



Volume 10, Number 3 | July 2009

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# Note from the editor

Dear reader,

This issue of the *Newsletter* focuses on intersections between economic sociology and law. The “economic sociology of law” is a field of study that, as Laura Ford and Richard Swedberg argue in the introductory essay in this *Newsletter*, has only fairly recently regained attention. This is despite the classic writings of Max Weber, who, more than nine decades ago, gave great importance to this field.

In their opening article, Ford and Swedberg take stock of more recent studies that have examined the role of law in economy and society, and outline areas that in their view warrant more attention, such as Roman Law and Financial Law. Yves Dezalay and Bryant Garth analyze “the economy of legal practice as a symbolic market”, comparing and contrasting processes of social, relational and financial capital conversion in the legal fields of the U.S., Europe and the “global South”. Laura Ford devotes attention to the role of law in relation to property, arguing that property is simultaneously a fundamental threat as well as a necessary corollary to the existence of social groups. Sabine Frerichs discusses connections and disconnections between economic sociology, socio-legal studies and economic analyses of law.

Further, we have two interviews. One interview was conducted with Gunther Teubner, an eminent sociologically-minded legal scholar, who has written extensively on the social theory of law, contract law, networks, transnational governance and constitutionalism. The other interview was conducted with French economic sociologist Philippe Steiner, the next editor of the *Newsletter*. The interview has been reprinted with kind permission from the Society for the Advancement of Socio-Economics (SASE). In the

interview, Steiner discusses the state of the art of economic sociology in France and gives insight into his recent work on the market for human body organs. From November 2009, Philippe Steiner will take over the editorship of the *Newsletter* with associate editors Sidonie Naulin and Nicolas Milicet (Université Paris-Sorbonne). We welcome him and his team and look forward to reading their next issue.

As in previous issues, Brooke Harrington edited the book review section, and I would like to thank her for all her work. Lotta Björklund Larsen, Marc Lenglet and Sebastian Botzem provide summaries of their doctoral research projects, which investigate the justification of illicit work in Sweden, compliance work in equity brokerage houses, and the politics of international accounting standard setting, respectively.

This is my last issue as Editor. I would like to thank all contributors to Volume 10 of the *Newsletter*. I would also like to thank Rita Samiolo (LSE) and Christina Glasmacher (MPIfG) for helping me to put the issues together, and I thank the Editorial Board for all their support.

Please continue to submit material that you think should be published in the *Newsletter*. Materials for the November issue should be sent to one of the following email addresses:  
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With best wishes for a fruitful summer,

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# Law in Economy and Society: Introductory Comments

By Laura Ford and Richard Swedberg

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A few years ago it was suggested that economic sociologists have not paid enough attention to the role of law in the economy, and a call went out for “an economic sociology of law” (Swedberg 2003). Since that time, a number of important insights have been generated, and a number of important studies have been produced that deal with the role of law in the economy. It has been argued, for example, that economic sociologists must not confuse law on the books with law in action, and that the state and the legal system are often overlapping in modern national administration but by no means identical.

To mention some recent studies, there is the important comparative work by Jens Beckert on inheritance law (Beckert 2007a; Beckert 2007b for a short version). Bruce Carruthers and Terence Halliday have carefully tracked recent attempts to create an international bankruptcy law (Halliday and Carruthers 2007; Halliday and Carruthers 2009). And there is Lauren Edelman’s ongoing attempt to see how modern economic organizations deal with the law and how these, in some cases, even end up by creating it (e.g. Edelman and Stryker 2005).

But there is also much that remains to be done, as this issue of the *Newsletter* shows. In addressing the issue of what should be on the agenda of the economic sociology of law today, one may want to distinguish between a general discussion of the basic principles of this type of approach, and the concrete topics that should be addressed. In the rest of this introduction we will first discuss some of these general principles, then give a few examples of important topics in need of analysis.

It is important to discuss the general principles of economic sociology, in order to be reminded why we need this topic in the first place. One way to approach this subject would simply be to hold up and draw attention to the part of Max Weber’s sociological work that deals with the inter-

section of law and the economy (see especially Weber 2003; 1978: 63-211, 641-900; Swedberg 2006). While Durkheim, Marx and many others have made important contributions to the economic sociology of law, Weber is clearly its patron saint.

But while it is definitely the case that much work still needs to be done both in presenting and understanding Weber’s “economic sociology of law,” we shall take a somewhat different stance toward his work in this introduction. We shall elaborate a bit on what can be seen as Weber’s basic ideas on this topic, but in doing so also develop them in new directions. We do this in order to show the fertility of Weber’s approach as well as to illustrate how to work with Weber’s ideas, rather than just duplicate them. Our attempt in this direction is presented below in the form of three general propositions that may be useful to keep in mind.

## I. Everything Economic has a Legal Dimension.

We propose (following Weber’s discussion of conceptual jurisprudence) that everything economic also has a legal dimension, and that this may be used as a rule of thumb by economic sociologists. We mean by this statement that whenever an analysis is carried out in economic sociology, one may also want to routinely ask what the legal dimension of the problem is, and determine if it warrants special investigation. It is indeed the case, we argue, that every economic phenomenon is addressed by law, either in the form of positive prescription or prohibition, or in giving contractual freedom to parties to determine its shape and direction. Related to this latter point, there also exists a grey area in law, which includes economic phenomena that have not yet been directly addressed by positive law, but for which regulation may be seen as imminent, due perhaps to increasing political attention and social controversy.

## II. Law Provides Economic Legitimation as well as Official Economic Justice.

Law, as Weber suggests, has become an important part of the legitimation of political rule in modern society – and also, we suggest, of economic rule. Economic inequality is partly accepted in society, for example, precisely because it is based on economic action and accumulation of wealth that is sanctioned by law. It is also important to emphasize in discussing economic justice, that the legal system expresses what we may term “official economic justice”. The law, however, is also the natural venue for citizens’ demands for economic justice more generally. We mention this because of recent attempts by behavioural economists to introduce justice (“fairness”) in the form of a primarily *psychological* phenomenon. We, in contrast, want to draw attention to the social or sociological dimension of economic justice.

## III. Modern Law Should Add to the Flexible Stability of the Economy.

Law is a remarkable means for establishing order and stability in society, including its economy. Bourdieu has pointed to the role that is played in this process by the habitus of the judge (Bourdieu 1987). Tocqueville argues that law can only be strong if it is backed by underlying mores (Tocqueville 1945). To this we want to add that one also needs to better understand the role that legal categories and legal education play in producing social and economic stability (see below; see also Ford forthcoming).

But the modern capitalist economy does not only need stability, it also needs flexibility. It needs flexibility, as Durkheim was the first to note, in order to help modern society to develop and improve (Durkheim 1964). To achieve a proper balance between stability and flexibility, between law-abiding behaviour and innovative behavior, represents a key challenge for social as well as economic legislation.

## IV. Topics that Need to be Better Understood: # 1: Roman Law

The economic sociology of law needs to go to the bottom of things; and when it comes to law, the bottom of things means Roman law. The reader may be familiar with a recent edited volume in which Janne Pölonen makes a thorough and persuasive case for a “Sociology of Roman Law”

(2006). As an historian, Pölonen argues that a renewal of scholarly effort to understand the Roman legal system “as it developed and operated” in ancient society – the roughly 1000-year period from the Twelve Tables (~450 B.C.) to Justinian’s great codification in the Fifth Century A.D. – is a worthwhile project for sociologists who seek a generalized understanding of law as it operates in societies. Here we wish to complement Pölonen’s arguments by pointing to the modern relevance of Roman law for the economic sociology of law.

We argue that Roman law has modern relevance in three respects: (1) as a direct influence on modern legal systems around the world, (2) as a direct influence on socio-economic and political theory, particularly through the tradition of “natural law”, and (3) as a direct influence on modern socio-economic and political institutions, through its influence on legal culture – the language, concepts, and categories of law – which has, in turn, influenced the broader culture in which politics, law, and the economy are discussed. In short, if an economic sociology of law is to include explanation, and if explanation involves the search for causal influences and mechanisms, the effort to understand Roman law and its modern influences must be part of the economic sociology of law.

■ *Roman law has directly influenced modern legal systems around the world.* This may seem like an indefensibly broad claim. However, it is worth recalling that Emperor Justinian’s codification of Roman law was undertaken in Istanbul (Constantinople), and applied primarily in the Eastern Empire, which extended across Greece, the Balkans, Turkey, the Levant, and North Africa (Jones 1986). The Eastern Empire was much more stable than the Western Empire, declining under repeated military attacks, but only finally collapsing in the Fifteenth Century; Byzantine Roman law survived “in Greek dress”, however, in the Balkans and Russia (Stein 1999).

In Europe, Roman law provided structure and content to ecclesiastical Canon law, the law of the “barbarian” Franks, Goths, and Lombards, and later to the civil codes of emerging European nation-states (Stein 1999; Helmholz 1996; Wieacker 1995). English law, while it is often contrasted as a “common law” system, actually absorbed Roman law through multiple channels, including ecclesiastical courts applying Canon law, courts of equity, and courts administering the *lex mercatoria*, which drew on the Roman “law of all peoples” (*ius gentium*) for legal principles applicable regardless of citizenship (Helmholz 2001;

Holdsworth 1922). Hugo Grotius drew extensively on Roman law in laying the foundation for modern inter-national law; through the combination of colonialism, intentional incorporation, and international treaties, European and Anglo-American legal principles built on the foundations of Roman law have spread across the globe (Henkin et al. 1993; Rheinstein 1953; Grotius 1949 [1625]).

■ *Roman law has directly influenced socio-economic and political theory, particularly through the tradition of "natural law."* As is briefly discussed in Ford's contribution to this issue of the *Newsletter*, and as has been shown by many other authors (e.g. Stein 1999; Buckle 1991; Tuck 1981), the natural law tradition is derived from ancient Greco-Roman narrative traditions, and from classical and imperial Roman law sources drawing on those traditions; as early as the Second Century, Roman law sources began to equate the "law of all peoples" (*ius gentium*) – a law that could be applied regardless of citizenship – with the law of "nature" and "right reason". In Montesquieu's *Spirit of the Laws* (1989 [1748]), the natural law tradition was developed in substantially new directions with the notion that *positive* laws might be intentionally crafted to match the governmental structure, cultural "spirit", and material economic conditions of a particular society. Nevertheless, in seeking to understand the "nature and principle" of different governments, the "spirit" of different societies, and in tracing the history of French law, Montesquieu drew extensively on the older natural law tradition, and on Roman law directly. The natural law tradition forms the backdrop to Enlightenment political theory (Buckle 1991) and economic theory (Schumpeter 1996 [1954]). Karl Marx, Max Weber, and Emile Durkheim all referred to Roman law in their theoretical discussions addressing the sociological and economic impacts of law.

■ *Roman law has directly influenced modern socio-economic and political institutions, through its influence on legal culture.* Property, contract, the corporate form, the mercantile partnership-association (*societas*), the distinction between "public" and "private" spheres, and possessory legal "rights": each of these is well-attested in Roman law. Whether, how, and to what extent these conceptual forms influenced modern institutions has been a topic of great debate. During the Nineteenth Century, the controversial issue of Roman law influence on German legal institutions sparked the historicist movement in law, which led directly to the *Methodenstreit* of Max Weber's time (Agevall 1999; Wieacker 1995). In Ford's contribution to this issue of the *Newsletter*, a theoretical perspective ("seman-

tic legal ordering") is briefly sketched, to be more fully developed in Ford (forthcoming). This perspective builds substantially on Max Weber's economic sociology of law (Weber 1978), and on the example of his dissertation pertaining to the emergence of the modern business corporation (Weber 2003). The guiding insight for this theoretical perspective is that lawyers ("jurists"), due to their distinctive training in legal thought, have drawn on archetypal "forms and formulas" from Roman law in bringing conceptual and analytic clarity to new economic, social, and political developments. In doing so, they have drawn new developments under the embrace of old forms, adding stability and clarity to these underlying developments, at the same time as they have extended the old forms. Through the influence of lawyers and jurists, modern institutions such as property, contract, the nation-state, and the corporation continue to be shaped by archetypal forms of Roman law, despite the undeniable fact that these institutions would be virtually unrecognizable to the Roman jurists who originally developed these legal forms.

## V. Topics that Need to be Better Understood: # 2: Financial Law

The current financial crisis has made many economic sociologists realize that they need to have a better knowledge of the financial system, including its legal dimension. It is clear that many attempts are currently going on – in fora like the G-20, the Bank for International Settlements and so on – to strengthen the financial system, in legal and other ways, so that it will not break down again. This is part of the process, to use the current vernacular in these circles, to "strengthen the international financial architecture" (e.g. Vestergaard 2009).

Much less attention, however, is currently being directed at another, but equally important task: how can we get the best productive use out of the financial system and what role can laws and regulations play in this? The function of the financial system is to serve the rest of the economy with money, credit and capital; it does not constitute a goal in itself.

In discussing the financial system, one needs to distinguish between national financial systems and the international financial system. These two overlapping systems also pose distinct legal challenges, since there currently does not exist an overarching international authority, similar to the nation-state. There is obviously also a link between the

national financial systems and the international financial system, which needs to be better understood. Should the two, for example, be decoupled to some extent, with the help of legislation? Or would it be preferable to introduce what we may call "legal road bumps", so that what happens in the financial system of one national system does not immediately spread to those in other countries?

There also exists an asymmetry in the current international financial system, with some countries being extremely strong (the United States, England), while others are extremely weak (many developing countries and, more generally, small countries that are not part of some larger association like the European Union). Is there a need, for example, for legislation that regulates or at least slows down the movement of short-term international capital? Do we need legislation that prevents volatility in the foreign exchange market? A return to stable currencies, as before the breakdown of the Bretton Woods system?

As mentioned earlier, capitalist economies need stability as well as flexibility, and legislation plays a role in this. How are financial innovations to be handled? Would it make sense to introduce new *regulated* incentives for financial innovation based on variations of intellectual property (e.g. a variation on a patent system), through which proposed financial innovations could be examined prior to their introduction into the financial system? While such an approach may seem shocking to lawyers and economists who value the channels for innovation provided by freedom of contract, recent events do point to the need for preventing the disruption that unbridled freedom of contract can pose to an internationally-integrated financial system. In this context, it may be worth recalling Karl Polanyi's argument in *The Great Transformation*: that legal regulation may be most effective in controlling the rate of change in economic life, and that this control over the rate of change may be more important to social and economic stability than any attempted control over the *direction* of change (Polanyi 2001: 38-40).

Many more topics should in our view be on the agenda of the economic sociology of law, since this type of analysis still has a long way to go. A thorough discussion of the general principles of an economic sociology of law is also needed. Some of these topics and issues are addressed in the following articles in the Newsletter. And the reader will hopefully also be inspired to pursue what remains to be done on his/her own.

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# The Economy of Legal Practice as a Symbolic Market: Legal Value as the Product of Social Capital, Universal Knowledge, and State Authority

By Yves Dezalay and Bryant G. Garth

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*“... we must keep clearly in mind that the true object of a real economics of practices is nothing other, in the last analysis, than the economy of the conditions of production and reproduction of the agents and institutions of economic, cultural and social production and reproduction, i.e. the very object of sociology in its most complete and general definition.”* (Bourdieu 2005: 13)

In the second half of the 1980s, sociologists of law began to depart from the idealistic vision of the profession identified with the sociology of Talcott Parsons. They began to place their emphasis on the markets that the profession served and from which it profited. The legal market was portrayed in this literature according to a corporatist logic. The idea was that the quality of legal services – and the value assigned to the services – was determined by mechanisms for professional control over the recruitment and production of lawyers – the “producers of law.” The legal market was thus characterized as a market of artificial scarcity due to the restricted supply. Rules and professional practices, according to this approach, were part of a strategy to defend and to legitimate the legal profession's monopoly on the provision of legal services and legal representation (Abel and Lewis 1988). The *numerus clauses* that operate in many countries served two functions according to this perspective. One was to guarantee quality among the providers of legal services. The other was to ensure that monopoly profits accrued to the limited supply of lawyers available to serve the public's demand. In exchange for this monopoly position, in addition, professional organizations assumed a collective responsibility to provide legal services to the disadvantaged, therefore contributing – despite the restricted supply – to the legitimating principle of equal justice for all.

Postulating this universal professional goal of market control helped to call into question the meaning and substance of professional ideals in a number of countries. It put pressure on legal professions to become more open and accessible. But this approach to the legal profession also has serious limitations. In the first place, it has trouble explaining the wide diversity of professional practices inscribed in specific national political histories. For present purposes, however, the most obvious weaknesses of this corporatist vision stem from dramatic events that transformed not only the education and reproduction of legal professionals, but also their mode of organization. Whatever plausibility the corporatist approach had was put into question by these transformations.

The first of these transformations is the result simply of a major increase in the number of law graduates. The opening began generally in the 1970s with the multiplication of the number of faculties of law and the expansion of access to legal careers to individuals from the middle classes. The legal profession therefore expanded its ranks beyond the relatively small minority descended from the legal elites who had characterized most legal professions. The corporatist idea of a homogeneous group of providers matched poorly with this development.

Then, beginning in the 1980s, the mode of production of legal expertise was transformed by a wave of corporate reorganizations, by the opening of new markets (like the Single Market for Europe), and especially by the internationalization and globalization of deregulated financial markets (the “Big Bang” of the City of London and its aftermath, shaking up financial markets everywhere). The growth in the demand for business law produced by these events went with a process of increasing concentration of corporate law in very large global law firms. The competition was accelerated by the multinational accounting firms, which sought for a time to compete with corporate law firms by offering a supermarket of professional services through so-called Multi-Disciplinary Partnerships, or MDPs (Dezalay 1992; Dezalay and Garth 2004).<sup>1</sup>

Corporatist logics were progressively distorted or dismantled in order to give free reign to competitive markets. Competition was exacerbated by the influx of new producers benefiting from the opening of borders – and thus of new markets – to challenge local professional preserves. The specificity of the mode of production of legal expertise increasingly lost out to profitable strategies drawn from management or marketing. The business logic of very large companies was extended to the professional services industry. Again, the corporatist model was hard to reconcile with this commercialization.

These major transformations began in the United States, where processes of concentration accelerated with the entry of numerous new lawyers into the legal labour force (Galanter and Palay 1991), and they extended to major cities around the globe. But the export of this model encountered strong resistance in a number of settings, in particular in Asia. Countries like Japan and Korea continued to impose very restrictive quotas on the number of new entrants into the legal profession and also enforced very restrictive rules limiting foreign competition, particularly that from the legal multinationals. They sought to protect their very small professions from the major forces of change.

Within the legal professional environment more generally, in addition, these upheavals brought forth a number of concerns and criticisms. The relentless pursuit of growth and profit called into question the professional ideal, which had long served to bolster the social credibility of the profession, of a collegial community of equals committed to serve the public interest. This context of a return to basic professional principles helped bring new approaches to the legal profession seeking to reintroduce the political dimension – whether by emphasizing the multiple forms of engagement by *cause lawyers* (Sarat and Scheingold 1998) or by insisting on the primacy of the political as the basis of the professional project. The emphasis on the political was a reaction to an economic approach considered too reductionist (Abel and Lewis 1988).<sup>2</sup> Even if aspiring to a political theory of law, however, the authors of the new emphasis hold to a very restrictive view of the relationship between legal professionals and the field of political power. Political liberalism, they maintain, characterizes the essence of the history and structures of the bar (Halliday, Feeley and Karpik 2008). They recognize that this political project faces obstacles which slow down or prevent its realization. But they maintain that this project remains inscribed in the very nature of the legal professional model

– built around the defense of the freedom of civil society vis-à-vis the encroachments of state authoritarianism. This approach echoes professional ideology, but it remains too narrow, even reductionist.

History shows that legal professionals more often than not put themselves and their expertise in the service of strong rulers (condottieri, caudillos, or political bosses, for example), or military regimes, authoritarian states, colonial powers, and the like. As Kantorowicz (1997) suggests, furthermore, one can suggest that the interventions of lawyers aiming to moderate the authoritarianism of power holders represent primarily a collective strategy of legitimation – for the power holders, and also for themselves – which leads to the role of double agent characteristic of lawyers as “guardians of collective hypocrisy” (Bourdieu 1987).

This idealized vision of the political liberalism of lawyers also errs by going to the opposite extreme of the market approach. It overlooks legal activity in the service of the economic interests of the ruling or possessing classes – from which lawyers are recruited. The lucrative service of particular groups is ignored. The sociological relationship among these elite groups, however, is essential to understand the articulation between the legal market and the politics of law.

Indeed, the role of state knowledge – and more precisely the role of the faculties and schools of law – in the reproduction of the dominant classes is essential to the complementarity between the two aspects of legal practice. The combination between inherited relational capital and specialized competence acquired in prestigious and cosmopolitan educational institutions allows the most successful business lawyers to combine political office with their activity as leaders of the large legal firms – statesmanship with profit.

Rather than to oppose the politics of law and legal markets, therefore, it is necessary to analyze what these two aspects of professional practice, at the same time distinct and complementary, contribute to the reproduction of the legal field. The investment in the institutions of the state is of double interest. First, the authority and violence of the state are essential to produce belief in the law – and thus the demand for legal competence. Second, the investment by lawyers in political activities enables them to accumulate capital that is at the same time institutional and relational. This capital then facilitates success marketing social peace

as counselors and mediators for individual and collective conflicts. To succeed in this double activity, professionals must play the double role of statespersons/guardians of the public interest and defenders (or agents) of the particular interests of groups or individuals.

This collective strategy of the double game is based on the social construction of a divide between law and politics. This divide is inscribed in learned representations and in the definitions of service in the institutions of the state. Far from preventing the accumulation of offices, this division allows activities that benefit from the complementarity between two arenas. Legal professionals can combine the two sides in career trajectories exemplified by the lawyer-politicians who dominated the various "Republics of Lawyers" in France, or even by those using Wall Street law firms or their equivalent to facilitate exchanges – and the mobility of individual lawyers – between the various sites of academic, political and financial power (Dezalay and Garth 2008).

In order to understand the success of this double game, however, it is essential to take into account the central role of learned investment. The accumulation of this capital of knowledge makes it possible for legal professionals to keep a certain distance from conflicts linked to the activities of the state. Depending on the setting, the distance could be from the various forms of "strong men" or other charismatic politicians that lawyers serve, or from the particular social interests that lawyers represent. Lawyers can draw on the higher legitimacy produced by knowledge that purports to be universal. The authorities of the state – as well as other players on the political scene – must respect that knowledge because it contributes substantially to their own legitimacy. That contribution serves them not only inside their own territory, but also on the international scene, where it is used as a guarantor of membership in the community of nation-states. Indeed, the international circulation of legal knowledge and the relational capital accumulated by lawyers predisposes them to serve as mediators in international relations – supported by a community of language and habitus.

In addition, this investment in learned capital plays a central part in the reproduction of legal professionals. This process, however, operates in an ambiguous and differentiated way. On one side, the need to acquire the requisite learning is used as a barrier to entry by facilitating the conversion of social (and financial) capital for the family lines of the noblesse de robe. Because of the high cost of

the studies and the elite selection processes, legal degrees have traditionally been regarded as the equivalent of the "diploma of the bourgeoisie" (Bourdieu 1998). Further, the social stratification that comes from school selection has often been accentuated by apprenticeship requirements that tend even more to favour those possessing the most social capital.

In a paradoxical way, however, these barriers to entry function much better when the process remains relatively open to meritocratic talent. Serving as a filter, the selection process can restrict access to a relatively small group of social newcomers whose selective integration can contribute to a permanent and controlled renewal of the legal field. Thus, the recruitment of meritocratic students – who then are encouraged to overinvest in the production and diffusion of legal knowledge to compensate for their lack of relational capital – is one of the engines for the construction of law as a scientific discipline akin to those found elsewhere in the university. In addition, the social selection of the new recruits – often from the middle classes or immigrant populations in the process of upward social mobility<sup>3</sup> – helps open new markets and new customers for the law. In particular, it favours strategies combining politics and law by which lawyers work to gain recognition for the rights of social groups that have been dominated or marginalized in the field of state power.

These two aspects of recruitment make it possible for the legal field to be presented as a neutral space, legitimate to handle the mediation of social conflicts representing a diversity of social interests. Admittedly, this process of representation is tilted in favor of the holders of economic power – from whom most of the professional elites are recruited. But this uneven distribution is not completely rigid, and it may attenuate over time through political struggles or through the meritocratic logic inscribed in the scholarly world.

The interactions among three poles – merchant, scholarly and political – are therefore central to the reproduction of the professional field. The mobility of agents between these various sites is accompanied by a process of conversion among the specific forms of capital that prevail in each one of these subfields. This process can also be analyzed historically as the product of various phases that together constitute the cycle of reproduction of legal expertise. This process involves the conversion (according to fluctuating methods and rates) of social, relational and financial capital accumulated in family lines into a legiti-

mate form of competence, validated by a universal knowledge and linked to the institutions of the national state.

This conversion requires a substantial financial investment, but it increases and develops the relational capital of the most endowed agents. This combination of complementary resources can then be mobilized in strategies for the acquisition of professional notoriety. Those strategies do not exclude investments in the public scene – in fact the opposite is the case. Again, however, while the costs of entry are far from negligible, they are relatively easily and quickly converted into profit. The clout that comes from the entire capital of influence, relations and public notoriety, in fact, is much sought by large companies anxious to defend their interests, whether in the legal arena or in administrative and legislative settings.

These processes of exchange between family, learned, and political capital can be observed either at the individual level – in the career trajectories of the most successful legal elites<sup>4</sup> – or from a collective point of view – in the social authority and credibility accumulated by national legal fields at various times in their respective histories. Putting together individual trajectories over time in fact helps to explain the cyclical phenomena affecting the collective role of lawyers which we analyze in the global South in our forthcoming book (Dezalay and Garth forthcoming).

The initial phase is that of primitive accumulation. It is based on the transfer of an imported legal knowledge to a small group of local notables co-opted within the framework of colonial strategies. This investment is later consolidated by conversion into state capital when these colonial lawyers transform themselves into founding fathers in movements for independence. These elites use their constitutional and diplomatic expertise to make themselves the architects of the new nation-states.

In parallel, the rise of the legal market allows them to develop a double legal and political competence. They serve the dominant oligarchies from which they came and the interests associated with those oligarchies. The marketing of legal knowledge and authority to the exclusive profit of the dominant interests, however, creates risks for the social credibility of these people and institutions. The position of the legal elites is all the more fragile since they served essentially as colonial clerks prior to independence and were not well established on their own locally. In addition, they were highly implicated in local political struggles because of the very close link between lawyers and politics.

The phase of disqualification that results from these risks can also be accelerated and rendered worse if lawyer-politicians are marginalized by authoritarian regimes depending for their credibility, for example, on their position in the Cold War or on the strength of the military. The competition from technocrats associated with developmental states may further weaken legal credibility and further reinforce the decline of the legal path as the privileged channel for the reproduction of state elites. Thus, the loss of social credibility of the legal field is due to the decline in the value of its social capital, which goes hand in hand with the loss of legal authority in the state. At the same time, however, this obsolescence of legal capital offers new opportunities for investment in legal knowledge, taking advantage, for example, of hegemonic strategies associated with the export of the rule of law.

These cyclical processes in the South – initial colonial investment, increasing value through independence, and then decline in authoritarian or developmental states – are more pronounced because of the instrumentalization of the law in the service of colonial policies. The export of legal knowledge was after all at the centre of strategies of domination, seeking both to legitimate the power exercised by imperial companies in remote colonial possessions and to facilitate colonial management. That facility is seen both in the co-optation of local elites converted into lawyer-compradors and then in their enactment of the role of guarantors of a constitutionalized transition. Thus, the autonomy of these peripheral legal fields was limited by their double dependence – on the struggles that would take place in local and international political arenas, and on the colonial academic centres as the most legitimate places for the reproduction of legal knowledge and competence. Colonial metropolises had jealously kept the monopoly on the production of legal knowledge.

These two weaknesses were reinforced in a cumulative way. Legal excellence was reserved for a small minority of privileged people due to the costs and difficulties of access to the international sites where it was produced. The marginalization or loss of position by legal notables then would have the effect of dismantling the elitist networks through which the capital of learned legitimacy was renewed. As a result, it became even more difficult to resist political pressures.

The overlap and exchange among the various species of social capital, including family, learned, and political capital, explain how the force of the law is built, but also how

it can weaken and lose credibility. In certain countries of Southeast Asia, such as Indonesia, this process of decline was particularly dramatic. But one could find similar phenomena, even if less serious, in European countries after the Second World War. Lawyers in Europe did not hesitate to denounce the “decline of the law.” Indeed, even if the system of positions at the core of the legal fields were more complex in Europe, in particular because of opportunities for social advancement for more meritocratic individuals, political struggles produced very similar results to what happened in the South. After having dominated political representation, as in the “Republics of Lawyers,” political lawyers in Europe were relatively marginalized by the bureaucracies of the Welfare State. Indeed, that marginalization was done knowingly to weaken the influence of lawyers and the propertied classes whom they served. Thus, even in the European countries, the political marginalization of legal notable has effects on the credibility of legal knowledge. The relative downgrading of legal education, which no longer appears as the royal way of access to positions of public or private power, affects the process of the re-actualizing of the legal capital of learned authority. That authority increasingly has to compete with the rise and autonomization of new state knowledge such as found in economics, management, and political science. In Europe, therefore, as in the colonies that the Europeans founded in the South, legal authority declined notably in the period after the Second World War. The decline in Europe, in fact, also helps explain the relatively low resistance within Europe to the international expansion of the model of Wall Street law firms that accelerated in the context of the liberalization of markets in the 1980s.

Today the U.S. legal field is in a hegemonic position enabling U.S. lawyers to export prescriptions for the rule of law and to impose U.S. approaches as the best source for a renewal of the social authority of peripheral legal fields initially patterned on Europe. The basis for that hegemonic position is the complex structure of oppositions and complementarities in the United States among the various poles of legal power – scholarly, economic and political – which constitute a kind of built-in anti-cyclical device. Internal tensions and permanent competitive struggles in the U.S. legal field produce new legal opportunities and therefore renewal – as much in academic space as in the political world.

Still, this exceptional legal prosperity of the United States should not be seen as an immutable asset. The history of the legal field of the United States in the nineteenth century reveals some similarities to that of the colonized coun-

tries. After the “golden age” when lawyers serving colonial power reinvented themselves as fathers of independence and the American Constitution, the credibility of the law gradually eroded, in particular in the Jacksonian period. It was not until the end of the nineteenth century and the launching of law schools combining elitist social recruitment and strong academic competition – which included opportunities that the competition provided for meritocratic promotion – that the value of legal capital was restored. Elitist networks bringing together Wall Street finance and the corridors of political power then began to prosper. The reformers and cosmopolitans of the elite legal field were later termed the Foreign Policy Establishment. This group prospered and dominated the field of state power for most of the twentieth century – embodying the close link between politics and legal markets.

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## Endnotes

**1**Pierre Bourdieu insists on the need to reconstruct “the genesis of the economic dispositions of economic agents” (2005: 5). *Marchands de Droit* (Dezalay, 1992) sought to describe the international competition and internal fights that accelerated the difficult conversion of the heirs to a European *noblesse de robe*, who regarded themselves as “learned professionals,” into merchants of law embedded in competitive markets and serving mainly large corporations.

**2**This “rediscovery of the political” rests also on a current of professional literature that describes (prescribes?) a generalized phenomenon of a “return to law” in the political field. The authors of this literature document this phenomenon in very diverse ways: promotional campaigns for the rule of law by international and national institutions, militant engagements for public interest or cause lawyering, even the weakening of political agents because of judicial inquiries of the *mani pulite* type. Or they point to more structural causes such as a judicialization of international relations applied to Europe or more generally.

**3**Particularly in the case of the United States.

**4**One could give multiple examples starting from our own research, in particular on international commercial arbitration (Dezalay and Garth 1996). One of the most remarkable illustrations is that described by Lauro Martines (1968) examining the role of the notable lawyer-diplomats in Renaissance Italy. In a time of economic and political upheaval, legal investment was to some extent a way to protect family capital: to “cash in on one’s connections and family prestige” (p. 76) by accumulating the positions of grand professor, ambassador, lawyer, judge or advisor to whichever of the authorities of State requires a “legal opinion” for important businesses. The book thus perfectly describes the process of investment in learned capital, then its valorization as diplomatic and relational capital, and finally its profitability on the market of legal mediation in various struggles for power. Initially, the noble families invested in legal knowledge by sending their children to Bologna; in return, those who came to possess this learned capital could use it to gain access not only to the most influential positions in the legal field but also in the field of state power. Indeed, Martines shows that not only were the grand professors well remunerated (with incomes equivalent to six months of the profits of the Florence branch of the Medici bank), but also that this position produced a marketable notoriety with respect to potential clients and the state. They served as ambassadors to negotiate important treaties or as mediators and arbitrators of commercial disputes or conflicts between official or religious powers.

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# Semantic Legal Ordering: Property and Its Social Effects

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What is property, what are its social effects, and what is the role of law in relation to property and its social effects? These are questions that have been asked, albeit in differing ways, by generations of social theorists, including the generation that established the academic discipline of sociology. The premise behind this essay is that these questions should be posed and addressed once again, in light of fundamental changes that are taking place in global societies and economies.

The primary objectives of this essay will be to (1) conceptually reassemble prominent theories of property, clustering them in a way that may shed new light on certain common elements, and (2) offer a preliminary sketch for a theoretical perspective that might combine these common elements. Once these theoretical perspectives have been offered, the essay will conclude with a brief discussion of property's social effects. Drawing on legal and political thought with roots in antiquity, the essay will point to the "paradox of property": the argument that property is simultaneously a fundamental threat to organized social groups, and often a necessary corollary to the existence of such groups.

## I. Theories of Property

In order to understand and explain the social effects of property, it is first necessary to understand what property is. Jurists and social theorists have made repeated efforts to elaborate defined criteria for identifying property, thereby enabling an understanding of its social attributes and effects. Here it is proposed that these theories can be seen as clustering around two poles: (1) organized social closure theories, and (2) collective representation theories.

### A. Organized Social Closure Theories

Organized social closure theories all start from the basic insight that an essential criterion of property is exclusivity. Add to this insight the colourful Hobbesian (1994 [1651]) argument that human beings acting in isolation could never achieve exclusivity that is durable or stable, and one has assembled the basic ingredients for an organized social closure theory. The causal intuition is that a group of individuals must cooperate in closing off access to an object or resource, thereby enabling exclusivity. In the language of contemporary institutionalist economics, a "common-pool resource" or "public good" is transformed into a "private good" through the collective action of a social group, which uses its collective possessory power to (1) protect the good against appropriation from outsiders, and (2) articulate and enforce rules concerning derivative possession, use and/or production and sale (see Barzel 1997; Ostrom 1990). Only social groups have the collective power, enabled by organized cooperation, to create exclusivity. Once a social group has created exclusivity, derivative "rights" may be articulated and allocated to individuals, to sub-groups, or to the collectivity as a whole. However, without the implicit or explicit exercise of collective power by the social group, any "rights" of exclusive access, possession, use, production or sale will be entirely illusory.

In Chapter 1 of *Economy and Society*, Max Weber (1978) articulated the organized social closure theory with characteristic directness and perspicuity. Contrasting open and closed social relationships – behaviour of a plurality of social actors where the action of each is oriented, in its meaningful content, to the behaviour of others – Weber identified the differential criterion as the degree to which certain "advantages" are effectively "monopolized" by the existing participants to the relationship. Where advantages are monopolized by existing participants, and where certain advantages are monopolized by individuals or sub-groups *within* the larger social relationship, Weber argued that property rights ("appropriated rights") have emerged. Within the larger category of appropriated rights, Weber identified "ownership" (*Eigentum*) with hereditary transfer across generations. Regardless of whether ownership is enabled within the closed social relationship, however,

appropriated rights may exist. Where the latter exist, they are dependent upon a degree of closure against outsiders and against other insiders. Thus it is social closure by an organized social group that enables the exclusivity characteristic of property.

Organized social closure theories have an ancient legacy, drawing force from centuries of scholarly reflection on Greco-Roman legal and political forms. The Roman historical ideal for socio-political governance was the republic: the *res publica* or "public thing." In Roman law, the word *res* was used to designate "things" in their legal relation to human beings, i.e. things as potential objects of property or other socio-relational "obligations" governed by law. Thus the republic was *literally* "the property of the public" (Cicero 1928, at I:XXV). In their mythical reflections on the origins of political communities and their laws, Greco-Roman authors established archetypal forms for reflection on the origin of societies generally. In reflecting on the forms they saw as prototypical ("natural") for enduring social relationships, these authors reflected on the establishment of forms for obligations and powers between persons in relation to proprietary objects (including human beings). In doing so, the Greco-Roman authors established a "natural law" tradition for considering the origins and legitimacy of property relations *beyond the context of positive law*. This natural law tradition for reflection on the origins and legitimacy of property "rights" and obligations contained, in implicit form, the basic elements of an organized social closure theory.

The clearest cases of implicit organized social closure theory in early Greco-Roman tradition are seen in narratives addressing the origins and legitimacy of (1) a delineated, proprietary "share" in landed territory, and (2) privileged membership in the "association of citizens," i.e. citizenship. These narratives reflected on a mythical transition from a period of primitive civilization, military insecurity, and small populations without settled abodes to increased social cooperation establishing military security, agricultural development, and permanently settled populations (see, e.g., Thucydides 1998, Book I; Plato 1926, Book III). The establishment of permanently settled populations on bounded territory was described as occurring in a process analogous to the establishment of colonies: territorial boundaries were purportedly established through the building of walls with attendant religious ceremonies, and individual allotments of land were purportedly granted by enlightened lawgivers to male heads-of-households. Citizenship privileges were conceived as being originally re-

stricted to elite male household-heads, their sons and male heirs, with occasional extension through legal alliances effectuated by treaty, forced marriage, or other means. In Plato's *Laws* (Books III and V; see also Morrow 1993), this foundational moment is described in language that combines elements of myth, comparative political history, and prescription for the ideal political community, whereas in Cicero's *Republic* (Book II) it is described as the actual history of Rome. Regardless of historicity, this foundational mythology relating to the establishment of closed political communities, with proprietary "rights" established for a subset of privileged citizens, contains the basic elements of an organized social closure theory of property.

For Imperial Rome, which governed a vast array of peoples with initially-diverse citizenship ties, the natural law tradition proved useful in establishing a universal law that could fill gaps in positive law and govern legal transactions between people whose formal legal status placed them under different positive laws. By the Second Century A.D., the natural law tradition had been partially interwoven with the positive law for Roman citizens. The interweaving of a "law of all peoples" (*ius gentium*) and citizen law (*ius civile*) is evident from the first section of *The Institutes of Gaius* (~150 A.D.), a Second Century legal textbook that inscribed foundational principles of Roman law for future generations of jurists. In the Byzantine Emperor Justinian's Sixth Century A.D. edition of these *Institutes*, the "law of nature" and the "law of all peoples" are formally equated with one another (I.2) and given their foundation in "justice" (*iustitia*), the supreme principal of which is stated to be "the constant and perpetual will to render to each one his own right (*ius suum*)" (I.1).

With respect to property law, an early and clear example of interwoven natural law and citizen law is seen in forms of acquisition, especially the form of "occupation" (*occupatio*): the first taking of a "thing of no one" (*res nullius*), along with certain related forms. While this form of acquisition was not based on labour, the prototypical examples (fishing, hunting, finding an abandoned treasure, seizure from an enemy in war) all involved physical exertion and control in relation to a thing. Difficult cases, which had generated debate among classical juristic schools, involved the labour of one person to create something new from raw materials belonging to another person. Already in the Sixth Century A.D., labour was used as a justification for deciding certain of these difficult cases in favour of the person who had expended effort in making something

new from the raw materials (Justinian II.1; cf. Gaius II.65-II.79).

Reflecting back upon the natural law tradition – a tradition that had been given new vitality beginning around the Twelfth Century with the rediscovery of Justinian’s codified Roman law, the founding of the great medieval law schools, and the establishment of ecclesiastical Canon law on the basis of Roman law – European jurists drew on it in formulating a law of “nations” and between nations. In laying the foundations for international law, Hugo Grotius (1949 [1625]) drew extensively on the natural law tradition, describing an evolutionary transition from common property to private property, basing the latter in organized social closure, either explicitly derived from agreement or implicitly based on mutual recognition of the right of occupation. While he did not acknowledge its basis in Roman law, or in a social-closure-based right of acquisition by occupation, John Locke (1998 [1689]) drew on this same tradition in articulating his natural law theory of property, the complement to his labour theory of value.

Explanation and normative justification are interwoven in the natural law tradition, as in the economic science built substantially upon this tradition (see Schumpeter (1954) on the natural law foundations of economic analysis). And, in this tradition, the prominent explanations of social and proprietary origins are theories of organized social closure. In the Marxist tradition of political economy, while the normative justification for private property is stripped away, the institution is also explained as a result of organized social closure, with the capitalist “class” (the “owners of capital”) substituted for “the association of citizens” as the enclosing collectivity (see Marx 1967 [1887]; Marx 1988 [1844]).

## B. Collective Representation Theories

The same Greco-Roman and natural law traditions containing an incipient organized social closure theory inspired Emile Durkheim’s collective representation theory of property. This theory is explicated in a series of lectures given by Durkheim, published in English under the title *Professional Ethics and Civic Morals* (1957). Reacting against individualistic natural law theories, especially the argument that individual labour provides the origin and justification for individual property, Durkheim articulated an alternative theory of property that focused on its social and ideational (“intellectual”) aspects, tracing their origins to *religious ideas* reflected in the Greco-Roman tradition.

Returning to exclusivity as the defining criterion of property, Durkheim argued that this exclusivity can only be enabled by the collective power of a social group. In making this argument, he articulated an organized social closure theory. However, for him the more important question was why social groups came to regard exclusivity as a relation between an individual and a thing that should be protected and upheld. In contemporary terms, it might be said that Durkheim was asking a “sociology of knowledge” question about proprietary exclusivity: what are the causes that explain the emergence and persistence of a set of ideas within a social group, a set of ideas that stamp exclusive possession and use with morality and legitimacy, thereby enabling individuals (and corporate bodies) to exercise exclusive power over things and to gain profit through the exercise of that power?

Drawing on his investigations of Polynesian societies and the work of his teacher, Fustel de Coulanges, Durkheim argued that this set of ideas originated in the ancient setting-apart of sacred things, things that by virtue of their dedication to a deity are “taboo”: not to be touched, consumed, or used by individuals. Just as ancient societies regarded certain things as being set-apart and sacred, he argued, so certain persons were regarded as holding a status that set them apart, such that by virtue of their sacred priestly office they alone might touch, consume, and use sacred things. In this way a “moral community” was established between persons and things: the consecration of things as sacred set inviolable boundaries around them, and consecrated them for the exclusive possession, use, and consumption by certain individuals.

Drawing on the Greco-Roman narrative tradition as a case study in the establishment of landed property, Durkheim followed Coulanges in focusing on the religious rituals and beliefs depicted in these narratives. The basic conception described is one in which landed territory is originally regarded as being sacred (and therefore untouchable), with the sacred character capable of being concentrated into boundaries through the use of specific religious rituals. In this way, the same sacred status that originally excluded the individual (the male household-head) can be transformed to his benefit through its concentration in boundaries that exclude all others excepting him and his household-members. The bond between the household-head and his landed estate is given a sacred and moral status, which the community respects and enforces because the community shares the religious set of ideas that have stamped the relationship with its sacred status.

Regarding the worship of powerful deities as the disguised worship of society's power, Durkheim argued that the decline of religious belief merely transfers sacred status from the divine to the social collectivity. Thus the individual's exclusive right to possess, use and profit from property is protected by collective social power rooted in collectively-held ideas, even with the decline of religious belief. What was originally religious becomes secularly moral and juridical, but it still carries the echoes of religious dogma. This is seen, according to Durkheim, in the remains of ritualistic formalism that long persisted in contract law, the primary juridical vehicle (aside from inheritance) for transferring property, and for conceiving social relationships in terms of reciprocal rights and obligations.

The argument that property originated in primitive religious ideas strikes the contemporary reader as being somewhat strange, especially in light of property's modern, economic character. Moreover, Coulanges' scholarly work (which Durkheim cited and relied upon) has been negatively judged for its uncritical reliance on classical texts, and for its polemical agenda against socialism, which is seen as contributing to his treatment of individual property as a "primordial" and universal institution (Momigliano and Humphreys 1980). Nevertheless, even the severest critics recognize Coulanges' influence on anthropological literature. In directing attention to deeply-rooted, collectively-held conceptions of social relationships and "things," as these are reflected in the written sources of Greco-Roman political economy and law, Durkheim and Coulanges pointed to the need to explain the social force of these shared conceptions. From Marcel Mauss' famous study of *The Gift* (1990) to contemporary examinations of Roman legal categories and semantics (e.g. Pottage and Mundy 2004), anthropologists and cultural theorists have continued to return to this explanatory problem.

### C. Semantic Legal Ordering

Organized social closure theories address the type of social *structure* that is necessary for property to exist, while collective representation theories address the types of socially-shared *conceptions* that are necessary. Viewed from this perspective, the two theories can readily be seen as complementary: organized social closure and proprietary conceptions must come together in order for property to emerge or change. In fact, while authors identified here with one or the other theory have tended to emphasize either the structural or conceptual aspect more, both elements have typically been present in their theoretical expo-

sitions. If it is accepted that organized social closure and proprietary conception must be brought together in order to explain why property emerges or undergoes transformation, the sociological query can be focused on *how* these structural and conceptual "ingredients" are brought together. The argument to be sketched here is that a focus on the education and social role of "jurists" in performing tasks of "semantic legal ordering" may be helpful in answering this question.

Leaving aside the issue of religious influence, it remains true that legal science has retained a profoundly "dogmatic" character. Lawyers – whether trained from Roman law *Institutes*, European codes, or Anglo-American common law principles inductively-derived from case-law precedents – are taught to reason from written texts by deduction and analogy, drawing on certain fundamental conceptual categories, including property, contract, and the corporation. Drawing fine classificatory distinctions, and creatively interpreting the "facts" of a transaction or dispute in relation to such classificatory distinctions, are central elements of the juristic art. Jurists are taught to think and work within formalities: documentary, substantive, and procedural "forms and formulas" that are relied upon to bring order, reliability, and clarity to dispute-resolution, legislation, and the effectuation of economic transactions. While addressing an issue posed in the present, lawyers are always looking back toward the forms and formulas transcribed in writing from the past, whether from case-law precedents, legislation, codified principles rooted in Roman law, or the "natural law" tradition based on Roman law that has guided juristic thinking when faced with gaps, rigidities, or inequities in positive law. For this reason, the forms and formulas that jurists draw upon in articulating solutions to particular social problems have remained remarkably stable over time.

The sociological importance of juristic thinking lies in the historical fact that foundational documents formally establishing social groups and their legal structures (national constitutions, corporate charters, codes of civil and criminal law, contracts of debt, exchange, partnership, merger and acquisition) are drafted, debated, sealed and delivered by jurists. For this reason, the forms and formulas that jurists have been taught to use in conceptualizing and describing the social group (e.g. as a corporate body or a contractual partnership), as well as the "rights" and obligations of its members, are transcribed into the meaningful "order" toward which individuals within the social group orient themselves in relation to one another (Weber 1978). Jurists

engage in a “semantic legal ordering” that gives meaningful form to the exercise of power by the social group in relation to the individual, thus enabling individuals to form stable expectations as to the directions in which their agency and interest (Swedberg 2005) can be directed, and the ways in which that agency and interest will be met with the formal exercise of coercive social power (Weber 1978). In the case of agency and interest directed toward “things,” the legal category of property supplies a semantic form that enables individuals and groups to form expectations concerning the extent to which they can take and retain possession, use, consume, and profit from things.

Jurists contribute to the organizational aspect of social closure, and to the collective ideas that individuals within social groups draw upon to conceptualize and justify proprietary exclusivity. By focusing on the role of jurists in historical and modern societies, organized social closure theory and collective representation theory can perhaps be synthesized.

## II. Conclusion: The Paradox of Property

Having briefly sketched a synthetic theory for explaining what property is and how it emerges, what remains is to briefly discuss property’s social effects. Returning once again to the archetypal Greco-Roman tradition, what emerges from that tradition is “the paradox of property”: that property is simultaneously necessary to the existence and development of the social group, and a fundamental threat to the social group.

Reflecting back on their mythical origins, Greek and Roman social theorists viewed their history in terms of repeated conflicts over proprietary wealth and citizenship rights. When these conflicts boiled up into crisis, archetypal lawgivers would enter the scene, restructuring proprietary and citizenship “shares” to bring about resolution and enable greater numbers of (free and male) members to benefit from investment in the collective social power represented by the republic or polis (e.g. Aristotle 1984; Cicero 1928; Plutarch 2001.) Regardless of historicity, this Greco-Roman tradition points to the paradoxical effects of exclusive, proprietary “rights”. Such rights constitute inequalities within the social group, which can produce vicious conflicts posing an existential threat to the group. At the same time, a wise structuring of such rights, along with transparency as to their content, can ideally produce a shared sense of investment in the security, stability, and development of the social group.

If the social group is organized around enclosed, proprietary rights (corporate, communal, or individual), property and the social group are corollaries: one implies the existence of the other. Nevertheless, the eternal hope is that a wise structuring of proprietary shares within the social group can enable property to be an engine of shared investment and stable growth, rather than instability and conflict.

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# The Legal Constitution of Market Society: Probing the Economic Sociology of Law

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## Towards a multilevel approach of embeddedness

'Embeddedness' can be considered the core concept – or lowest common denominator – of economic sociology (Rizza 2006; Beckert 2007; Krippner/Alvarez 2007; Gemici 2008). Programmatically, this concept displays a critical posture towards neoclassical mainstream economics: While the latter is seen as 'disembedding' economic action from its social context (both analytically and normatively), economic sociology follows the opposite agenda of 're-embedding' economy in society. Embeddedness thus points to conflictive relations between mainstream economics and economic sociology.

At the same time, the concept also reminds of economic sociology's affiliation with general sociology, namely theories of modernization, differentiation and integration. In other words, the problem of embeddedness is not confined to the economy as such but replicated in other 'relatively autonomous' social spheres, such as law, politics and science. Consequently, the embeddedness discourse encompasses – more or less – all levels of sociological analysis:

■ On the microanalytical level, the discussion centres around the concept of *actors* and appropriate theories of action: Whereas microeconomic theories typically presuppose self-centred 'monadic' actors (*ego*), microsociological theories deliberately start from 'dyadic', i.e. interactive and intersubjective entities (*alter*).

■ On the mesoanalytical level, the focus turns from inter-related actors to *relations* in their own right: In economic sociology, this perspective prevails both in network and field theoretical approaches that either draw on the 'struc-

turalist' notion of relational networks or the more 'culturalist' notion of institutional fields.

■ On the macrolevel, the analysis focuses on social *regimes*, or the totality of interrelations in a given society: Regimes are complex institutional constellations that connect – and thus integrate – different spheres of action. Socio-economic regime-analysis draws both on macrosociological theory and comparative political economy.

■ On the metalevel, the analytical focus turns to the *rationalities* underlying a given regime or social order: Rationalities refer to abstract, epistemic categories located in the 'deep' structure/culture of society that organize our perceptions and evaluations of reality. These include 'scientized', i.e. objectified concepts and dichotomies.

Micro-, meso-, macro- and metaanalytical approaches based on the embeddedness paradigm can thus be distinguished by their respective focus on actors, relations, regimes or rationalities. They can also be combined and connected in a multilevel design that offers the whole scale and scope of sociological analysis. Yet, commonly, theoretical paradigms either cluster around bottom-up approaches that focus on the micro- and/or the mesolevel and top-down approaches that focus on the macro- and/or the metalevel. Whereas the former are particularly prominent in the American context and constitutive for the 'new' economic sociology, the latter are traditionally stronger in the European context and representative for the 'old' (or classic) economic sociology.

## From social economics to new economic sociology

To be sure, the relaunch of economic sociology, as pursued by American scholars in the 1980s, was from the outset sceptical of 'oversocialized' conceptions of economic action, as would be found in neo-Marxist as well as post-Parsonian strands of sociology at that time (Granovetter 1985; Convert and Heilbron 2007). Not surprisingly, then, more 'holistic' approaches are largely lacking under the 'new' brand of economic sociology. But this does not

mean that other approaches – classic or contemporary – addressing ‘the sociology of the economy’ (Zafirovski 2001) would not be instructive for understanding the multilayered problem of embeddedness.

Hence, it is worthwhile also reconsidering the origins of economic sociology at the turn of the 19th/20th century (Swedberg 1987): In retrospect, the decades between 1890 and 1920 can be referred to as the classical period of economic sociology which was marked, amongst others, by the pioneering works of Emile Durkheim, Max Weber and Georg Simmel – ‘founding fathers’ of sociology more generally. Alternatively, one could also start a reading list in ‘classic’ economic sociology with the pertinent contributions of Vilfredo Pareto, Joseph Schumpeter and Thorstein Veblen – today better known as representatives of economics.

In the German-speaking countries, the *fin de 20ème siècle* is also known for the first *Methodenstreit* (battle of methods) which, a generation later, was followed by the second *Methodenstreit*, or *Werturteilsstreit* (battle of value judgments). These debates not only shaped the direction that economics and sociology would later take as independent social scientific disciplines but also affected the future development of economic sociology (Zafirovski 2002).

Schematically, one can summarize the formative impact of these decades with Max Weber’s (analytical) distinction between economic history, economic theory and economic sociology which were conceived as interrelated branches of the encompassing field of social economics. If social economics thus formed the ‘undifferentiated’ starting point, the battles of methods mainly worked to differentiate economic history and economic theory. In this sense, ‘reductionist’ theoretical economics (led by the Austrians) ruled out ‘holistic’ historical economics (led by the Germans).

Yet, as a side effect of these definitional struggles, economic sociology was singled out as a subdiscipline much smaller than the original field of social economics and detached from both economic theory and economic history. In fact, the ‘old’ distinction between economic theory and economic sociology still fuels the debate on ‘disembedded’ versus ‘embedded’ views of the economy. And the ‘old’ distinction between economic history and economic sociology has, in the course of time, marginalized more holistic, historicist versions of economic sociology.

The differentiation of social economics thus left a bunch of specialized economic disciplines – economic history, economic theory and economic sociology – with much expertise but little exchange. The same happened on the other, sociological, side of the equation: Whereas Max Weber’s encyclopaedic work on “Economy and Society” still followed a ‘double bind’ policy of relating economic sociology not only to other economic disciplines (such as economic history and economic theory) but also to other sociological disciplines, including the sociology of the state and the sociology of law (Weber 1972 [1922]; Swedberg 2006), these links have later been lost.

Again, the ‘new’ economic sociology is a case in point as it has, on the one hand, dissociated itself from sociology’s theoretical and historical branches and, on the other hand, lost sight of the links between economic, political and legal institutions.

### From E&S, L&S and L&E to the economic sociology of law

More recently, however, there have been calls from scholars (mostly institutionalists) working in the field of economy and society (E&S) as well as in the neighbouring fields of law and society (L&S) and law and economy (L&E) to closer connect economic and legal sociology – and thus further what can be called the ‘economic sociology of law’ (Zafirovski 2000; Swedberg 2003, 2006; Suchman 2003; Stryker 2003; Edelman 2004, 2007; Edelman and Stryker 2005).

All these fields – E&S, L&S and L&E – are interdisciplinary inasmuch as they lie in between the common subject matters of economics, sociology and jurisprudence, namely the economy, the society (or the ‘social’) and the law. Yet, interdisciplinarity denotes not only the reintegrated *ex post* state but also the undifferentiated *ex ante* state of what has come to be known as scientific disciplines. At least the socio-economic field (E&S) and the socio-legal field (L&S) not only follow, but also predate, in this respect, the ‘differentiated’ economic and legal disciplines.

Not surprisingly then, they also share a very similar research paradigm, namely the idea of social embeddedness: Whereas the former focuses on the embeddedness of the economy, the latter concentrates on the embeddedness of the law. In both cases, the negative point of reference can thus be found in ‘disembedded’ conceptions of either the

economy (put forward by economic theory) or the law (put forward by legal theory).

At the same time, E&S and L&S give very similar examples of how scientific debates have restructured once 'integrated' socio-economic/socio-legal fields. The story of the latter (L&S) thus reminds of the story of the former (E&S): Once dominated by 'holistic' historical-cultural approaches – with the German historical school of jurisprudence as a prototype (García-Villegas 2006; Tuori 2007; Grechenig and Gelter 2008) – the socio-legal field was gradually transformed into a differentiated landscape of historical, theoretical and sociological disciplines.

Today, legal history, legal theory and legal sociology are thus rather disconnected from each other; and L&S mainly builds on a narrow understanding of the latter: a sociology of 'law in action' (as opposed to 'law in the books') that disregards both the history of law, including the social history of legal thinking, and the theory of law, including its 'hidden social theories' (Tuori 2007).

Just as 'new' economic sociology has lost its historical-comparative dimension (or rather left it to political-economic approaches) and come to define itself by its critical posture towards orthodox economic theory, today's legal sociology shows, on the one hand, a rather weak account of its macrosociological underpinnings and stands out, on the other hand, by its strong stance against legal orthodoxy (Vick 2004; Tamanaha 2009).

As regards the structure of the third research field in between economic and legal scholarship, the embeddedness paradigm has much less relevance. As a matter of fact, L&E is not about how specialized spheres of action – the law and the economy – are embedded in the wider society. However, it is possible to describe the field in terms of the 'mutual embeddedness' of these specialized spheres, i.e. the legal embeddedness of the economy and the economic embeddedness of the law.

To put it differently: Whereas both the legal and the economic sphere can be considered as independent systems with distinct rationalities (and specific scientific disciplines in charge of their 'rationalization'), they are, at the same time, dependent on each others functioning within one and the same socio-economic/socio-legal regime.

Far from adopting this kind of thinking, L&E scholars nowadays focus on what is called the economic analysis of

law, basically meaning the introduction – or imposition – of economic categories on legal thinking (Bouckaert and De Geest 2000; Fink 2004). In other words, historical-cultural and sociological accounts of the interaction between law and the economy, including the interaction of legal dogmatics and orthodox economics, are largely missing.

Accordingly, it would be the task of a 'renewed' economic sociology of law to provide these more encompassing perspectives and, thus, to 're-embed' the narrowly conceived merger of law-and-economics. In fact, today's L&E appears to be a rather 'disembedded' research field that claims, if only by its name, interdisciplinarity but certainly lacks socio-legal and socio-economic input – not to mention the one-sidedness of many economic approaches to the law.

Taking everything together, we can conclude that the differentiation of the social sciences into independent disciplines has also affected the structure of interdisciplinary research fields such as E&S, L&S and L&E. All these fields are currently marked by a mismatch between middle-range theories employing micro- and mesolevel perspectives and large scale theories also exploring the macro- and metalevels of embeddedness. Insight into this structural imbalance adds to the more trivial – and yet telling – account of E&S lacking the law, L&S lacking the economy and L&E lacking society as (theoretical and empirical) points of reference.

## From economic sociology to the economic sociology of law

An economic sociology of law that builds on the embeddedness paradigm would be able to tackle all these deficiencies. It would link up – and thereby broaden – legal and economic sociology and, in particular, complement today's reductionist 'law and economics' with a sociology of the interrelations of legal and economic spheres. Whereas from a bird's eye point of view, the economic sociology of law would thus be located in the middle of three independent disciplines (sociology, economics, jurisprudence) and three interdisciplinary fields (E&S, L&S, L&E), it can also be conceived as part and parcel of economic sociology as such.

At this stage, I will only mention two points to corroborate this claim. First of all, modern economies are legal artifacts.

In other words, the law is constitutive, supportive or restrictive of many, if not most, economic phenomena; it affects the economy on the level of actors, relations, regimes and rationalities. But apart from this rather general argument, there is also a more specific reason to consider the economic sociology of law as a continuation of the established branch of economic sociology.

This second point builds on economic sociology's identity as an alternative to what is considered today as mainstream economics: Contributions to economic sociology are generally marked by a critical distance to classical and neoclassical economic theory. In fact, economic sociology addressed, from the outset, not only economic practices but also economic thinking. It therefore includes a 'sociology of economic knowledge' (Steiner 2001).

In other words, to get a comprehensive picture of the 'sociology of the economy' one also has to delve into the 'sociology of economics' (Zafirovski 2001). This is supported by Michel Callon's dictum on the economy's embeddedness in economics (Callon 1998), which emphasizes that economic thinking not only reflects and rationalizes but ultimately produces and 'performs' economic practices (thus referring to the 'performativity' of scientific constructions).

Hence, my point is very simple: If economics forms part of economic sociology's subject area, the same will apply to 'law and economics' which is mostly considered as an expansionist style of neoclassic economic scholarship. In order to shed light on the economy's embeddedness in economics, the economic analysis of law thus calls for a sociological analysis of law and economics. In other words, law and economics need to be complemented, on an equal footing, with an economic sociology of law.

The argument on the latter's 'affiliation' to the subdiscipline of economic sociology is thus, last but not least, based on the cognitive dimension of embeddedness, i.e. the epistemic metalevel (rationalities) and its reflections on the substantial micro-, meso- and macrolevels (actors, relations, regimes). 'Cognitive embeddedness' can be distinguished from 'normative embeddedness', which would rather be assigned to the macrolevel (regimes) and its regulatory impact on micro- and mesolevel phenomena.

Referring to recent discussions on tensions inherent in the embeddedness concept (Gemici 2008), I would claim that cognitive embeddedness is a basic condition of all econo-

mies while normative embeddedness is a contingent standard for certain economies: Cognitively, economies are thus always embedded in the sense that they are moral, scientific or cultural constructions (rationalities). Normatively, they are, at the same time, more or less embedded when measured by the moral, scientific or cultural standards that are institutionalized in a given society (regimes).

It would be misleading, however, to interpret cognitive embeddedness (rationalities) and normative embeddedness (regimes) in terms of 'statics' versus 'dynamics': Even though concrete regimes make sense only in the light of abstract rationalities, both can and do change in the course of time. Moreover, one and the same regime makes differently sense under different rationalities. That is to say that alternative rationalities can also compete for the interpretive authority of existing regimes, especially in a state of crisis.

## Analyzing the legal constitution of market society

I would like to conclude with an illustration of how a fully-fledged account of embeddedness can be directed to problems of the economic sociology of law and, thus, elucidate the legal constitution of market society (Frerichs 2008, forthcoming). My approach is strongly influenced by the neoinstitutionalist strand of 'new' economic sociology, especially Neil Fligstein's contributions to the sociology of markets (Fligstein 1990, 2001). Yet, it also goes beyond: Special emphasis is put on regimes and rationalities as these capture best the impact of the legal order.

Methodologically, Fligstein focuses on entrepreneurial actors and the relational fields (or markets) they are engaged in, i.e. the micro- and mesolevels of market society. One of his core ideas is that repeated interaction in the field brings about certain 'conceptions of control' that are shared amongst the actors – business partners and competitors alike – and thus help to reduce uncertainty. With this notion Fligstein comes close to the idea of cognitive embeddedness as pointed out above.

Yet, even though Fligstein is quite explicit about the wider, political-economic context of his studies, namely the constitutive link between states and markets, the macro- and metalevels of his analysis are less elaborate than the micro- and mesolevels. Put positively, while his approach privileges the bottom-up perspective by way of focusing on

actors and relations in a specific field, it can very well be combined and complemented with a more pronounced top-down perspective which also sheds light on overarching regimes and rationalities.

It goes without saying that the ideal counterpart of Fligstein's 'political-cultural approach' would rather be found outside the boundaries of 'new' economic sociology: In this case, the optimal candidate appears to be 'cultural political economy', which stands for a cultural refinement of the critical tradition in political economy (Jessop and Sum 2006). The latter was mostly left aside in the re-launch of economic sociology because of its 'holistic' ambitions and, more particularly, its Marxist legacy.

Yet, whether by coincidence or not, critical political economy provides us with a suitable higher-order equivalent of Fligstein's market- or field-specific conceptions of control: In this case, they are either defined as 'proto-concepts of control' (on an abstract, categorical level) or 'comprehensive concepts of control' (on the level of concrete, cultural realizations). These more encompassing concepts of control (Overbeek 2004) reflect not only the 'social logic' (Zafirovski 2004) of certain markets, but of market society as such. Moreover, they especially point to the contingent character of regimes and rationalities within modern capitalism.

The notion of concepts (or conceptions) of control hence allows to combine different levels of analysis – and, thereby, to get a fuller picture of the cognitive embeddedness of markets in society. What remains is to specify these conceptions in a way that they catch the interpenetration of legal and economic rationalities. This can best be done with the notion of 'economic constitutions' which are, by definition, hybrids between economic and legal reasoning.

The proper subject of studies in the economic sociology of law thus consists in the economic constitutions that make up market society. Yet, these 'legal conceptions of economic control' are, of course, contested – even more so in times of crisis. This concerns not only the notorious trade-off between 'economic efficiency' and 'social justice' but also how these terms are defined, first of all.

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# Intersections between Economic Sociology and Law: Interview with Gunther Teubner

*Gunther Teubner is an eminent sociologically-minded legal scholar, who has extensively written on the social theory of law, contract law, networks, transnational governance and constitutionalism. Currently, he is Professor of Private Law and Legal Sociology at Johann Wolfgang Goethe-University Frankfurt/Main, and Centennial Professor at the London School of Economics and Political Science. He studied law and legal sociology in Göttingen, Tübingen and Berkeley, and has held visiting professorships at the Law Schools of Berkeley, Ann Arbor, Stanford, Leyden, The Hague and the Institute for Advanced Study in Berlin.*

*Gunther Teubner has received many prizes and honours, amongst them the "Premio Capo Circeo", "Premio Capri San Michele", the "John F. Diefenbaker Award" from the Canadian Council for the Arts and the "Leon Petrazycki International Scientific Prize" from the International Sociological Association. Gunther Teubner holds honorary doctorates from the universities of Lucerne, Napoli, Tiflis and Macerata.*

*His central publications include: Nach Jacques Derrida und Niklas Luhmann (*Lucius & Lucius*, 2008), Regime-Kollisionen: Zur Fragmentierung des Weltrechts (co-authored with Andreas Fischer-Lescano, *Suhrkamp*, 2006), Paradoxes and Inconsistencies in the Law (co-edited with Oren Perez, *Hart Publishing*, 2006), Transnational Governance and Constitutionalism (co-edited with Christian Joerges and Inger-Johanne Sand, *Hart Publishing*, 2004), Global Law Without A State (*Dartmouth Publishing*, 1997), Law as an Autopoietic System (*Wiley*, 1993), Juridification of Social Spheres (*deGruyter*, 1987), Contract and Organization (co-edited with Terence Daintith, *deGruyter* 1986).*

**Professor Teubner, could you please begin by telling us a bit about what projects you are currently working on?**

"Societal constitutionalism" is occupying my mind these days. Constitutions are too important to be left to public lawyers and political scientists. In their state-centric per-

spective they reduce constitutionalism to institutionalized politics. What is needed, is to expand theory and practice of constitutionalism to a variety of social sectors, particularly to the economy, but also to science, the health sector, religion, and the new media. The present crisis of globalization demonstrates the urgency of constitutionalizing the capital markets, the real economy, the internet and other social sectors. The central message is – to put it in a somewhat abstract manner – to exert massive external pressures to promote the self-limitation of expansive tendencies of partial rationalities. More concretely, political pressures exercised by protest movements, NGOs, labour unions, the media, the intelligentsia, and – last not least – institutionalized politics are needed to compel the economy (and other social sectors) to develop constitutional institutions that effectively limit the economy's self-destructive tendencies and its ecological externalities in the broadest sense.

**How and why did you get interested in the study of economic life?**

I was fascinated by the intelligence of economic self-regulation – and by its massive failures. Both made me curious to find out in what ways law is able to support economic self-regulation from the outside, and whether the law can contribute to block the economy's destructive tendencies.

**In what ways can the study of law contribute to our understanding of economic life? How do you see the relationship between law and economics as two fundamental ways of ordering social life?**

Both law and economics represent two different strands of what Max Weber called formal rationality of modern society. Both suffer from a paradox. Both constitute partial rationalities, as they maximize only one limited social function (law: creating structures of society; the economy: creating potential for the satisfaction of future

needs of society). But at the same time they are universal, as they are relevant for the whole society. Even worse, both tend to claim their partial rationality to represent the unique rationality of modern life. The result is a pervasive juridification and economization of social life with rather disastrous consequences. Hence the need for societal constitutionalism.

### **You are a Professor of Private Law and Legal Sociology. How did you get interested in sociology?**

My first interest in sociology had to do with the failure of German lawyers during the Nazi-period. When I began to study law I had the hope that sociology could have an effect of *Soziologische Aufklärung* [sociological enlightenment] on the narrow-minded discipline of law, which, at that time, was in the grip of political and legal positivism. Of course, I had to find out that this was a somewhat naïve optimism regarding the potential of an academic discipline. Today, my expectations are more sober, but they still go into the direction that sociology could be a kind of meta-discipline that is able to see dangers of modern fragmentation, e.g. totalitarian tendencies in politics or in the economy.

If one understands sociology as the discipline that deals with "social" relations in the sense of mutual support and solidarity, then sociology is as limited as law and economics. It concentrates just on another, additional rationality of action. However, if sociology develops a general theory of social communication then it is able to analyze the multitude of partial rationalities in modern society – among them economic and legal rationality, their interplay and their relation to society as a whole. As a meta-discipline in the social sciences, social theory may lead to a sober assessment of the potential and dangers of fragmented rationalities. In the end, this type of sociological analysis might help to develop normative perspectives in politics and law.

### **What writings in sociology or the social sciences have had a major impact on your work?**

Mainly Niklas Luhmann, but also Max Weber, Emile Durkheim, Eugen Ehrlich and Philip Selznick, more recently Michel Foucault and Jacques Derrida.

### **You have written extensively about contract law, global law, transnational governance and corporate governance. In what ways did sociology help you to get to grips with these fields of study?**

In two ways. One is the external observation of legal phenomena, which helped me to go beyond the limits of legal doctrine in understanding contract and transnational governance. For example, I developed a sociological understanding of contract, in which contract does not only appear as an exchange relation between economic actors but as an institution that mediates between different social systems, the economy, law, politics and diverse productive sectors. Another example is "private ordering" in the transnational field. Here, the sociological theory of legal pluralism helps to identify the legal proprium in social norms, an insight that explodes the narrow state-centred concept of law, which is still mainstream. It results in the discovery of genuine legal phenomena beyond the nation state.

The other way in which sociology influenced me, I call "sociological jurisprudence". Here, I try to gain sociological insights from both empirical enquiry and social theory, which is fruitful for legal argument and the development of a more comprehensive legal doctrine, which is of course different from social theory. For example, quasi-contractual expert liability toward third parties is then no longer based on theories of incomplete contracting, but on sociological theories of the integrity of expertise as a social institution. This leads to concrete results for a variety of legal problems in this field, like the scope of protected parties, standards of negligence etc. Another example is the law of networks. Up to now network relations are not perceived as legal relations in their own right. Law conceptualizes them either as bilateral contracts or as corporate relations. However, both are inadequate to catch the properties of networks in a normative perspective. Sociological network analysis opens a new perspective for the law. If legal doctrine develops, in parallel to sociological network concepts, the notion of "connected contracts", then the law will be in a position to deal with problems of network failure, especially with problems of legal liability that have been neglected in the past. Let me mention three concrete legal results:

■ Networks are legally binding even if there is no contract in the technical legal sense.

■ Network members owe implicit duties to each other, the standards of which are much higher than the usual duties of care in tort law.

■ External liability for network failures extends not only to the network member who made the outside contact, but to all network members who were involved in the concrete project. All three results could never have been reached on the basis of traditional contract law.

### **How do you see your work in relation to the field of economic sociology? How would you position your work within that field?**

I have a parasitic relation to economic sociology. But only insofar as it overcomes the narrow perspective of rational choice as its leading paradigm. If it does so, it produces a somewhat distant view on economic phenomena, which in my view is helpful for a sober legal analysis of economic problems, which does not just internalize the partial perspective of economists.

### **In your view, what research topics within economic sociology have so far been neglected or have not received enough attention?**

Constitutional economics is a thriving field within economics. But sociologists so far have not taken it up in the sense of studying it from a truly sociological perspective. Constitutional economists clearly see that constitutions are emerging not only in politics and states, but in any social field, organization or association. But they tend to conceive constitutions only as contractual arrangements of rational actors. Here, sociology should come in and overcome this artificial perspective. They should analyze societal constitutions as historical, dy-

namic sequences of events, or to be more precise, as interrelations between secondary (“reflexive”) legal and social processes.

### **There is a growing interest in the economic analysis of law. Is it important for you to establish dialogue with economists, and if so, what are feasible strategies to accomplish that?**

I find it extremely difficult to communicate with economists and with scholars of law and economics. They do not accept interdisciplinary dialogue. For them, interdisciplinarity means nothing but to apply economic instruments to the rest of the world. Frankly, I find them as “doctrinal” as my colleagues from legal doctrine, if not worse. I did, however, communicate successfully with economists who engage in “political economy”, for example scholars from the *varieties of capitalism school*. They were open-minded enough to take non-economic analyses into account. I think, comparative law can learn a lot from comparative economic institutionalism and vice versa. Comparative law has shown a fatal tendency toward unification of law, or at least its harmonization. From the *varieties of capitalism school* it could gain a lot when it begins to stress difference instead of the usual convergence of legal systems and to reflect the properties of different production regimes in different national and regional contexts. The political economists, in turn, would gain something from a legal theory in an evolutionary and systemic perspective, which would transform their sometimes mechanical models into richer historical trajectories.

### **On what topics would you like to see economic sociologists and legal scholars cooperating?**

My answer comes as no surprise: societal constitutionalism.

# Economic Sociology in France: Interview with Philippe Steiner

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*Philippe Steiner is a longstanding member of France's lively field of economic sociology and a professor of sociology at the Université Paris IV, Sorbonne. The third edition of his book *La sociologie économique* was published by La Découverte (2007). In the interview, conducted by SASE in connection with the SASE 21st Annual Meeting in Paris this July, he tells us about the state of the art in France and discusses his recent work on the market for human body organs. From November 2009 Philippe Steiner with associate editors Sidonie Naulin (Université Paris-Sorbonne) and Nicolas Milicet (Université Paris-Sorbonne) will take over the editorship of the Newsletter. We welcome him and his team and look forward to their plans for the Newsletter.*

## What is going on in the field of socio-economics in France?

**Philippe Steiner:** There are two elements that I would like to pinpoint. First, in France there is currently institutional acknowledgement of the importance of this sub-field of sociological enquiry. To illustrate this, we can look at the fact that in 2003, the *Centre national de la Recherche Scientifique* (CNRS) agreed to create and partially fund a network of scholars, whether economists or sociologists, working in economic sociology. During its first four years, this network was a hive of activity, sponsoring several workshops in various regions of France on different topics (the labour market, the food market, money, Harrison White's theory of markets, to mention a few). In addition, the network organized annual meetings in which senior scholars commented on doctoral students' research in progress. This is an essential task when the institutionalization of the field is at stake. Most importantly, the CNRS has finally agreed to give this network an extra four years of financing, which I see as a good sign. This is a sign that the field is maturing, and that it is important to help people active in this domain in order to reinforce past achievements in the study of the economy from a sociological point of view. I

would add that economic sociology is now often included in university curricula, and it is currently one of the three topics that candidates for the *agrégation*, a highly selective exam in the French teaching system, must study intensively.

My second point, which may be seen as either a cause or consequence of the first, is that a lot of interesting research is blossoming in the field. Marcel Mauss and Karl Polanyi inspired some researchers to stress the gift dimension at work within today's society (see for example *La société vue du don*, Paris, La découverte, edited by Philippe Chanial, a disciple of Alain Caillé, or *Le dictionnaire de l'autre économie*, Paris, Gallimard, edited by Jean-Louis Laville). There are also studies that approach economic activity from an ethnographical point of view: hospital management (Nicolas Belorgey, from the EHESS) and financial business (Horacio Ortiz, from the EHESS as well), to mention two recent outstanding PhD dissertations. Florence Weber has followed this approach, notably in her research on the care industry for the elderly and she has provided a general overview for scholars interested in this ethnographic approach (*L'ethnographie économique*, Paris, La découverte). Following Eve Chia-pello (*Le nouvel esprit du capitalisme*, written together with Luc Boltanski, Paris, Gallimard) and Frank Cochoy's lead (*Sociologie du packaging. L'âne de Buridan face au marché*, Paris, La découverte), there is also a growing number of people studying the managerial dimension of economic activity, public accounting practices included. This is a topic of utmost importance, given the rapid growth of new public management in France today.

## What sets the study of socio-economics in France apart?

Aside from the fact that French social scientists are increasingly connected to the international academic and scientific world, there are, in my opinion, three elements that may explain how the study of socio-economics in France is unique.

First, there is a strong connection between heterodox political economists and economic sociology. After World War II, many French economists veered away from mainstream economics. A new French economic journal (la *Revue économique*), which is now the most important journal of its kind, endorsed the idea that political economy should be strongly linked to other social sciences, such as history and sociology. This idea wasn't taken up, and their endeavor faded away in the beginning of the 1970's. However, Marxism was important in the French academic world, which meant that the strong connection between political economy and the social sciences remained influential. This led to a second strand of political economists unwilling to follow the neo-classical or mainstream approach of political economy as an "inexact and separate science", in the words of Daniel Hausman. Consequently, French economic sociology has a strong link with economists belonging to the *Ecole de la régulation* (Robert Boyer and his disciples) and to the *Economie des conventions* (Olivier Favereau, François Eymard-Duverney among many others) devoted to the study of various coordination processes. The book edited by André Orléan, an active and innovative scholar in the fields of finance and money, who is strongly influenced by the Durkheimian approach (*L'économie des conventions*, Paris, Presses universitaires de France), provides an excellent example of the connection between French "institutional" economists and French economic sociologists. Does this mean that French economic sociology is different because, to use Mark Granovetter's words, it comes from economists? This would be incomplete; a second element must be considered.

The second important element comes from the strong influence of the sociology of science. To make a long story short, this can be illustrated by the *Centre de sociologie de l'innovation*, created at the *École des Mines* by Lucien Karpik. Karpik was interested in the study of professions and regulation (a topic studied by Jean-Daniel Reynaud, who was highly influential in the field of the sociology and economy of labour relations). He wrote a seminal chapter on market coordination, using his research on lawyers (*Les avocats*, Paris, Gallimard), and stressed the role of quality uncertainty and trust in the economy. Meanwhile, Michel Callon and Bruno Latour combined the Foucauldian approach to sciences and technology with pragmatic and ethnographic approaches. This became crucial about ten years ago, with the collective work of Michel Callon and his disciples, particularly Fabian Muniesa, on performativity. The disci-

ples of Bruno Latour, notably Frank Cochoy, also made an important contribution to this approach with their research on marketing, merchandizing and the daily functioning of contemporary markets.

These two strands of thought are not separate. The best illustration of the present state of affairs is provided in Lucien Karpik's last book (*L'économie des singularités*, Paris, Gallimard; the English translation will be soon available: *The Economics of Singularities*, Princeton University Press). In that book, the reader encounters a personal implementation of these two strands of thought, with a broad and powerful synthesis of different socio-technical arrangements (such as guides, hit parade, networks, etc.) and coordination processes. These elements make market exchange possible when quality uncertainty is present, and when quality becomes more important than price for the consumer. This book, as well as much other research, is about more than just economic sociology. It reaches the level of general sociology or theoretical sociology, which I take as an indication of successful work in a given subfield of sociology.

The third element comes from the idiosyncratic French educational system. In France, there is a wide gap between universities and the so-called *Grandes écoles*, the latter playing a much more important role in the continuity of the social elite than the former. Within some of these *Grandes écoles*, and notably within the three *Ecoles normales supérieures*, it was highly common for young scholars to study economics and sociology together – when it was rare in the universities. This means that these schools produced and continue to produce bright young students for whom economic sociology is a legitimate research field.

### How did you become interested in the market for human organs?

When I was working on *The Durkheimian School and the Economy (L'école durkheimienne et l'économie: Sociologie, religion et connaissance)*, published in 2005, I was surprised by the small amount of research devoted to modern gift-giving behaviours, aside from the works of Alain Caillé and Jacques Godbout (*L'esprit du don, La découverte*). The research that had been conducted in this field was either from a broad, theoretical point of view or consisted of general surveys covering a wide variety of gift-giving practices. In the latter, for example,

the living donation of a kidney was given the same treatment as domestic practices, such as a husband fixing sandwiches while his wife repaired the car.

Once, in the LSE bookshop, I was drawn to a new edition of Richard Titmuss' famous book, *The Gift Relationship: From Blood to Social Policy*. I should add that this book is not extensively read in France, as I do not remember hearing of it previously. I was mesmerized. I stayed for quite some time, reading the introduction and some pages regarding Titmuss' classification of gift-giving behaviour.

At that time, it became clear to me that organ transplants were of the utmost importance. The reason for this is apparent: Titmuss' book radically changed the domain of blood, as can be seen by the reaction of the American political system. As a result of Titmuss' research, American law-makers decided to prohibit market transactions in the case of whole blood. However, Titmuss fell short in that he claimed that market relationships should be completely banned from the domain of blood transfusion. There are many countries in which full blood cannot be bought and sold, but parts of blood can be. An example of this would be plasmapheresis, in which red blood cells are not collected. I thus decided to consider why, in the case of solid organs (kidney, heart, lung, liver and pancreas), the ban on market transactions was and still is so stringent and so widely accepted – the exception being Iran, since an Act passed in 1988 makes it here legal to buy a kidney from an unrelated living person on a regulated market. In a nutshell: I think it is useful and necessary to study why market relationships are banned in a world so prone to believe that markets are the solution to (almost) any issue related to scarcity and exchange of resources between people.

### You have two books that will be published shortly, could you tell us about them?

The first is a book that I co-edited with my friend and colleague François Vatin, sociologist in *Nanterre université*: it is a treatise of economic sociology, and will be published next September (*Traité de sociologie économique*, Paris, Presses universitaires de France). This book is a direct result of the network that I mentioned above. In it, almost all the major French economic sociologists present their past achievements and explain

their current, cutting-edge work. French-speaking scholars and students interested in this topic will thus find an up-to-date assessment of what is going on in the field as far as the French-speaking community is concerned. I believe this book will be useful to foreign scholars and help them to understand the current state of affairs in France.

The second book is about organ transplantation (*La transplantation d'organes: un commerce entre les êtres humains*; Organ Transplantation as Social Commerce). The aim of this book is to understand how the system actually works in the absence of market transactions. I would like to stress three points. First, the present system results from the tension that surgeons acting as organizational entrepreneurs created when they began to be successful, first in renal transplants and subsequently in liver, heart and lung transplants. However, their technical successes were not enough, and in the 1980's the harvesting of human body parts (HBP) lagged behind the medical needs of patients and transplant surgeons. This created the need for broader organizations, such as the United Network for Organ Sharing in the US, l'Établissement Français des Greffes (now the Agence de la Biomédecine) in France, or the Organización Nacional de Trasplantes in Spain. The series of organizations that produce, distribute and use HBP function thanks to various sets of rules (for example, the dead donor rule that requires that HBP be harvested on legally dead patients when post mortem production of HBP is concerned, or the complex set of rules for matching HBP with patients on waiting lists). However, these organizations also need rules concerning financing the massive costs associated with transplant surgery, immunosuppressant drugs and post-transplant care. HBP always have a cost associated with them, even when they result from a gift. These costs are similar to the tariffs set for resource transfers within a multidivisional firm: they must stimulate people to improve their performance within the various departments involved, they must cover the local costs, and they must further the strategic goals of directors – in this case, increasing the number of transplants. This means that there is a social construction of tariffs within this series of organizations, just as there is a social construction of market prices. Second, in the production of HBP, three kinds of interests are at play: the personal interest of the donor (whether living or dead), familial interest, particularly that of the relatives of the dead donor, and finally, collective interest. The latter results in part from the fact, and this is a point of

paramount importance, that renal transplant, the most common transplant (about 60,000 such transplants are made yearly in the world), is far less costly than the alternative therapy of dialysis. These three interests are at work in similar situations involving death: in the case of the law of bequest (see Jens Beckert's *Inherited Wealth*) or on the life insurance market (see Viviana Zelizer's *Morals and Markets*). What comes as a surprise, however, is the fact that in the US and Europe, familial interest is in jeopardy because it is considered to be a major obstacle to the production of HBP. In the US, many states have passed laws that prevent members of the family to reverse the choice made by the dead patient. In France, debates on bioethics in Parliament have resulted in the strengthening of the presumed consent law in order to downplay familial interests. The difference with market coordination is thus made less clear, and we get the same results from the organizational incentives that make the Spanish system so efficient. Finally, let us consider the debate on the creation of a biomarket for HBP. Market coordination would be limited to incentives for the production of HBP, mainly kidneys, and there would be no spot market in which buyers and sellers would meet and bargain. This market would be a regulated market and thus, as some surgeons and bioethicists suggest, notably in the US, this market coordination would not be morally aggressive. This is a major concern because the boundaries of market transactions are at stake. This is a perfect example of Polanyi's double movement thesis: some act in favour of spreading market relations, while others resist this invasion because they consider it to be a deadly threat to social life. My personal position is to refuse the creation of biomarkets for HBP, because of what I call the "transplant trade", just as there was an Atlantic slave trade when slavery was still legal. A biomarket would allow middle class patients from rich countries to buy HBP from poor people living in poor countries. Such trade is repugnant, to use Alvin Roth's words (see his "Repugnance as a Constraint on Markets" in the *Journal of Economic Perspectives*, 2007), because it would make inequality and poverty a medical resource for the rich, threatening the republican view of liberty.

### What is your next research project?

I would like to consider the positive dimension of the critique of political economy. The four main characters involved are Auguste Comte, Emile Durkheim, Marcel

Mauss and Pierre Bourdieu. All of them wrote harsh critiques of political economy. This, I believe, is well known. The fact that their critiques are associated with several strands of research on non-market transfers of resources is less salient. Comte stressed the role of gift-giving and the law of bequest as examples of altruistic behaviour within the industrial society. His last books (*Catéchisme positiviste* and *Système de politique positive*) made clear that he considered the superiority of altruism over selfishness as the great social issue of the time. Durkheim was certainly influenced by Comte's ideas, but he nevertheless did not use Comte's thesis as a basis for his own research programme. He instead progressively slipped away from altruism/selfishness to a different topic of interested/non-interested behaviours. This meant that the biology of the brain and, more generally, the anthropological dimension of Comte's approach were left out in order to stress the sociological aspect of both behaviours, as, according to Durkheim, selfishness and altruism result from social processes. This was then at the heart of Mauss' work, particularly in the introduction and conclusion of his celebrated essay on the gift, which should be read with his essay on sacrifice, written in collaboration with Henri Hubert. In *The Gift*, Mauss was bold enough to suggest that men follow a limited number of rules (the three famous obligations to give, to receive and to give back). No doubt, Bourdieu was well acquainted with this essay and many others from Mauss and Hubert (notably their study on *La magie*). He was also undoubtedly familiar with the important essay published in 1927 by a former student of Mauss, René Maunier, in which Maunier studied gift-giving during weddings (*Twassa*) in Kabylie, precisely the region in Algeria where Bourdieu conducted his own ethnographic fieldwork on the rituals and symbolism related to house building and the honour code, both so important during wedding ceremonies. This gave rise to Bourdieu's paper in the 1970's on symbolic exchange, which I take as the last avatar of the intellectual movement that initially appeared as a critique of political economy. I consider the sociology of markets to be of paramount importance within economic sociology, but it would be wrong to believe that the whole field revolves around the market: there are a large number of social exchanges and resource transfers not carried out through markets. In this respect, I fully agree with Harrison White's claim that the market is nothing but a kind of social arrangement (arena in White's parlance) for matching people and resources. Theoretical studies are essential for elaborating that point and for providing

tools to understand how different social arrangements work.

**From November 2009 you will be editing the Economic Sociology Newsletter. What plans do you have for the next issues of the Newsletter?**

Basically, we would like to continue the efforts made by the previous editors of the *Newsletter*, that is to offer information on what is going on in this most active field of sociological research. Hence, any relevant contribution would be welcome by my two co-editors and myself. From our own side, for the issue forthcoming in November this year, we plan to put together a set of papers dealing with the commercialization of the body, which is

a hot topic in the field of transplant medicine and beyond. The second issue will provide a window on a non-European strand of economic sociology with a set of papers on Brazilian economic sociology, which constitutes a very active field of enquiry in its own right. Brazilian economic sociologists are dealing with topics that depart from those studied in Europe and the United States: particularly important are the political dimension related to poverty, the access to land, health, school or money and the concern with the sustainability of socio-economic processes in the agricultural sector. More generally, we believe that it is of great interest to have a better grasp on what is going on in other countries and continents and we want to further intellectual exchanges in this respect. The content of the third and last issue is not yet fully thought out, but a set of papers dealing with economic anthropology and economic ethnographic could be one possible focus.

# Book Reviews

**Book:** François, Pierre, 2008: *Sociologie des marchés*. Paris, Armand Colin, p. 311.

**Reviewer:** Alex Preda, University of Edinburgh,  
[A.Preda@ed.ac.uk](mailto:A.Preda@ed.ac.uk)

At the opening of Chekhov's *Three Sisters*, the public sees Olga, Masha, and Irina Prozorov sitting in the drawing room of their house, reminiscing about life in Moscow and hinting that they will soon move there – "there is nothing on earth better than Moscow"! A similar thing happens in the Introduction and first chapter of Pierre François's *Sociology of Markets*, where the intention of going to Moscow is announced, in the form of an ambitious – and entirely laudable – project of a sociology of markets based on the close reading and fusion of Max Weber's and Georg Simmel's respective analyses of markets as systems of competitive transactions.

In spite of their otherwise considerable differences, Weber and Simmel seem to agree both on viewing market transactions as competitions, and on taking the transaction as the fundamental unit in the analysis of markets. They both ascribe competitions a prominent social place and, while Weber directed his attention among others toward issues of power and authority implied in these competitions, Simmel emphasized that competitions always take specific interaction forms. A synthesis of these two positions, conceptualizing (and studying) power, legitimacy, and charisma within competitive transactions, to name but a few aspects (there are many more), would represent a genuinely novel contribution to sociology. This implies not only an analytical examination of competition as a basic form of sociality, but also a comparison of market transactions with other forms of social competition. Since we seem to live in societies where competitions are ubiquitous – from professional sports to "best marmalade" contests at village fairs – such an approach would situate the sociology of markets, with one strike, at the core of a more general sociological theory, going well beyond the analysis of the social factors which intervene in allocation processes.

After finishing the first chapter, this reader, smiling and full of hope, already saw himself riding on the metaphorical train to luminous "Moscow" – the promised land where Weberian and Simmelian theories of the market came

together in an analytically fruitful way. At the outset of the journey, I was puzzled to find François treating markets in a Durkheimian fashion – as general and collective entities – rather than following Weber and Simmel in taking transactions as the basic units of analysis. But I put aside my concerns and got on board. Well, I should have known better.

The *Sociology of Markets* is a book which – in the acknowledgments – presents itself as a manual issued from a habilitation thesis. For those not very familiar with the Continental academic system, the habilitation is a kind of second PhD thesis cum exam entitling the holder to supervise PhD students and, more importantly, to compete for a tenured professorship. It is also expected to be an original piece of research, a notch up from the PhD thesis. This can create some tensions, since a manual is supposed to review the existing literature along analytic lines, while a habilitation thesis is expected to present an original (theoretical or empirical) take on a given problem. As it became clear later during the lecture, this tension leaves a mark on the structure and the achievements of the book.

In Chekhov's play, once the Prozorov sisters have announced their intention of moving to Moscow, Tusenbach, Chebutykin, and Solyony burst into the conversation (they had been lurking behind the columns in the reception hall), and this simple intervention morphs, to use Erving Goffman's term, into fateful action. The web of mundane relationships and interactions intervenes decisively upon the plans for moving to Moscow. In the *Sociology of Markets*, at least one fateful guest makes an impromptu apparition right in the title of the third chapter (*Homo Oeconomicus and the Social Fabric*). I did not see this guest lurking behind the paragraphs of chapter two, concerned as this chapter was with the boundaries of markets, and mainly with the distinctions between markets, firms, and the state.

In a manner similar with that of the Prozorov sisters, once *homo oeconomicus* has burst in, François feels compelled to invite him at the table, put the samovar on, and engage in a conversation about economic rationality which does not mention even once the more recent sociological argument according to which the rationality assumptions of economic models do not have a representational character.

This conversation allows the author to draw attention to the social institutions which shape economic actions, and thus make the transition to the fourth chapter, which discusses the interplay of markets and social institutions. François seems aware of the difficulties raised by defining what an institution is, but does not provide us with such a definition here. This, however, is not such a major issue. Since most of the book is anchored in a review and presentation of arguments and empirical research undertaken by contemporary economic sociologists (almost exclusively from the US and France), readers can get an idea of what various authors understand by institution, and how this notion can take entirely divergent meanings in different works.

What is more important, though, is: where's the promised train to Moscow? Where's the announced synthesis of Weber and Simmel, so attractive, so appealing to this reader? I should have been warned by the word *manual* present in the acknowledgments, but I had to cling to my hopes. Chapters two through four of François's book offer very little, if anything, in the way of the above. They rather represent a conventional, though well structured review of major work done by US structuralist and neo-institutionalist approaches in economic sociology, together with work done by French sociologists. For this reader, this latter was a particularly novel element, though authors such as Luc Boltanski are not discussed, and what is perceived as other authors' significant contributions (e.g., Michel Callon on performativity) are not mentioned.

Once the whole conversation about economic rationality and institutions has been finished, when there is a moment of awkward silence in the drawing room, Pierre François goes back to the sociology of market competitions. Ah, Moscow! This is discussed in chapters five (*Competition and Morphology*) and six (*The Competition as Struggle*). Chapter five is essentially a presentation of the structural and institutional constraints on inter-firm competitions. Chapter six, however, goes back to the introductory theme and, based on Simmel, deals with the notion of competitive struggle. While the word *interaction* is mentioned several times (it cannot be kept in the *oubliette*, due to Simmel's insistence on competition as an interaction form), this chapter (and the rest of the book with it) does not offer an analysis of the interaction order of competitive transactions, but discusses again the institutional constraints and resources of inter-firm competitions. Nevertheless, we can say that, at least, we are now at the railway station, standing on the platform: the train to Moscow must be departing from here. During the lecture, this

reader asked several times, in the manner of impatient children: but where is the train to Moscow? When does it depart? The last sentences of Pierre François's conclusion told me to be patient: this is a future project. "Here, have an ice cream and read 'Where the Action Is'. The train will be here soon." And so, I was left standing on the platform, looking hopefully into a radiant horizon. Anton Pavlovich Chekhov would have approved.

**Book:** Wolfgang Streeck, 2009: *Re-Forming Capitalism: Institutional Change in the German Political Economy*. Oxford, Oxford University Press. Pp.297

**Reviewer:** Akos Rona-Tas, University of California, San Diego

For those who want to know why historical institutionalism is a fruitful and rigorous approach to the study of society, and why it is not just a license for sociologists to tell what happened – a task historians do much better – Wolfgang Streeck's timely book is required reading. I also recommend the book for anyone who is interested in the suddenly urgent task of reforming capitalism.

In his introduction, the author lays out the theoretical approach in conversation with two other prominent schools. On the one hand, he dismisses "variable sociology," which focuses on relationships among decontextualized variables across multitude of cases and serves up overreaching, universalistic claims. He also criticizes the "varieties of capitalism" literature for its economistic-functional conceptual framework. What he proposes instead is historical institutionalism that scrutinizes a few individual cases in historical context, identifies various mechanisms of change and jettisons any notion of equilibrium or system-level functional imperative. The rest of the book demonstrates how this historical institutionalism works in explaining the fundamental changes in the political economy of Germany since the post-WWII zenith of the German welfare state.

Streeck begins by surveying five sectors: collective bargaining, intermediary organizations of producers, social policy, public finance and corporate governance. He carefully demonstrates that the same trend is observable in all five sectors: a loss of centralized control, and a turn towards individualization and competitive pluralism. He calls this trend "disorganization" and observes that there is no evidence of any of the self-stabilizing processes assumed by

functionalism. Moreover, there is no external shock that could provide a simple account for this historic shift. In fact, for the most part, change has emerged endogenously; contradictions that were in place from the very beginning, but seemed initially manageable, began to get out of control over time, undermining the original institutional setup. Self-undermining is as important a mechanism for institutions as self-reinforcement, Streeck argues. Institutions have life cycles and with age, they die or change their nature as their self-undermining tendencies gather force.

Would this not be consistent with a simpler narrative, which states that the free market is the final equilibrium toward which all economies are groping? Isn't the historical shift that Streeck himself names "liberalization" proof that corporatist systems will eventually gravitate to the best practices of the self-regulating market? The book points out that these are odd questions about an economy that has been one of the most successful in the world and was especially so during its corporatist years. Moreover, the current German economy is still far away from the Anglo-Saxon model of the free market. Furthermore, disorganization or liberalization do not constitute a shift from a market coordinated by institutions to one without institutional coordination. Institutions are as important today as they were thirty years ago; it is just that the nature of these institutions that has changed. "Durkheimian" institutions, emphasizing social obligations and public order imposed from above by authoritative organizations, have yielded to a "Williamsonian" type, which accentuate private ordering generated from below by voluntary coordination aimed at reducing transaction costs. Streeck also points out that if we take history seriously, convergence on a single model is a logical impossibility, as there is no ultimate "best practice," final resting point, or end of history, and because countries start from very different circumstances and move at varying speeds; even if they were to move in the same direction, there always be diversity. If it is not the gravitational attraction of the free market, could the disorganization of the German economy be explained by the pressures brought about by globalization? This claim is also rejected, because Germany has always been among the most open economies since at least the 1960s.

The last part of the book addresses capitalism: the complex historical configuration of a particular economic organization, polity, culture and social relations. We are reminded that the economy is embedded in its non-economic context, and that what rational market actors want and how

they can achieve it are all shaped by historical, non-economic institutions.

As for where the disorganization and liberalization may lead in the future, the author draws on Polanyi to posit that the expansion of the market always provokes the countermovement of social protection that eventually sets limits to how far markets encroach on our lives. We cannot say much more: after all, history is real, and the future is not simply the extrapolation of the past, but an open affair; it therefore remains fundamentally uncertain. This does not mean that the future is indeterminate, just not determinate enough to allow strong predictions.

*Re-Forming Capitalism* deserves to be compared to Polanyi's *Great Transformation*. Like Polanyi's classic work, this excellent book is also an historical institutionalist argument against liberal theories, offering a holistic critique of a decades-long era of liberal market expansion in the heart of Europe. Streeck is more precise about the mechanisms of change than Polanyi, who is often frustratingly vague in this respect, and builds on much more empirical evidence than Polanyi could command in his book-length essay. Polanyi, however, has one advantage, and that is historical hindsight. The *Great Transformation* was written in the late 1930s when the market had already been in retreat for several years. By contrast, *Re-Forming Capitalism* was written just moments before the current meltdown of the capitalist economy. This depression is almost certainly the end of the liberal era of disorganization and market ascendancy; if so, this raises a series of interesting questions for this book. First, the economic disaster that began in the United States but quickly spread to Germany and elsewhere raises the possibility that internationalization may have played a larger role in the disorganization of Germany than the book suggests. Germany may have had open doors 40 years ago, but the openness of those doors may be less important than what comes through them, and that traffic has surely changed. Second, the fact that the downturn began in the financial markets may make it necessary to rethink the importance of the financialization of the economy. The move from bank loans to financial markets created not just the pressure to improve shareholder value but also a stronger interdependence of the fortunes of companies through the fluctuations of the stock markets. And finally, it is also clear that this crisis was not the result of the countermovement of society against market expansion, but rather, the market sabotaging itself – proving that it is just as much subject to self-undermining tendencies as institutions.

As capitalism is now in for a major overhaul, it is imperative to understand how models other than the Anglo-Saxon one actually work. By demonstrating the power of historical institutionalism, this book makes a major contribution to our understanding of the post-war German political economy, and by extension, our current conundrum.

### References:

**Polanyi, Karl**, 1944/2001: *The Great Transformation: The Political and Economic Origins of Our Times*. Foreword by Joseph E. Stiglitz and with a new introduction by Fred Block. Boston: Beacon Press. Pp. 317.

**Book:** Kornai, János, 2006: *By Force of Thought: Irregular Memoirs of an Intellectual Journey*. Cambridge, MA.: The MIT Press.

**Reviewer:** Johanna Bockman, George Mason University [jbocman@gmu.edu](mailto:jbocman@gmu.edu)

In *By Force of Thought*, internationally renowned economist János Kornai presents us with a fascinating and insightful intellectual memoir. His scholarly work on socialism and his innovative critiques of neoclassical economics made him famous in top-ranked economics journals, and gained him a full professorship at Harvard University, as well as elite research positions in his native Hungary. Economists around the world have devoured his work, as reflected by former Russian prime minister Yegor Gaidar, who wrote, "He was the most influential on all of us in the 1980s...We knew all his books" (p. 251). His work offered a critical insider's view and a novel system for understanding the realities of socialism. Taking us from his childhood to his retirement, Kornai explores the political and ethical commitments behind his economic writings, as well as the difficult situations in which he has worked. The reader will delight in the unique access into the mind of an economist and his personal motivations behind economic research, but the non-specialist may become overwhelmed at the level of detail.

As a child, Kornai "lived prosperously in a spacious and expensive apartment in the center of town and moved every summer to a fine villa in the Rózsadomb district of Buda, the hilly side of Budapest" (p. 3). He gained a broad education that served him well later in life. The German

occupation of Hungary in 1944 led to the horrifying experiences of losing his father to the Holocaust and Kornai's own falling into forced labor in Hungary. Kornai soon embraced communism, Marxism, and the Soviet Union. After joining the Hungarian Communist Party, he became the economics writer for the Hungarian Communist Party newspaper *Szabad Nép*. This job allowed him to observe the functioning of the "classical" socialist system up close. To write his columns, Kornai attended the meetings of the Hungary's Supreme Economic Council, witnessed the detailed interventions in the economy by the two top leaders of the country, and talked regularly with enterprise managers and economic experts throughout the system.

After the death of the Soviet leader Joseph Stalin in 1953 and the changing political environment in the Soviet Union and Hungary, Kornai experienced a shift in consciousness and began questioning his previous beliefs. Around 1955 and 1956, he "broke with Marxism" because it did not satisfy "the fundamental requirement of science and compare theory with the real world" (pp. 79-81). Combining his journalistic knowledge with a new critical approach and further empirical research, Kornai finished and defended his dissertation, which became *Overcentralization in Economic Administration* and evoked excitement in Hungary and abroad. He took part in the failed Hungarian revolution of 1956, which led to the arrest of many of his colleagues and friends. During this time, he established several life principles for himself: 1) break with the Communist Party, 2) do not emigrate, 3) do research and not politics, 4) break with Marxism, and 5) become part of the Western profession of neoclassical economics (p. 133). Kornai's research emerged out of very personal experiences, which makes *By Force of Thought* very interesting as "a subjective augmentation of [his] scholarly work" (p. xiv).

Seeking information about his friends and colleagues, the police interrogated Kornai on numerous occasions. In the breaks between interrogation sessions, Kornai began reading neoclassical economic literature. Yet I feel that his commitment to neoclassical economics – the mainstream in the economics profession in the United States and elsewhere – requires more explanation than he provides. For example, his turn towards Western--and especially American-- neoclassical economics did not mean that he became a convert to capitalism. His conversion happened decades later. Instead, Kornai writes, "I broke *radically* with Marxist theory and ideology. Yet I went on believing for quite a while that socialism could be reformed" (p. 81). In the face of party leaders declaring that there was no alternative to

the current system, neoclassical economics provided him a rational choice framework that assumed one could reflect on and select among a variety of options (p. 133). Furthermore, in neoclassical economics Kornai saw a model by which to reform the socialist economy in Hungary.

When he read neoclassical economic literature, Kornai always thought "over what might follow for a socialist economy from what I had read" (p. 122). In fact, from its beginnings, neoclassical economists have always theorized about how a socialist state might function, which allowed them to develop their economic tools. From my own research, a socialist state lies at the core of neoclassical economic thinking. This explains why Western economists were immediately fascinated by Kornai's work. His *Overcentralization* received rave reviews in the *American Economic Review*, *Financial Times*, the *Times Literary Supplement*, as well as many other publications. *Econometrica* published his two articles with Tamás Lipták in the 1960s without any revisions at all. Western neoclassical economists found his work interesting because it spoke to the most relevant questions in the profession; in fact, neo

classically trained economists in the East and the West work on the same kinds of problems and with the same tools. As a result, Kornai used Hungary as a case study and "never worried that readers may suspect provincialism in that" (p. 311).

The book also sheds new light on the personal and political motivations behind Kornai's later works. Through all of this, Kornai elaborates on his life principles, seeking to remain true to his commitments to research and "positive" science. However, with Hungary's transformation to capitalism in 1990, Kornai chose to write more normative works that advocated for how the world should be. As a sociologist, I wished he had returned to the spirit of *Overcentralization*, building on the vibrant studies by economic sociologists and anthropologists, and stepping outside the narrow world of policy. And while I found his individualist, rational-choice perspective on his own life enlightening, it provided only small glimpses into the collective endeavor of economics. Yet, these criticisms in no way detract from Kornai's great contributions: fascinating insights into the workings of socialism and into the mind of an economist.

# PhD Projects in Economic Sociology

## Black Work: Justifying Illegal Purchases of Services in Contemporary Sweden

**Institution:** Department of Social Anthropology, Stockholm University and Score (Stockholm Centre for Organizational Research)

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The aim of this PhD project is to illuminate social practices which make purchases of *svart arbete* acceptable within the Swedish contemporary welfare state. Svart (black) and arbete (work) are illegal exchanges of work which translate into English as informal economy, illicit work, working off the books, moonlighting etc.

From a macro perspective, at national level, *svart arbete* is an economic societal phenomenon bemoaned by politicians and officials. Objections are mainly structured in two discourses where materialistic explanations lay the ground for more philosophical and moralistic reasonings. Firstly, a perceived increase in *svart arbete* is said to be due to 'Swedes' worsening morals'. These rule breaking complaints single out certain groups of citizens as less moral than others. The second line of reasoning is economic, pointing to different varieties of lack of due income to the state's coffer, or to the skewed market competition *svart arbete* is said to create. These actualize questions of welfare distribution, where those already well-off are seen to benefit and poorer people to be abused.

At the individual level, there is a discord between performing informal exchanges for private use and being aware of the negative implications this has for the society one lives in. Almost all informants contacted for this research had at some point purchased and accepted *svart arbete*. Their explanations were mainly based on two sets of reasoning; economic and traditional. The most often heard argument for the existence of *svart arbete* was that it is 'cheaper' which could denote that we are dealing with transactions in exclusively economic terms. Wherever an opportunity appears, there seems to be someone who takes the chance of getting a service performed less costly. 'It's so little', in relation to the perceived cheating of 'others' or 'it's a kind

of tax return' pointed to structural complaints. That we live in a globalized and modern society increasingly governed by economic mores, where everything has a price was a third explanation.

Yet, purchasing *svart arbete* is more than wheeling and dealing with the sole intention of maximising economical rewards for personal benefit and disregarding any social implications (i.e. the acting of *homo economicus* who is devoid of reciprocal relations). One aspect of buying *svart arbete* is the abandonment of formal and official markets where exchanges, at least theoretically, are often seen as failing to create reciprocity. People daily partake in a large amount of economic practices where at least some are governed by diverse and complex reciprocal relationships. This is especially true for exchanges of work, where reciprocity is sometimes negligible while at other times lingers long and strong. It can be a simple bartering between friends, but also pure market transactions such as acquiring professional services for a monetary compensation. Buying *svart arbete* means concealing it from the gaze of authorities and more or less also from the surrounding community.

Relating to others cheating invoke reciprocal feelings as part of citizens' expectations on the welfare state to which all should contribute. In most welfare societies formal exchanges of services are ruled by laws and regulations and subject to tax. In the Swedish context this means that all work made for a compensation of any kind should be recognized and publicly accounted for. Through the Tax Board, the state aspires to have insight into all exchanges of work and the economic value attached to them – Foucault and his panopticon come to mind. Collier and Lakoff's notion of 'regime of living' (2004, 2005) is therefore found as a useful concept to analyse the ethical implications of *svart arbete*. This regime allows understanding of how people make ethical decisions well knowing that the activity is illegal and sometimes illicit, but still aiming for a congruent perception of living their life. A 'regime of living' informs on how normative, technical and political aspects are contextualized in peoples' lives and how ethical considerations arise as a result from a situated moral discussion. In so doing, the concept helps move beyond divisions of illegal and legal exchanges or concepts such as the formal and informal economy.

The thesis is based on data from semi-structured interviews conducted with middle-aged Swedes. To study illegal but acceptable *svart arbete* aims to illuminate the multifaceted reasoning about moral exchanges. It is an interaction between actual purchases of work for private use and how people make sense of them in a larger context as they cheat the welfare state most claim to believe in.

## “Deeds, not (only) Words”: Compliance Officers and the Making of Financial Practices

(original French title: *Déontologie de marché. De la pratique des institutions à l’institutionnalisation des pratiques*)<sup>1</sup>

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This research is the result of a long-lasting participant observation which was carried out within an equity brokerage house, and has recently been defended at the Paris-Dauphine University. The thesis investigates the compliance function, today a cornerstone of the compliance control systems of financial institutions offering investment services. Through the compliance function, practices shaping the everyday life of the financial landscapes are put under scrutiny. Compliance officers take the view from both the floor and the bodies of rules and regulations applicable to market participants. Further do they not only implement procedures seeking to embed rules within organizations, but also – and perhaps more importantly – do they act ahead of practices, thereby trying to mitigate the flourishing uncertainty resulting from the exchange of financial instruments.

The thesis is structured around a leitmotiv, expressed by a market operator exposing an inextricable situation to his compliance officer just before the auction phase and asking: “and now, what shall I do?”. The interrogation in

itself opens possibilities of sanctions, resulting from non-compliance with available regulatory texts, even when those are not clear about the right course of action. The research question is formulated as a theoretical expression of a very practical question: how does the shift from words to acts, and the institutionalization of accepted market practices, happen in a trading room? To answer this question, we observed and analyzed the ways in which norms are disseminated within practices, so that reputations do not get jeopardized as a result of inappropriate behaviours. The thesis focuses on the means that compliance officers use, the deployment of discursive devices, to achieve the transition from generic normative texts (the law) to specific practical contexts (the market situation).

The argument draws on a social-constructionist approach, and finds its conceptual roots in neo-institutionalism, then moves on towards social studies of finance (SSF), to show how compliance officers help to control the representations generated by market participants. To do this, they implement a speech made of translations, guiding analysts, sales persons and traders inhabiting the trading room. The discursive process, materialized in and through specific devices (procedures, e-mails, recorded conversations, training, pieces of advice), can be said to perform market practices, by framing and making these legitimate.

Several different situations, which have been observed, and interviews, which have been conducted, allow for the illustrating, evaluating and criticizing of this discursive process. We also show that the notion of performativity itself, as developed by the SSF literature, can be deployed once again in a fruitful direction, by paying attention to the materiality of intertwined texts and contexts, and to the temporal regimes attached to such discursive constellations.

### Endnotes

<sup>1</sup>The document is downloadable on <http://tel.archives-ouvertes.fr/tel-00349168/en/>

## Standards of Globalization – Cross-border Regulation of Financial Reporting as Path Creation

(original German title: *Standards der Globalisierung – Die grenzüberschreitende Regulierung der Unternehmensrechnungslegung als Pfadgestaltung*)

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Accounting standards are frequently understood to be little more than formalized rules for the preparation of financial statements. Professional understanding mainly emphasizes the a-political nature of expertise, a notion upheld at the international level where many relevant standard setting decisions are taken today. An organizational analysis of the International Accounting Standards Board (IASB), to the contrary, shows that the 35-year history of transnational standard setting in accounting has been characterized by contests between various interest groups striving to shape international standards and the institutions in which they are set. Closer scrutiny reveals an intricate story of the politics of accounting regulation.

My thesis investigates the development of the IASB. Originally a private cross-border initiative, the IASB became the organizational centre of a transnational self-regulatory network dominated by accounting practitioners, auditing companies and selected international financial institutions. I am reconstructing the development of a private organization that succeeded to effectively outcompete governmental efforts to harmonize standards across borders. The IASB managed to establish a long-lasting transnational arrangement in which pro capital market-standards are set. Drawing on institutional theory, the thesis shows how the interrelation of accounting norms, organizational and procedural prescriptions and exclusive participation leads to a stable regulatory configuration catering to the information needs of capital market actors.

The detailed empirical analysis covers the period from 1997 to 2007 during which the transformation of the IASB into

an expert-based private regulatory organization took place. Earlier participatory structures were replaced by an expert-oriented organization out of reach from public oversight. To compensate for the lack of participatory accountability, the IASB has established a formalized due process. The chosen consultative means, however, do not limit technocratic decision-making. Instead, they have been designed to shield 'technical expertise' from societal demands. As a central element of transnational standard setting, consultation further strengthens the rule of abstract, professional expertise.

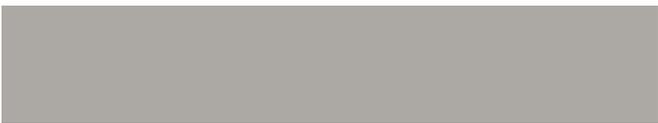
The configuration of the new private authority has contributed to a gradual narrowing of the content of international accounting standards to the information needs of capital market actors, and increased the propensity of fair value accounting. IASB's Conceptual Framework has privileged shareholder value ideologies which in the meantime have even become controversial in Britain. Nevertheless, the domination of Anglo-American actors has strongly influenced the IASB and its standards. My network analysis shows a coalition of globally operating auditing firms, selected investment banks and a small group of international organizations, among them the European Commission, and some national regulatory agencies dominating the transnational arrangement in general and the IASB's decision-making and advisory bodies in particular.

The conceptual contribution of the thesis lies in explaining IASB's success as a case of private transnational institution-building which is characterized by the complementarity of a) the normative content of IASB's standards, b) the organization's structure and formalized consultative procedures, and c) an actor constellation consisting of professional experts, global accounting firms, selected corporations and regulatory agencies which dominate the transnational network. Empirically, the thesis shows that a lack of formal accountability is not detrimental to transnational standard setting. Not only is IASB's secluded inner circle of decision-makers detached from societal demands, it surprisingly lacks notable input from the users of financial statement. Users are given priority in much of the organization's official rhetoric as well as the academic literature, but are largely absent in the IASB network. The authoritative position of accountants and auditing firms has remained largely unchallenged, at least until the present global financial crisis.

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