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Appropriating rhetoric: a beginner's guide

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Abstract

This paper examines the importance of the speaker – the agent – in the construction of dialogue. Within the rhetoric used by each agent are power constructs which display the speaker's position in society (role). The rhetoric used by that agent in the process of fulfilling that social role is particular to that setting in space-time. However, what happens when another agent in a different social position appropriates that rhetoric? The framing of the dialogue changes and the hidden power structures revealed and altered. To what extent does the new agent appropriate the first speaker's normative authority? What impact does this have on the rhetoric itself?

In this discussion I take a real-life example of the appropriation of rhetoric from the ongoing Eurozone downgrade debates. I use McCloskey's theory of rhetoric, or 'sweet talk', to uncover the normative bias of the discourse, and set the dialogue within Giddens' structuration framework to highlight the importance of language, locale and the agent. The analysis highlights power differentials that are indicative of conflicts of interest in the regulation of credit-rating agencies and the debate asks what this means for future action.

The story so far

You may remember what happened on 11 November 2011. At around 3 o'clock in the afternoon (it was a Friday), a technical 'glitch' occurred at Standard & Poor's (S&P's). A message was sent out to some subscribers that France's sovereign credit-rating had been downgraded. This was news to France. In fact, it was news to the rest of the markets as well and precipitated a jump in bond yields that refused to resolve, even after strenuous denials by the credit-rating agency (CRA): 'The ratings on the Republic of France remain "AAA/A-1+" with a stable outlook, and this incident is not related to any ratings surveillance activity' it said.[2] 'We are investigating the cause of the error,' it said. But bond yields remained stubbornly high.

One month later, though, the issue resurfaced in more concrete form. At the beginning of December, S&P's announced that it was indeed reviewing Eurozone credit ratings and that there was a 50 per cent chance that countries – including France – might be downgraded. The announcement came a couple of days before a European summit and

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2 See <http://ftalphaville.ft.com/2011/11/10/741751/about-that-france-downgrade/?> accessed 1 January 2013.

was undeniably embarrassing for French President Nicolas Sarkozy who had staked his reputation on maintaining France's coveted triple-A rating. It also spelled bad news for the main Eurozone bailout fund which was being propped up on – amongst other things – France's triple-A rating.[3] It's safe to say the rating was important not only to France but to the Eurozone.

The summit passed fairly uneventfully and, one month later, in January 2012, France finally saw its credit rating downgraded to AA+. Among the (mainly fiscal and economic) reasons cited for the review, S&P's highlighted political indecision as one of the factors in the downgrade. Having staked so much political capital on maintaining the AAA rating, the French government was at pains to point out that the downgrade was 'bad news' but 'not a catastrophe' after all.[4]

But downgrades happen regularly. What was different here? The difference in this dialogue, played out for the most part in the European media, was the political response to the January announcement. Instead of accepting the rules of the game as set by CRAs and altering their economic policy, France fought back. The French Finance Minister, François Baroin, openly questioned the political motives of the threatened downgrade. Speaking on the French radio station, Europe 1, he remarked that the French economy was in better shape than that of the UK and that 'you'd rather be French than British in economic terms'.[5] Baroin, in turn, was responding to comments made by the French Prime Minister, François Fillon, and the French Central Bank Chief, Christian Noyer, who had both pointed to the comparative weakness of the UK economy. In an interview with the French paper *Le Telegramme*, Mr Noyer stated '[a] downgrade doesn't seem justified to me when you look at the economic fundamentals'. He went on: '[o]r else a downgrade should come first for the UK, which has a greater deficit, as much debt, more inflation, and less growth than us, and collapsing credit'.[6] He finished by stating '[o]ur British friends have a higher deficit and more debt, and I would say that the ratings agencies have not yet noted that'. Friends indeed.

More followed. A member of German Chancellor Angela Merkel's Christian Democratic Union party echoed Noyer's sentiments, stating that it simply wasn't 'fair' to leave the UK's AAA rating intact with a stable outlook while downgrading France and Austria. Appeals to 'fairness' and the level of public questioning of the ratings marked an interesting pinch point in the ongoing saga that is the Eurozone crisis. Ultimately, a phone call between Fillon and UK Deputy Prime Minister Nick Clegg, in which the British politician requested that France 'calm the rhetoric', marked a ceasefire.[7]

CRA ratings methodology for sovereign bonds has always included an appraisal of the political stability and the strength of institutions in a country. In a post-crisis transparency drive, CRAs published 'plain English' guides to their ratings methodology following accusations of being impenetrable and obscure. These reveal the extent to which analysts' individual 'appraisals' of political conditions are included in the rating. In Moody's rating methodology this is included as 'other factors' in the final stage of the process. S&P's states that 'rather than providing a strictly formulaic assessment, Standard & Poor's factors into its ratings the perceptions and insights of its analysts based on their consideration of all the

3 The European Financial Stability Facility's own rating was an agglomeration of those of the states supporting it.

4 See <www.channel4.com/news/france-downgrade-rumours-hit-euro-rescue-hopes> accessed 1 January 2013.

5 See <www.bbc.co.uk/news/uk-politics-16222988> accessed 2 January 2013.

6 See <www.telegraph.co.uk/finance/financialcrisis/8958251/UK-should-be-downgraded-before-France-says-ECBs-Christian-Noyer.html> accessed 1 January 2013.

7 See <www.bbc.co.uk/news/uk-politics-16222988>; see also <www.channel4.com/news/france-downgrade-rumours-hit-euro-rescue-hopes> accessed 1 January 2013.

information they have obtained'.[8] This allows the agencies to provide subjective assessments, or 'opinions', protected as such in the United States under the First Amendment to the Constitution as free speech.[9] Political assessments are clearly factored into the methodologies of all agencies and the stability and credibility of the government, along with the strength of rule of law institutions, comprises a notable aspect of the rating. This was probably most evident in the Italian downgrades that forced the disgraced Berlusconi out of office.[10] However, the ratings are independent of state involvement, comparative, and all rely on published methodologies.

Inherent in the assessments of economic stability and resilience is a discourse of power. The rhetoric employed by the CRAs to 'persuade' markets of the likelihood of default contains the social and market position of the agency, the trust other actors place in them and, consequently, their respective power within the markets. Arguably, the Italian example would also suggest a demonstration of their power in the political sphere too. Sarkozy's request to have his political abilities judged on the retention of the French AAA rating also suggests that political participants are happy to invite CRA power into their field of operation. Until things go wrong, that is.

This story highlights myriad interactions between CRAs, politicians and the markets. In this article, I will focus on only one aspect of this, namely the appropriation of frames of discourse, the effects of this on both the communicative interactions and on other actors, and what this can tell us about power differentials and conflicts of interest in the regulation of CRAs. The interactions will be analysed through Giddens' theory of structuration, which takes as its starting point the individual actor-agent whose 'knowledgeability' of the world in which they operate comprises 'discursive consciousness', 'practical consciousness' and the 'unconscious'. The second of these, 'practical consciousness', in turn, comprises their tacit knowledge about how to 'go on' in everyday life; how to interact with others and how to recognise, process and react to ordinary and extraordinary situations. This in turn is constructed through the use of language – discourse, dialogue, rhetoric and 'sweet talk'.[11] Inherent in, and central to, this ability to successfully interact is communication, or talk. Deirdre McCloskey's theory of rhetoric will be used here to unpack the normative content of much of the dialogue used in the story. The content and purpose of the discourse is just as important as the speaker, however, a change in the latter may also precipitate a change in the meaning of the dialogue.

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8 S&P's, 'How We Rate Sovereigns' (Global Credit Portal, RatingsDirect 13 March 2012) 7 <www.standardandpoors.com/spf/ratings/How_We_Rate_Sovereigns_3_13_12.pdf> accessed 1 January 2013.

9 See inter alia the cases brought by Jefferson County against Moody's and by Orange County against S&P's in 1999. Actual malice on the part of the CRA had to be proved to overcome the First Amendment protection. However, an ongoing case in the California Court of Appeal, which recently upheld the First Amendment protection, did call into question whether certain ratings for special investment vehicles that are not publicly distributed may have a case to answer on negligence charges. For further information, see <http://newsandinsight.thomsonreuters.com/Legal/News/2012/01_-_January/No_free-speech_protection_for_rating_agencies_____again__CA_judge/> accessed 3 January 2013. However, the recent civil action brought against S&P's by the United States Department of Justice and the Securities and Exchange Commission is set to challenge the lack of accountability of CRAs.

10 Repeated downgrades saw 10-year bond yields remain at unsustainable levels for a significant period of time, forcing Italy to concede that its principal problem was its leader. Following his conviction for tax fraud, Berlusconi faces a Senate vote on whether to strip him of his seat in the Chamber. This could finally bring an end to his attempts to overthrow the government, potentially meaning the outlook for Italian politics is stable, and by extension, the political aspect of Italy's sovereign rating.

11 D McCloskey, 'How to Buy, Sell, Make, Manage, Produce, Transact, Consume with Words', in E M Clift, *How Language is Used to Do Business: Essays on the Rhetoric of Economics* (Mellen Press 2008).

Framing the 'structuration' scene; lights, camera, (inter)action

Structuration, 'an unlovely term at best', is a comprehensive theory of social interaction that takes the individual actor-agent as its starting point. It sets out the 'structuring of social relations across time and space, in virtue of the duality of structure',[12] or the mutual reinforcement and reconstitution of the agent and the structure through repeated interactions. Structure(s), therefore, both informs and is reproduced through repeated interactions, however, it can only be identified in interactions and memory traces.

The 'practical' consciousness of language: why say it like that?

Central to the theory of structuration is what actors know or believe about the circumstances of their actions and the actions of others (their knowledgeability). This knowledge is drawn on in the production and reproduction of action and includes both tacit and discursively available knowledge. Tacit knowledge, in turn, falls into two categories; the unconscious and practical consciousness. This latter describes what actors know or believe about the circumstances of their actions but cannot express discursively. Information is not repressed (as in the unconscious), but rather represents tacit knowledge about how to go on in everyday life, including how to interpret and respond to various situations and interact in a 'normal', day-to-day manner. The boundary between the discursive and practical consciousness is shifting and permeable, but included in the latter are the reflexivity of the agent, her self-consciousness and ability to monitor her actions as the 'monitored character of the ongoing flow of social life'.[13] To be human is to be a social being and to act purposively, or to be able to explain the reasons for acts through the discursive consciousness. However, our continuous monitoring of actions and interactions, dependent on our rationalisation of the world in which we operate, takes place in practical consciousness. This is where we understand the actions of others and process the norms that act as factual boundaries of social life.[14] The mutual knowledge shared by members of a society about how to co-exist with one another is not directly accessible to the discursive consciousness of most actors, but is inherent in their ability to go on in social settings successfully.[15] While much sociology focuses on the discursive consciousness of the actor by going into the field and asking people what they are doing and why, the practical consciousness rarely forms the subject of inquiry. However, for Giddens, this is 'fundamental to structuration theory' as the site at which the rules and resources implicated in the reproduction of social interaction are rationalised.[16]

The practical consciousness of the agent develops throughout childhood, and goes hand in hand with the development and use of language. As humans, language is essential for defining the boundaries of our sphere of perception. We are unable to perceive or conceive (clearly at any rate) that which cannot be verbalised and, by the same token, are only able to perceive that which we know *how* to perceive. Language continues throughout adult life to be the principal means of communication in social situations both of co-presence (face to face) and mediated co-presence (via the telephone, or by an email).

12 A Giddens, *The Constitution of Society* (Polity Press 1984) 376.

13 Ibid 3.

14 Ibid 4.

15 Ibid.

16 Ibid 6. Giddens' terminology is drawn on here except for the term 'embed', which I borrow from Granovetter. See inter alia M S Granovetter, 'Economic Action and Social Structure; The Problem of Embeddedness' (1985) 19(3) American Journal of Sociology 481-510: and M S Granovetter and M Swedberg, *The Sociology of Economic Life* (Westview Press 2001).

Information is conveyed and received in the form of language, which is reinterpreted by the receiver. The use of language, its importance for conveying messages, its grammatical structures, the hidden implications of certain words, are all reinforced by the constant production and reproduction of linguistic exchanges, causing language usage to embed deeper. Language therefore gives us the tools to conceptualise ourselves as agents, and the world in which we live, while also allowing us to rationalise the structures of action that are acceptable and those that are not. These are recursively implicated and further confirmed in turn through repeated interactions.

The hidden meanings behind the use of certain aspects of language are also produced and reproduced through interaction and more deeply embedded as structural properties informing those very interactions. Natural scientists use precise, objective language which implies their authority and expertise. Economists take a similar approach. So, too, do CRAs, as the following quote demonstrates:

> The negative outlook considers that economic performance is likely to remain weak; that it will be progressively more difficult for the government to consolidate its finances given an increasingly rigid budget structure; and that debt metrics will continue to rise and financial flexibility to decline as a result.[17]

Note the phrases such as 'consolidate its finances', 'rigid budget structure', 'debt metrics', 'financial flexibility to decline'. These typically economic phrases convey economic certainty. The agency has closely examined the financial situation of the country – in this case Barbados – and is not happy with the result. By using terminology associated with the 'science' of economics, notions of authority, independence, impartiality and the mathematical application of formulae to determine a result, the reader is left with the impression that this is the work of highly skilled professionals who ought not be questioned. Certainly, analysts may be highly skilled, but remember from above – these are opinions only.

The use of terminology that itself conveys the authority of the speaker constructs rules of interaction which, through recursive reproduction throughout time and space, form structure(s) discernible in instantiations, which are continually reproduced through repeated interactions. The rules and resources, or 'structural properties', are rationalised and reproduced by the practical consciousness of agents operating in the same field; in our story, sovereign bond market participants, governments, financial media and other stakeholders. The normative implications of the language used, implicated in the practical consciousness of agents, mean that it is rare for the rating or its justification to be challenged, save in the normal channels provided for by the CRA itself.[18] Agencies were relied on, for the most part, as 'experts' whose opinions were largely unquestioned by the markets. This is, of course, until the crash of 2008 when it became apparent to most that the ratings were not always accurate or up to date. Actors were forced to reappraise their conduct within the market and the assumptions that their actions and interactions were founded on. They were forced to address the structural properties of the systems in which they functioned.

17 See <www.moodys.com/research/Moodys-downgrades-Barbados-to-Ba1-outlook-negative--PR_262599> downgrade of Barbados, accessed 1 January 2013.

18 There is an appeals process provided for by all CRAs whereby an assigned rating can be challenged and reviewed prior to publication. There is also the option of not publishing the rating at all if it is not necessary, in which case only minimal fees are payable to the agency.

Normative rule-setting and resource allocation: 'Why? Because the CRA said so!'

Sovereign bonds make up approximately 40 per cent of the entire stock of bonds issued globally.[19] As international gatekeepers to the financial markets, CRAs have the power to determine which countries can access the markets and at what price. Governments cannot issue bonds to the international markets without a rating, and must approach the 'big three' agencies (S&P's, Moody's and Fitch Inc.) to rate their issues. Because of their ability therefore to open, or close, the gates to the international finance markets, Partnoy has referred to the CRAs as 'gateopeners', and these actors have become increasingly important as a means of accessing finance.[20] As states chose to turn increasingly to international markets to raise funds rather than the banks, the role of the CRA was elevated from nicety to essential, and the level of rating assigned became crucial for determining the interest a state could expect to pay on its borrowing.

When a state requests a rating, the CRA will use the information provided by the state and will carry out some of its own research into the various categories that are appraised and which go into forming the final rating. In the case of S&P's, the two overarching calculations that inform the rating are, firstly, the political and economic profile and, secondly, the flexibility and performance profile.[21] Within the first of these, the political score will include an examination of institutional effectiveness and political risks while the economic structure and growth prospects comprise the economic score. In order to establish the institutional effectiveness, the country's institutions are analysed against an international scale. Moody's claims to rely on World Bank figures and analyses here.[22] This in turn has been the subject of unflattering analysis on grounds of reliability and normative relativism.[23]

Countries are aware that their institutional structure will be compared to the 'ideal standard' set out by international financial institutions like the World Bank. They are also aware that the closer they conform to those standards, the higher their rating is likely to be, and the lower the costs of their borrowing will be. By implementing the ideal standard of governance as a precursor to market access, the CRAs engage in international standard-setting. They are, in other words, establishing the rules of the game, or structure, by which countries have to play. Indeed, structural properties are made up of rules and resources recursively implicated in social reproduction. Institutionalised features of systems have structural properties in the sense that relations are stabilised across time and space. At the same time, resources can be both allocative and authoritative. By assigning a rating which determines the cost of accessing the markets, CRAs are exercising allocative resources, while their co-ordination of markets and state organisation embodies their exercise of authoritative resources. As such, CRAs, through recursive actions and interactions with states and other market participants, actively set, monitor and adjust the structure in which interaction takes place. Combined with the normative bias of language used resulting in their embedded authoritative status within the markets, actors conform of their own choosing to 'fit' within a structure that they both tendentiously create and are created by.

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19 S&P's (n 8).

20 F Partnoy, 'How and Why Rating Agencies are not like Other Gatekeepers' <http://finance.eller.arizona.edu/lam/fixi/creditmod/Portnoy.pdf> accessed 2 January 2013.

21 S&P's (n 8).

22 Moody's, 'Rating Methodology; Sovereign Bond Ratings' (September 2008) <www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_109490> accessed 1 January 2013.

23 A Perry-Kessaris, 'Prepare your Indicators: Economics Imperialism on the Shores of Law and Development' (2011) 7(4) International Journal of Law in Context 401–21.

However, this analysis raises the further point of regulation. Sovereign states, as we have seen, are reliant on CRAs for a rating of their bonds. The financial crisis has meant that European states in particular are increasingly relying on international markets to remain solvent. It is therefore even more important to states currently to receive the best possible rating, meaning that borrowing costs will be kept down. CRAs may establish the rules of the market, but it is these same nation states who are held accountable for the regulation of CRAs. The agencies' dismal performance throughout the crisis has shifted the regulatory spotlight back on to nation states and international organisations who have spent years deliberating the best way to regulate bodies on which they disproportionately rely. This conflict of interest is further exacerbated by imbalances of power within the markets, as the following discussion illustrates.

The power of persuasion in markets

While many have settled on institutions and structures as the key to understanding the functioning of society, for McCloskey, the simple answer to this is language, talk, communication.[24] Admittedly, the definition of institutions given by the New Institutional Economics movement is a blunt tool for describing what is ultimately an exceptionally complex intangible. Within structuration, rules and resources, as structural properties, comprise structure, yet these are again found in memory traces and as instantiated in actions and interactions. Again, then, in language. After all, information exchange, discussion, debates, dialogue, persuasion, *communication* all take the form of talk (or writing). But we all use language to shape the world, and to shape our interaction with the world, and to shape our interaction with others around us. The same can be said for our reflexive self-monitoring and manifestation of interpretation through recursive action and interaction. If the key to understanding social interaction is to be found anywhere, it might be worth a look at language.

Rhetoric never used to be a dirty word. The *Oxford Dictionary of Current English* gives the definition as 'the art of persuasive or impressive speaking or writing; language designed to persuade or impress'.[25] The opposite is logic, or dialectic speech, which is reasoning conducted according to strict principles of inductive validity. As McCloskey puts it,

> Rhetoric . . . is not merely the ornament one adds into speech at the end, and it is not necessarily dishonest. It is the whole argument – its logic, its arrangement, its appeals to authority, its passion, its pointed lack of passion, its audience, its purpose, its statistics, its poetry. Of course economics, and therefore law and economics, will be 'rhetorical'.[26]

So rhetoric is nothing more than the art of persuasion. Law is rhetoric. Sociology is rhetoric. Economics is . . . and here is the problem. Once upon a time, economics – the social science of economics – was deductive. But the logical, inductive and unchallengeable reasoning of the natural sciences drifted into or was appropriated by economics, gradually, throughout the twentieth century. Sure, *homo economicus* wanted to maximise his utility, but we forgot the fact that he had to be home by tea to put the kids to bed and so didn't really care about the finer points of maximisation right there and then.

For McCloskey, economists claim to practise dialectic while in fact engaging in rhetoric. Indeed, the very act of claiming scientific certainty is a persuasion. She gives the example

24 See, inter alia, D McCloskey, 'The Rhetoric of Law and Economics' (1988) 86(4) Michigan Law Review 752–67; McCloskey (n 11); D McCloskey, 'The Rhetoric of the Economy and the Polity' (2011) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1839109> accessed 2 January 2013.

25 *Concise Oxford Dictionary of Current English* (OUP 1964).

26 D McCloskey, 'The Rhetoric of Law and Economics' (1988) 86(4) Michigan Law Review 752–67, 760.

of a price exchange to illustrate the importance of conversation in economic exchanges, or, as she terms it, 'sweet talk'.[27] 'The market' establishes the 'given price' of an item by talking about it. Sellers and potential buyers communicate, they exchange information about how much they value the item. What does it mean to the buyer? How much do they really want the item? They want it a lot? Well, then it will cost more. Have you ever noticed the price increase of items in your Amazon 'wish list'?

But a conversation cannot take place without actors. Actors matter, not only as the participants who engage in rhetoric, but as framers of a dialogue. The conversation is important, but so are both the social positions of the actors and the locale in which the dialogue takes place. Social position, or role, corresponds to the significance attached to the rhetoric – to what extent do you trust the speaker? If your nosey neighbour mentions that a company is going to 'go bust', you are less likely to sell your shares than if that neighbour happened to be the managing director of said company. Social position can be attributed by other agents through their actions and interactions, forming structural properties that are implicated in the actions of others. Or, as we have seen, it can be implied by the agent through the normative implications of her rhetoric. But the locale in which the exchange takes place is also important. The physical region in which the communication is set gives the actors definite boundaries in which to communicate with each other and so frames the dialogue. The locale shapes the interaction by shaping the actors' behaviour, thereby influencing the meaning both implied and imputed.

When states request a rating for a new issue of sovereign bonds, they attempt to persuade the agency that their bonds are deserving of the highest possible rating. In the countless meetings between the agency and government ministers, central bank officials, and even heads of industry, the CRA gains knowledge through dialogue, debate and persuasion.[28] But part of the independence and impartiality of the CRA is an undertaking to 'see through the rhetoric' and assign an accurate rating, unbounded by the wishes of the issuer. The rating that results informs, or *persuades* the markets of the true value (the risk) of the bonds. Each review and downgrade (or upgrade – it is possible in the reverse) marks a shift in rhetoric by the agency as to the risk involved in such an investment. This analysis allows us to look past the dialectic of most ratings and their explanations. In fact, taking the ratings to be mere rhetoric, the art of persuasion, suddenly becomes very apt against the backdrop of the First Amendment to the US Constitution.

But what happened to the story?

What have we learned so far? Language, in all its glorious forms, constitutes the basic blocks of self-monitoring, self-perception, action and interaction. It also constitutes the practical consciousness through the internal processing and rationalisation of interaction, crystallising into the rules and resources that make up structural properties that are in turn implicated in recursive, routinised conduct. We've seen that CRAs engage in rhetoric disguised behind a veneer of dialectic. We've seen how, through repeated actions and interactions with market participants and stakeholders, this rhetoric has been implicated in the structural properties, observable as instantiations and memory traces and has resulted in high levels of power being imputed to the CRAs by other market actors.

But we are then left with the story set out above, which doesn't follow the rules. The initial technical glitch suffered by S&P's and the jump in bond yields that followed may be

27 McCloskey (n 11).

28 S&P's includes discussions with business leaders operating within the state in question when conducting research prior to assigning a rating.

proof of the authority still attributed to ratings and the agencies that assign them by the markets. It is fair to say that the numerous errors and failures by CRAs unmasked during the financial crisis – notably AAA ratings attached to subprime collateral – did erode the level of trust and authority accorded to CRAs by forcing stakeholders to reappraise the role of the agencies in the market. This reappraisal may in turn have extended to their ability to set international norms in political, institutional and fiscal fields, their ability to set the rules of market interaction and allocate the resources potentially gained thereby, and their role in establishing the structural properties of market-oriented interaction. But that reappraisal clearly had not served to alter the function of the underlying structure, within which it was a normative requirement to have at least two ratings for any bond issue. This 'rule' of the markets had been established for decades and recursively confirmed through repeated bond issues with assigned ratings. This norm in turn was fundamental to the social position of CRAs as gatekeepers of the markets, and the fact that this position has endured the questioning that followed the crash implies that the structural properties questioned were either less fundamental to the market or questioned in such a way as to leave their intrinsic effectiveness intact. The power of the CRAs – relative to other market actors – was shaken, but ultimately remained intact.

The January 2012 announcement by S&P's of downgrades for France should have been another episode of such interaction. Agencies set the rules – political, institutional, economic – that have to be met in order for a certain rating to be assigned. But when the 'wrong' answer came back, French politicians openly challenged the rationale and motivations of S&P's. There are several possible reasons why. As we have seen, CRAs hold authority, attributed by market actors and maintained through 'normative dialectic'. It is suggested that, in appropriating the language of the CRAs, the French ministers were keen to deflect the embarrassment of a downgrade by appropriating the authority associated with such dialogue. Noyer's statement that the UK has a 'greater deficit, as much debt, more inflation, and less growth . . . and collapsing credit' than France was a plea to the markets, as well as to the agency itself, that was undeniably framed in CRA dialectic. McCloskey notes that actors engaged in competitive rhetoric need to employ tools that are equal or superior to those of their opponents. If your adversary has just invested in a new piece of technology that gives him an advantage, chances are you're going to try and get the same (or better) if you want to succeed. Of course, political rhetoric is more susceptible to challenge than economic dialectic. To compete, then, why not borrow the dialectic frames of reference that deflect challenge so well?

Yet the market failed to respond. Indeed, the lack of further action by the CRA indicates that the frames appropriated by Noyer, Baroin and others were only partially successful. It is true that some commentators agreed with France, noting that they may have had a point. But the lack of reaction by the markets indicates that, while the language was borrowed, the authority and trust implicated in the linguistic turn did not follow. Rhetoric may be essential to the formulation of trust, but it is clearly not sufficient.[29] In structuration, the equivalent of sweet talk comprises the linguistic turn of the agent's knowledgeability. But there is a problem. Humans, along with other great apes, have learned to be suspicious of rhetoric.[30] As politicians endlessly engage in rhetoric, we have learned to be suspicious of them, too. However, the main problem facing Noyer in his attempt to appropriate attributed authority was time, or the fact that his assertions came *after* those of the CRA. For episodes to be implicated in structure, interactions must be produced and reproduced through time and space, and this in turn results in system integration. But the dislocation of the actor (the

29 McCloskey (n 11) 32.

30 Ibid 13.

rhetorician) and the field of dialogue (the locale) resulted in mistrust. The result was what sounded little more than a political spat between a bruised Eurozone and a smug UK.

What does this story tell us?

The story of Fillon and French rhetoric is an interesting example of the appropriation of frames of discourse. Without doubt, this phenomenon occurs frequently in all walks of life, for many reasons. The implied normativity of one actor's talk, be this authority or inferiority, expertise or ignorance, impartiality or bias, may mean that dialogue is borrowed first and foremost for its authority, or bias, for example. What is more important here, though, is what this spat reveals about power imbalances within the international markets, and how conflicts of interest have become so central to the regulation of CRAs. We have seen that rating agencies set the rules of the game – international norms of sovereign bond markets that have to be met by anyone wanting to access the markets. We have seen how much nations rely on international finance, given the dire situation of the banks, and the fall-out of the financial crisis. In short, therefore, the CRAs have greater power in the markets through their position and use of dialectic, and they set the rules of engagement. Nation states wanting to raise funds must play along and meet the conditions of rule of law, governance, political credibility, and so on, if they want to survive – financially, of course, but everything else rests on this. Following the crash and the realisation of the extent to which CRAs got the numbers so vastly wrong, calls have been directed at states and governments to do something to regulate the agencies. As the discussion has shown, this is akin to asking governments to bite the hand that feeds.

The story set out above illustrates the recognition by politicians that CRAs hold greater power within the markets than they themselves do. The appropriation of rhetoric was, as suggested, an (albeit thwarted) attempt to harness some of this authority for political purposes. While unsuccessful, it served to illustrate the power imbalance between the parties, as explained above with reference to rhetoric and dialectic.

On the practical front, there are two broad approaches to regulation open to states. The first is to rely entirely on the markets themselves to regulate activity, by firstly improving transparency and then increasing competition, the idea being that agencies compete on their reputations for best practice and reliability. The problem here is that reputation can only be gained in the ratings market over years of engaging in the practice and, without a reputation of quality and reliability to begin with, it is difficult to gain popularity and recognition. We have hit a vicious circle. Moreover, the speed and complexity of the new collateralised products that were being rated were so great that the products were virtually unintelligible. Each of the 'Big Three' agencies was assigning its top ratings to the products which later turned out to be toxic. Clearly, competition failed in this instance, and there is no guarantee that this could ever constitute a fail-safe method.

The second option available to states is to increase oversight of CRA operations. How agencies enter the market, how they operate and how they are reimbursed, along with increased disclosure and transparency rules, all constitute viable, and attractive, regulatory options, especially when backed up with high penalties for non-compliance. Regulators in Europe have proposed a combination of the two approaches, although arguably the focus falls heavily on oversight. Regulation (EC) 1060/2009, as amended by Regulation (EC) 513/2011, not only encourages more firms to enter the ratings market, but increases requirements on transparency, disclosure, oversight and compliance. CRAs operating in European member states must now be registered and certified and must submit to oversight by – and pay operational fees to – the European Securities and Markets Authority.[31] This is the body tasked with ensuring that the higher standards set are adhered to and with imposing fines or revoking certificates to operate on evidence of infringement.[32]

Potential conflicts of interest are set out in the regulations and are to be avoided by the CRA or managed appropriately, however, there remains a black cloud over the continuing presence of astonishing conflicts of interest.[33] Moreover, proposals have recently been tabled to completely phase out ratings-based regulation by 2020 and impose even stricter rules on the publication of unsolicited sovereign ratings.[34] The proposals also emphasise the ability of private investors who have relied on a rating to their detriment to bring a civil action against the CRA, whether or not a contractual relationship exists between the two parties, potentially massively increasing the liability of agencies.[35] We await a test case to see the real impact of this provision, however.

The European Commission has recognised that, while EU regulation of CRAs is equivalent to that currently in operation in the US, Canada and Australia, current measures only mark the first step in the regulatory journey to address all the problems and conflicts of interest in the credit-ratings market.[36] However, the steps taken so far represent an important shift in the international balance of powers. In effect, CRAs still set the rules of the game *within the markets*. But by regulating the agencies, states are devising a new set of rules *in which* CRAs will have to function. In other words, by drawing up tighter regulatory standards and increasing oversight and penalties for non-compliance, states are taking back some of the power lost to CRAs within the markets. This necessarily has to be done at the international level due to the nature of both the markets and the operations of the larger CRAs.

One aspect of this worth noting is the legislative requirement that agencies remain free from any political or economic influences or constraints, which is now stated explicitly in the regulations.[37] While CRAs may objectively take into account the political situation or credibility within a country, it may not downgrade a country (or group of countries) simply due to harsher regulation, oversight, or unpleasant political rhetoric.

To place this once again in the language of structuration, states are reaffirming their power through their agency – or their ability to act – and, by enacting legislation, will be using language more reminiscent of dialectic to alter the rules and resources of interactions. States may then set allocative resources by regulating how agencies are allowed to charge for their services (although at present there is no blueprint for how to resolve this major conflict of interest: in fact there is also a lack of constructive suggestions and debate in this area). States may also set authoritative resources by correcting information asymmetries and diluting the power of CRAs through increased transparency, which enables other market

31 See, respectively, <www.esma.europa.eu/page/List-registered-and-certified-CRAs> and <http://europa.eu/rapid/midday-express-02–04–2012.htm> accessed 4 February 2013.

32 Art 20(1), Regulation (EC) 1060/2009, L302/16. See also <http://europa.eu/rapid/midday-express-16–10–2012.htm> accessed 4 Febraury 2013.

33 Title II, Art 6(1), Regulation (EC) 1060/2009, L302/16, although detail is notable in its absence here. Many European regulators have called for future action to completely overhaul the CRA market, in so doing wiping out any possibility for conflicts of interest to exist. There are currently no firm plans – or indeed any viable suggestions – to eliminate all conflicts of interest in this area, notably surrounding how ratings are paid for.

34 See <www.europarl.europa.eu/news/en/pressroom/content/20130114IPR05310/html/Tougher-credit-rating-rules-confirmed-by-Parliament%27s-vote> accessed 4 February 2013.

35 Ibid.

36 See <http://ec.europa.eu/internal_market/securities/agencies/index_en.htm> accessed 4 February 2013. However the 2006 Dodd-Frank Wall Street Reform and Consumer Protection Act in the US required all Federal Agencies to remove references to credit ratings in their regulations. See below.

37 Annex I, s A,1(a), Regulation (EC) 1060/2009, L302/16.

actors to undertake their own analysis based on the available information. In this setting, information is power, and increased information flows may negatively affect the authority of the CRAs within the international financial markets.

Even more importantly, ratings-based regulation will be abolished, both in the US and the EU. This had meant that the specific regulations applicable to any debt issued would be determined on the basis of the assigned rating. This requirement, in effect, was a state endorsement of the general reliability of ratings and, by removing this requirement, one structural property that had maintained the authority imputed to ratings was demolished, challenging at the same time the position of ratings at the heart of all debt transactions. This in turn leaves space for other actors to reappraise the structure(s) informing market norms and function should any further revelations come to light about the practices of CRAs.

In addition to questioning the validity of regulatory responses to rating agency failures, the story also highlights the importance of settings of interaction, in particular when aspects of the interaction – rhetoric, for example – are appropriated. In borrowing the discourse of rating agencies, the political speaker may hope to emulate their authority and exercise some of their influence over the markets. But what happens when rhetoric simultaneously shifts both between both *agents* and *locales*? This question is compounded by another: what happens when the appropriator and appropriatee are seen commonly to rely on different types of discourse in everyday communication? No one would question that politicians are renowned for their reliance on rhetoric and their desire to persuade people, markets and the laws of the universe if they were able. Rating agencies, by contrast, employ 'dialectic' and the language of science to convey their authority, expertise and social position resulting in their unchallengeability. The shift in agent and locale, therefore, takes place across a linguistic boundary – moving from the apparently logical to the rhetorical, or as we might say, from rhetoric-dressed-up-as-logic to plain old rhetoric.

Following the outburst, UK bond yields did not show any interest in the French protestations. French bond yields gradually returned to their normal level. The markets failed to respond to the French politicians, indicating that any authoritative bias imputed to the discourse of the CRA by nature of the language used was 'lost in translation' when it was later employed by the French political classes.

The veneer of dialectic that agencies attach to their market rhetoric, it is suggested then, is where the normative bias of authority lies. Once this is lost, the power and trust attached to rating agencies owing to their authority is also lost. Fillon, a master rhetorician, appropriated only the rhetoric, which was devoid of authority, power and trust. This leaves us to conclude that the authority imputed to ratings by the market (as witnessed in the first jump in bond yields) derives from the agency itself (or the analysts working for the agency), manifested in agency rhetoric. The same can be said of any agent. Further, any normative authority imputed *to the agent* by other actors is then reproduced in that agent's discourse, confirming earlier imputed authority in a feedback loop. This manifests in the language used which in turn is received into the practical consciousness of other agents. Their repeated actions and interactions reproduce as structural properties the normative implications of her discourse, which becomes embedded as the structure which both organises and is reproduced in actions and interactions across time and space. So, the appropriation of language by an agent who also engages in a similar type of communication – say logic – may have a different outcome for the normative authority bound up in the discourse. Scientific rhetoric appropriated within the community of genetic biologists, for example, will retain its authority. The same discourse, spoken by a bus driver, would not only sound odd, but would lack the authority of the biologist. The same is true between rating agencies and politicians.

In a telephone call made to Nick Clegg following the French statements, François Fillon appeared at pains to make clear that his intentions had not been to call into question the UK's rating, but instead to 'highlight that rating agencies appeared more focused on economic governance than deficit levels'.[38] In fact, in this observation he may have been right. The competence of those dictating economic policy – in the eyes of the rating agencies – may have played a role equal or greater in determining the rating to the level of the deficit or the debt. Conversely, domestic political rhetoric by the Coalition government in the UK has focused on maintaining the AAA rating by reducing the deficit, a trick (one suspects) used widely by policy-makers to deflect analysis of their personal performance. But in the weeks that followed, the political spat proved that any challenge to rating agency authority, or market orthodoxy, was not what the French government had in mind after all. In a statement in late January, François Fillon admitted to the world's media that in an apparent U-turn France would, after more consultation, consider making budgetary 'alterations' if necessary.[39] While still claiming that France was a 'safe country for investment', he confirmed that the government would be paying heed to the opinions of S&P's, and would be taking remedial action. Having so publicly questioned the rules of the markets as set by CRAs, the final note to the story ends on one of a return to the status quo, with France backing down and ultimately conforming. There was a return to political rhetoric by the politicians who, once striving to meet the rules set by rating agencies, were rewarded with lower bond yields. The position of CRAs within the structures of the sovereign bond markets was confirmed. However, this position may be challenged by future regulatory reforms that seek to realign the rules and resources of market interactions.

38 See n 7.

39 See <www.telegraph.co.uk/finance/financialcrisis/9014832/Francois-Fillon-France-downgrade-should-not-be-dramatised.html> accessed 4 February 2013.