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PREDATORY CAPITALISM, PRAGMATISM, AND LEGAL POSITIVISM IN THE AIRLINES INDUSTRY

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This paper examines three of the primary structures of thought and some of the situational circumstances that enable and constrain the actions of corporate leaders in the airlines industry. It argues that lawyers and corporate leaders who understand the law and the structures of power in America have a unique capacity to protect and enhance share-owner wealth. Three examples are used to propose a model of force relations in complex, high-stakes situations.

INTRODUCTION

In the U.S.A., the law imposes a fiduciary responsibility on corporate leaders to protect and enhance share-owner wealth. Corporate leaders use various means to achieve these ends. In complex, high-stakes situations, legal means may be used to achieve business ends. This paper argues that lawyers and corporate leaders who *understand the law and the structures of power in the U.S.A.* have a unique capacity to achieve business ends. This powerful resource can be and is used to protect and enhance share-owner wealth. For example:

> *Example 1: In 1993; Continental Airlines and Northwest Airlines sued AMR Corporation's American Airlines, the nation's largest airline, for $3 billion in damages. They charged that American used predatory pricing to try to run its two weaker rivals out of business in the summer of 1992. In response, American argued that the summer fare cuts—some as much as 50 percent—were only intended to lure customers.*
>
> *The jury found in favor of American. A judgement of predatory pricing requires the plaintiff to prove that: (1) the company is pricing its product at a loss and not just making a promotional offer; and (2) the company has a reasonable chance of ultimately making more money by destroying its competitors.*
>
> *It was estimated that the plaintiffs had spent slightly less than $10 million in arguing their claim, whereas American had spent at least $20 million on its defense. The case was one of the largest and most closely watched antitrust trials in 1993 (O'Brian, 1993).*

This paper will argue that historically contingent *structures of thought* and *situational circumstances*—representations of the social order—are implicit in this example and others like it. It will argue that they enable and constrain the legal actions that serve business ends. It will argue that they constitute the medium and the outcome of the actions they organize. And it will propose a model of force relations in complex, high-stakes situations.

The paper develops in four sections. First, it proposes a theoretical framework that shows how action and order are related. Second, it uses this framework to examine the primary

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structures of thought and some of the situational circumstances that enable and constrain the actions of corporate leaders in the airlines industry. Third, it proposes a model of complex, high-stakes situations in which escalating commitments of resources may lead to increasingly elastic legal interpretations, while elevating the significance of power and force relations in conflict resolution. Lastly, it summarizes the challenge for future research.

THE THEORETICAL FRAMEWORK

Action and order are two of the basic elements of all sociological thought (Alexander, 1982, 1988). Figure 1 counterpoises action and order vertically in a continuous loop. Action and order have reciprocal effects on each other, and these effects and their effects are counterpoised horizontally within the loop. The social order is an abstraction that is defined as structures of thought and situational circumstances.

Action

Action includes the capacity to act (a manageable perception) as well as action *per se*. Action has an ends–means (values) orientation. It is situated in geographic place and time. It is historically contingent. And it is generally routine; that is, most action is more or less unconscious.

Routine action tends to reproduce the structures of thought and the situational circumstances that organize it. Strategic action seeks to transform these structures and/or circumstances to fit a different value orientation. Such actions produce the intended, unintended, and unacknowledged outcomes that shape subsequent actions.

Order

Figure 1 argues that people's actions are enabled and constrained by the social order. More importantly, it argues that the social order is *the medium and the outcome* of the action it organizes (Giddens, 1984). That is, the social order enables and constrains human action, but it is also affected by the action that it enables and constrains. The circularity of this argument is the essence of the continuous loop in Figure 1; it has been widely debated and generally supported, but it cannot be verified empirically.[1]

Structures of thought—one aspect of the social order—can be variously defined.[2] Here they are defined as the 'deep' structures of a society. They operate at a more or less unconscious level of thought. They are evident in the actions of people; but actions can be deceptive, sometimes intentionally so.

In Figure 1, structures of thought are defined as value orientations. Value orientations identify individual and collective perceptions of reality. They define ends, they specify means, and they organize priorities. Thus, if reproduction is the primary objective of any species, then survival is the primary means to this end; and this ends–means perception sets priorities. Value orientations also include beliefs and attitudes. Beliefs identify what people accept as true or real. Attitudes are predetermined views on people and things, such as abortion, gender and race relations, politics, and religion.

There are different kinds of value orientations. First, there are those that are virtually universal and reflect the primacy of such things as survival and reproduction. Second, there are those that define national identities, such as the American Way, and reflect an indigenous blending of various philosophical views. Third, there are those that define the individual's role in common domains (e.g., Sunday school teacher (church), mother (family), and specialist in civil rights law (profession)).

Value orientations are normative and subjective phenomena; thus, they are difficult to describe. There are always different versions of and different views on the 'deep' structures of a society. However, it is possible to approximate the *central tendencies* and the *axes of variation* that characterize specific structures of thought. As Erikson (1976: 82) notes, 'The identifying motifs of a

[1] Giddens' 'duality of structure' argument has been widely debated. See, for example, Archer (1982), Bryant and Jary (1991), Callinicos (1985), Cohen (1986), Dallmayr (1982), Gane (1983), Gregson (1986), Mouzelis (1989), Poole and Van de Ven (1989), Pred (1984, 1986), Smith and Turner (1986), Thrift (1985), Urry (1982) and Wendt (1987).

[2] Psychologists have proposed a wide variety of internal constructs to explain the essentially unconscious information processing associated with human behavior; and in most cases, there is little or no neurological evidence to support these constructs (Barsalou, 1992). Nevertheless, such constructs seem to facilitate explanations of human behavior.

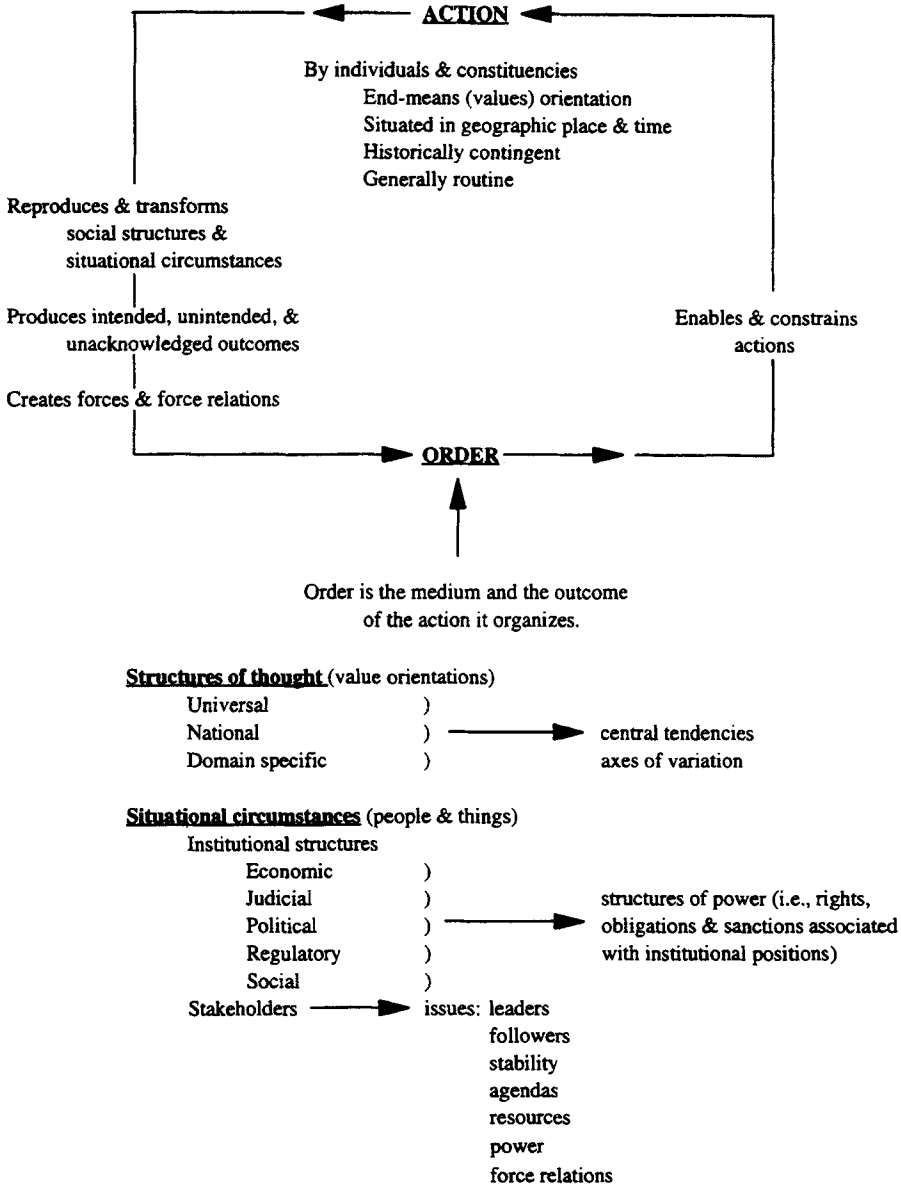

Figure 1. The theoretical framework

culture are not just the core values to which people pay homage but also the lines of point and counterpart along which they diverge.' Thus, in the U.S.A. one of the central tendencies is the American concept of a *civil society*. As Starr (1988; 35) notes:

> This concept has a rich history in Western political thought, most notably in the writings of Locke, Alexis de Tocqueville, and John Stuart Mill. It is grounded in ideals of citizenship under law; in freedom of speech, of the press, of assembly, and of worship; and in the protection of minority rights under majority rule. Above all, it holds that society is distinct from government and that government is but one of several institutions coexisting in a pluralistic social fabric.

However, a civil society means different things to different people. Thus, in the U.S.A. two contrasting views of a civil society define an axis of variation. As Kerlinger (1984: 16) notes, *American conservatism* emphasizes:

> the status quo and social stability, religion and morality, liberty and freedom, the natural

> inequality of men, the uncertainty of progress, and the weakness of human reason. It is further characterized by distrust of popular democracy and majority rule and by support of individualism and individual initiative, the sanctity of private property, and the central importance of business and industry in society.

Kerlinger (1984: 16) also states that *American liberalism* emphasizes:

> freedom of the individual, constitutional participatory government and democracy, the rule of law, free negotiation, discussion and tolerance of different views, constructive social progress and change, egalitarianism and the rights of minorities, secular rationality and rational approaches to social problems, and positive government action to remedy social deficiencies and to improve human welfare.

Situational circumstances—another aspect of the social order—include the people and things that are indigenous to a specific place and time. The airlines example suggests that there are two features of this environment that are significant: the institutional structures and the stakeholders.

Institutional structures are manifestations of the various structures of thought (value orientations) and the historical interactions of their advocates. Of particular interest here are the structures of power that are operating within and across these institutional structures (e.g., economic, judicial, political, regulatory, and social). *Structures of power* are reflected in the rights, obligations, and sanctions associated with specific institutional positions. Since people act in various institutional capacities, their actions and their capacity to act are in part dependent on the rights, obligations, and sanctions associated with their institutional position.

People who understand structures of power have the capacity to use the incumbent's governing structures of thought; the incumbent's perceptions of the rights, obligations, and sanctions associated with his or her position; and the incumbent's situational circumstances to influence his or her behavior. Thus, lawyers and corporate leaders who *understand the law and the structures of power in the U.S.A.* have a unique capacity to protect and enhance share-owner wealth.

Stakeholders are individuals or groups of individuals that affect or are affected by a situation (Freeman, 1984). These people vie to protect and enhance their interests. Their actions are a manifestation of their value orientations and the institutional capacities in which they act. This raises several issues. Who are the leaders and the followers? How stable are the coalitions? What are the agendas? What resources do the groups have? How much power do the groups have? What force relations link the various constituencies?

Power and force relations

Power is the 'capacity to promote or prevent significant change, even against opposition' (Lehman, 1988: 821).[3] To use power is to act on the actions of others or to display one's capacity to act on the actions of others. The *forms of power* can be variously defined. In essence, they range from physical force through authority and manipulation to rational persuasion (Wrong, 1988). They include the creation and management of expectations that promote or prevent change. The mobilization and use of power creates forces, which are variously linked in transitory relationships of unity, compromise, and conflict as the stakeholders maneuver for advantage. Thus, power is relational (Foucault, 1983):

> . . .power must be understood. . .as the *multiplicity of force relations* immanent in the sphere in which they operate and which constitute their own organization; *as the process* which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them; *as the support* which these force relations find in one another, thus forming a chain or a system, or on the contrary, the disjunctions and contradictions which isolate them from one another; and lastly, *as the strategies* in which they take effect, whose general design or institutional crystallization is embodied in the state apparatus, in the formulation of the law, in the various social hegemonies. (Foucault, 1978: 92 emphasis added).

Force relations tend to form in complex, high-stakes situations. A *complex situation* has various interpretations. It enables some stakeholders to justify expedient positions, while it enables other

[3] Power has been variously analyzed (e.g., Bachrach and Baratz, 1970; Ball, 1975, 1976; Barbalet, 1985; Callinicos, 1985; Clegg, 1975, 1979, 1989; Dahl, 1991; Dahrendorf, 1959, 1968; Debnam, 1984; Foucault, 1978, 1983; French and Raven, 1959; Giddens, 1984; Lehman, 1988; Lukes, 1974; Martin, 1977; Nagel, 1975; Pred, 1981, 1984, 1986; Wrong, 1988).

stakeholders to prolong a discussion of the issues and avoid actions that are costly. A *high-stakes situation* focuses stakeholders on protecting and enhancing their interests. It tends to elicit a resource commitment in proportion to the significance of the threat or the opportunity. And it may lead to an escalating commitment of resources that exceeds the expected benefits.

In sum, people's actions are enabled and constrained by the social order, which is the medium and the outcome of the action it organizes. Structures of power—the rights, obligations, and sanctions associated with institutional positions—are part of the social order. People who understand structures of power have the capacity to use the incumbent's governing value orientations; the incumbent's perceptions of the rights, obligations, and sanctions associated with his or her position; and the incumbent's situational circumstances to influence his or her behavior.

In complex, high-stakes situations people may use power—force, authority, manipulation, and rational persuasion—to achieve their ends. However, the use of power tends to create forces and force relations that produce the intended, unintended, and unacknowledged outcomes that shape subsequent actions. Thus, complex, high-stakes situations can be dangerous, unstable situations. The predictability of stakeholders' actions may decrease. And stakeholders may act in ways that are inconsistent with their value orientations or in ways that challenge the ethical and legal constraints of society.

AN ANALYSIS OF THE AIRLINES INDUSTRY

The first section proposed a theoretical framework that showed how action and order were related. This section extends the discussion. It examines three of the primary *structures of thought* and some of the *situational circumstances* that enable and constrain the actions of corporate leaders in the airlines industry. Figure 2 mirrors the discussion.

Situational circumstances

The Airline Deregulation Act of 1978 transformed a protected oligopoly into a highly competitive market in the U.S.A. It led to a host of new entrants and overcapacity, followed by vicious competition and consolidation. By 1993, the overcapacity remained (some 900 planes were parked in the desert Southwest); 20 percent of the capacity was operating under Chapter 11 protection; and foreign markets were becoming more price-competitive. The industry's losses were staggering: $3.8 billion in 1990, $2.3 billion in 1991, and $3.0 billion in 1992 (Standard & Poor's, 1994: A43).

Airlines provide a commodity service. They have relatively little control over price, except at airports where they have reduced or eliminated much of the competition (i.e., the 'fortress hubs'). Each seeks to be a low-cost carrier, and the primary cost driver is economies of scale. Economies of scale require large investments in planes and support facilities. This means high fixed costs; thus, capacity utilization (i.e., 'yield management') is critical. Given the excess capacity, cutting prices is one way to fill capacity.

However, price is not the only basis of competition. Some competitors use legal actions to exploit the structures of power and force relations in the competitive arena. Two additional examples amplify this point:

> *Example 2: In 1983, Continental Air Lines (CAL), led by Frank Lorenzo, asked its unions for reductions in wages and benefits. After several months of fruitless negotiations, CAL claimed insolvency and filed for reorganization under Chapter 11 of the Bankruptcy Code. CAL then asked the bankruptcy court to annul its union contracts, claiming that otherwise it would be forced to liquidate. The request was granted. Labor costs fell from 35 percent to 20 percent of operating costs, and CAL had secured a major cost (pricing) advantage over its union competitors.*

> *Example 3: In 1992, officials of the strongest airlines (i.e., American Airlines, Delta Air Lines, and United Airlines) led by American Airlines' Chairman Robert Crandall, attacked their weaker rivals by asking Transportation Secretary Andrew Card Jr. to withdraw the certification rights of airlines flying under Chapter 11 (i.e., Continental Airlines Holdings, Trans World Airlines, American West Airlines and Metro Airlines). Mr. Crandall argued that Chapter 11 gave these firms an unfair advan-*

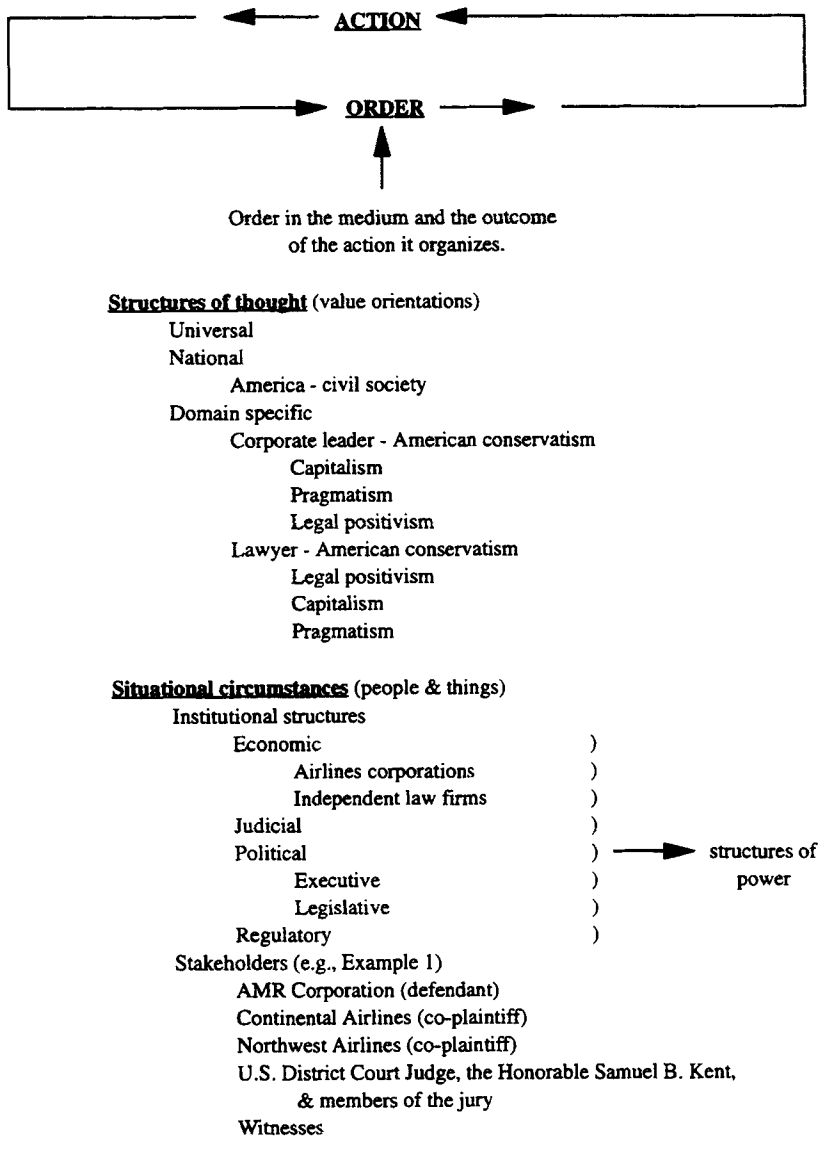

Figure 2. An analysis of the airlines industry

tage, since these carriers did not have to pay all of their debt, lease, or pension charges. Mr. Card held that revoking certification would be a wrongful intrusion of government.

Example 2 is a classic example of the use of legal means to serve business ends (i.e., to reduce the bargaining power of employees). Example 3 is a different example of the use of legal means to achieve business ends (i.e., to destroy or weaken competitors). Other examples would point to similar conclusions: the law, while it serves many interests, can be used to protect and enhance share-owner wealth. The next two sections explore this issue further.

Business structures of thought

This section examines two of the primary business structures of thought—capitalism and pragmatism—and some situational circumstances that enable and constrain the actions of corporate leaders in the airlines industry. In the competitive environment that emerged after deregulation in 1978, these value orientations became increasingly predatory.

A basic axiom of business holds that the cash generated by the business must exceed the cash used by the business. Beyond that, all businesses have two objectives: to make money and to grow

the business. In addition, the law imposes a fiduciary responsibility on corporate leaders to protect and enhance share-owner wealth. Thus, capitalism and pragmatism are the dominant structures of thought in U.S. business. They are the medium and the outcome of the actions they organize. They operate at a more or less unconscious level of thought. And they are normative and subjective phenomena.

Capitalism is a complete value orientation. It establishes ends, means, and priorities; and it is based on specific beliefs and attitudes. Today, it is based on perhaps six basic principles (Prybyla, 1989):

C1. There must be a relatively free market for goods and services and the factors of production (e.g., land, labor, capital). The market must be relatively accessible to buyers and sellers, and the transactions must be essentially voluntary.

C2. Market places must reflect the relative scarcity of goods, services, and factors, including the marginal social costs (private and external) to producers and the marginal social utilities (use values) to buyers. Decision making pivots on market prices; thus, prices are the central allocative mechanism of the market.

C3. There must be relatively free competition among buyers and sellers. With few exceptions, buyers and sellers must have alternatives.

C4. There must be rational (maximizing or at least satisficing) economic behavior by buyers and sellers. Sellers pursue profits by creating value for buyers (the capitalist ethic), while buyers pursue value relative to price.

C5. Private property rights must be dominant. Individuals or freely constituted groups of individuals must have the right to use and transfer property to earn income.

C6. Socioeconomic intervention mechanisms must exist to promote stable economic growth and full employment and to protect the quality of life. These include *macroeconomic management mechanisms* (e.g., fiscal and monetary policy tools); *redistributive mechanisms* (e.g., social security, unemployment, and workers' compensation insurance); and *regulatory mechanisms* (e.g., departments of communications, education, environmental protection, health and welfare, and transportation).

Pragmatism directs the choice of means. It focuses on the practicality and usefulness of ideas. It was part of a general revolt against the intellectual and closed systems views of nineteenth-century Idealism. In keeping with the theory of evolution, it posed an open systems view of action and order that reflected a survival-of-the-fittest mentality. It emerged in the 1860s as American industry began a period of rapid change and growth, became the most influential philosophy in America during the first quarter of the twentieth century, and is still a dominant philosophy in business and law. Pragmatism reflects five basic themes, which are relevant to business and variously supported by its advocates:

P1. It emphasizes the elastic nature of reality and the practical function of knowledge as an instrument for adapting to reality and controlling it. Interpretations of reality are based on personal standards of efficiency and utility. Human existence is basically concerned with action, and change is an inevitable condition of life.

P2. It emphasizes the priority of actual experience over fixed principles and theoretical reasoning in the investigation of issues.

P3. It holds that the meaning and value of an idea lie in the consequences of its use.

P4. It holds that truth is the verification of an idea in practice. Crudely put, the truth is 'what works.'

P5. It interprets ideas as instruments and plans of action. It emphasizes the functional character of ideas.

Capitalism and pragmatism have a special meaning in the airlines industry. The deregulation of routes was intended to create freer markets for airline services (C1) and it did, but industry consolidation led to the development of 'fortress hubs' and captive feeder links that reduced buyers' options. The deregulation of prices (C2) was intended to reduce the cost of airline services and it did, but industry overcapacity has led to recurrent price wars that have devastated profitability, delayed the replacement of ageing planes, and raised real safety issues. Deregulation was

intended to create more competitive markets (C3) and it did, but the competitive strategies were forged in an increasingly predatory environment in which fewer and fewer competitors survived.

Competitor behavior was rational (C4), and it emphasized the elastic nature of reality and the practical function of knowledge as an instrument for adapting to reality and controlling it (P1). Successful competitive strategies were often ones that changed the competitive 'rules' or raised the specter of the irrational and therefore unpredictable competitor (P2, P3, P4, and P5). The most dangerous competitor is the one who can effectively strike in the most seemingly irrational and unpredictable manner and who can effectively change the rules of the game. In sum, the 'return to capitalism' in the airlines industry in 1978 and the emergence of extremely competitive conditions led to a predatory environment of the most pragmatic kind.

Accordingly, some managers developed *predatory management styles* as a means of survival. Other managers developed predatory management styles to prosper and grow. For example, in 1980, Texas Air Corporation (TAC)—headed by Frank Lorenzo—set up New York Air, a nonunion carrier, to challenge Eastern Airlines on its profitable Boston–New York–Washington route. The direct attack on Eastern and the increasingly competitive conditions in the industry eventually took their toll. In 1986, TAC purchased a debt-plagued Eastern for $300 million. According to Mr. Lorenzo, Eastern's net asset value was about $2 billion. Eastern asked its unions for reductions in wages and benefits. The unions refused, and TAC began to dismantle Eastern. Most of the assets (e.g., Eastern's computer-reservation subsidiaries) were sold to other TAC entities, and some of the transactions were ethically and legally challengeable. An East Coast shuttle was sold to Donald Trump for $365 million. Eastern's unions retaliated along a series of fronts. But on January 18, 1991, Eastern Airlines ceased operations: 18,000 employees faced an uncertain future.

In sum, the actions of some managers in the airlines industry have been predatory. Their intentions were to 'consume' their competitors and to destroy any opposition to protecting and enhancing share-owner wealth. The actions of these managers suggest several propositions:

1. Managers who use predatory management styles believe that the *institutional structures* of society can be used to protect and enhance share-owner wealth. Thus, the executive, judicial, legislative, and regulatory institutions are used to serve corporate interests.

Examples 1, 2, and 3 show how the judicial and the regulatory institutions might be used to protect and enhance share-owner wealth. The judicial and regulatory institutions are also linked to the executive and legislative institutions, which can also be used to protect and enhance corporate interests.

Thus, Abramson (1989: A16) noted that 'Mr. Lorenzo. . .gave at least $100,000 to the Republican Party last year' and sketched some of the institutional linkages established by TAC. For example, former government officials working for TAC included (a) Philip Bakes, President and CEO of Eastern Airlines, former aide to Democratic Senator Edward Kennedy, and former chief counsel for the Civil Aeronautics Board; (b) Rebecca Range, Vice President of Government Affairs for TAC and former assistant to President Reagan for public liaison; and (c) Clark Onstad, Vice President of TAC and former chief counsel for the Federal Aviation Administration. Former TAC executives working for the government included (a) Frederick McClure, President Bush's assistant for legislative affairs and the White House's top lobbyist and (b) Mark Johnson, spokesman for House Speaker James Wright, a Texas democrat. Board members among TAC's corporate holdings included (a) Thomas Boggs Jr., democratic lawyer-lobbyist and member of Eastern's board and (b) John Robson, former Chairman of the Civil Aeronautics Board and member of Continental's board. At the time, Mr. Robson's appointment as Deputy Treasury Secretary was pending before the Senate.

2. Managers who use predatory management styles believe that the institutional *structures of power* can be used to protect and enhance share-owner wealth. They see action and the use of power as associated with specific people acting in specific institutional capacities. Thus, the incumbent's behavior can be influenced by the incumbent's value orientations; the incumbent's perceptions of the rights, obligations, and sanctions associated with his or her position; and the incumbent's perception of his or her situational circumstances.

Examples 1, 2, and 3 pivot on the perceptions

of a district court judge, a bankruptcy court judge, and a transportation secretary, respectively. Their perceptions were almost certainly instrumental in the strategies used. The success of these ventures depended on the abilities of the corporate leaders to *sense and utilize a potential congruency of perceptions between themselves and other stakeholders.*

Thus, in Example 2, Continental Airlines initiated bankruptcy proceedings in late 1983. The case was situated in an era of increasing conservatism in America. The Carter Presidency had progressively abandoned the liberal policies of its earlier years and had turned toward economic conservatism. In 1980, the Reagan platform had argued for (among other things) massive deregulation and the appointment of conservative judges to the federal bench (Gold, 1992). In 1981, President Reagan dismissed the air traffic controllers, further reinforcing the declining power of organized labor in the U.S.A. And in late 1983, CAL filed for Chapter 11 protection in federal court. The presiding judge was the Honorable R. F. Wheless Jr., who had been appointed to the bench in 1982. The evidence, albeit circumstantial, suggests that Mr. Lorenzo may have *sensed and utilized a potential congruency of perceptions between himself and other stakeholders* that in retrospect enabled CAL to end several months of fruitless negotiations with its unions.

3. Managers who use predatory management styles prefer win–win strategies (or at least the appearance thereof); but they recognize that stakeholders can be created, exploited, and destroyed to protect and enhance share-owner wealth, albeit with the appropriate cosmetics.

Examples 1, 2, and 3 create and exploit stakeholders (e.g., lawyers, judges, witnesses, and regulatory officials) with the intent of destroying or weakening other stakeholders (e.g., competitors and unions). However, the intentions are appropriately cloaked.

4. Managers who use predatory management styles see the interpretation of ethical principle as guided by perceptions of the 'greater good'—protecting and enhancing share-owner wealth—and the 'worst outcome'—failing to fulfill one's fiduciary responsibility. The significance of this role morality is accentuated by the hostility of competitive moves in a very competitive and unprofitable industry.

Examples 1, 2, and 3 describe competitive moves that are intended to create irreparable damage. In Example 2, substantial damage was done—the unions were destroyed, people lost their jobs, salaries and wages were reduced—but labor costs fell from 35 percent to 20 percent of operating costs.

The predatory management styles of these managers suggest that their view of human relations is based on a *sociology of conflict.* A sociology of conflict emphasizes the conflictual, unstable nature of society. It argues that power and conflict are indigenous to the allocation of scarce resources; and it holds that members of society are bound together by differing structures of thought (value orientations), such as U.S. conservatism and U.S. liberalism.

A sociology of conflict focuses on structural relationships of unity and conflict, distributions of power, and relations of dominance. It sees radical change (evolution or revolution) as inevitable and manageable (Dahrendorf, 1959, 1968; Lockwood, 1956, 1964; Rex, 1961). It is primarily concerned with radical change, structural conflict, modes of domination, contradiction, emancipation, deprivation, and potentiality (Burrell and Morgan, 1979).[4]

In sum, capitalism and pragmatism are two of the primary business structures of thought that enable and constrain the actions of corporate leaders in the airlines industry. In the competitive

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[4] By contrast, a *sociology of order* emphasizes the ordered, regulated nature of society. It holds that members of society are bound together by collectively held values and norms. It acknowledges the existence of conflict and change, but neither conflict nor change is a central issue. Thus, a sociology of order is primarily concerned with the status quo, social order, voluntary consensus, social integration and cohesion, solidarity, need satisfaction, and actuality (Burrell and Morgan, 1979).

The two sociologies encompass a continuum of views on the nature of human relations in society. They are associated with an 'order–conflict' debate that arose in academic sociology in the 1950s, peaked in the 1960s, and faded in the 1970s.

However, Bernard (1983, 1985) argues that the two sociologies have a long and contentious tradition. He contrasts the sociologies (order or conflict) of Aristotle and Plato, Aquinas and Augustine, Hobbes and Machiavelli, Locke and Rousseau, Comte and Marx, Durkheim and Simmel, Parsons and Dahrendorf. The works of these men echo the structures of thought (value orientations) and situational circumstances that governed them. They observed similar events but explained them in different terms. The perceptual differences have no empirical resolution: the assumptions on which they are based reflect the selective views of their authors.

environment that emerged after deregulation in 1978, these value orientations became increasingly predatory. Corporate leaders in the airlines industry use power—authority, manipulation, and rational persuasion—to fulfill their fiduciary responsibility to the share owners. The mobilization and use of power creates forces that are variously linked in transitory relationships of unity, compromise, and conflict as the stakeholders maneuver for advantage. In complex, high-stakes situations, these linkages—force relations—produce the intended, unintended, and unacknowledged outcomes that shape subsequent actions.

Legal structures of thought

This section examines legal positivism, which is the dominant structure of thought in the U.S. legal profession. It shows how legal positivism has created institutions and structures of power that can be used to serve (as well as oppose) business ends. And it shows how legal positivism, capitalism, and pragmatism inextricably link the professions of business and law in the airlines industry. There was a synergy in the melding of these value orientations. The melding gave business another means of protecting and enhancing share-owner wealth, and it enabled the Bar to achieve real power and prestige.

Until about the 1790s, the common law was used to resolve private disputes; and the professions of business and law coexisted in an adversarial relationship. However, in the 1790s, this situation began to change; and the rate of change soon accelerated. Two things happened. First, the courts began to use the common law to promote economic development. For example, by 1825, the common law was beginning to recognize that economic growth was dependent on free competition (C3); and the courts generally held that competitive injury was not compensable. Second, the professions of business and law began to shed their traditional animosities. They soon forged an alliance and focused their efforts on economic development. This alliance, for the first time, enabled the Bar to achieve real power and prestige (Auerbach, 1976; Horwitz, 1977).

About the 1840s, the rate of change slowed; and the law entered a period of increasing formalism that lasted through the end of the century. By 1860, the U.S.A. was entering a period of rapid economic development that was initially based on laissez-faire capitalism (C1–C5) and the belief that the market system would allocate rewards fairly based on individual effort and skill. However, the forces of immigration, industrialization, and urbanization created disturbing social tensions; and the equity argument of laissez-faire capitalism weakened with the centralization of corporate power in America (Horwitz, 1992).

With the establishment of the Interstate Commerce Commission in 1887, the tide of opinion was turning against legal formalism and laissez-faire capitalism. The Progressive (liberal) critique of the early 1900s and later the Realist critique of the 1920s and 1930s argued that legal formalism and laissez-faire capitalism were failing social constructs in an increasingly pragmatic and socially conscious America. The result was increasing government intervention. The New Deal legislation of the 1930s modified American capitalism (C6) and substantially changed the American legal system. As Shamir (1993; 365) notes:

> The New Deal was based on an intensive effort to introduce statutory rules and administrative regulations as primary sources of law, at the direct expense of the common law-based judicial process. This effort marked an important departure from traditional ways of doing legal business in the United States and signaled the relative decline of the federal judicial system as the main engine of legal development.

Nevertheless, U.S. business and the legal profession soon turned these new institutional structures to their advantage. Some people argued that they 'captured' the agencies that were intended to regulate them (Horwitz, 1992).

Legal positivism is the dominant structure of thought in the American legal profession. Legal positivism holds that the law is established by the accepted political authorities and processes in a civil society. In America, it holds that the law is established by recognized legislative, judicial, and regulatory authorities and processes. Historically, select members of the business and legal professions have been able to influence the development of the law to their mutual advantage. Thus, lawyers and corporate leaders who *understand the law and the structures of power in the U.S.A.* have a unique capacity to protect and enhance share-owner wealth.

The philosophical antecedent of legal positivism is *positivism.* Positivism is a dominant philo-

sophy of the industrialized world, which holds that all knowledge regarding matters of fact is based on the observation and measurement of the 'positive' data of experienced and that beyond the realm of fact is the realm of pure logic and mathematics. It originated in the French Enlightenment and eighteenth-century British Empiricism, and it first assumed its distinctive form in the writings of the French philosopher Auguste Comte (1798–1857). It generally does not concern itself with the consideration of subjective and normative phenomena, such as individual and collective values, natural rights, or moral judgements. Hence, the positivist ethic tends to be utilitarian (i.e., the greatest good for the greatest number). Positivism is worldly, secular, antitheological, and antimetaphysical.

Legal positivism in the U.S.A. has created institutions and structures of power that can be used to serve (as well as oppose) business ends. It has also created some conflicting moral obligations. For example:

1. The American legal system is an *adversary system.* Thus, the parties to the dispute argue their conflicting views of fact and law before an impartial and relatively passive judge and/or jury, who decide who gets what. The burden of proof is on the disputants, and the law is primarily shaped by lawyers (Jorstad, 1990; Shamir, 1993; Wilkins, 1990).

As Examples 1 and 2 demonstrate, the adversary system is an institutional means to corporate ends. A corporate leader can use the adversary system to destroy or weaken an opposing stakeholder or to protect the corporation from the predatory actions of an opposing stakeholder.

2. The adversary system is based on *due process rights* protected under the 5th and 14th Amendments, that ensure individuals and corporations 'personal autonomy, the effective assistance of counsel, equal protection of the laws, trial by jury, the right to call and to confront witnesses, and the right to require the government to prove guilt beyond a reasonable doubt and without the use of compelled self-incrimination' (Freedman, 1992: 467). (The effective assistance of counsel is assured in most criminal cases in most states; but there is no similar protection in civil cases, except as provided for by contingency fees. However, the assistance of counsel is available on a fee basis to large corporations in the airlines industry.)

Due process rights protect all rights in a civil society. They are part of the institutional means that can be used to serve corporate ends. For example, expert witnesses can be called to support or rebut the claims of the disputants.

3. The *ethical codes* of the legal profession require lawyers to act as *zealous advocates* for their clients. A lawyer is expected 'to keep the client informed, safeguard the client's secrets, provide competent and diligent services at a reasonable fee, and abide by the client's wishes concerning the purposes of the attorney–client relationship' (Wilkins, 1992: 815). Zealous advocacy implies a role morality, which is distinct from the common morality as it might be reflected in utilitarian, rights, feminist (ethics of care), or other moral codes (Ellmann, 1990; Jorstad, 1990; Simon, 1988).

Zealous advocacy is part of the institutional structure of the adversary system. Zealous advocacy is used to serve corporate ends, and its effects are compounded by market forces. In highly competitive markets, economic necessity encourages lawyers to pursue zealous advocacy to its ethical and legal limits.

The ethical codes of the profession also require lawyers to act as *officers of the court.* A lawyer should not 'counsel or assist the client in fraudulent conduct, file frivolous claims or defenses, unreasonably delay litigation, intentionally fail to follow the rules of the tribunal, or unnecessarily embarrass or burden third parties' (Wilkins, 1992; 815). However, as Terrell and Wildman (1992: 415) note, 'the legal system often seems to be viewed today as simply one more tool to be manipulated as necessary in service to a client.'

The ethical codes impose *conflicting moral obligations* on lawyers. Thus, 'a lawyer confronting an ethical dilemma has two arguably contradictory normative frameworks from which to construct a "legal" response' (Wilkins, 1990: 479). As a result, the Model Rules of Professional Conduct (1983) and the Model Code of Professional Responsibility (1980) 'enforce only minimum standards of behavior (and) sanctions are imposed only for the most egregious forms of misconduct' (Terrell and Wildman, 1992: 414).

4. The most important *structures of power* are embedded in the daily operating environment of the lawyer's practice. As Wilkins (1992: 817)

notes, 'The formal and informal relationships lawyers form with colleagues, adversaries, and state officials produce unique and effective norms, procedures, and sanctions.' In the airlines industry, effective lawyers extend these relationships into the executive, legislative, and regulatory structures.

While *legal positivism* is the dominant structure of thought in the U.S. legal profession, *capitalism, pragmatism,* and *legal positivism* inextricably link the professions of business and law in the airlines industry for two reasons. First, some corporate leaders are lawyers. Second, capitalism and pragmatism are dominant structures of thought in any lawyer's life, whether he or she is employed by an airlines company or by an independent law firm that serves the airlines company. There are three reasons for this:

1. *The market for legal services is highly competitive.* Lawyers that work in or for the airlines industry earn their living in a market that is subject to competitive forces. The management practices of the independent law firms mirror those of the corporations they serve, but long-term client relationships are difficult to maintain. Large corporations are doing more of their legal work in-house and are using outside firms for specific projects, particularly litigation (Carr and Mathewson, 1990). As a result, the competition for clients among independent law firms has intensified. Thus, as Taibi (1994: 1555) notes, 'firms may be more willing to cut corners or to take inappropriate risks, perhaps even break the law, to acquire or keep this transactional work.' In the employer's vernacular, 'if he or she can't do it, there are lawyers that can.' Thus, as Terrell and Wildman (1992: 415) note, 'The pressure on lawyers today is to portray themselves as "can do" people, dedicated to making every possible effort to achieve the goals set by the client.'

2. *The large corporate client is a knowledgeable buyer.* Such clients 'usually have a considerable baseline of experience from which to formulate the goals of the representation and to evaluate lawyer performance' (Wilkins, 1992: 817). As Terrell and Wildman (1992: 415) note, 'The reality is that clients now exercise remarkable control over their lawyers—the "good" lawyers, the ones to whom clients will return with additional work, are those who get things done, not prevent things from happening.' This may include keeping the client out of court, a statement that points to the value of a lawyer that not only understands the law but understands the structures of power in the U.S.A. as well.

3. *In complex, high-stakes situations, the law is potentially elastic.* The first criterion of pragmatism emphasizes the elastic nature of reality and the practical function of knowledge as an instrument for adapting to reality and controlling it. The law is potentially elastic for several reasons. First, there may be several sources from which a legal position might be developed (e.g., common law; federal, state, or local statutes; or regulatory edicts). Second, legal doctrines often contain vague or ambiguous language susceptible to multiple, inconsistent interpretations (Wilkins, 1990: 478). For example, the legislative intent of Chapter 11 of the Bankruptcy Code was to allow management to restructure the business into a viable economic unit. It was not to be used to terminate labor contracts (e.g., Continental Airlines) or to avoid personal injury claims (e.g., Manville Corporation—asbestos). Third, the application of the law to the facts may vary depending on the level of the argument (i.e., general case or specific instance). In sum, as the client's stature and ability to pay increase, the law becomes increasingly elastic; or at least it is made to appear so.

In sum, select members of the business and legal profession have nurtured a symbiotic and synergetic relationship over the past 200 years. Three structures of thought (value orientations) have shaped and been shaped by the evolution of this alliance: capitalism, pragmatism, and legal positivism. This alliance has also shaped and been shaped by the development of the U.S.A. Legal positivism has created institutions and structures of power that can be used to serve (as well as oppose) business ends. It has also created some conflicting moral obligations that have been accentuated by economic forces.

A MODEL OF FORCE RELATIONS

The previous section examined three of the primary *structures of thought* and some of the *situational circumstances* that enable and constrain the actions of corporate leaders in the airlines industry. It extended the discussion of action and order in the first section.

This section extends the related discussion of power and force relations. In sum, it proposes a model of force relations that may have application beyond the airlines industry. Thus, it sketches a generic situation in which legal means may be used to protect and enhance share-owner wealth. It discusses the primary stakeholders—corporate leaders, trial lawyers, and trial witnesses—in Example 1. It outlines the nature of the stakeholder governance structures. It argues that the quest for competitive advantage seems to be based on *intuitive processes of analysis that are highly responsive to situational circumstances and grounded in a sociology of conflict.* And it explains the path dependencies inherent in a model of force relations.

Attack and counter attack

Examples 1, 2, and 3 describe complex, high-stakes situations. In essence, they are various manifestations of a generic management situation, that is:

> *Generic Situation: A corporate leader sees an opportunity to use legal resources to harrass, weaken, or destroy a competitor. The corporate lawyers and senior managers are consulted. The legal actions are planned, the costs and benefits associated with the various scenarios are assessed, and the risks are weighed. If the evaluations are favorable, the attack is launched. If the action is convincing, it may succeed.*
>
> *Alternatively, the competitor strikes back. The intent is to destroy the expectations of the attacking firm—to change the projected distribution of costs and benefits and to increase the risks associated with the attack. The hostilities escalate until a settlement is reached or they are resolved in an appropriate institutional forum.*

The attacking firm has the opportunity to secure a first-mover advantage. It can choose *how* it is going to attack and *where* it is going to attack. Thus, it has the initial choice of strategy, which limits the nature and scope of its resource commitment. It may also have the initial choice of jurisdiction. And it may be able to use outside legal counsel on a contingent-fee basis.

By contrast, the defendant has to prepare for all possible contingencies; and this preparation is a direct hourly cost. Average hourly billing rates in large cities (e.g., Dallas and New York) may range from $125 to $210 per hour for associates and $220 to $350 per hour for partners. In Example 1, the plaintiffs spent slightly less than $10 million arguing their claim, whereas American spent at least $20 million on its defense. In addition, the attack diverts corporate resources that might otherwise be used to protect and enhance share-owner wealth in the firm's markets. Thus, the attacking firm has the potential to do irreparable damage.

The choice of jurisdiction—forum shopping—may be a very important issue in some cases. For example, Himelstein (1995) reported that a study of federal cases from 1979 to 1991, published in the fall of 1995, found that plaintiffs won early victories in 73 percent of the suits that remained in the court in which they were originally filed. In transferred cases, plaintiffs won just 26 percent of the suits. Himelstein (1995) also relates how Delta Air Lines, in a 4-year $2.5 billion dispute with Pam Am ending in 1995, hired a jury consultant to conduct a series of mock trials to determine whether or not to argue for a jury trial or to let a judge decide the issues. Delta's lead counsel, Dennis Glazer of Davis, Polk & Wardwell, actively solicited the interest of a federal district court judge and, with a little luck, got the case transferred from a federal bankruptcy court to a federal district court and the judge of his choice. As Mr. Glazer noted, 'I'm paid to win and to take advantage of the system' (Himelstein, 1995: 68). The evidence suggests that Mr. Glazer was able to *sense and utilize a potential congruency of perceptions* in positioning the case for trial.

Stakeholders: Example 1

The actions of the stakeholders create the forces and force relations that are identified in Figure 1. At a minimum, there are three constituencies in the generic situation: the attackers, the defenders, and the adjudicators. However, there are often more than three constituencies. Thus, in Example 1, there were two attacking firms. In Example 2, there were four defending unions. In Example 3, there were three attackers and four defenders.

The attacking and defending constituencies will

include stakeholders with related but different agendas. The objective of the attacking and defending team's corporate leaders and staff will be to protect and enhance share-owner wealth. Plans will be carefully weighed, actual performance will be compared to plan, and plans will be recast accordingly. The attacking and defending team's lead counsel will probably come from an independent law firm, and the supporting counsel may come from another independent law firm(s). These independent law firms are in business to make money, and they will manage the short-term possibilities of doing so against the difficulty of preserving a long-term relationship with the client. Factual and expert witnesses will be used by both sides. Independent expert witnesses are generally in business to make money. They too will manage the short-term possibilities against the difficulty of preserving a long-term relationship with the client.

Table 1 outlines the primary corporate leaders, trial lawyers, and trial witnesses in Continental and Northwest Airlines' attack on AMR Corporation's American Airlines. Many other lawyers, company employees, and individuals participated in the trial. American Airlines and AMR Corporation used three independent law firms. Continental used three independent law firms. And Northwest Airlines used one independent law firm.

The backgrounds of the three CEOs are of interest. Robert Ferguson III, President and CEO of Continental Airlines, has a B.S. degree. John Dasburg, President and CEO of Northwest Airlines, has a law degree, was admitted to the Florida bar in 1974, and is a member of the American Bar Association. (He also has a B.S. degree in Industrial Engineering and an M.B.A. degree, and he is a C.P.A.). Robert Crandall, President and CEO of American Airlines, has a B.S. degree and an M.B.A. degree. This supports an earlier claim that *capitalism, pragmatism*, and *legal positivism* inextricably link the professions of business and law in the airlines industry.

The choice of firms and lawyers reflects some of the best talent available. For example, Baker & Botts is a large, prestigious firm with offices in Houston, Austin, Dallas, New York, and Washington, D.C. Similarly, Gibson, Dunn & Crutcher has 17 offices located in five states, Washington, D.C., and seven countries. Cravath, Swaine & Moore is a large, prestigious firm with offices in New York and London. And Joseph D. Jamail II is well known for having won an $11 billion+ judgement in 1985 for Pennzoil against Texaco, after Texaco interfered with the Pennzoil–Getty Oil merger.

The adjudicators (e.g., judges, jury members, and regulatory officials) may also have their agendas, and these agendas may become increasingly significant with the increasing coverage of law suits by the print and television media. For example, as Continental and Northwest Airlines planned their attack on American, they may have had a choice of jurisdiction. Thus, they may have had a choice between federal and state court. Assuming they preferred the efficiency of the federal system, they may have had a choice of federal district and division. These choices may have depended on the value orientations of the judge(s) who might have heard the case and on how cases were assigned when several different judges might possibly have heard the case. Finally, American Airlines may have had some ability to influence these choices. (The jury trial was conducted in U.S. District Court in Galveston, Texas, before the Honorable Samuel B. Kent.)

Table 1 and the accompanying discussion describe the kinds of stakeholders that may be involved in complex, high-stakes situations and the nature of their relationships. In sum, there may be many stakeholders. Their objectives may be congruent, opposed, or related in other ways; but they have the resources to support their positions. Thus, they have the power to achieve their ends.

Stakeholder governance structures

When a corporate leader uses legal resources to harasss, weaken, or destroy a competitor, it is unlikely that individual stakeholders in the attacking or defending constituencies will act unilaterally. Instead, they will coordinate their actions, within and across their organizational units and within and across the various legal entities of their allies. By contrast, individual stakeholders in the adjudicating constituency are generally expected to act unilaterally. Thus, a model of force relations must focus on intraorganizational and interorganizational stakeholder relationships and the actions of individual stakeholders in complex, high-stakes situations.

Table 1. Primary trial lawyers and trial witnesses: Continental Airlines and Northwest Airlines vs. American Airlines and AMR Corporation

Trial lawyers	
American Airlines and AMR Corporation (Dallas/Fort Worth Airport)	
American Airlines	
Anne H. McNamara	Senior Vice President and General Counsel
Andrew B. Steinberg	Senior Attorney
Michael J. Rider	Senior Attorney
Baker & Botts (Houston)	
Finis E. Cowan	
G. Irvin Terrell	
Beck, Redden & Secrest (Houston)	
David J. Beck	
Gibson, Dunn & Crutcher (Los Angeles)	
Robert E. Cooper	
Continental Airlines (Houston, Texas)	
Susman Godfrey (Houston)	
Parker C. Folse, III	
Cravath, Swaine & Moore (New York)	
David Boies	
Mary Boies & Associates (New York)	
Mary Boies	
Northwest Airlines (St. Paul, Minnesota)	
Jamail & Kolius (Houston)	
Joseph D. Jamail, II	
Trial witnesses: Factual and expert	
American Airlines	
Robert L. Crandall	President and CEO
Donald J. Carty	Executive Vice President Finance and Planning
Michael W. Gunn	Senior Vice President of Marketing
Angela McBride	Manager Pricing and Yield Management Development
Ronald Miller	Manager of Domestic Pricing
Jennifer Proctor	Senior Analyst Pricing and Yield Management
Experts	
Dr. William E. Avera	
Professor William Baumol	
Professor William F. Baxter	
Dr. Gary Dorman	
Continental Airlines	
Robert R. Ferguson, III	President and CEO
Mark Drusch	Vice President of Strategic Planning
Experts	
Dr. Morton Ehrlich	
Professor Mark Zmijewski	
Dr. Franklin Fisher	
Professor Robert Pindyck	
Dr. Jeffrey Leitzinger	
Northwest Airlines	
Gary Wilson	Co-Chairman
John Dasburg	President and CEO
Tim Griffin	Senior Vice President of Market Planning and Development
John Garel	Vice President of Financial Planning and Analysis
Expert	
Dr. Robert Hall	

Source: Michael J. Rider, Senior Attorney, American Airlines

In Example 1, Table 1 points to the nature of these relationships. Thus, American Airlines' Senior Vice President and General Counsel, Anne McNamara, was responsible for coordinating the intraorganizational activities of American's corporate staff and its factual witnesses. Ms. McNamara was also responsible for coordinating the interorganizational activities of American's three independent law firms and its expert witnesses. Similarly, the co-plaintiffs, Continental Airlines and Northwest Airlines, had to coordinate their actions, within and across their organizational units and within and across the various legal entities of their allies. For both the attackers and the defenders, the tasks of coordination were complex and demanding; and the stakes were high. By contrast, Judge Samuel Kent and the jurors were expected to listen to the arguments of fact and law and act in their capacity as independent adjudicators.

The governance structures controlling *intra-organizational stakeholder relationships*—in complex, high-stakes situations—are likely to be a blend of mechanistic and organic structures. They are mechanistic to the degree that activities have to be coordinated vertically and horizontally within and across organizational units in some fail-safe way. However, complex, high-stakes situations usually require highly competent employees (e.g., senior attorneys and managers); and such people are generally more productive in organic environments.

The governance structures controlling *inter-organizational stakeholder relationships*—in complex, high-stakes situations—are likely to be cooperative relationships (Ring and Van de Ven, 1994). Cooperative interorganizational relationships (IORs) emerge when managers negotiate over the transfer of property rights—particularly intangibles, such as legal services—among legally equal and autonomous parties. These property rights require specific, long-term investments in a business venture (e.g., an attack on a competitor) that cannot be fully specified or controlled by the parties in advance of their execution. Cooperative IORs are primarily based on the moral integrity of the participants and their reputation for 'fair dealing.' Moral integrity is created over time through interpersonal interactions that lead to the social-psychological bonds that facilitate sense making and enable the relationship to survive and prosper. Thus, dispute-resolution mechanisms tend to be endogenous.

In sum, the attacking and defending constituencies must coordinate their actions within and across their organizational units and within and across the various legal entities of their allies. The tasks of coordination are complex and demanding. Thus, the success of the venture may depend on the governance structures the constituencies use.

Competitive advantage

The theoretical framework outlined in Figure 1 argues that the actions of individual stakeholders—in complex, high-stakes situations—are enabled and constrained by their governing structures of thought (value orientations); their perceptions of the rights, obligations, and sanctions associated with their institutional positions; and their situational circumstances. In a model of force relations, this proposition is descriptive. However, in complex, high-stakes situations, it may also be a source of competitive advantage.

This paper has argued that historically contingent *structures of thought* and *situational circumstances* enable and constrain the actions of corporate leaders in the airlines industry. They are the medium and the outcome of the actions they organize. Three structures of thought—*capitalism, pragmatism*, and *legal positivism*—link the professions of business and law in the airlines industry. In the competitive environment that emerged after deregulation in 1978, these value orientations became increasingly predatory.

As firms struggled to survive, *predatory management styles* enabled some corporate leaders to survive and prosper longer than others. The actions of these leaders suggest that:

1. They seem to use the institutional structures of society and the structures of power operating within and across these institutional structures to protect and enhance share-owner wealth.
2. They seem to see action and the use of power—authority, manipulation, and rational persuasion—as associated with specific people acting in specific institutional capacities. They seem to *sense and utilize a potential congruency of perceptions between themselves and other stakeholders.*

Thus, there is a 'flip side' to the descriptive

proposition. That is, *the incumbent's behavior can be influenced by the incumbent's governing structures of thought (value orientations); the incumbent's perceptions of the rights, obligations, and sanctions associated with his or her position; and the incumbent's perception of his or her situational circumstances.* This proposition may be a source of competitive advantage.

3. They seem to prefer win–win strategies, but they recognize that stakeholders can be created, exploited, and destroyed to protect and enhance share-owner wealth.
4. Finally, they seem to see the interpretation of ethical principle as guided by perceptions of the 'greater good'—protecting and enhancing share-owner wealth—and the 'worst outcome' failing to fulfill one's fiduciary responsibility.

In complex, high-stakes situations, legal means may be used to protect and enhance share-owner wealth. Thus, lawyers and corporate leaders who *understand the law and the structures of power in the U.S.A.* have a unique capacity to achieve these ends. Their understanding of the law and their access to the best legal talent in the world gives them a unique kind of power.

The mobilization and use of power create forces that are variously linked in transistory relationships of unity, compromise, and conflict as the stakeholders maneuver for advantage. Thus, Continental and Northwest Airlines acted in unity against American on the predatory pricing issue but were active competitors on other issues.

The force relations may also escalate—perhaps exponentially–as the number of stakeholders increases. The force relations are variously known and unknown. And they produce the intended, unintended, and unacknowledged outcomes that shape subsequent actions. Hence, in complex, high-stakes situations, the use of power is relational; and it must be understood as a multiplicity of force relations.

Complex, high-stakes situations can also be dangerous, unstable situations. The predictability of stakeholders' actions may decrease as the danger and instability increase. The result may be a proliferation of unintended and unacknowledged outcomes. Thus, some stakeholders may be pressed to act in innovative ways that challenge the ethical and legal constraints of society. Other stakeholders may be pressed to act in ways that are inconsistent with their constituency's value orientations, thus jeopardizing the success of the venture and pointing to the need for fail-safe stakeholder governance structures.

In sum, some corporate leaders in the airlines industry seem to pursue management styles that are predatory and based on the value orientations of capitalism, pragmatism, and legal positivism. They seem to be able to use legal means to exploit the structures of power and force relations in the competitive arena. Thus, the quest for competitive advantage seems to be based on *intuitive processes of analysis that are highly responsive to situational circumstances and grounded in a sociology of conflict.*

Path dependencies

Force relations are historically contingent. They evolve in response to the intended, unintended, and unacknowledged outcomes that develop from the interplay of forces in complex, high-stakes situations and the interventions of exogenous events. They reproduce or transform stakeholders' governing structures of thought (value orientations); stakeholders' perceptions of the rights, obligations, and sanctions associated with their institutional positions; and stakeholders' situational circumstances. Thus, they reproduce or transform the structures of thought and the institutional structures that define the central tendencies and axes of variation in a society.

This paper has sketched some of the transitions in structures of thought and institutional structures that have shaped the professions of business and law over the last 200 years in the U.S.A. These included the use of the common law to promote economic development (1790–1840), the melding of the business and and legal professions (1790–1840), the shift to legal formalism (1840–1900), the emergence of laissez-faire capitalism (1860–1900), the Progressive and Realist attacks on legal formalism and laissez-faire capitalism (1900–1940), and the New Deal legislation of the 1930s. These changes developed from the interplay of forces in complex, high-stakes situations.

A model of force relations is path-dependent. It evolves along a path—a time line—that is historically contingent. Thus, Figure 1 is a representation of a *present* state that, with the addition of the third dimension shown in Figure 3, moves along a time line as a series of action–

order frames representing the past, present, and future states of action and order.

A model of force relations is a composite of stakeholders' perceptions of the present, past, and future states of the theoretical framework shown in Figure 1. Stakeholders' perceptions of the present state are *personal representations* of the theoretical framework. However, stakeholders' perceptions of the present state are also dependent on their perceptions of the historical ordering of actions and their intentions to use (reproduce or transform) the social order to achieve their ends.

The actual state of the social order—present and past—is indeterminant. Representations of the present and the past exist as abstractions in the minds of stakeholders. The actual state of the social order is irrelevant. The perception is the reality.

The future state of the social order is problematic. It depends on the evolution of force relations and perhaps the intervention of exogenous forces.

Managers that are sensitive to the path dependencies in force relations may try to anticipate and influence marginal changes in the structures of thought and thus the institutional structures of society. They may see these changes as a source of competitive advantage. Thus, in the 1970s, some corporate leaders, such as Frank Lorenzo, lobbied for deregulation of the airlines industry. As the CEO of a small regional airline, Mr. Lorenzo saw deregulation as an opportunity to expand a regional carrier into an international carrier, which is exactly what happened. Perhaps Mr. Lorenzo and others like him saw deregulation as a marginal change in an increasingly conservative society—a marginal shift from public ordering to market ordering. In general, business people may prefer private ordering (e.g., a tacit division of the market) to market ordering (e.g., freely competitive markets) and market ordering to public ordering. However, the protected airlines may well have preferred the public ordering.

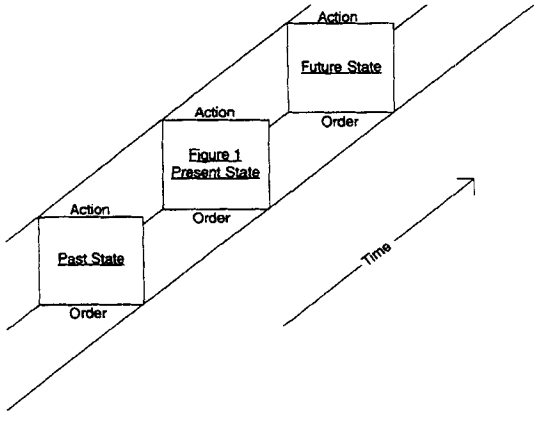

Figure 3. The theoretical framework as a path-dependent model

THE CHALLENGE FOR FUTURE RESEARCH

For years, strategy research has distinguished between strategy content research and strategy process research (Chakravarthy and Doz, 1992). Strategy content research focuses on the content of a firm's strategy and its performance. Strategy process research focuses on how firms develop strategies. For most researchers, content, performance, and process are linked (Schendel, 1992).

Some corporate leaders in the airlines industry seem to be able to use legal means to exploit the structures of power and force relations in the competitive arena (strategy content). These managers seem to be using *intuitive processes of analysis that are highly responsive to situational circumstances and grounded in a sociology of conflict.* If this is true, then these intuitive processes are scarce resources. So long as they remain scarce, they may be a means of creating competitive advantage (Powell, 1992). The challenge is to delineate the processes.

Researchers will have to investigate situations similar to those used in Examples 1, 2, and 3. The investigative methodologies will have to identify the stakeholders' governing structures of thought (value orientations); the stakeholders' perceptions of the rights, obligations, and sanctions associated with their institutional positions; and the stakeholders' situational circumstances. They will have to identify the force relations. And they will have to identify and monitor the path dependencies of these variables. The study of complex, high-stakes situations will be difficult; but it is possible.

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