Institutionalizing Legal Consciousness: Regulation and the Embedding of Market Participants in the Securities Industry in Ghana and Fiji

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How do differences in the implementation of regulation impact market behavior? I propose a theoretical framework to understand this impact as part of the process of embedding market participants through the institutionalization of legal consciousness within a field of action. I use this framework to understand the impact of the difference in the implementation of securities regulation in Ghana and Fiji. In Fiji, where the regulatory agency is more present and process-oriented, brokers operate with a greater orientation toward formal rules. In Ghana, where the regulatory agency is distant and auditing, brokers rely on explicit enforcement of floor-based norms. Conceiving of legal consciousness as an emergent feature of a field of social action advances the understanding of how legality is institutionalized, since the emergent structure shapes the orientations, behavior, and relations of actors within the field.

Sociolegal scholars increasingly emphasize international and global dimensions of law and draw on comparative analysis of the implementation of law in various jurisdictions. While such work demonstrates the global diffusion of legal norms (Dezalay & Garth 1995; Finnemore 1996; Meyer et al. 1997; Boyle & Preves 2000), important differences exist in national characteristics of lawmaking (Dobbin 1994), styles of regulation (Kelman 1981), and processes of contestation and policymaking (Boyle, Songora, & Foss 2001). Structurally similar laws may be implemented differently across jurisdictions, with resulting variation in the impact of law. Moreover, the manner in which legality is institutionalized creates variation in the legal consciousness shared by actors in different fields

An earlier version of this article was presented at the joint meetings of the Law & Society Association and the Research Committee on the Sociology of Law of the International Sociological Association in July 2001 in Budapest, Hungary. This research was funded in part by a University of Minnesota College of Liberal Arts Grant for Research Abroad and a University of Minnesota Department of Sociology Bright Research Award. Thanks to Elizabeth Boyle, Ron Aminzade, Robin Stryker, Ross Macmillan, Chris Uggen, members of Ron's Salon discussion group, individuals at my research locations, and the editors and anonymous reviewers of the *Review* for their helpful feedback. Please address correspondence to Erik Larson, Sociology Department, Macalester College, 1600 Grand Avenue, St. Paul, MN 55105; e-mail: larsone@macalester.edu.

Law & Society Review, Volume 38, Number 4 (2004)
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https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

of action and impacts people's understanding of and behavior in these environments. Theoretical gains can thus be made by combining insights from the literatures on legal consciousness (Ewick & Silbey 1998; Nielsen 2000) with neo-institutional approaches to law (Suchman & Edelman 1997; Edelman, Fuller, & Mara-Drita 1999). Such an approach can also illuminate the social processes through which market participants are embedded in social structures (Granovetter 1985).

To provide insight into divergent implementation of similar law and the impact of this difference on the structure of legal consciousness in fields of action, I examine securities industry regulation in Fiji and Ghana. Despite nearly identical legislation, the implementation of securities law in Fiji and Ghana is very different, as are the consequences of this implementation. In Fiji, regulation has been constructed around the process of transacting on the stock exchange with the regulatory agency having a more visible presence in the daily operations of the exchange. In Ghana, regulation centers on auditing of outcomes of the exchange, leaving the regulatory body more detached from daily operations. These divergent regulatory approaches shape broker orientation and competition. Brokers in Fiji are more oriented toward formal rules, while those in Ghana have developed stronger, trading-floor-based norms.

I present the argument of the article in four sections. First, a brief comparison of the legislation that created the regulatory agencies in Fiji and Ghana demonstrates that the regulatory agencies have similar legal authority in relation to the stock exchange and market participants in the two countries. Second, I compare the manners in which regulation has been implemented in Ghana and Fiji. Third, I examine how the differences in implementation impact broker practices and orientation. Finally, I summarize the argument and highlight a few conclusions.

Theoretical Overview

Sociolegal scholarship shows that regulation is part of the process of the social construction of fields of action (Suchman & Edelman 1997). Questions about the social organization of regulation move beyond a state-market dichotomy by highlighting the importance of informational structures, levels of regulation, and national styles of regulation (Mitnick 1980; Yeager 1991; Vogel 1994; Kelman 1981; Dobbin 1994). Examination of regulation as social construction analyzes the character of regulatory action within specific spheres of activity and highlights the mechanisms through which the implementation of law shapes the activities,

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

understandings, and constitutions of firms and other participants (Cotterrell 1995; Mertz 1994; Suchman & Edelman 1997).

Analysis of the social construction of regulation enhances important work in economic sociology on the embeddedness of market participants (Granovetter 1985, 1990; Abolafia 1996, 1998; Uzzi 1996; Montgomery 1998; Sayer 1995; Zukin & DiMaggio 1989). Such work highlights how cognitive and cultural referents shape market participants' behavior in pricing, interpretation of opportunity, and positioning in relation to competitors (Knorr Cetina & Bruegger 2002; Beunza & Stark 2002; Abolafia 1996; White 2002). Variation in the construction of regulation may thereby result in differences in the cognitive, cultural, and relational environments of market participants.

The process through which market participants are embedded within a regulatory environment suggests a theoretical framework that draws upon an understanding of the emergence of legal institutions and legal consciousness. Neo-institutional approaches demonstrate that institutions of compliance diffuse within social fields through cultural and cognitive processes, shaping responses to regulatory change (Edelman 1992; Edelman, Uggen, & Erlanger 1999; Edelman, Fuller, & Mara-Drita 2001). The meaning of ambiguous law is settled through the institutionalization of practices that are taken to demonstrate compliance with law (Edelman 1992; Edelman, Uggen, & Erlanger 1999; Phillips & Grattet 2001; Mertz 1994). Regulatory law is, therefore, endogenous, since its meaning is settled "within the social field that it is designed to regulate" (Edelman, Uggen, & Erlanger 1999:407).

Still, there are two gaps in existing work. First, analysis of regulatory change within the tradition of neo-institutional law and society theory takes the requirement of compliance as a given. It asks *how,* not *whether,* compliance occurs. Yet if the nature of compliance is settled within social fields in which law is only one of many competing institutions, the influence of law should depend on the presence of actors oriented toward the law as a result of agenda-setting and decisionmaking processes (Heimer 1999). Second, research within the neo-institutional law and society framework typically examines questions of compliance *within* organizations, rather than *between* organizations. Edelman (1990, 1992), for instance, focuses on compliance with employment law, which centers on the relationship between an employer and employee—a relation internal to a firm. As economic action is also embedded in relations *between* firms (White 2002), compliance with regulation of inter-firm relations (such as transactions) warrants complimentary attention.

Legal consciousness theory provides a framework for filling these gaps. It shares with neo-institutionalism the premise that law

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

is emergent within social settings, while focusing on the meaning and sense-making activities that create law within these settings (Ewick & Silbey 1998). While neo-institutional legal research has centered on the problem of compliance, legal consciousness research "examines the role of law . . . and its role in constructing understandings, affecting actions, and shaping various aspects of social life" (Nielsen 2000:1059). Studies of legal consciousness have been based on how individuals conceive of law in relation to various aspects of their daily lives (Merry 1990; Ewick & Silbey 1998; Nielsen 2000). The focus of research has been on individuals and attributes of the individuals as the explanation for variations in legal consciousness, studying differences in legal consciousness by holding both legal doctrine and social phenomena constant (Nielsen 2000). Researchers could move beyond this focus to organizational environments and the legal consciousness that develops within different but similarly situated fields (McCann 1999).

The literatures on neo-institutionalism and legal consciousness complement one another in understanding the impact of variation on regulatory construction within social fields. By applying the study of legal consciousness beyond individuals to the emergent consciousness shared among participants in a social field, we can address questions of when law applies, when compliance is necessary, and how relations between competing institutions and firms are conceived. At the same time, the organizational field can be brought to bear on legal consciousness: Norms and practices that enable and constrain action are shaped within fields and consciousness is institutionalized through participants' internalization of the characteristic background assumptions in the field (Campbell 1998). Finally, by constructing social environments in which particular legal orientations are valorized or ignored, the regimes created to implement substantive rules impact the behavior of market participants, influencing cultural and cognitive beliefs about opportunity, pricing, and competition.

Research

The implementation of securities law in Ghana and Fiji and its impact on broker practices provide a unique opportunity to compare the institutionalization of legal consciousness within similar social fields and the impact of differences in institutionalized legal consciousness. As part of a larger study on the emergence and development of stock exchanges in diverse parts of the world, I selected the exchanges in Ghana and Fiji due to their similarity in size and recent establishment. As nascent markets in which the implementation and application of regulatory law are also new, a

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

comparison between the two exchanges offers insight into how regulation impacts on market participants. The two sites have virtually identical formal law but very distinct regulatory practices, making them an ideal case comparison. Within these contexts, I examine variation in the extent to which compliance with formal law is part of the orientation of the brokers in their daily activities. The relations between the brokerage firms in these settings are a vital part of activity, since stock exchange trading and price competition are explicitly between firms. Further, since both stock exchanges are floor-based, all brokers are present during trading, increasing the visibility of these inter-firm features of the field. Finally, the field itself is an important part of the activity of each of the brokers, since knowledge of effective price competition and trading practices are essential to the work of stockbrokers.

Methods

I conducted ethnographic research over four-month periods in Fiji (August–November 2000) and Ghana (December 2000–March 2001), collecting a variety of data on the structure and operation of the markets. During these periods, I engaged in participant-observation at the stock exchanges, brokerage firms, and regulatory agencies every business day, observing all trading sessions and front- and back-office tasks during nonmarket hours. I also completed thirty in-depth, semi-structured interviews with stock exchange staff, regulatory officials, stockbrokers, and other market participants.[1] Interviews ranged from thirty minutes to three hours. I drew upon specific instances from my field research during the interviews to formulate questions and topics of conversation. Finally, I analyzed documents at the regulatory agencies, stock exchanges, and brokerage firms that articulate or explain the regulatory process.

Underlying the analysis in this article is a textual comparison of the legislation in both countries that created securities regulatory bodies, with particular focus on regulatory functions and powers. Analytically, I also draw upon field notes of the participant-observation research and the written materials to understand how individuals engage in their day-to-day work. I use the interviews with regulatory officials in Fiji and Ghana to gain insight as to how these

[1] In both locations, I conducted interviews with all management, surveillance, inspections, and enforcement staff at the regulatory agencies and with management and market officials at the stock exchanges. In Fiji, I conducted interviews with representatives of all brokerage firms, while in Ghana I interviewed representatives from ten of twelve firms, as two brokers were unable to schedule appointments. Both of these brokers were with firms that were small in relation to the overall market and had participated in less formal conversations on the floor of the exchange.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

officials define their tasks, gather information, and implement policies. Finally, the article draws upon the array of research I undertook during the market sessions at the exchanges and with brokerage firms to examine the effects of the regulatory actions on market participants' orientation and behavior.

Background of Research Sites

Both Fiji and Ghana are former British colonies, gaining independence in 1970 and 1957, respectively. In the 1980s and 1990s, the governments of Fiji and Ghana decided to emphasize capital market development as a component of economic policy, reflecting the increasing prevalence of these markets worldwide (Helleiner 1994). As part of this emphasis, Fiji and Ghana each created a regulatory agency responsible for promoting and regulating the development and operation of the capital market through acts of Parliament. In 1993, Ghana passed the Securities Industry Law, Provisional National Defence Council (PNDCL) Act 333 (SIL), which created the Securities Regulatory Commission (SRC).[2] In 1996, Fiji passed the Capital Markets Development Authority Act, number 13 (CMD Act), creating the Capital Markets Development Authority (CMDA). The passage of each piece of legislation occurred in proximity to substantial changes in the operation of the capital markets in each country, particularly the establishment of more formal stock exchanges.

The Ghana Stock Exchange (GSE) was created in 1989. During the mid-1990s, Ghana was undergoing structural adjustment under arrangements with the International Monetary Fund. As part of the adjustment program, Ghana undertook to liberalize the foreign exchange control regime and to privatize some large state-owned enterprises. The organization of the GSE, including most basic trading, listing, and membership regulations with the exception of trading by nonresident foreigners, did not change during this period (other than by growth). By the end of the 1990s, the GSE wished to change to an electronic trading system, but project funding through a World Bank grant was cancelled. The GSE still changed the trading rules to what they would have been if the electronic system had been implemented but continued to trade manually.

Formally, Fiji's Suva Stock Exchange (SSE)[3] had existed since 1979, but it initially operated only as a trading post. Investors who

[2] Renamed the Securities Exchange Commission in the Securities Industry (Amendment) Act of 2000.

[3] In December 2000, the name was changed to the South Pacific Stock Exchange.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

wished to purchase or sell shares would send their request to the exchange, where one of the two staff members would enter the order into a ledger, matching orders once each week. As part of the effort to spur capital market development in Fiji, it was decided that the SSE should become a more active market. Thus, in 1996, the SSE began to operate a call market, in which brokers would bring client orders to the exchange in an on-floor auction process.

Both Fiji's SSE and the GSE are small by international standards. At the end of 2000, the SSE listed ten companies with a total market value of US$126 million, while the GSE had twenty-two listed companies with a total market value of US$518 million.[4] During 2000, both exchanges had small total trading volumes, with SSE total turnover at US$3.7 million and GSE turnover at US$7.2 million. The number of brokerage firms roughly corresponds to the size of each of the markets. In Fiji during 2000, there were four stock brokerage firms, each employing two or three registered brokers; there were 12 brokerage firms in Ghana, employing between one and four registered brokers. Finally, the number of staff at the regulatory agencies is also proportional to the market sizes, with five staff members in Fiji and nineteen in Ghana at year-end 2000. Total regulatory body expenditures in 2000 were US$172,000 in Fiji and US$344,000 in Ghana, or 4.7% and 4.8% of total market trading value, respectively.

In addition to comparable sizes, the two stock markets are similar in relation to their domestic economies and global financial markets. Both exchanges list a substantial proportion of domestic subsidiary companies of transnational corporations (one-third to two-thirds), with the balance being domestic companies. While foreign investors own a larger aggregate percentage of shares on the GSE, most of these investors are not active in buying and selling shares, and all rely on Ghanaian brokerages. While brokers and the exchanges in each country follow events in overseas capital markets, neither stock market moves in reaction to these overseas markets (Larson 2003). Both exchanges trade three times a week, during mornings only. Neither is central to the provision of capital to the domestic market, as bank finance dominates for most enterprises in each country, and neither exchange is the source of substantial trading in government, quasi-government, or corporate debt. Each country also has a large number of companies with equity finance that are not listed on the respective exchange.

[4] Values are converted at year-end 2000 exchange rates of 1 Fijian Dollar = US$0.4575 and 1 Ghanian Cedi = US$0.0001418.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

Legal Authority Under Securities Industry Regulation

Securities industry legislation in Fiji and Ghana is remarkably similar. Fiji's CMD Act (1996) and Ghana's SIL (1993) follow much the same structural outline. They establish a regulatory body, enumerate its functions, describe the procedure to approve stock exchanges, list licensing procedures, and establish minimal conduct guidelines. In numerous instances, the two laws read identically to one another, with the exception of syntax and errors in text.[5] While the functions enumerated for the two regulatory agencies do not use identical language,[6] these functions are substantially similar. Both regulatory bodies are to license, approve, control, and supervise the activities of stock exchanges and stockbrokers; act to minimize abuses and other improper practices; and exercise oversight over trading in securities.

Beyond agency functions, the powers and duties enumerated for the regulatory agencies in the two countries are virtually identical. For example, Fiji's CMD Act states:

> Where a securities exchange reprimands, fines, suspends or expels, or otherwise takes disciplinary action against a member or a listed company, it shall within seven days give notice to the Authority in writing, giving particulars including the name of the person, the reason for and nature of the action taken. (CMDA Act 1996: Section 37.1)

Ghana's SIL reads:

> Where a stock exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the stock exchange, it shall, within seven days give to the Commission written particulars of the name of the member, the reason for and nature of the action taken, the amount of the fine, if any, and the period of the suspension, if any. (SIL 1993: Section 27.2)

Both Ghana's SIL and Fiji's CMD Act establish standards of minimal content for membership and trading rules of stock exchanges, require stock exchanges to gain approval of the regulatory agency prior to changing any membership or trading rule, and give the regulatory agency the power to effect rule changes.[7] Both regulatory agencies also have authority to direct the exchanges

[5] In a few instances, the drafters of the laws did not catch errors they made in making some modifications, referring to subsections that do not exist or referencing multiple subsections when only one is applicable.

[6] This is the least technical part of the law and, as a result, drafters and parliamentarians may have felt at greater liberty to change these sections.

[7] In the case of Fiji's CMDA, the power to draft and affect rule changes is explicitly stated in the CMDA Regulations (1997) and Rules (1997).

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

in regard to the manner in which they operate and in regard to trading in any particular security.

It should not be surprising that these two laws are so similar. Drafters of rules and regulations in both locations noted the ease in relying on language that was used by other jurisdictions. In both countries, exchange officials involved in revising rules explained such use by noting that they were not trying "to reinvent the wheel." As former British colonies, both continue to use the British legal system. The Commonwealth Secretariat served as a resource in the drafting of SIL in Ghana. While market participants in Fiji are not certain of the origins of the CMD Act, one individual related that he had "heard that it was the same as the law in Kenya," another former British colony.

Ghana's SRC and Fiji's CMDA thus stand on virtually identical statutory ground in relation to the stock exchanges and stock trading activities. To the extent that there is any statutory difference between the bodies, it is that the SRC may have more power vis-à-vis stock exchanges, although the subsequent CMDA Regulations (1997) and Rules (1997) enumerate similar powers.

Analysis of Implementation of Regulation

Despite the formal similarities in legislation, the regulatory approaches of Fiji's CMDA and Ghana's SRC differ considerably.[8] Generally, the SRC has been deferential, delegating more to the stock exchange with SRC regulatory activities focused on auditing outcomes. In contrast, the CMDA has been more of an active participant in the process of market operations. These differences have led to profound variation in the legal consciousness institutionalized in each market field.

Before analyzing the differences in and impacts of regulatory implementation, it is worth considering why these two regulatory bodies have different approaches to regulation. In the cases of Fiji and Ghana, neither market size nor variation in the political position of the regulatory agency is persuasive as an explanation. As discussed above, the markets are similarly sized, with staffing and funding of the regulatory bodies proportional to trading volumes and the number of brokers in each market. Similarly, neither regulatory agency has been the subject of political contention, while both agencies have maintained continuity in management and

[8] The differences in regulatory approach cannot be attributed solely to the activities of the agencies, since other market participants are active in processes that call upon the regulatory agencies to become involved. Such activity could range from requesting the regulatory agency to make a decision about a dispute to a stock exchange not having a procedure in place to handle an important contingency.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

operations after elections brought new ruling parties to power in Fiji and Ghana. More compelling explanations focus on the process through which the agencies became operational. First, the initial location of the regulator within its larger social setting shapes its possibilities to exert authority. While both the CMDA and the SRC share some important similarities in early-stage implementation,[9] they differ in the timing of initiation of operations in relation to the stock exchange. By the time the SRC was operational, the GSE and many brokerage firms had been in operation for nine years. In contrast, Fiji's stock exchange had been an active exchange for less than two years when the CMDA started operations. In addition, many brokers in Fiji established operations after the CMDA initiated its work. In this regard, the less-established nature of the stock exchange and brokers in Fiji may have made it easier—and perhaps more necessary—for the CMDA to assert its regulatory powers and authority. Second, the networks of relations between the regulatory staff and the regulated parties may influence the regulatory approach. At the SRC, the top two executives are former staff members of the stock exchange, while CMDA staff come from outside the stock exchange, with fewer direct connections to active participants in the capital market. Such direct ties may shape the relations between the regulatory body and regulated organizations by placing them within the framework of the pre-existing social relations (whether they are relations of trust, deference, or a shared view of how the regulated organization operates).

In the balance of this article, I characterize the approaches to regulation and examine the manners in which these approaches institutionalize a structure of legal consciousness for market participants. In this section, I first examine the activities that both regulatory bodies call "market surveillance." This analysis draws on the regulatory officials' sources and uses of information to determine what is under surveillance when the regulatory bodies engage in market surveillance, examining how the surveillance activities fit together to construct regulation. Second, I analyze isolated instances of trading outside the rules of the exchanges to gain insight into the relation between the regulatory bodies and the stock exchanges. In the next section, I consider the impact of these differences on how brokers dispute, handle rule violations, and express trading norms.

[9] Neither established operations immediately after being authorized by law, with existing government agencies serving as temporary authorities. When they were created, both the CMDA and SRC adopted similar personnel policies, with staff not covered by public/civil service regulations and, more important, pay scales. Finally, both the CMDA and SRC relied on long-term consultants from abroad with considerable experience in the securities industry to assist in the launching of operations.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

Market Surveillance Techniques

The fundamental difference in regulatory approach between the CMDA and the SRC can be seen through an analysis of practices of *market surveillance*. While both agencies have staff positions whose titles and job descriptions include "market surveillance," the tasks involved are substantially different.

For Fiji's CMDA, the job of market surveillance is process-oriented, with primary attention focused on the details of specific transactions. The market surveillance officer attends all stock exchange trading sessions and compiles a market surveillance form. If any trading is "irregular" or "does not make sense," the officer notes the situation. The market surveillance officer draws on additional CMDA staff members to check the trading practice against the rules and regulations in order to "look at the situation and determine if there is a case to pursue." The tentative conclusion reached by the CMDA appears in a written market surveillance report, which may require further investigation. An official explained, "If there is something that happens [such] that we need to review certain documents . . . we conduct a special inspection [to] review the things that we see that we think are related to a certain event." After reviewing this information, including the response of the party that is suspected of breaching the rules, the staff of the CMDA reaches a conclusion. If a violation occurred, it forwards this to the members (directors) of the CMDA, who determine the appropriate regulatory action.

The officer's surveillance of the market relies on having a "feeling" for the market. The officer explained that during the year,

> We've done about three or four [special inspections] already. All of them were based on market surveillance . . . We had one broker pull down an order and later on toward the end of the session place it back again and trade it with his own.[10] That was one situation and there was another where we had a broker pull an order. We suspected [she did this] because she didn't get the match she wanted. She relisted it the following session again. That looked funny to us.

This example illustrates several aspects of CMDA's market surveillance. First, the surveillance is of the *process* of trading. The surveillance officer pays attention to how and when orders are placed (and matched), rather than merely paying attention to the outcomes of orders (trades and prices). Second, the attention to process highlights the importance of having market knowledge

[10] The market surveillance officer is describing the tendency of brokers to attempt to match their own buying and selling orders on the market, thereby insuring receipt of the commissions on both sides of the trade and making certain to provide execution for their customers' orders.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

that stretches across time. It is important to know what orders were placed or removed in previous sessions. Finally, the surveillance officer has developed a tacit sense of what seems correct or incorrect. Thus, something that "looks funny" triggers a deeper investigation.

In contrast, market surveillance for Ghana's SRC consists of annual inspections of each brokerage firm and focuses on brokers' adherence to standards of business conduct and financial adequacy. The SRC and GSE jointly select issues to focus on during the inspection process and use a set of topics and questions, along with a sample of records, to assess the brokerages' practices. The practices that are assessed, in the words of the field officer, are "the issues fundamental to the protection of clients, because our main jobs are protecting the client and developing the market." One member of the market surveillance department cooperates with an official of the GSE to examine the accounts and records of the firm. After a field visit, the market surveillance officer writes a full report that is used internally in the SRC to draft a letter to the management of the brokerage. The management letters often raise the same issue with a number of firms, suggesting corrective actions to the brokerage firms. For example, in all of the letters to management in 2000, the SRC noted that the brokerage firms needed to appoint compliance officers.

The inspections process is quite similar to an audit. The SRC market surveillance field officer explained,

> There is a set of items I look at as they impact the operations of the brokerage. I go through them systematically, such as financial statements. I look at the obligations—taxes, etc.—with a view to ensure the operations of the brokerage are sound. I look to make sure there is adequate licensing to operate. I look at the impact on clients. . . . Due to time constraints and resource constraints in terms of the numbers of people, I cannot go into the details on an inspection. Basically what we're doing are systemic audits, not substantive audits.

As in Fiji, inspectors in Ghana must rely on "instinct":

> We just take a sample [of records], but it is not scientific. A statistical sample is not found to be the best. From my experience, it comes with instinct . . . It is a hunch, the way you train yourself over the years.

Pursuing "hunches" may uncover an item that raises suspicion, leading to more detailed investigation, as the field officer recounted:

> Financial statements are usually of a summary nature. Given the time and manpower constraints, we cannot look at the individual transactions. . . . [In one case] we came across a line item "discounting of securities." We investigated further and came to the

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> conclusion that they had bought the securities off market [listed securities are allowed to be traded only through the GSE unless there is an explicit exception granted].

The field officer explained that they began "investigating this with a lot of other brokerages" as part of the annual inspections. This explanation encapsulates the surveillance process used by the SRC. The records of the firms are investigated at a summary level. If something seems out of the ordinary, it is investigated further, often through questions and answers. If an offense is discovered, it becomes a part of the inspection routine at other brokerages.

To bring the comparison with Fiji's CMDA into sharper relief, the surveillance by Ghana's SRC is not of the process of trading, but of the front- and back-office practices of brokerage firms. Second, the SRC surveillance in Ghana is based on an official applying an observation to additional locations, in essence developing standards for all market participants. In contrast, the CMDA's market surveillance requires an official to observe across time in order to understand the process.[11] Finally, surveillance in both markets requires tacit knowledge to trigger more detailed investigation, yet this knowledge is of a different nature in each market. The trigger for the CMDA is the behavioral practice of a market participant. For the SRC, it is the accounting of firm behavior.

Examination of how each agency completes the task the other calls "market surveillance" further highlights the different approaches to regulation. At the SRC, the Corporate Finance and Investment department is responsible for tracking trading on the stock exchange. The department uses the Official List—a daily release from the stock exchange summarizing volumes traded, price changes, and high bid and low offer prices—to insure proper reporting of this information and to prepare monthly reports about aggregate trading activity and market trends. In contrast to the market surveillance official at the CMDA, the SRC official who tracks the market relies upon information supplied by third parties, rather than firsthand knowledge, and is concerned with the outcomes, rather than the process, of trading.

The CMDA conducts regular and special inspections of brokers. These begin with an interview that includes "specific questions on rule compliance." While not drawing too sharp of a distinction, since the SRC uses some of the same technique of

[11] This is not to say that the CMDA does not compare across brokerage firms (which it does as part of the brokerage licensing process, as discussed below). Rather, the discussion in this section concerns how both agencies conduct the activity of market surveillance.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

posing questions to brokerage firms and since the CMDA examines financial records, there is some contrast between the choice of the entry point into the inspection of the brokerage firm. A CMDA official's explanation of inspections illustrates the distinction between *how* and *which* records are examined:

> We ask for [a] sample of all the records to get an understanding of the transaction flow through the whole organization. All of those records must be in order. There are rules about how you keep them. Brokers must keep order forms in chronological order. There are spot checks on rule requirements. . . . It becomes self-evident. Once you have enough experience, it becomes glaringly obvious what the issues will be. When you get the first set of records, you get an idea where the violations are going to crop up. It is all a flow. If they are not recording orders properly, how are they going to know if they entered them properly on the market? If they breach one rule, we get a lot of others [rule breaches]. . . . [A rule violation about completing a record] sounds trivial, but it is critical.

Here, a sample of records is examined as part of the *process* of bringing the client orders to market. The CMDA official is concerned with the "flow" of orders and records. While the CMDA is also concerned with the ongoing ability of the firm to conduct business, the use of order entry inspection as a "building block" highlights the unique importance of specific details of order processing, in contrast to the SRC.

It is important to note that despite the fundamental differences in the regulatory approach to market surveillance and broker inspection,[12] some aspects of regulatory activities in Ghana and Fiji are the same. Officials in both agencies rely on inference based on individual experience to select cases for further investigation. The CMDA official uses the knowledge of market dynamics, while the SRC official relies on the "auditor's instinct" to sense that something is wrong. Both regulators stretch their observations beyond their present time-space location: The CMDA looks at patterns of trading over time, while the SRC uses findings from one firm to set the general agenda for inspection for all firms. This extension of observation is a key manner in which the regulators build tacit knowledge, gaining the experience of knowing how the regulated parties behave. Finally, both the CMDA and SRC operate with the same ends in mind: client protection and market development.

[12] This discussion, centered on the activities labeled by each agency as "market surveillance," excludes many other activities that both the regulatory agencies undertake, such as approving public offerings of securities and collective investment schemes (unit trusts and mutual funds).

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

Yet their techniques of inspection and regulation differ. The CMDA, in both market surveillance and regulatory inspections, examines the manners in which orders to trade securities are processed. In this regard, regulation is constructed as a component of the transactional process (although not wholly reduced to it). The SRC, in contrast, constructs market surveillance as an auditing function. The entry point is not through specific transactions, but an accounting view of the brokerage firm. This applies equally to trading on the stock exchange, as the SRC is concerned about the broad outcomes of trading (volumes, price movements) rather than the mechanics that were involved in producing the outcomes. From a regulatory perspective, the variation in approaches demonstrates the trade-off between the values promoted by a particular technique and the risks associated with such an approach. A closely involved regulator gains responsiveness and an inside perspective but risks capture; while regulation from a distance provides a clearer delimitation of regulator independence, it risks formalism.[13]

Trading Outside the Rules

To gain more insight into how CMDA and SRC regulatory practices differ, it is instructive to compare how two similar instances were handled. Violation of stock exchange trading rules regarding the matching of orders occurred in both locations. While rare, these instances are analytically useful to demonstrate how participants deal with "trouble" cases and how the practices of regulation play out in each location.

In Fiji, the process of matching particular orders became a matter of contention during one trading session. The issue of what constituted a "matching order" arose when a broker placed an order to buy shares at a price *higher* than the price of an existing selling order. During trading of Talanoa Corporation,[14] Broker A placed an order to sell at $3.01 per share that remained unfulfilled on the market. Subsequently, Broker B listed orders to sell Talanoa shares at $3.03. Broker B then took out a calculator to determine the total quantity of shares on the orders just listed at $3.03. Broker B then placed an order to buy this quantity of shares at $3.03. The SSE executed all the orders at $3.03, matching Broker B's buying order with Broker B's selling orders and bypassing Broker A's selling order at $3.01. Broker A protested that the order at $3.01 had priority, since it was at a better price. An SSE staff member replied that there was no match between the orders to sell at $3.01

[13] I thank one of the anonymous reviewers for this suggestion.

[14] All names of corporations and brokerage firms are pseudonyms.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

and buy at $3.03, since $3.01 does not equal $3.03. After this, Broker B again listed an order to sell (this time at $3.05) and an order to buy (at $3.05), bypassing another order of Broker A's to sell at $3.04. The SSE again matched Broker B's orders. The head of trading at Bula Brokerage (Broker A's firm) retrieved a copy of the SSE Business Rules and showed them to the SSE staff member responsible for making decisions in the matter. Despite this protest, the SSE stuck by the earlier decision. During this entire time, the CMDA market surveillance officer recorded all of the orders and trades, verifying them with a market official from the stock exchange.

Upon returning to the CMDA office, the market surveillance officer re-created the call market session trading by writing the orders and trades on a whiteboard in chronological order. The surveillance officer then discussed the trading with another CMDA staff member, testing various interpretations of what had happened. One member hypothesized, "Broker B made a mistake. The buy order is higher than the sell order. That does not provide the best execution. Also, Broker A should have been more aggressive [in protesting the SSE's decision]." After identifying the relevant trading rules, the staff members reworked the chronology by listing the orders in sequence, noting when and how trades were matched. Then they repeated the process a second time by scrutinizing each order in light of the trading rules. This reconstruction of the trading identified eleven separate steps of the trading process, with specific notation of each breach of the trading rules.

After this initial reconstruction was complete, a third staff member was brought into the conversation, with the discussion focusing in detail on the ordering of the breaches of the trading rules. The CMDA staff members asked questions of one another, attempting to pose challenges to the tentative conclusions about the situation.[15] The staff determined that the situation warranted further action in directing the stock exchange. The entire process began with the CMDA's market surveillance, which is based on the surveillance officer's knowledge of the basics of how the market should work and was enabled by the officer's daily recording of information. This information was used to examine the processing of each relevant transaction, in line with the construction of regulation as part of the market process.

The CMDA includes the activities of the stock exchange within its regulatory purview. It examines whether activities breach the

[15] The CMDA will present conclusions to the parties involved, giving them a chance to respond and provide more information. This process holds open the possibility that the conclusions could change.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

rules and essentially re-creates the stock exchange as it should operate, relying on stock exchange rules and the actual "inputs" to the exchange—the flow of orders. CMDA officials locate, read, analyze, and then test the application of the rules relevant to the situation under consideration. When staff members think they have interpreted the rules and applied them to the situation correctly, the entire process is presented to and discussed with a supervisor, including as many possible responses as could be encountered. Finally, the CMDA decides whether a situation warrants their direct involvement, rather than waiting for a broker to issue a complaint letter. This proactive involvement in market operations sharply contrasts with the SRC activities in Ghana.

During my research, the GSE was in a period of transition, changing the process by which orders were matched. Under the new system, order-matching procedures were in price-time priority with instant execution. This contrasts sharply with the previous trading regime, in which any broker could match another's price on a bid or offer and, if the order was large enough, share proportionally in any trade. The shift in trading rules, thus, posed a problem for brokers: If one broker was the first to place an order to sell at a particular price, all of his or her shares would have priority over those of a broker who placed an order to sell at the same price moments later, meaning that trades would often go to the first broker, rather than be shared among a number of firms.

One brokerage firm noted a provision in the rules: Brokers could enter "market orders," designating the order as "MKT" rather than putting a specific price on the order. Under the rules, a market order has priority over an order with a specific price. A broker could decide to use a trading tactic to list an order to buy or sell at MKT and immediately place the corresponding order to complete the transaction; this could circumvent the priority rules, getting both the buying and selling sides of the transaction. At one of the earliest "live" sessions of continuous auction trading, the firm found itself in a situation in which it wished to complete a transaction where it had both a buying and selling order for the shares of a company, but it could not fill both of the orders because another firm already had an offer to sell the shares at that price. The former firm decided to use this tactic, listing the selling order at MKT and less than a minute later listing the buying order, claiming the trade. At this point, a very heated argument broke out on the floor of the stock exchange, with the broker justifying the tactic by referring to the provisions for market orders in the trading rules. After studying the rulebook, a GSE official grudgingly upheld the trade. As was standard, no officials from the regulatory agency were present. Within one week, other brokers—including

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

the broker whose order was bypassed in this first instance—started to learn and use the tactic.[16]

As other brokers started to use the tactic, they lacked understanding of the trading rules concerning the tactic and made errors. As a result, some brokers claimed trades[17] that they should not have: The broker from Cantonments Stock Brokers (CSB) placed an order to buy Volta River Bank (VRB) at market and an order to sell the same number of shares at 2300, claiming the transaction. When the broker placed the orders, however, there were existing orders on the board to buy VRB at 2300 and to sell VRB at 2305. Thus, if the CSB broker had first entered the order to buy at market, CSB should have bought the VRB at 2305 (from the member with the existing selling order at 2305). If the broker had entered the selling order first, CSB should have sold to the buyer with the bid at 2300. In spite of the fact that a number of other brokers were watching the transaction, no broker caught the error.

I witnessed other, similar incidents in the following weeks. Conversations with and among the brokers indicated that these were honest mistakes. Brokers thought they were using the rules correctly. In the instances that somebody notified a stock exchange official about a mistake, the typical pattern of response would be first to verify that the mistake had been made, followed by a check of the order tickets for the time that the orders were placed. If the GSE official concluded that a mistake had occurred, the official would typically go to the errant broker and explain the problem. The broker would usually apologize and claim that he or she did not realize the error. In the end, the GSE would issue a warning—usually a simple verbal warning. This action was designed to be preventive, as the transgression of the rules was seen primarily as a temporary, developmental issue. GSE officials generally saw a mistake as a flaw in the rules that would be corrected. At the same time, GSE officials viewed each broker as deserving one chance to make a mistake, since they were often trying to use these tactics to keep up with their rivals.

Unlike the CMDA, the SRC was notably absent in the instances of trading violations at the stock exchange. As no formal disciplinary action was taken in these instances, the SRC received no notification of specific violations of trading rules. The SRC was, however, indirectly involved in the attempts of the GSE to come up with a correction to the trading rules. This effort was part of a

[16] When I was leaving the field, the GSE had a draft of a rule clarification that would make it impossible for brokers to use the tactic.

[17] Under the new trading system, brokers are responsible for matching orders and reporting trades to the stock exchange.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

wider range of work by a committee charged to oversee the phased implementation of the new trading arrangements. In the committee meetings, the SRC representative was often a minor player. The representative would participate, asking questions and offering suggestions, but did not take an active leadership role, nor would the representative be consulted about how the SRC staff would look upon possible rule changes. It seemed, at times, that the representative was there as much to be informed about what the GSE would be doing as to engage in any sort of oversight or regulation.[18]

This analysis touches on the more fundamental issue of the general relationship between the regulatory agency and the stock exchange. In Ghana, the relationship is more or less one of a partnership, with the SRC delegating authority to the exchange and jointly inspecting brokerage firms with the exchange. As an official at the SRC noted, "The stock exchange itself would have seen [any instance of market malpractice]. As a matter of course, they have to give us that report. We even ask them to investigate and report to us." The SRC is detached from the daily operations of the stock exchange but maintains regulatory power over the exchange. As an SRC official explained,

> The fact is that the rules and regulations [of the stock exchange] are . . . approved by us. Once approved, they [the stock exchange] must follow those rules and regulations. If they want to change them, they have to come back to us for approval . . . If they do not comply with the regulations, they are violating them. If we become aware of it, they will be questioned on it. If the explanation is not adequate or we don't approve of the explanation, we have to instruct them to comply.

Formally, these are the same powers held by the CMDA, but in practice the method of implementing regulation constructs the trading activities of the stock exchange in a different manner. The stock exchange's daily operations in Fiji are an object of regulation by the CMDA, in which primary importance is attached to having a process that follows the rules as prescribed. In contrast, the SRC leaves daily operations as an internal matter for the GSE, which, according to an SRC official, "makes sure trading is taking place in an orderly manner." The SRC engages the GSE trading oversight as part of a broader partnership between exchange and regulatory agency. The GSE becomes a source of information (through reports initiated by the GSE or through requests for investigation and reports from the SRC) for regulation. In this regard, the stock

[18] In fact, in some discussions SRC staff members indicated that they are at times somewhat frustrated by the fact that the GSE sometimes seems to ignore the SRC, such as inviting the SRC representative to the meeting only an hour before it is to start.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

exchange's daily operations in Ghana are not an object of regulation, but a source of SRC regulation.

Impact on Broker Practices—Formal Rule versus Floor-Norm Orientation

Despite formally similar law, the SRC and the CMDA differ in their styles of regulation. While the SRC is more distant from the stock market, the CMDA is a more active participant. And while the CMDA focuses on the process of market activity, the SRC audits market and brokerage outcomes. Yet how do these different regulatory styles impact the legal consciousness and practices of market participants? To answer this question, I examine three aspects of the emergence of legal consciousness within these similarly situated fields. First, I analyze broker disputes during trading. This analysis shows the emergence of field-level legal consciousness, how brokers conceive of and express disputes, and how inter-firm relations are part of this emergent legality. Second, I explore how brokers handle others' technical rule violations. This examination demonstrates brokers' awareness of when and why compliance with law is necessary and the manners in which competition and status are parts of the process of the diffusion of this compliance. Finally, I examine the ways in which brokers express trading norms. This analysis highlights the cultural and cognitive importance of legal consciousness for pricing behavior. Taken together, the analysis demonstrates that the more removed SRC approach is accompanied by a stronger set of trading-floor norms that govern broker behavior in Ghana, while brokers in Fiji are more rule-oriented (even when they are acting against the spirit of the rules). The field of activity for brokers in Fiji, thus, incorporates a legal consciousness more oriented toward formal rules than that seen in Ghana.

How Brokers Dispute

As discussed above, the first time a broker at the GSE used an order designated as MKT to claim a trade, an argument erupted on the trading floor. The second time the tactic was used by the same broker, a few days after the stock exchange had upheld the practice, an even more heated argument ensued, with nearly every broker shouting and arguing against the broker who initiated the trade. Other than the broker initiating the MKT trade, no brokers referred to the trading rules in their arguments. Instead, brokers invoked themes of fairness, arguing that others "could not trade like that." Fellow brokers were the sole audience of this vocal outburst. The following week, the broker who "lost" the trade the first time placed an order at market to get around another broker's

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

order, stating, "They made a fool of me, but now I will use their trick." Now there was no argument about the legitimacy of the tactic. When I asked a broker about this, I was told "it was accepted already."

In Fiji, the most explicit trading dispute was the instance of matching orders for the Talanoa Corporation at different prices as discussed earlier. In this case, the head of trading of one of the firms whose order was bypassed obtained a copy of the trading rules and presented an argument to the stock exchange staff about the rules. The broker could have presented an argument either to or about the other brokerage firm, arguing that the firm had a duty to get its client the best price. Instead, the broker's argument centered on the exchange's application of its trading rules. When this was unsuccessful, the head of trading called the CMDA later that day to complain about the stock exchange's decision.

These two examples highlight important differences between broker orientations in the two exchanges. Both disputes concerned the interpretation of rules in cases of ambiguity: In Fiji, the debate concerned what constituted a "match," while in Ghana, the status and processing of the new category of orders designated as MKT was contested. First, the initial audience and framing of the arguments are important. In Ghana, broker-centered arguments about fairness concentrated the dispute among the brokers despite the fact that the stock exchange had final authority. Brokers could have argued to a stock market official that the interpretation put forth by their competitor was based on a faulty understanding of the purpose of MKT orders under the trading rules.[19] In Fiji, the broker invoked specific trading rules rather than principles of fairness and transferred the dispute to the exchange. Both framing and audience shaped the potential outcomes, as the regulatory agency can levy formal sanctions, while brokers have no such authority. Second, despite the fact that a broker in each location cited the trading rules, the broker in Ghana used the rule as a defense when challenged after having planned the trades. In contrast, the broker in Fiji had no idea that any reference to the rule would be needed. The broker's use of the rule as an unplanned, immediate response in Fiji suggests that rule-consciousness is much more a part of the repertoire of brokers on the SSE.

Finally, there is the difference in the finality of the ruling of the stock exchange. The broker in Fiji appealed to the regulatory body

[19] Such an argument could have focused on the definition of a market order as one seeking immediate execution. The tactic relied on a lack of immediate execution, since there was not a corresponding counter-order. Brokers could have also argued that the principles underlying the trading system (price-time priority) favor orders that improve the market and that the order in this instance did nothing to improve the market and, therefore, should not be given priority.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

after the ruling of the exchange, while no such appeal occurred in Ghana despite the fact that most brokers did not agree with the ruling. In Ghana, the brokers continued to dispute the practice the second time it was used even though the stock exchange had held that it was within the rules, suggesting an attempt to establish a floor norm against the tactic. Indeed, the practice only became recognized as accepted after a second broker used it, signaling its acceptance as a norm of trading, rather than simply an allowed practice under the rules. This second broker, by announcing "I will use their trick," appealed to a norm of the fairness of turnabout. Instead of appealing to the rule or even simply trading the order, the broker's statement justified the behavior against the initial user of the MKT tactic as fair. These differences illustrate an underlying difference in legal consciousness as it relates to disputing: Brokers in Ghana conceived of and expressed disputes in terms of norms and fairness, while brokers in Fiji emphasized the formal principles of rules.

The difference in orientation toward the rules between Fiji and Ghana is further underscored by the strong adherence of brokers in Ghana to norms of fairness even when the trading rules would have allowed other practices, illustrated by an incident in Ghana in which the norms of fairness were explicitly invoked to prevent a broker from taking advantage of orders on the market. During one pre-opening session, a broker had listed an order to sell shares of a company as MKT. Since trading had not yet opened, this trade would happen at the price of the highest order to buy at the opening of trading. One broker noticed this and said to two other brokers, "I will wait to drop the price," meaning that the broker was going to enter an order to buy at a substantially lower price just prior to the beginning of trading. The other brokers responded, "It is not fair," counseling the buying broker to not drop the price (and, just to make sure, these brokers also told the selling broker what the other broker might do). While aware of what the rules allowed, the buying broker did not simply "drop the price" to take advantage of the situation, but announced an intention to other brokers. In making this statement, the broker initiated a conversation about the potential trade, opening the opportunity to hear what others thought of the trade, rather than simply taking advantage of the rules. The other brokers' response—that it "is not fair"—expresses the importance of a normative order outside that of the trading rules on the floor.

How Brokers Handle Rule Violations

In both Ghana and Fiji, brokers are likely to protest a competitor's rule violation if the violation has a direct impact on their

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

orders. In the case of rule violations that do not have a direct impact, brokers in Ghana and Fiji respond differently. Brokers in Ghana rely on internal status and practice norms, while brokers in Fiji call upon the resources of the regulatory agency.

After initial disputes about the MKT tactic were settled, more brokers on the GSE used it over the next few weeks. Some brokers, however, did not understand the technical details of how to use the tactic properly, which depended upon the broker time-stamping and listing the buying and selling orders in the proper sequence.[20] On one occasion, a broker listed orders in the wrong sequence. Another broker, who had no affected orders, checked the tickets and pointed out the error. This second broker stated, "Brokers should be watching each other. We are each other's keepers. When I use the MKT order, I do it right. I want to make sure others do it right." The broker is not expressing a sense of competition—that the broker wants to make sure others "do it right" so that he can make sure to not lose any trades—but is enforcing a norm and educating other brokers in the proper use of the technique. This sense of norms and tutelage also highlights an element of status involved in proper execution, witnessed by a conversation between two brokers:

> Broker B: Which did you do first [stamp and post the buy or the sell]?
> Broker A: No, I looked. *What kind of broker do you think I am?* When I time-stamp, I look at both tickets and make sure.

Broker B, who had made an error using the technique in the previous trading session, was rebuilding status by demonstrating a more complete understanding of how and why the sequencing of orders matters. Broker A's response indicates that competence and status, rather than proving that the technique and the trade were proper, were the main concerns. Neither the broker who "wants to make sure others do it right" nor Broker B were directly affected by the potentially offending orders, yet they commented on them. In this regard, while there is a concern that the procedure used is correct within the rules, the consciousness of these rules is strongly mediated through status and practice norms, as they reflect on the "kind of broker" others think one is.

In contrast, brokers in Fiji used technical rule violations as a more direct part of their competitive toolkit by alerting regulatory

[20] For example, if the broker wanted to bypass another broker's selling order and there were no buying orders on the trading board (which was the most common scenario), the broker would have to first stamp and list the order to sell at market. After this order was listed, the broker could then list the buying order at the desired transaction price. If the broker were to reverse the sequence of the orders, the buying order (stamped and listed first) would match the selling order that the broker had wished to bypass.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

officials at the CMDA. Thus, when a brokerage firm learned that a competitor had accidentally sold a larger quantity of shares than the competitor had, the firm tipped the CMDA. These actions can cause some short-term problems for the firm that is investigated and are also a means by which to "spoil the identity" (Goffman 1959) of the competing broker, perhaps bringing a greater degree of scrutiny in the future. Thus, allegations occur even when there may be no clear rule violation. When one firm was upset about the manner in which a competing broker sold shares to raise the cash position for a client, the firm complained to the CMDA that the broker was engaged in market manipulation. While the CMDA investigates complaints that are backed with evidence, an official noted that "too often, brokers talk to [a CMDA official] on the floor [of the SSE]. That's competition and rivalry." Investigations, even absent any finding of wrongdoing, can have a significant impact on a firm.

The differences between how status is implicated, how sanctions are applied, and how arguments are framed relate to the more fundamental difference between internal, floor-based norms in Ghana and the external rule orientation in Fiji. In both instances, there is an attempt to have a sanction applied to the violator. In the case of the brokers in Ghana, this attempt is through impugning the competence and status of the brokers vis-à-vis the other brokers. Compliance, therefore, is not necessary for the sake of following law, but for individuals to uphold their character within this situated field. In Fiji, however, the attempt to sanction invokes the more formal process of a regulatory agency investigation. Such efforts are not concerned with the status of brokers amongst brokers but may be attempted to harm the status of the competing firm with the regulatory agency. Thus, while brokers in Fiji may want to illustrate compliance to other brokers, the rationale behind this presentation is to avoid unwanted regulatory attention, rather than to uphold one's character in the eyes of one's peers.

How Brokers Express Trading Norms

In both markets, brokers have substantial influence on the prices of clients' orders and, as a result, subsequent trades. Brokers have interests in presenting the market as a stable place to invest to a public that is not accustomed to financial volatility and in maintaining their share of the market. Within this environment, certain norms of how to trade have formed, particularly in relation to price declines (Larson 2001).

On the GSE, brokers used to be expected to "restore the price" of a company's shares if they bought or sold these shares at a price lower than the previous closing price, particularly in the case of

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

large, block trades. Brokers would restore the price, creating a trade by listing orders to buy and sell a small number of shares (typically one hundred, the minimum size of a trade to change a price) to bring the closing price in line with the previous day's closing price. Under the new trading system, the norm of restoring the price was violated when a broker needed to match a large buying order with a large selling order at a price 2% below the previous close. To do this, the broker first had to supply shares to an open order to buy shares at the previous closing price. When other brokers saw the trading, they became upset. The reactions were swift: "Now they [the shares] have come down. You have to take the price back up" and "Push the price up." When these simple commands did not work, the brokers shifted tactics. One broker stated, "We are learning. You should have reserved one hundred [shares] out of that and closed it at [the previous closing price]." Another broker reinforced this lesson by stating, "If they had bought one [hundred shares fewer] and the rest at [the previous close], that would be fine." When even these comments did not achieve the desired result, one broker announced to all the other brokers, "They are going to go home and they are not willing to do anything about it. . . . They don't care." No broker, other than the broker who engaged in the trade, expressed an opinion that differed from the general negative assessment. Away from the floor, two brokers expressed that they had no problem with the trading. The strength of the floor norms is demonstrated in that one of these brokers was one who was complaining on the floor—such an expression was possible only in a private interview (whether or not it was sincere).

When the broker in Ghana violated the norm of restoring the price, the reaction of the other brokers was immediate and vocal. The matter-of-fact commands from the other brokers to bring the price up demonstrate that the norm was unproblematic in their eyes, despite explicit prohibitions against false trading and market manipulation in both the trading rules and the SIL.[21] When the initial attempt to alert the broker to the duty to restore the price was unsuccessful, the other brokers undertook it as their duty to educate the broker as to how the trade really should have happened, offering an opportunity to repair the reputation of the

[21] Section 123 of the Securities Industry Law reads:

> A person who effects, takes part in, is concerned in or carries out, either directly or indirectly, two or more transactions in securities of a body corporate which are transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilizing the price of securities of the body corporate on a stock exchange in Ghana with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate commits an offence.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

trading broker, who could align the action as a simple mistake. When even this was not successful, the other brokers resorted to a shaming tactic to sanction the broker ("they are not willing to do anything about it . . . they don't care"). While the "offending" broker could have sought protection by claiming a defense that the trading rules established that the trade had to happen in this manner (which would have been a true statement), this was not the case. In response to the other brokers' comments, the trading broker responded, "We had to amend the order so many times. You should accept that you do not understand the situation." Instead of using the rules that supported the actions in this situation, the broker appealed to other brokers to accept the trading as excusable due to the circumstances. Further, the broker's claim that others did not understand was not concerning the trading rules, but the particular situation of the clients for whom the broker was trading.

In Fiji, there was a similar norm to maintain stable prices in certain shares. In one instance, however, a broker had a client who needed a sum of money in a short time frame and gave the broker instructions to sell shares as low as 10% below the previous closing price. During trading, the broker ended up selling some of the shares 5% below the previous close, which is where the issue closed that day. After trading, the broker explained to others the situation of the client, giving an excuse for the violation of the norm. More telling, however, was the reaction of another, newer broker who said in response, "Don't worry. I'll make sure the price goes up on Monday." After the inexperienced broker was out of earshot, one bystander (an official of the regulatory agency) said, "That was a very stupid thing to say." In recounting the story later, the initial broker stated that the new broker's comments showed a lack of skill, since a "good" broker may make sure the price goes up but not say anything about it publicly.

The importance of rule orientation among the brokers in Fiji is also evidenced by the explicit focus on the trading rules that would be expressed in the brokerage offices—particularly when brokers were violating the rules. While I was with a brokerage firm, a broker had prepared orders for that day's trading under the assumption that this broker would gain recognition on the trading floor prior to competing brokers and be able to transact a number of buying and selling orders at one price; however, at the call market, a competing broker was recognized first and listed an order to buy (that was not filled) at a different price, preventing the broker from listing the prepared orders. Rather than place the orders and trade against the competing broker, the broker simply held the orders for the next session. Knowing that the CMDA could check specific order forms and understanding the applicable rules

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(orders must be placed at the next call market after receipt), the broker said,

> Don't fill in the bottom [of an order form] until you are ready to place the order. Sometimes, the [inspector from the regulatory body] says you got this order on this date and you did not place it until this other date. . . . [To prevent this, you should] put the date here that you take it to the board.

The broker knew that not placing the orders is a violation and that the CMDA may well discover it. To minimize the likelihood of discovery, the broker must have sufficient awareness of the rules and, thus, know that the date on an order form should be the same date (or one day earlier) as the order is placed on the board.

The difference in rule consciousness between the two sets of brokers is quite apparent. Knowledge of these rules is part of the cognitive frame used by the brokers in Fiji in preparing and processing orders and in trading on the exchange, particularly when the brokers use formal rituals only to comply. Such compliance, however, requires formal silence on the trading floor about the norms that violate the rules. Certainly, this rule consciousness is related to the more constant presence of the regulatory authority in Fiji as compared to Ghana; however, brokers themselves reproduce this orientation toward the formal rules in their practices of competition and measures of status. The broker who openly expressed the price norms in Fiji was seen by colleagues (and regulators) in a manner similar to the broker in Ghana who violated the norm of restoring the price. When trading norms are violated in Ghana, the attempt is made to educate or shame, keeping the norms within the trader-based group. In Fiji, this role of education and shame is transferred to the regulatory body.

Conclusions

We can better understand the impact of regulation on market behavior if we incorporate insights from neo-institutional and legal consciousness theories. Regulation is involved in constructing fields of action. As such, regulation shapes the environment in which economic actors are embedded. Regulatory law, however, is indeterminate, being constructed within the field that it is to regulate (Suchman & Edelman 1997; Edelman, Uggen, & Erlanger 1999). The manner in which this ambiguity is resolved shapes the structure of legal consciousness in the field of action. As a result of this structure of legal consciousness, actors incorporate and use understandings about disputes and behavior in their actions in that field.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

This theoretical model applies to the implementation of securities industry regulation in Ghana and Fiji. Despite formal similarity in powers and duties, there are substantial differences in how regulatory activity has been constructed. The CMDA has been actively involved in stock exchange activities, using a transaction-processing approach to regulation. The SRC has been more removed from the daily operations of the stock exchange, using an auditing approach to regulating the market and market participants. The different approaches reflect the history of regulatory establishment, with Ghana's regulatory agency established a number of years after its stock exchange. Neither regulatory approach should be held to be more correct or more effective than the other. Both agencies uncover some rule violations, but miss others. Both agencies identify and respond to instances of serious misconduct—such as fraudulent selling of securities and unauthorized trading of customer money—in an efficient and effective manner.

However, the difference in regulatory approach impacts the manner in which market participants are embedded in the market by creating differences in legal consciousness within the fields of action. Brokers in Ghana have developed stronger, internal norms that are openly expressed on the floor of the stock exchange, while brokers in Fiji are oriented more toward formal rules. The difference in orientation creates a difference in the structure of market practices and competition between brokers in Ghana and Fiji. While the trading rules in the two markets are similar, differences in the extra-competitive tactics emerge as a result of the differences in floor norm and formal rule orientation. Disputes that arise during trading are recognized, framed, and addressed differently based on the orientation of the brokers. In addition, these differences in orientation shape the understandings of the brokers about competence, status, and the legitimacy of changes in trading practices, as brokers assess each other's performance and relative merit based on standards derived from their shared understandings of and orientation toward law.

The difference in the structures of legal consciousness between these fields is consistent with research that suggests that the impact of an institution within any particular social field is associated with the presence of representatives of the institution (Heimer 1999). In particular, the more constant presence of regulatory officials in Fiji has been associated with a greater influence of formal legality on the field of trading activity on the stock exchange when compared to the field of trading activity in Ghana. Over time, though, it may well be that such a presence need not be necessary to sustain the shared consciousness of typical actors in the field. Through

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

institutional structuration, actors create and reproduce cultural expectations, governing principles, and organizational norms (Suchman & Edelman 1997). In Fiji, brokers reproduce the formal rule orientation in challenging the stock exchange's interpretation of a rule or complaining to the regulator about a technical violation of the rule. Indeed, over time, as the interpretation of Fiji's regulatory rules crystallizes, enforcement activities by the regulatory agency may well decrease, as market participants internalize the discipline of these rule-oriented norms (Phillips & Grattet 2001). Similarly, by drawing on broker-centered floor norms, education, and shaming to respond to disputes and violations, brokers in Ghana reproduce the distance of the regulatory agency.

The conceptualization of legal consciousness as a feature of a field of action enhances the theoretical understanding of the processes by which legality is institutionalized. This theoretical advancement broadens our understanding of how individuals and organizations within a field conceive of disputing and compliance. Rather than beginning from the assumption of the applicability of law, researchers may examine the manners in which the legal consciousness typical in a field of action pose compliance as a necessity or disputes as worth pursuing. Further, this conceptualization enhances our understanding of how legality applies to relations between actors within a particular field in matters such as when to dispute and how to frame such disputes. In this manner, legal consciousness can be understood as an emergent structure within a social field.

By understanding legal consciousness as an emergent structure within social fields, one gains insight into how legality influences processes that occur in these fields. The emergent legal consciousness shapes social relations between participants. For instance, markets can be understood as social structures developed to overcome uncertainty by stabilizing relations among a set of actors (White 2002). Shared understandings, including legal consciousness, develop and are institutionalized within these market structures, impacting the operation of the market and the potential for change in the market. Legal consciousness influences the status and attributed competence of a participant, how others interpret and evaluate the participant's actions, and the potential for a challenger to be seen as legitimate and to possibly become an incumbent market leader. In markets and other social fields, institutionalized legal consciousness provides stability within the field as well as the potential for producing change. The orientations and understandings of law shared by actors within that field—or the institutionalized legal consciousness—are part of the dynamic of that field.

https://doi.org/10.1111/j.0023-9216.2004.00065.x Published online by Cambridge University Press

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