senate and House committees with oversight on bankruptcy legislation, and Figure 4 adds relationships created as lobbyists hired Congressional staffers.

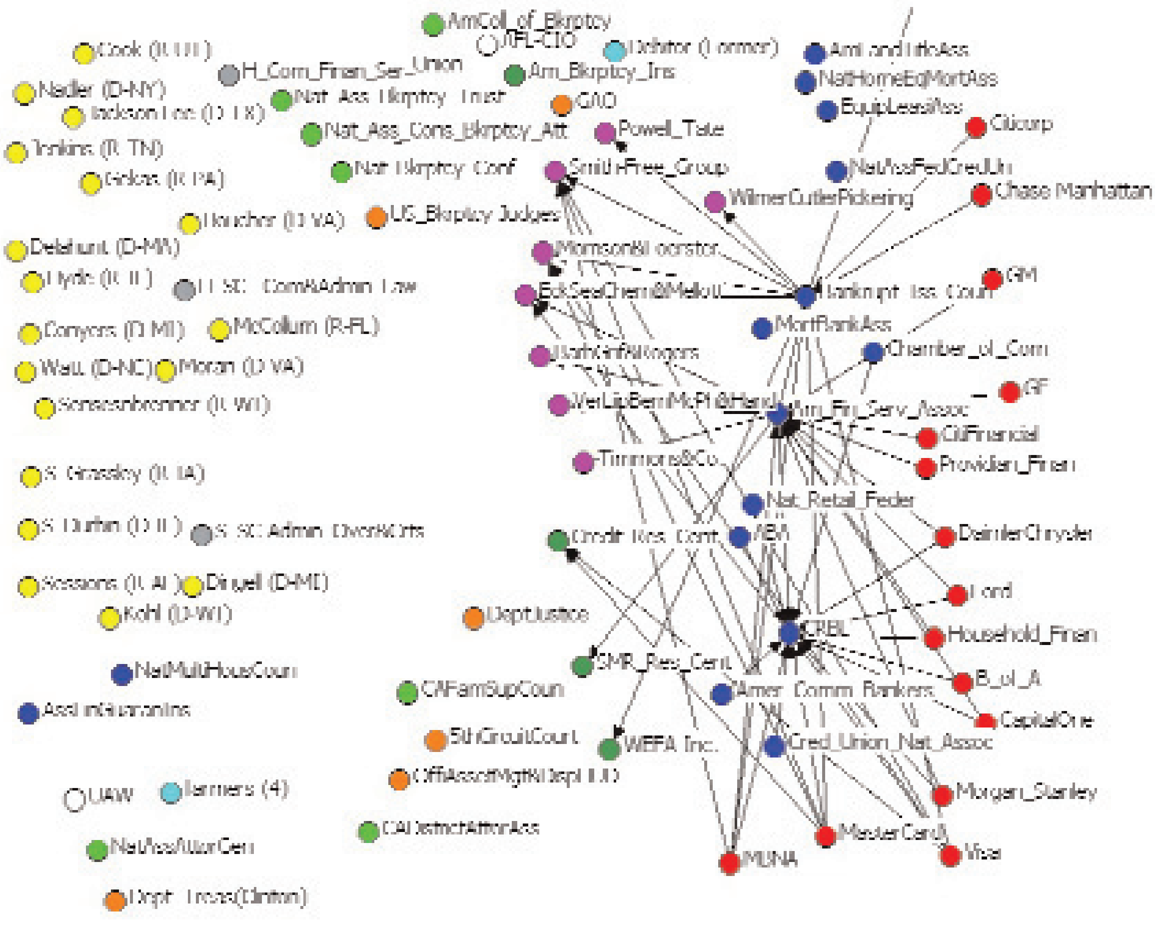

Figure 2: Network including "X hired Y to lobby or do research"

Pro-debtor advocates mainly included organizations whose members regularly had close encounters with debtors in bankruptcy: unions, federal officials, bankruptcy trustees, and their professional associations. Figure 5 shows the data in Figure 4, with actors who were pro-debtor and pro-creditor shown in white and black, respectively. As Figure 5 shows, those who were pro-debtor were largely unorganized: They appear as isolates in the graph. In contrast, a relatively strong network existed among actors dedicated to passing pro-creditor legislation. Thus, the pro-creditor side was much better prepared not only to lobby legislators but also to testify before the House and Senate Judiciary Committees (or their subcommittees), which held numerous hearings between 1997 and 2006 as they debated and revised the legislation. Figure 6 completes the emerging network of influence by adding ties signifying who testified before which Congressional committee.

Where does one find representative democracy in these graphs? Perhaps it exists because debtors had some advocates on the Senate and House Judiciary Committees, all of whom were Democrats (but not all Democrats on the committees were pro-debtor).[2] Certainly, the clearest trace of representative democracy lies with the four farmers and the one debtor who managed to testify before Congress over BAPCPA's 8-year history.

Shortly before BAPCPA was to go into effect, Hurricane Katrina devastated New Orleans. A number of senators and representatives introduced bills into the House and Senate that would have given

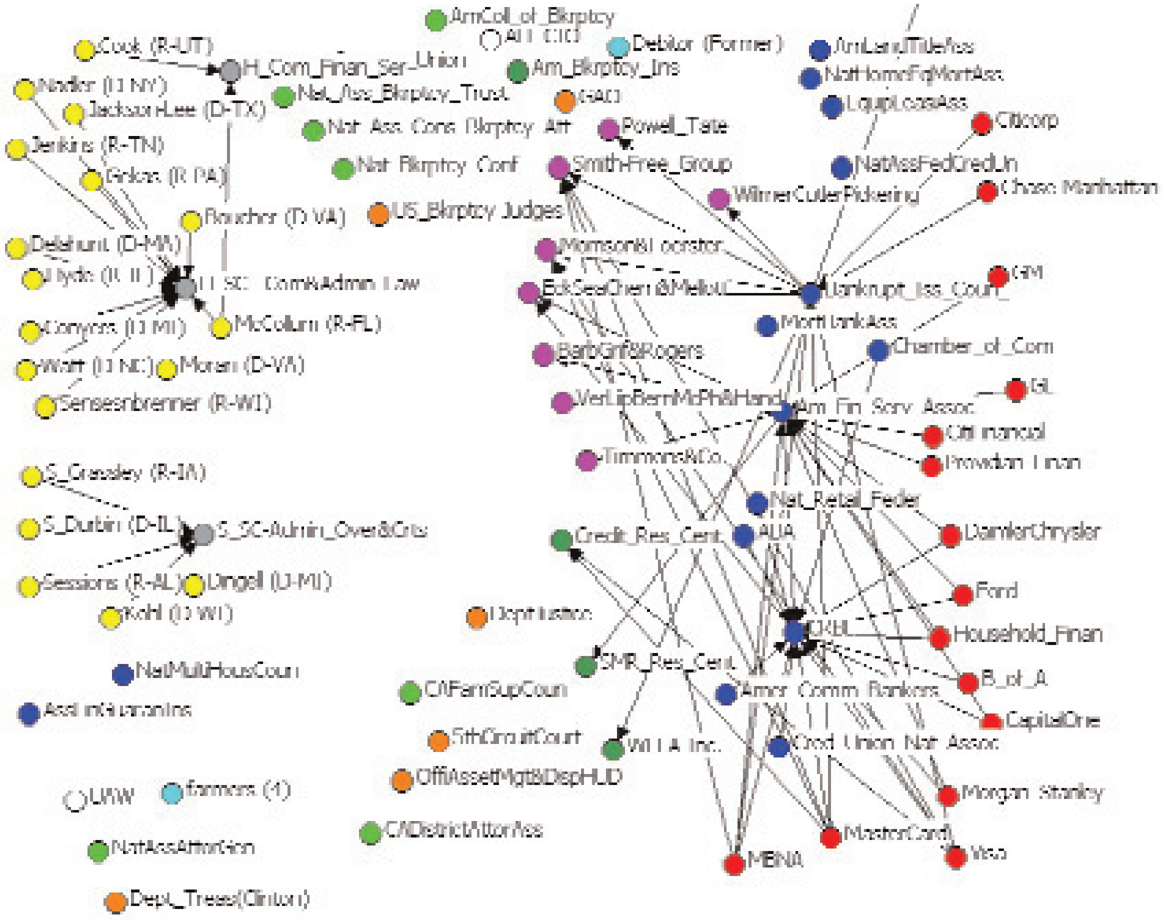

Figure 3: Network including "X serves on committee Y"

victims of Katrina relief from the BAPCPA. In the house, Representative Sensenbrenner, chair of the Judiciary Committee and a supporter of the bill, refused to hold hearings. According to Govtrack.us, which provides the status on all bills before Congress, every bill designed to relieve debt for the victims of Katrina has languished in the committee.

The graphs in Figures 1 through 6 suggest that a structure clearly emerged around BAPCPA's passage. Industry formed associations that managed its interests in Congress. Citizens, however, had to rely on public interest groups, professionals, and professional societies to speak on their behalf. Thus, unlike corporations, citizens would have had difficulty influencing the organizations that acted on their behalf, had they known enough to want to exert influence. Whether this type of network structure characterizes other legislative battles is an empirical question. If so, we might see the structure as evidence for what we might call the institution of "representation by organization." Unfortunately, it does not appear to be the institutional structure described in the Constitution of the United States.

FROM PUBLIC TO PRIVATE GOOD: PRESCRIPTION DRUG USER FEE ACT

Although the U.S. Food and Drug Administration (FDA) traces its history to the 1906 Food and Drug Act, the FDA as we know it today was the child of the New Deal's Food, Drug, and Cosmetic Act, which was

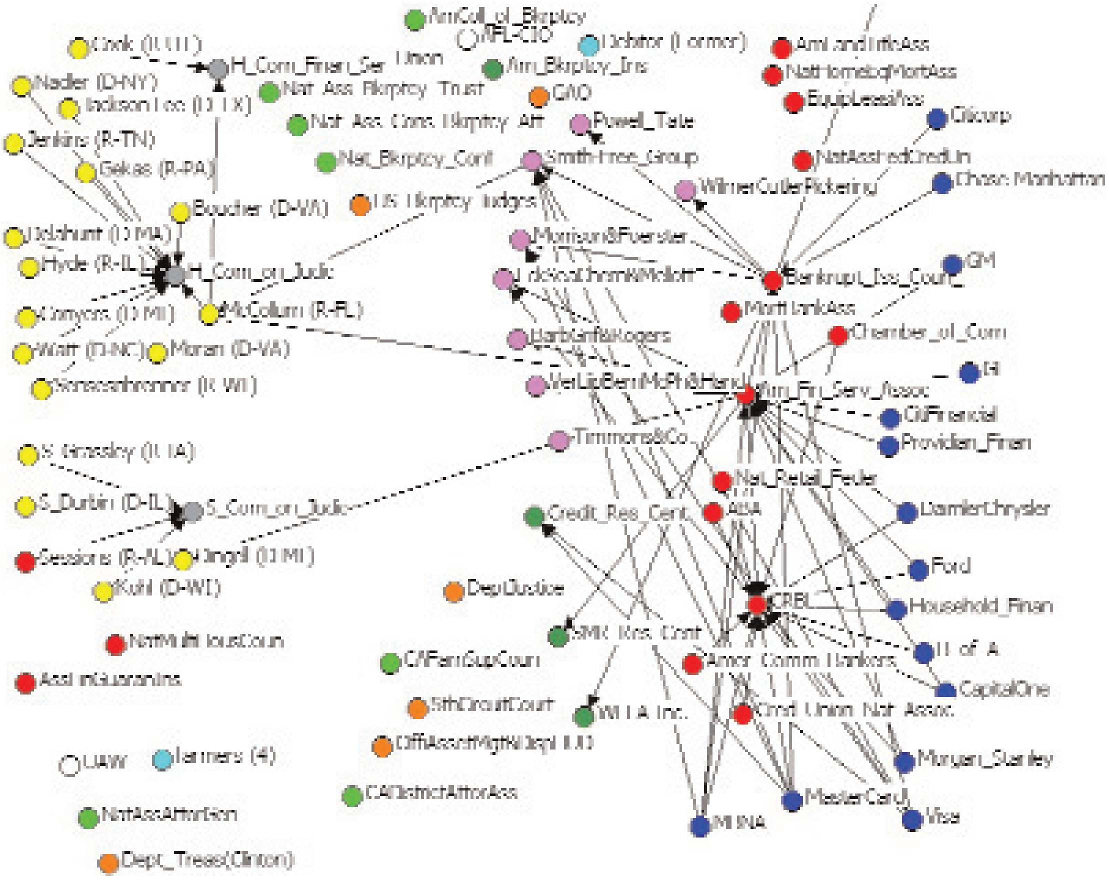

Figure 4: Network including "X hires someone from Y's staff"

passed in 1938 (see FDA, 2005a). The 1906 law had confined the FDA's predecessor to issues of labeling. It could neither certify drugs as safe nor remove drugs from the market. Between 1906 and 1938, however, the public became concerned about drugs that were ineffective or unsafe. Concern turned into furor in 1937 when a Tennessee drug company, Massengill, began marketing Elixir Sulfanilamide. Clinical experience has shown that sulfanilamide was useful in tablet form for treating streptococcal infections. Salesmen reported back to Massengill that there was a demand for a liquid form of the drug that could be more easily administered to children. One of Massengill's chemists discovered that sulfanilamide would dissolve in diethylene glycol. Recognizing an incredible opportunity to expand sales, Massengill began marketing an elixir made with diethylene glycol before first testing it for toxicity.

Unfortunately, diethylene glycol is highly poisonous. We know it best as brake fluid. After being on the market for only 2 months, 100 people, many of whom were children, had died from Elixir Sulfanilamide. Many others were poisoned. The public was finally ready for the FDA to become a regulatory agency, which the 1938 act mandated.

In 1962, another tragedy important to the FDA's development occurred. Worldwide, pregnant women who had taken thalidomide, a new sleeping pill, began to give birth to children with serious birth defects. The public uproar led to the passage of the Kefauver-Harris Drug Amendments, which for the first time required firms to prove the effectiveness of their drugs before they could market them.

Thus, the history of the FDA until the 1980s was one of increasing recognition that the government needed to regulate drug companies to ensure the

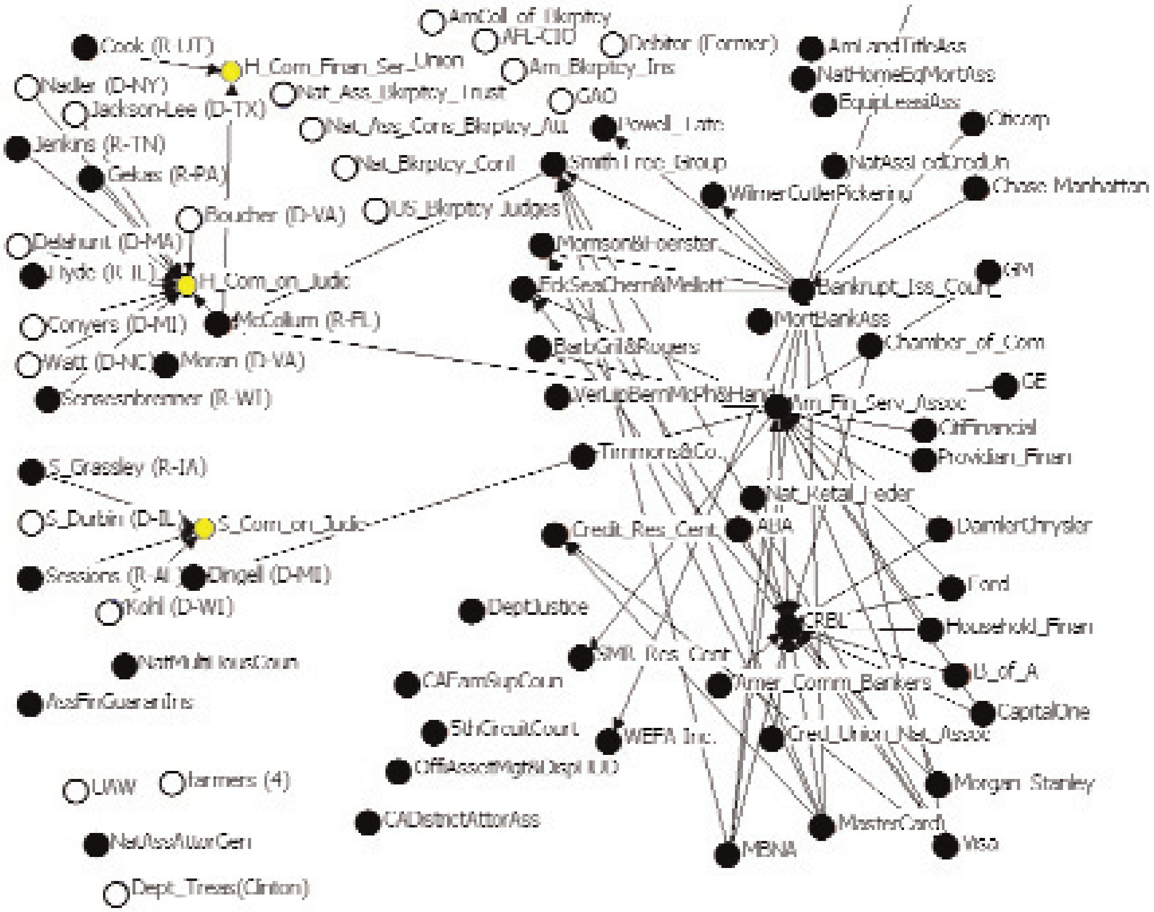

Figure 5: Pro-corporate and pro-debtor network

safety of citizens. In fact, the FDA's mission, which it now posts on its Website, reads (FDA, 2005b),

> The FDA is responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our nation's food supply, cosmetics, and products that emit radiation. The FDA is also responsible for advancing the public health by helping to speed innovations that make medicines and foods more effective, safer, and more affordable; and helping the public get the accurate, science-based information they need to use medicines and foods to improve their health.

Although Kefauver-Harris was good news for consumers, it increased the time and expense of bringing a drug to market. Delays grew even greater in the 1980s as the number of new drugs in development multiplied and the FDA suffered personnel and budget cuts. Biotechnology and pharmaceutical companies began to complain vociferously that the FDA's procedures were too unwieldy and costly and that they hurt consumers by keeping useful drugs off the market. A number of academics who studied organizational innovation also trumpeted such claims. In the late 1980s, AIDS activists joined with drug companies to argue that the length of time necessary for drug approvals was harmful: People were dying unnecessarily because they could not take advantage of promising new drugs.

By 1992, the sense that America's competitiveness rested on rapid innovation, protests by AIDS activists, and lobbying by pharmaceutical industry persuaded Congress to amend the Food, Drug, and Cosmetic Act

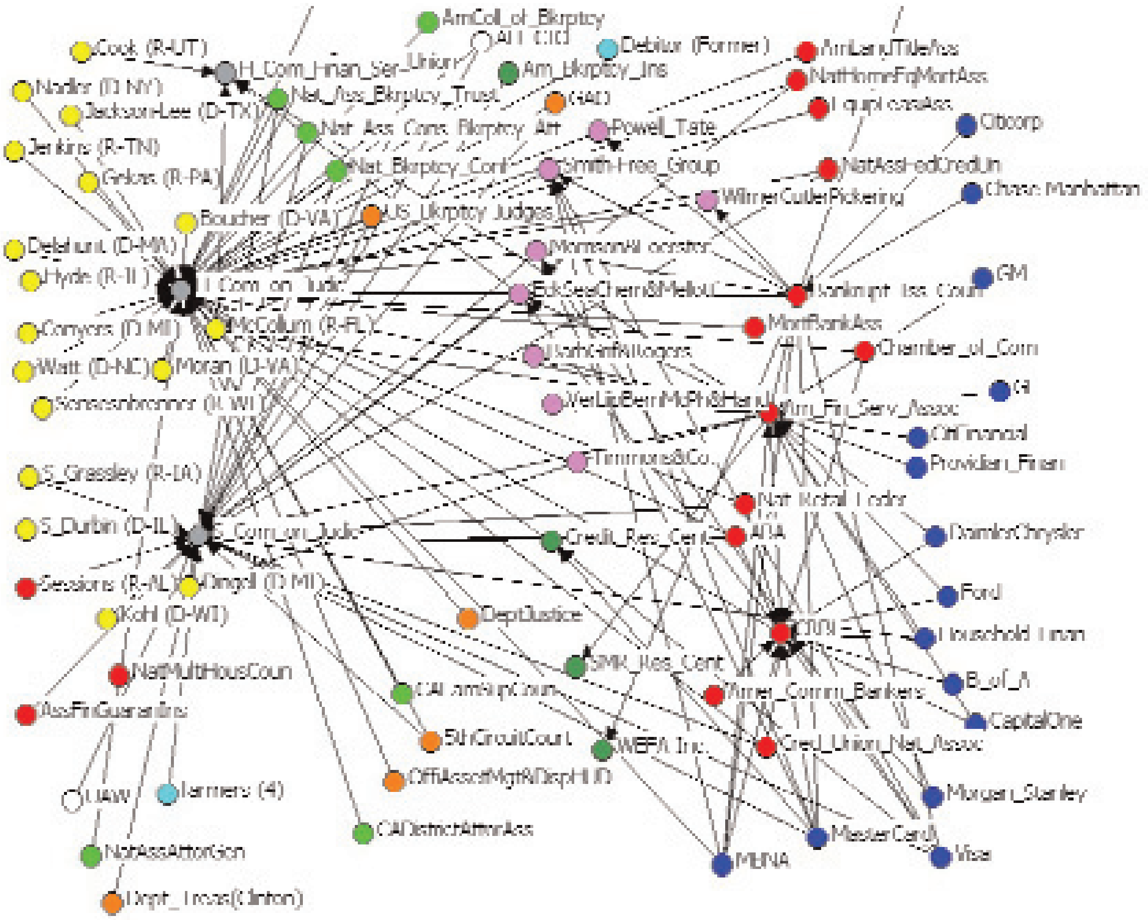

Figure 6: Network including "X testified at hearing held by Y"

by passing the PDUFA. The PDUFA instructed the FDA to speed up drug approvals for firms that agreed to pay fees for initiating new drug applications, for inspecting plants, and for inspecting the drugs themselves. The PDUFA also allowed the FDA to grant firms permission to market drugs before clinical trials were done if the firm promised to conduct the research while the drug was on the market. If the drug proved unsafe or ineffective, the FDA could take the drug off the market (see Kuhlik, 1992)

The drug companies initially lobbied against the PDUFA, arguing that it represented a tax. But by the time the PDUFA was up for renewal in 1997 (it must be renewed every 5 years), the biotechnology and pharmaceutical industries had discovered that the fees worked to their benefit. Because the PDUFA legislated that fees could only be invested in the review process, the FDA had increased its staff devoted to reviews by 57% and review times had fallen by 34% to 50% (Olson, 2004b). The improvement was especially pronounced for novel drug applications (Olson, 2000). Olson (2004b) suggests that the FDA also had incentives to reduce review times because the PDUFA pegged performance to achieving targets and because the agency sorely wanted to protect its new revenue stream. Thus, in sharp contrast to 5 years earlier, biotechnology and pharmaceutical firms lobbied intensely for the PDUFA's renewal in 1997 and then again in 2002 (Dreyfuss, 1997).

Not only does the history of the PDUFA offer insights into how corporations can affect how laws are written and passed, it also allows us to see how corporate actors can co-opt a regulatory agency's agenda so that it serves the public good less effectively than it might have otherwise. The PDUFA mandated closer working relationships between the FDA and the firms that it regulated. In fact, in support of this provision, Clinton urged the FDA to "trust industry as partners not adversaries" (Willman, 2000). The PDUFA required the FDA to arrange meetings with companies that want new drugs approved within a matter of months. It also set performance goals for the duration of reviews and gave the firms, which the FDA was supposed to regulate, a role in assessing whether the FDA has met its goals. Between 1992 and 2001, user fees went from making up 0% to 50% of the FDA's drug approval budget (U.S. General Accounting Office, 2002). Put differently, by 2001, the amount of money allocated by Congress to the FDA increased by 35%, whereas the amount of money from fees grew 170%. As the research of contingency and resource dependency theorists has repeatedly shown, those who control important, scarce, and nonsubstitutable resources wield considerable power (Hickson, Hinings, Lee, Schneck, & Pennings, 1971; Hinings, Hickson, Pennings, & Schneck, 1974; Pfeffer & Salancik, 1978). The PDUFA handed the pharmaceutical firms precisely such an edge over the FDA.

To protect the public good, the FDA must balance two types of risk: (a) the risk of approving drugs that later prove to have harmful effects and (b) the risk of not approving drugs that could have been beneficial. Since the PDUFA, the FDA has clearly done a better job of guarding against the second risk. The FDA is approving more drugs more quickly (Olson, 2002a, 2004a). Unfortunately, carefully controlled studies show that the rate of adverse drug reactions involving serious illness and death has increased since the PDUFA went into effect (Olson, 2002b, 2004b):

> Estimates suggest that a 1-month reduction in a drug's review time is associated with a 1 percent increase in expected reports of ADR hospitalizations and a 2 percent increase in expected reports of ADR deaths. At the mean, a 12-month reduction in a drug's FDA review time is associated on average with an increase of 10.92 ADR hospitalizations and 7.68 ADR deaths per drug. (Olson, 2002b, p. 640)

Moreover, the incidence of serious illness and mortality is higher for novel than for standard drugs, reflecting precisely the different speeds at which drugs are approved.

In 2002, Congress took steps to address the risk of approving harmful drugs. The PDUFA's third renewal mandated that part of the user fees be earmarked for the FDA's safety activities. Specifically, one in four new jobs were to be allocated to safety or what the FDA calls "post approval risk management activities." However, in a nod to industry, the renewal required the FDA to do whatever monitoring it intended to do within the first 2 years a drug went to market and exempted from monitoring those drugs that were already on the market at the time of the act's renewal (Timmerman, 2002).

Data collected since 2002 suggests that firms are not completing the post-marketing studies that the FDA requests. In a report entitled "The Conspiracy of Silence," Congressman Edward Markey (D-MA; Markey, 2005) wrote,

> Based on information provided to [us] by the FDA and the Securities and Exchange Commission (SEC) in response to [our] inquiries, it is apparent that: The majority of companies benefiting from accelerated approval are failing to complete the post-marketing studies required by law on a timely basis. Although some companies do complete their required studies without any intervention from the FDA, the FDA has allowed many companies to stall or forgo completion of their required post-marketing confirmatory studies. (p. 5)

Of the 91 post-marketing studies required by the FDA, the report went on to note, 42 had not been completed and half of these had not even started. However, in 1998, the FDA did approve Calgene's request to use thalidomide as a treatment for leprosy and granted approval for testing thalidomide as an AIDS drug.

PRIVATE MILITARY FIRMS: OUTSOURCING THE MILITARY[3]

Although the Constitution of the United States does not explicitly state that the federal government has the right to maintain a standing military, it certainly assumes such a right. For example, Article II, Section 2 reads, "The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States." Since the 17th century, nation states have held the sole legal right to wield deadly force and, conversely, military forces have served nation states as the states' own employees. Since the collapse of the Soviet Union and the end of the Cold War, however, what Peter Singer (2003) calls private military firms (PMFs) have

Type	Activity	Examples
Military Providers	Provide combat troops, air and land support	Executive Outcomes, Sandline, Ibis Air
Military Consultants	Provide strategy, analysis and training	MPRI, BDM, Dynacorp, Vinnel
Military Support Firms	Provide logistics, transportation, supply, construction & transportation	Brown and Root (a subsidiary of Halliburton)

Figure 7: Types of private military firms

become more numerous and are playing increasingly important roles in national and international conflicts.

Private military firms offer military services on the open market to buyers with sufficient money to purchase them. The services range from boots on the ground to tactical and strategic planning, training, logistics, intelligence, psychological warfare, and satellite surveillance. Clients include governments and corporations (especially oil and mining companies with interests in Third World countries) as well as drug cartels and insurgencies. The tides of several wars in Africa, including Sierra Leone and Angola in the mid-1990s, were turned by employees of Executive Outcomes and Sandline—South African and British companies, respectively. Both firms were subsidiaries of the Branch-Heritage Group, a British multinational oil and mining corporation, which also owned a private air force, Ibis Air. Even more interesting is the fact that Branch-Heritage owned diamond mines in both countries. At first glance, private military firms look like a modern version of the mercenaries who have fought for cash since the dawn of history. But Singer (2003) notes that PMFs differ from traditional mercenaries in six important ways.

First, PMFs are corporations that have corporate structures and rights, including the right of limited liability. Second, they are motivated by corporate rather than individual profit. Third, PMFs do not operate in the shadows; they operate openly on the market as legitimate global businesses. Many have Web sites.[4] Fourth, PMFs provide a much wider and more integrated range of services than traditional mercenaries. Fifth, recruitment is public and specialized, just as it is for most professional firms. In fact, high-ranking former military officers from the United States, Britain, South Africa, and Australia have founded the majority of these firms and they employ highly trained specialists who have also served in the world's best armed forces. Finally, and perhaps most important, PMFs are usually embedded in networks of corporate holdings that trade on the world's stock markets. In fact, your pension portfolio or mutual fund may hold stock in such companies or their corporate parents.

There are three types of private military firms defined by the sector of the military theater they service (see Figure 7). Of course, some firms operate in more than one sector. *Military providers* specialize in delivering combat troops including air and ground support. This is the one market that U.S. firms do not dominate. *Military consulting* firms offer clients services ranging from strategy and analysis to training. Finally, *military support firms* provide supply, logistic, intelligence, transportation, and construction services.

Because of military downsizing and the spread of the logic of outsourcing into the Pentagon, the United States has increasingly contracted with PMFs to provide critical services in all its armed conflicts since the late 1980s. For example, on the recommendation of the Pentagon, the Croatian government hired MPRI (founded in 1987 by eight high-ranking, retired U.S. officers and incorporated in Delaware) to train the Croatian army, which was, at best, a ragtag force. The United States sided with the Bosnians and Croatians against the Serbs, but because the United Nations had implemented a ceasefire and an arms embargo, the United States could openly provide neither weapons nor training to the Croatians. The UN embargo did not apply to MPRI, however, because it was a corporation rather than a nation. In April 1995, the Croatian Army launched an offensive called "Operation Storm," fielding an army whose sophistication surprised everyone, especially the Serbs, whose defenses crumbled under the onslaught. Within a week, the Croatians had recaptured all the territory that the Serbs had previously seized (Singer, 2003).

Croatia is not the only instance of the United States using PMFs in situations where it could not legally deploy its own armed forces. In the late 1990s, the Clinton administration found that the war on drugs in Columbia was going badly, but Congress had limited the extent to which the United States could use the military to support the eradication of the cocaine trade. Thus, hampered, the government turned to PMFs including Silver Shadows, Armourgroup, MPRI, and DynCorp. The State Department hired DynCorp to provide technical support for the Columbian National Police and to run drug eradication programs involving the aerial spraying of defoliants. In 2001, FARC (Revolutionary Armed Forces of Columbia) rebels downed a Columbian helicopter. DynCorp sent out an armed search-and-rescue team made up of former U.S. Green Berets, who rescued the downed crew in a firefight with the rebels, while the DynCorp's Huey gunships provided covering fire (Singer, 2003).

The United States has relied especially heavily on PMFs in Afghanistan and Iraq, where all three types of firms operate. In addition to Brown and Root, Halliburton, and DynCorp, which together handle almost all of the military's support functions, at least 20 military provider firms (such as Blackwater, Triple Canopy, Hart Group, Control Risks, and Custer Battles) fill crucial roles. The provider firms have three broad tasks: defend key installations, escort convoys, and protect key individuals. Custer Battles is responsible for airport security at the Baghdad airport. Custer Battles employs former Special Forces and Ghurka fighters to defend the airport from mortars, rockets, and snipers (Singer, 2004). As Singer notes, the roles played by employees of military providers are every bit as risky as those played by uniformed troops:

> [Just a few days after having four of its employees executed, dismembered and burned on a bridge in Fallujah, Blackwater personnel] defended the CPA (Coalitional Provisional Authority) headquarters in Najaf from being overrun by radical Shiite militia. The firefight lasted several hours, with thousands of rounds of ammunition fired, and Blackwater even sent in its own helicopters twice to re-supply its commandos with ammunition and to ferry out a wounded U.S. Marine. The same night, Hart Group, Control Risks and Triple Canopy were all involved in pitched battles. Unfortunately, the Hart position was overrun. Abandoned by nearby Coalition forces, the firm's employees had to leave one of their comrades dead on a rooftop on which he and four colleagues had been fighting after their house had been captured. (p. 3)

Singer reports that neither members of Congress nor top commanders in Iraq are fully aware of how extensively private firms are engaging in battle.

Newspapers have recently reported major cost overruns and suspicious financing by Halliburton and other military support firms operating in Iraq. Less widely known is that PMFs have been involved in incidents of abuse in Afghanistan and Iraq. Amnesty International reports that the U.S. Army has documented that employees of CACI International and Titan Corporation tortured prisoners in Abu Ghraib. In fact, Daniel Johnson, a CACI contractor, was alleged to have directed Sergeants Ivan Frederick and Charles Graner to torture a detainee during an interrogation (Amnesty International, 2006).

Peter Singer (2003) has succinctly summarized the implications of using PMFs to support military action in a representative democracy:

> Military service privatization represents a unique step in the process of outsourcing public institutions to the private market. The ideas of garbage collection, prison administration and even public schools being run by for-profit firms have all become generally accepted as ways to make public services more competitive. The use of a privatized military actor as a foreign policy tool, however, is not just about achieving greater cost competitiveness. In the end, it is the outsourcing of the affairs of the state to a private corporation because it lies beyond public controls. The potential dangers are extensive. . . . PMF's allow leaders to short-circuit democracy by turning over important foreign policy tasks to outside, unaccountable companies. . . . [They] offer an alternative

mechanism for the executive body to conduct secret operations without other branches (of government) being involved. . . . Such marginalization of the legislature is a contravention of the role the Founding Fathers intended for Congress in the Constitution. (pp. 213-214)

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I have shared these sobering cases with you today because I believe organizational scholars must step up to the challenges that these cases pose. They show us that organizations have altered and are continuing to alter social institutions—even democracy is not exempt. But to take on these issues, organizational theorists will have to reverse their thinking about how to study the relationship between organizations and their environments. Since the 1960s, organizational theorists have spent most of their time developing theories of how environments affect organizations and, more recently, how organizations affect each other. It is time for organizational theorists to pay much closer attention to how organizations alter and even create their environments, especially institutional sectors that lie outside the economy and that get little attention. Such a move will certainly offer tremendous opportunities for young scholars to construct careers, because there is nothing better for a career than mapping largely uncharted territory. But I would hope that the incentive to do such mapping would involve more than having a stellar career. What is at stake is the foundation of our system of governance. It seems to me that organizational theorists have, on this topic, an opportunity to use their expertise to do research that not only makes a difference but that could make history.

NOTES

1. For a history of the Bankruptcy Abuse Prevention and Consumer Protection Act, see Jensen (2005).

2. Reports suggest that Representative Moran, who did not sit on either committee, may have decided to cosponsor bankruptcy reform in return for a loan from MBNA that he obtained through his contact with James C. Free, an MBNA lobbyist from the Smith-Free Group. Four days before Representative Moran became the lead Democratic sponsor of Representative Gekas's bill, he received a $447,500 loan on "highly favorable terms" from MBNA, one of the nation's largest credit card companies. According to the Federal Reserve, it was the largest mortgage package the company reported giving to a single borrower that year.

3. This section of the article draws heavily from Peter Singer's (2003) *Corporate Warriors*.

4. For examples, see Dyncorp (http://www.dyn-intl.com/subpage.aspx?id=46), MPRI (http://www.mpri.com/index.html), and Blackwater (http://www.blackwaterusa.com).

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