CONVERGENCE OF THE DISCIPLINARY PROCESSES OF ACCOUNTING ORGANIZATIONS?

A COMPARISON BETWEEN THE UNITED STATES AND FRANCE

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ABSTRACT

A number of studies have attempted to compare modes of regulation of the accounting profession in different countries. Because their wide scope, most of these studies don’t achieve the level of insight given by local researches. Therefore, it appears necessary to focus on one of these topics. This paper presents a comparison of the disciplinary process of the accounting profession of two countries considered as extremely different: the United States and France. Baker et al. (2005) studied the differences in regulation of the accounting profession (especially the one of statutory audit) in these two countries. They found that the preponderant modes of regulation were a mix of “associationism” and “legalism” in the United States, while a mix of legalism and corporatism in France. If this interpretation seems mostly accurate, the paper suggests that this classification is not exactly true when considering the disciplinary process of the accounting profession in the United States and in France. As a matter of fact, it appears that beyond differences, those countries are fairly close in matter of the power of the State within the disciplinary process, as well as in the nature and the number of disciplinary sanctions taken against public accountants and auditors.

Key words: Disciplinary process, France, United States, Profession
INTRODUCTION

After financial scandals such as ENRON, WORLCOM, PARMALAT, or ELF AQUITAINE, the confidence of the public in companies’ reporting has been shaken. The accounting profession plays a major role in both the establishment of the financial statements and if necessary their revision afterwards. The confidence of stakeholders is therefore greatly dependent on the credibility of the accounting profession. This credibility is based on both the moral character and the technical competence of the professionals. Professional ethics depends upon the belief of a Code of Conduct and on the enforcement of the code through sanctions imposed upon those who disrespect the code. Technical competence is achieved through formal education such as what is learned in college, as well as continuing education, and informally by maintaining an awareness of the changes in professional standards.

Governments and professional accountants have been working on the restoration of the public confidence in the market place, and in both Public Accounting and Statutory Audit. This has led to the issuance of new laws (Sarbanes-Oxley Act in the United States, Financial Security Law in France, Companies Bill in the United Kingdom, Kon Trag and Bilanzrechtsreformgeset in Germany). The swiftness and effectiveness of government intervention raises a question regarding the modes of regulation of the accounting profession.

A number of researcher’s have studied various aspects of the regulation of the accounting profession in different countries. Local studies provide an insight that cannot be achieved by comparative studies. A comparative study tends to have too general a focus. However, comparative studies are very useful in that they help the reader in gaining a broad understanding of concepts present in a number of countries To overcome the difficulties with both a forms of study it appears necessary to compare countries on a narrow field. This paper therefore focuses on the disciplinary process of the accounting profession. As we highlighted earlier that it is a major aspect in the search for public confidence in public accountancy. This study will examine the discipline of accounting professionals by examining France and the United States.

We begin with a review of the studies regarding discipline of the accounting profession and then proceed to a brief overview of the history of the profession. We will then present the characteristics of the disciplinary processes of both France and the United States. This will include an examination of:

- Who can initiate a case;
- When appeals to a case are possible;
- How the courts function;
- What punishments professionals are subject to;
- How cases are publicized; and finally;
- What are the number of disciplinary cases initiated and the number of sanctions imposed.
1. THE DISCIPLINE IN THE ACCOUNTING PROFESSION

Local research studies such as the ones of Loeb (1972), St. Pierre and Anderson (1984), Parker (1994), Thomas and Seaman (1996), Robertson and Hawkins (1999), Moriarity (2000), and Bédard (2001) focused on precise aspects of the regulation of the accounting and audit profession in one single country. While Robertson and Hawkins (1999) prescribed changes to Certified Public Accountants’ self-regulation, St. Pierre and Anderson (1984) analysed the factors associated with lawsuits against Public Accountants. They looked at the legal aspect of regulation through the study of court decisions during the 1960s and 1970s. Moriarity studied the level of sanctions imposed to Certified Public Accountants (CPA’s). He focused on the disciplinary sanctions applied by the American Institute of Certified Public Accountants (AICPA) to its members. Parker again used the national level of study (1994) in order to determine whether the disciplinary procedures of the Australian profession reflected the role of ethics codes in the search for the private interest of the accounting profession.

To study the enforcement of ethics in the accounting profession in the United States and Canada many authors have examined how individual states has imposed sanctions for ethical violations. Loeb used the disciplinary files of the State Society and State Board of a large Midwestern State. Thomas and Seaman (1996) also based their study on the violations of the Code of Professional Conduct of a State Board for Public Accountancy (State of Texas). Finally, Bédard (2001) informed the reader on the discipline of the accounting profession in Québec, using the data of the Québec Chartered Accountants’ professional association.

Beside Robertson and Hawkins (1999), all the authors listed above focused on the disciplinary aspect of the accounting profession in one single country. The data furnished are therefore very informative and quite exhaustive, which provides the reader with precious information unavailable in international studies having a wide scope. Blij et al. (1998) compared the disciplinary practices of auditors in both Germany and the Netherlands.

This paper attempts to overcome the problem of lack of information associated with most international studies, while at the same time providing the useful insights given by local researchers. We decided to focus on one aspect of the accounting regulation, the disciplinary process, and then compare it between two given countries (the United States and France).

We have seen that a number of authors have studied the disciplinary aspect of the accounting profession. When observing the data used by the authors (Figure 1), we see that they focus on different levels of the regulation. That is on the sanctions given by different organisms: State courts (civil and criminal), professional societies (ex: AICPA, State Societies, disciplinary sanctions at the society level), and State Boards (disciplinary sanctions at the state level, through State organizations). Different data is used to study the same subject.

We are left to wonder what are the different organisms involved in the disciplinary process, and which level of study is the most adequate to get an understanding of the disciplinary practices of the accounting profession. In order to answer these questions, it is necessary to describe the actors of the disciplinary process. Then to explain, using tangible factors such as
which organism holds the ultimate sanction to professionals that is the right to withdraw licensure to practice, why one level is more interesting than the other.

Figure 1. The Discipline in the Accounting Profession

<table>
<thead>
<tr>
<th>Level</th>
<th>Organisation</th>
<th>Law Courts</th>
<th>Professional Associations</th>
<th>Public Organizations</th>
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In 2002 in the French accounting review *Comptabilité Contrôle Audit*, Bédard, Baker and Prat Dit Hauret (see also Baker, 2005) studied the regulation of statutory audit in Canada, the United States, and France. They used the analytical framework developed by Puxty, Willmott, Cooper and Lowe in 1987. This framework used to study accounting in multiple countries is based on the exploration of social order models by Streeck and Schmitter (1985). These authors identified three principles of social orders: Market, State and Community (Puxty et al., 1987, p. 276). As interpreted by Puxty et al., these principles can be articulated in the context of accounting regulation, which is really at the intersection of ordering principles (Puxty et al., 1987, p. 277).

Bédard, Baker and Prat Dit Hauret (2002), leaving aside the principle of Community, make use of four ideal-types of regulation according to the respecting weight of Market and State to define the regulation of the statutory audit profession in the three countries studied: “Liberalism”, “Associationism”, “Corporatism” and “Legalism”.
After a brief review of these ideal-types of regulation\(^1\), the authors describe for each of the three countries: the organisms implicated in statutory audit regulation, along with how audit is regulated, which relates to licensure requirements, norms development, practice regulation, and professional liability.

The authors show the importance of state and private organizations in both France and the United States. They further suggest that professional associations such as State Societies and the AICPA have disciplinary powers over CPAs in the United States. To prove this statement the authors note the disciplinary sanctions given to members that are published on the professional societies’ websites. The authors define the disciplinary liability of the American Accounting profession as “associationist”. The French profession is considered to be a mix of “corporatism” and “legalism”. This classification suggests that the role of public organizations is major in France and nonexistent in the United States.

Indeed, the authors do not insist on the fact that public organizations at the State level, (State Boards for Public Accountancy) do also have the power to sanction their members. At this point, it is essential to note that membership to this State organization is made mandatory by the fact that the professional is a CPA. As noticed by an investigator of the New York State Education Department’s Office of the Professions (NYSOP)\(^2\), the NYSOP, which acts as the State Board for Public Accountancy, “has the right to license and the right to withdraw this license”. Then, membership is voluntary for professional organizations, whereas in order to practice, registration with State organizations is mandatory. Therefore, the population under the supervision of State agencies is consists of the entire number of CPAs licensed and registered in that State.

In addition, if a professional gets expelled from the voluntary organization, from the professional society (AICPA, or State society) he belonged to, he is still able to practice as a CPA in the State he is licensed, until he eventually gets his license terminated by the State organization. In the United States, the State level is therefore the ultimate level where a CPA

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\(^1\) The four ideal-types of regulation are defined by the authors (in Baker et al., 2005, p. 4-5) as follows:
- Liberalism: “The regulation of statutory auditors is based on the market for audit services”.
- Associationism: “Regulatory activities are effectuated through professional associations that represent and defend the interests of their members”.
- Corporatism: “The state not only permits the creation of professional associations, it integrates the associations into its regulatory apparatus”.
- Legalism: “Regulatory power resides in the hands of the state, and it operates pursuant to rules and regulations promulgated by the state”.

\(^2\) Interview that took place in August 2004
can be excluded from the accounting profession. The role of governmental agencies is therefore, as in France, a major one in the regulation of the Accounting Profession.

Those two facts, entire population representation and power to withdraw license of practice, allows us to use the data issued from the disciplinary measures given by the NYSOP to New York CPAs. Choosing the New York State Board for Public Accountancy as surrogate for the study of the disciplinary process in the United States is based on a couple of issues. First, the history of the accounting profession in the United States, finds its roots in the State of New York. Also, Moriarity (2000) found that during his study, New York State had the largest number of disciplinary items (103). This makes the State of New York one of the most active States in term of sanctioning accounting professionals. Therefore, it is very logical to consider the State of New York as a surrogate for the United State in studying the disciplinary process.

For France, the choice of the data to study is quite obvious. The public and the private aspects of the professional regulation are integrated within the same organizations: the Conseil Supérieur de l’Ordre des Experts-Comptables for Public Accountants and the Compagnie Nationale des Commissaires aux Comptes for Auditors.

2. COMPARISON OF THE ORGANIZATION OF THE ACCOUNTING PROFESSION’S DISCIPLINARY PRACTICES IN FRANCE AND IN THE UNITED STATES

The question of what makes a profession has been studied by sociologists including Hall (1968) and Abbott (1988). Based upon an analysis of the professionalization literature, Hall provides the following attributes, which are usually associated with a profession:

• Creation of a full time occupation.
• The establishment of training that reflects a knowledge base.
• Formation of professional associations.
• Formation of a code of ethics.

In the US, the term CPA comprises both accountants working in public accounting firms and employees in non accounting firms. In France, those employees are not included in the accounting profession. In this sense, the French Profession is more a profession in the meaning of Hall. In this study the use of the CPA profession is based upon those individuals in public practice, and does not include those working for non-accounting firms.

2.1. The roots of the accounting profession and its disciplinary laws

France

French accounting organizations can be traced throughout history, like in the Communauté des maîtres écrivains et arithméticiens jurés experts de la ville de Paris, established in 1704 and mentioned by Cocault et Pinceloup (quoted by Ramirez, 2001, p. 393). The first major accountants’ organization was created in 1881 and was entitled Société de Comptabilité de France. Then the Compagnie des Experts-Comptables de Paris was established in 1912,
which promoted for professionals to be both competent and independent (Ramirez, 2001, p. 398).

It was not before 1927 and then in 1937 that diplomas (brevet d’Expert-Comptable and Brevet professionnel comptable) were created (Burlaud, 1998, p. 659). The French Government waited until 1942 and then 1945 to regulate the accounting profession and establish the qualification of Expert-Comptable and rules governing all the aspects of the profession (Ordonnance issued on September 19th, 1945).

The 1945 ruling reveals an important implication of the Government in the regulation of accounting profession. It is important to note that at this time the development of a code of ethics is mandated to the profession by the French Government. In France the Code of Ethics includes technical competence. The motto of the profession is in terms of Science, Consciousness and Independence (CSOEC, 2004, p.36), which clearly recalls the guidelines based on competence and independence given by the Compagnie des Experts-Comptables de Paris in 1912.

Like American CPAs, French Public Accountants and Auditors are mostly the same people. As a matter of fact, any Public Accountant can register as an Auditor. It is interesting to note that the idea of a corporation of Auditors was raised by a law issued in 1966 (Loi n°66-537 du 24 juillet 1966), only forty years ago. That led to the creation of the Compagnie Nationale des Commissaires aux Comptes in 1969 (Décret n°69-810 du 12 août 1969).

The question of accounts’ revision can be traced back to the legislation of 1863. This law was the first one making private companies mandate one or more Auditors (Castell et Pasqualini, 1995, p. 6). The role of auditing has been successively regulated, especially with the law of July 24th, 1867, and the decree of August 8th, 1935.

**United States**

Accounting professionals, who where known as “expert-accountants” in the 19th century, became organized as a profession during the same time period as the French profession. In the British Isles, the development of accounting organizations spread from 1853 to 1919. Major factors explaining the development of accounting organizations in western countries include industrialization, trade and financial panics. According to Parker (1994 b), the need for accounting professionals in Britain followed the “growth of large-scale organizations and in particular of the railways, the development of the limited liability company, the high rate of insolvency, auditing, costing and tax services” (p. 595). The organization of a profession in the United States would then be natural considering the intense trade between Britain and the United States during the end of the 19th century. In addition, most accountants in the United States came from England or Scotland (Markham, 2002, Vol 1., p. 333). Markham also suggests that financial panics (panics of 1857, 1877 and 1884 in the United States; Panama Mania in France) gave the opportunity to accounting professionals to get organized and recognized as a profession (p.332).

The American Accounting profession became organized through two organizations: the New York Institute of Accountants (NYIA) and the American Association of Public Accountants (AAPA), which were respectively incorporated in 1882 and in 1886. The latter was created by
New York accountants and in turn was to serve the purpose of enhancing the reputation of the accounting profession at the national level (Edwards, 1954, p. 58).

The search for public confidence led these two organizations to seek legal recognition and the licensing of Public Accountants from the Regents of the University of the State of New York. In 1896, the qualification of Certified Public Accountant was passed as law by the State of New York (Zeff, 2003, p. 190). With this early legislation regarding the accounting profession, we can see that the place of the State in the regulation of the accounting profession goes much far back in the case of the United States than in France. The French Government waited almost half a century after the Law of 1867 before regulating accounting with the decree of 1935.

The quest for legitimating the accounting profession was a main factor in the development of codes of ethics. The first code was issued in 1905 as part of the bylaws of the newly formed American Association of Public Accountants (from the merger of the NYIA and the AAPA) and contained only two rules (Preston et al., 1995, p. 512-515).

Preston et al. (1995) explains how the rules of the code of ethics of the American accounting profession evolved to become more numerous and precise. This contrasts with the philosophy of early codes, which rules “were deliberately limited to emphasize the moral inherent in the accountant’s character” (Preston et al., 1995, p. 528).

Today, CPAs have to follow the ethics codes of the professional organizations to which they belong as members. In addition, CPAs have to follow the rules of the State Board for Public Accountancy of the State in which they are licensed. In the State of New York, the Constitution of the State and the statutes passed by Legislation give the Board of Regents of the University of New York the authority to appoint and examine a board for each of the forty-four regulated professions. This is how the Office of the Profession (NYSOP) acts as a State Board for Public Accountancy for the Board of Regents especially in terms of disciplinary matters.

Therefore, by being regulated by the Regents of the University of New York, the accounting profession has to follow the Education Law and the Rules of the Board of the Regents. One of these rules (Part 29, §29.10, Article 12) is for CPAs to follow the standards promulgated by the profession (i.e. AICPA) and the Generally Accepted Accounting Principles issued by the Financial Accounting Standards Board (FASB). After meeting the education standards required by the NYSOP, a candidate has to sit for an examination, which is designed by the AICPA. But in the end, the profession and the State regulators are inextricably linked, an individual is licensed by the NYSOP. This implies that this agency has exclusive authority to withdraw a professional’s license after disciplinary investigations. This penalty can be imposed if one is found guilty of professional misconduct as defined by the Part 29 of the Rules of the Board of Regents, the Article 130 of the Education Law and the part 70 of the Regulations of the Commissioner (the Commissioner is appointed by the Board of the Regents of the State of New York).
2.2. Characteristics of the disciplinary processes in France and in the United States

2.2.1. Initiating cases

France
The rulings relating to the profession of Public Accountant do not provide detailed information about whom is able to issue a complaint and initiate a disciplinary case (Décret n°70-147 du 19 février 1970). However, the majority of the cases initiated against Public Accountants emerged from reviews conducted by the different regional accounting councils. The frequency of those reviews is not mandated by the regional councils’ internal rules. However, they cannot take place more than once every three years (Lemaignan A., 1989, p. 40 and 423). If a Public Accountant is suspected of carelessness in his professional practice and he did not follow the code of conduct of the profession (Code des devoirs professionnels), then the accountant is subject to the disciplinary powers of the regional disciplinary chambers.

Official texts are more precise concerning who can initiate a disciplinary case against an Auditor. According to the Annual Report of the Haut Conseil du Commissariat aux Comptes (H3C, 2005, p. 91):
• the Presidents of a regional company,
• the President of the national company,
• the Minister of Justice,
• the State Prosecutor, and
• the General State Attorney

Can initiate a disciplinary case at the regional level. Since the new law relating to financial security (Article L.821-10 of the Code de Commerce, annexe 2), the President of the newly formed AMF (Autorité des Marchés Financiers, the French SEC) can refer to the General State Attorney requesting disciplinary measures to be taken. In addition, the Presidents of regional companies as well as the President of the national company can order disciplinary actions after professional reviews help detect professional malpractices. Disciplinary actions can also be mandated by a peer, the audited society, or by any of its stockholders (CNCC, 1996, p. 9).

United States
In the State of New York, the approach appears to be less procedural than is the case in France. Anybody, a professional or not, can report a complaint to one of the New York regional offices of professional discipline. A complaint form is accessible on the internet on the NYSOP website. Any client, or peer can directly report the misconduct of an accounting professional.

Professional misconduct can also be revealed by peer reviews as prescribed by the AICPA. Those reviews are conducted under the authority of the AICPA or by the State CPA Society of a specific State (NYSSCPA for the State of New York). A professional, who is found guilty of malpractice, is then subject to disciplinary measures at the societies’ level, as far as

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3 Examen d’Activité Professionnelle
these societies are responsible for disciplining their members. The AICPA and the NYSSCPA can refer the cases to the NYSOP. It is however not systematically the case. The measures taken by the AICPA are published in the *Journal of Accountancy*. By studying the decisions published, we notice that a significant number of accounting professionals expelled from the national professional association can still practice as CPAs in the State of New York.

### 2.2.2. Possibilities of appeal

**France**

A Public Accountant who is sanctioned at the regional level can appeal the case to the national council’s disciplinary chamber. The same is true for Auditors, who can appeal to the newly formed Haut Conseil du Commissariat aux Comptes.

**United States**

No possibility of appeal is given at the NYSOP level. However, it has raised the question of what happens to license restoration after revocation. After waiting for three years at a minimum, an individual can request for license restoration by proving to the Board of Regents that “he or she is worthy of the privilege of having a professional license” (NYSOP’s website: Disciplinary Actions).

### 2.2.3. Composition and functioning of the disciplinary courts

**France**

It is interesting to note that in France, at the national level, when a sanction is appealed, the court has more individuals representing the public rather than professionals. This is different than how process exists at the regional level.

The regional chamber, related to Public Accountants’ discipline, is composed of one representative of the Government (the President of the appeal court of the region, who is designated by the Minister of justice) and two members of the regional council of Public Accountants. As we move to the appeal level (national), the Government has more impact as it is represented by three out of five members. The Minister of justice designates one President from any of the courts of appeals. The Minister of finance and economy mandates the last two representatives of the Government. The remaining members are Public Accountants (Article 49 de l’Ordonnance du 19 septembre 1945, modifiée par la Loi n° 68-946 du 31 octobre 1968, article 19).

The audit profession has less prominence in the case of the disciplinary process as compared to Public Accountants. Auditors represent one out of the six members of the regional disciplinary chambers, instead of two out of three for the Public Accounting profession. For the auditor’s disciplinary hearing, three of the other members are judges, and one is a University Professor. The law is not very precise concerning the last member. It only states that it should be an individual qualified in management issues (Article 8, Décret n°69-810 du 12 août 1969, modifié par le Décret n°85-665 du 4 juillet 1985).

The security law of August 2003 transferred the role of disciplining to the national level with the change from the national company of auditors (CNCC) to the High Council for Audit
H3C, as compared to the CNCC, is independent from the profession and comprises an important number of public representatives. The disciplinary court of appeal for Auditors consists of three judges, the President of the newly formed Autorité des Marchés financiers, one representative of the Minister of finance and economy, one University Professor, three individuals qualified in matters of management and three Auditors (article L. 821-3 du Code de commerce).

**United States**

In New York, the disciplinary hearing shall be conducted by a panel of three or more members (subtitle 6510 of the Article 130 of the Education Law of the State of New York). The panel contains a minimum of:

- Two members of the State Board for Accountancy,
- One public representative of the State Board for Accountancy.

This panel is appointed by the executive secretary of the State Board, who also designates the chairperson. Finally, the Education Department can appoint an administrative officer, admitted to practice as an attorney in the State of New York. The administrative officer is non-voting, but assures that the procedures are respected, and the report drafts are signed by the chairperson. The majority of the State Board members are accounting professionals. We can conclude that beside the chairperson and the administrative officer, professional accountants represent 2/3 of the disciplinary panel.

In both countries the disciplinary measures appear to be heard by a panel where the profession is quite well represented under the strict supervision of representatives of the State. In France, representatives of the Government sit at the disciplinary chambers. In the State of New York, every decisions taken by the disciplinary panel is reviewed by the Board of the Regents.

**2.2.4. Punishments**

**France**

A Public Accountant found guilty of professional malpractice, brings upon himself a variety of sanctions (Ordonnance issued on September 19th, 1945, Title IV, Article 53) which can be as follows:

- a warning,
- a reprimand,
- a blame,
- a suspension for a limited time,
- an expulsion from the professional organization, associated with the impossibility to practice as a Public Accountant.

In addition, Professionals sanctioned can not be elected as members of any of the regional councils of the Ordre des Experts Comptables. According to the Décret n°69-810 issued in 1969, and modified May 27th, 2005, an auditor who did not follow the code of conduct of the profession (Code de déontologie de la profession de commissaire aux comptes) is subject to the same sanctions described above for Public Accountants, besides the reprimand.
United States
The Board of Regents of the State of New York investigates and prosecutes professional misconduct through the New York State Education Department’s Office of the Profession. Licensees, who are found guilty of professional misconduct, are subject to a range of penalties that includes:
- censure,
- reprimand,
- fines (up to $10,000 for each violation),
- suspensions and/or probationary terms.
- In case of more severe misconduct, the professional can have his/her license revoked.

In the following section we will see that the impact of the punishments on professionals is dependent on the publicity made of the sanctions.

2.2.5. Publication of cases

France
As far as the public accounting profession is concerned, no publicity is made around the sanctions given to professionals. In addition, decisions are disseminated differently if they have been treated at the national or at the regional level.

If an appeal is made to a case, the national discipline chamber is in charge. Case law is maintained, up to 1990, at the accounting’ documentation center⁴. This information is also spread through the accounting review Revue Française de Comptabilité for the years 1989 to 1992 (Revue Française de Comptabilité, 1992, p.19). Cases after 1992 are no longer published. However, the information about the number of disciplinary cases is found in the CSOEC’s annual reports. The ethics committee of the CSOEC also publishes statistics, in the professional journal SIC⁵, from both the regional chambers and the national chamber.

The information relating to disciplinary measures taken against Auditors is communicated widely. Disciplinary cases are published on a single sheet of paper and added to the Bulletin National des Commissaires aux Comptes, a professional publication received by all the auditors in France. Even if this is confined within the profession, the publication of the information is contrary to the accounting profession. The cases reported here are anonymous and refer to both regional and national (now the H3C) chambers’ decisions.

Only decisions that lead to the suspension or the revocation of membership of an accounting professional or an auditor are published outside the two professions. This information is accessible to anyone in the Bulletin officiel des annonces civiles et commerciales (Article 110 du Décret du 12 Août 1969, modifié par le Décret n°2005-599 du 27 mai 2005).

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⁴ The Bibliotique (Public Accounting Profession’s documentation center) is located in Paris and is accessible to anyone.

⁵ To this day, most reports can be attributed to Alain Lemaignan (Lemaignan A., 1999, 2001)
It appears that the impact of the punishments on professionals is dependent on the publicity made of the sanctions. Sanctions such as reprimands or warnings do not have a major influence (if any) on the professionals. On the contrary, a professional who is prevented from practicing cannot make a living anymore. The principle of the fine in the United States is based on the same idea that financial loses are dissuasive. In addition, the fact that only decisions referring to the prevention from practicing are published, confirms that less severe disciplinary measures do not have an impact neither financial, nor on the reputation of Public Accountants or Auditors.

**United States**

Final decisions taken by the Board of Regents of the State of New York are available on the NYSOP’s website (for the period 1994 to present). One can access those decisions by determining a specific time frame, or the name of a particular professional. The publication of the disciplinary cases is not anonymous as it is in France. Anybody is able to know about the disciplinary file of any professional in the State of New York, as long as the professional has been subject to disciplinary measures. Cases, which resulted in a dismissal, are not published on the web.

St. Pierre and Anderson (1984, p.242), suggest that the accounting professional has been “in trouble” if the case was heard, “regardless of the outcome”6. The CPA’s reputation is impaired by the publication of the disciplinary case he was involved in, even if he was not found guilty of professional misconduct. This impaired reputation could then lead to a decrease in the “firm’s ability to attract new clients or to keep existing clients” (Chaney and Philipich, 2002, p.1244).

Contrary to France, any measure, whatever its gravity, is published on the website of the NYSOP, with the name of the professional. The cost of minor measures such as warnings or reprimands, is therefore, much more important on American professionals than on French professionals.

**2.2.6 Number of cases**

**France**

The number of cases treated by regional discipline chambers averages 66 cases a year7. If we consider a population of Public Accountants of about 15,000 members (2001 Annual Report of the CSOEC), this indicates that less than 0.5% of the population was summoned to appear before the regional discipline chambers. Only 0.3%8 of the professional members of the OEC had disciplinary sanctions taken against them at both the regional and national levels (Duperret and Lemaignan, 1996, Lemaignan, 1999).

In her study, Garmilis (2003) collected the disciplinary cases treated by the regional and national chambers of discipline of the auditing profession in France for the period 1991 to 2004. This study reveals that the regional chambers dealt with 179 cases, on which 82 professionals appealed to the national chamber of discipline. When taking the year 1998 as an

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6 Emphasis in the original text
7 This estimate is computed on the following information : 398 cases for 6 years (from 1993 to 1998)
8 This estimate is computed on information based on the professional publication SIC (1996 and 1999)
example, we notice that 17 cases where treated by the regional chambers, which resulted in 0.07% of sanctioning on a population of auditors composed of 13,237 individuals (Annual Report of the CNCC, 1998).

**United States**

For the period 1994 to 2004, the Board of Regents took an average of 23 disciplinary measures per year relating to misconduct in the accounting profession of the State of New York. On a population of NY registered CPAs and PAs of about 35,000 (as of January 1st, 2002, according to the NYSOP’s website), this represents less than 0.07% of the accounting professionals that were subject to disciplinary measures. We do not, however, have accessibility to the number of professionals whose disciplinary cases resulted in a dismissal. As the cases are not anonymous, their publication could harm the professionals implicated in disciplinary cases, while they were not found guilty of any professional misconduct.

In comparing the results in the two countries, it is important to note that the Board of Regents does not deal with fee disputes, as is the case with the OEC and the CNCC disciplinary chambers. For the period 1991-2003, the regional chambers of discipline of the French auditing profession treated 44 cases relating to relations with clients, which mainly refers to fee disputes. This represents almost 18% of the misconduct cases. No sanction is generally applied to those cases. Mainly, the disciplinary chambers state the amount to be paid by the client. This information greatly reduces the percentage of the professionals involved in disciplinary cases within the accounting and auditing professions in France. If we disregard the issue of fee disputes when analysing the French data, the number of professional sanctions is 0.07%. This is basically the same rate of sanctions found in New York State.

The characteristics of the disciplinary processes described above, (Initiating cases, Possibilities of appeal, Composition and functioning of the disciplinary courts, Punishments), are summarized in the following figures:

- France, public accounting– Figure 3,
- France, auditing – Figure 4,
- New York - Figure 5.
Figure 3. The disciplinary process of the public accounting profession in France

(Based on Desouther C. and Lemaignan A., 1995)
Figure 4. The disciplinary process of the audit profession in France

Complaint received by:
- regional council
- Public prosecutor

The representative of the government at the regional chamber of discipline

Investigation

Report’s submission within the next 2 months

No follow up

- Discharge
- Warning
- Blame
- Suspension (5 years maximum)
- Expulsion
+ Eventual ineligibility to the regional councils

No case initiated

Appeal (suspensive) to the High Council initiated by:
- the professional sued
- the plaintiff
- the President of a regional council
- the President of the national association
- a representative of the government
- the President of the AMF

Summons to appear 15 days prior to the hearing
+ Accessibility to the file

Appointment of a reporter

Hearing

Notification of the decision within 10 days

1 month

- Confirmation
- Repeal of the sanction given by the regional chamber
- Referral to the regional chamber

Appeal (non suspensive) to the Council of State

2 months

(Appeal to the) Council of State

(Based on CNCC, 2005 and H3C, 2005)
Figure 5. The disciplinary process of the accounting profession in the United States

- Regional office of the NYSOP
- Main professional office of the NYSOP

Investigation

- No follow up
- Administrative handling
- Referral to the State Attorney General for criminal prosecution

No disciplinary case initiated

- Discharge
- Censure
- Reprimand
- Fines (up to $10,000)
- Suspension
- Expulsion
+ Probation terms

Hearing by the NYSOP

Report of the panel

Final decision by the Board of Regents

Notification of the decision

(Based on the Education Law of New York State)
3. DISCUSSION

The study of the disciplinary process of the accounting profession raises the question of the place of the Government in the regulation of the American accounting profession. According to Wallace (1998, p. 47), the regulation of the accounting profession in the United States “is consistent with the market-based economy in the United States and a tendency not to centralize authority within the government setting”. In the same line, Bédard et al. (2002, p. 164) found that the preponderant system of discipline of the accounting profession in the United States was strictly based on Associationism. This means that the authors (Bédard et al., 2002, p.164) consider the disciplinary aspect of the regulation to be supervised by professional associations only.

As far as the disciplinary aspect of the regulation of the accounting profession is concerned, the study of the disciplinary process of the accounting profession finds these statements to be counterbalanced. We find that today, as in the past, the State of New York has been clearly involved in the regulation of the profession. Unless the State of New York revokes a professional’s licence the professional is allowed to practice in the State. The influence of the individual states weakens the role of the profession in disciplining its members. This power implies that in New York State the professional discipline of Certified Public Accountants can be defined in terms of Legalism.

The important role that the State of New York plays in disciplining the members of the accounting profession, suggests that the United States’ mode of regulation in terms of discipline is very close to the French model. Historically the accounting profession in America obtained recognition by the State. This granted the professional associations the supervision they sought in terms of licensing CPAs. In France, the right to practice as Public Accountants or Auditors is also regulated by law. Representatives of the government participate in the composition and functioning of the disciplinary procedures. Government representatives sit in the French chambers. In New York, all the decisions taken by professionals within the State agency (NYSOP) are reviewed by a panel of State representatives (Regents). Obviously the legal mode of regulation is the preponderant model regarding the discipline of the accounting profession in both countries. This becomes more evident with the creation of the Public Companies Accounting Oversight Board (PCAOB). This non-profit corporation was created by the Sarbanes-Oxley Act of 2002 (SOX) “to oversee the auditors of public companies” (PCAOB, 2003, p. 2).

In the United States there were concerns that consulting revenue fees were part of the problem with Arthur Andersen’s handling of the Enron audit. This lead to the SOX mandate that public accounting firms must separate Audit, and Consulting, and some Tax services. This separation of professional responsibilities is consistent with the French model that has long separated the professional accounting and audit functions.

Accountants and auditors like to proclaim themselves to be professionals. Apparently, the government views the audit of financial statements to be a public trust that can result in legislation controlling the role the auditor can play.
However, this government oversight which can be instituted by legislation is enforced by the disciplinary process. Some professionals do not follow the code of conduct predicted by the organizations mandated to regulate the practice of the profession (OEC, H3C, NYSOP). The study of the accounting profession’s disciplinary process in both countries indicates that the two countries are very close in terms of the nature and the number of sanctions given. To enforce the codes of professional ethics the three organizations even in different countries have a range of similar sanctions, varying from warning to exclusion.

Robertson (Robertson et al, 1999 p. 74) suggests that the sanction system in place is a preventive environment based on a compliance strategy. Both countries have their accounting professionals being sanctioned at a similar rate approximately .07%. In light of this insignificant number of professionals sanctioned for malpractice, the disciplinary system of the accounting profession is not based on a sanctioning strategy. A low rate of professional sanctions gives the impression that the practicing professionals are operating at a level of technical competency and high moral functioning. A problem with reaching this type of conclusion is that any improper conduct regarding financial statement audits can impact thousands of innocent investors, as was the case with some of the highly publicized financial scandals such as ENRON, WORLCOM, PARMALAT, or ELF AQUITAINE. Because of the large number of citizens that can be impacted by a rogue accounting professional government oversight and legislation is never far away.

A major difference between the two countries lies in terms of the publicity of the sanctions. Publication of the disciplinary cases is much wider in the United States which uses the internet. In France the publicity is spread only inside the profession. In addition the practitioner’s name is disclosed in NYS whereas, the publication is anonymous in France. Those two facts, in line with St. Pierre et al. (1984, p. 242), helped us conclude that sanctions have a more material impact on American CPAs than on French Public Accountants and Auditors. Material impact is defined as impaired reputation leading to business loss, according to Chaney et al. (2002, p. 1244). This statement is supported by the availability of fines in the United States, which can material in financial terms and most certainly dissuasive.

CONCLUSION

This study presented the major characteristics of the disciplinary process of the accounting profession in both France and the United States. This study finds that "Legalism" is a significant aspect of the American accounting profession’s disciplinary process. This finding is contrary to prior studies comparing the regulation of the accounting profession in the two countries, using the ideal-types issued from Puxty et al. (1987) (Bédard et al., 2001; Baker et al., 2005). The result is based upon the finding that France and the United States are very close in terms of the power of the State to discipline of the accounting profession. These countries are also very close when observing the outcome of the disciplinary processes. The disciplinary processes do not appear to be harsh nor harm the majority of practitioners. A small number of sanctions were given to professionals found to have not followed the Professional Code of Conduct. The small numbers involved implies that the professionals operate in preventive environment based upon a compliance strategy rather than functioning in a sphere oriented towards sanctions and unnecessary limits being placed on professionals.
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