

Constitutionalizing Markets without Borders
Explorations in the Economic Sociology of Law

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In this paper, I will briefly outline the main features of a project that I am currently working on at the Centre of Excellence in the ‘Foundations of European Law and Polity’ at the University of Helsinki. The theoretical ambition of this project is to develop an economic sociology of law that combines and integrates social theory, economic sociology and legal sociology. [Empirically, this approach will be applied to and substantiated with the transformation of ‘legal conceptions of economic control’ that guide the constitutionalization of transnational markets, namely at the European level. *To be completed; see abstract.*]

In the following, I will first introduce the theoretical side of the project, that is, locate the economic sociology of law in its interdisciplinary framework and highlight the theories and traditions to be merged in a new research paradigm. [Second, I will illustrate how this economic-sociological approach helps to understand the course of disembedding and reembedding markets by and through law, or ‘legal conceptions of economic control’, in the processes of Europeanization and globalization and particularly point to contingencies and shifts in the European economic constitution. *To be completed; see abstract.*]

In recent times, scholars from different backgrounds, but with overlapping interests, have engaged in laying the groundworks for an ‘economic sociology of law’, notably Richard Swedberg (2003; 2004; 2006), Milan Zafirovski (2000), Neil Fligstein (1990; 2001; 2007) Lauren Edelman (2004; 2007), Mark Suchman (2003; Edelman/Suchman 1997), and Robin Stryker (2003; Edelman/Stryker 2005). These works suggest to establish a research paradigm that builds, on the one hand, on the sociological classics who had also been pioneers in spelling out the social link between law and economy, as prominently Karl Marx (Buckel 2007), Émile Durkheim (Münch/Frerichs 2008) and Max Weber (Swedberg 2006; 2008), and, on the other hand, also benefits from the proliferation of the so-called ‘new’ institutionalisms in both economics (Rutherford 2001) and sociology (Hirsch/Lounsbury 1997) as well as in between, namely in economic sociology (Nee 2005; Maurer 2008; Zafirovski 2000).

From a systematic point of view, the economic sociology of law lies at the interface of sociology, economics and law, that is, between three long-standing and relatively clear-cut

disciplines at the heart of the social sciences (Fig. 1). At the same time, it is located between three problem-oriented and from the outset cross-disciplinarily oriented research fields that have emerged in between: namely 'economy and society', including different strands of political economy, socio-economics, economic and sociological institutionalisms and, of course, economic sociology; 'law and society', comprising socio-legal studies in a broader sense and culminating in a proper sociology of law; finally 'law and economy', so far mainly staffed and defined by scholars representing various strands of law and economics (Fig. 2). The economic sociology of law thus finds itself in the middle of three traditional disciplines and three interdisciplinary research fields that offer a rich framework of theoretical approaches, empirical methods and practical questions and, by merging different perspectives, allow a fresh view on the social embeddedment and mutual construction of law and economy (Fig. 3).

In the following, I will roughly sketch out the approaches, problems and literatures that would feed into an economic sociology of law that makes use of its multifarious research environment and proves beneficial in exploring the social constitution of transnational markets. But before I turn to the different discourses to be merged in the new paradigm, I would like to note that my background is in social theory and macrosociology and that I thus have a preference for 'structuralist-constructivist' lines of argument (Bourdieu 1986; 1994; 2005). Consequently, I understand the macro-micro-link between structure and agency rather as 'microtranslation' (Jepperson 1991) than microfoundation, the latter presuming individuals as the basic units of society, thereby more or less neglecting the emergent qualities of social relations. Moreover, a sociological 'macro bias' that points to the social embeddedness of individual actors in structures and cultures and thus takes a critical stance towards 'methodological individualism' would also prevent from 'methodological nationalism' defined by a narrow focus on nation states conceived as unitary actors, or the societies they 'contain' as if there was no transnational dimension. At least conceptually speaking, a macrosociological approach would thus also have to account for the structural realities and cultural constructions of 'world society' (Heintz et al. 2005).

Starting with the triangle of sociology, law and economics, the main point of interest would be to understand and theorize upon the relations between these disciplines inasmuch as the economic sociology of law is concerned. On a theoretical level, affinities between law and economics as regards the micro-analytical focus on actors, contracts, diverging interests and arising conflicts (Hsiung 2004) have to be matched with discrepancies in the respective macro-contexts of economic functionalist versus legal dogmatic reasoning. The same goes for

ambiguities in the relationship between economics and sociology as well as sociology and law. With respect to the latter, I would rather see discrepancies at the micro-level, as pointed out by contrasting ‘law in the books’ and ‘law in action’, and affinities at the macro-level, notably when it comes to questions of ‘value relevance’ (Weber 2004) pertinent to the normative self-understanding of societies as reflected in legal and social theories. For the relations between economics and sociology, I will particularly draw on the different institutionalisms acting as bridge-builders as well as gatekeepers between both disciplines and their respective cores of ‘calculus’ and ‘culture’ (Hall/Taylor 1996; Schmid/Maurer 2003). In the end, this attempt of interdisciplinary ‘triangulation’, would hopefully result in an approach that allows to combine and integrate elements of sociological, economic as well as legal perspectives.

At the same time, my main interest is in putting forward a structuralist-constructivist perspective on law and economy (including the lawyers’ economy and the economists’ law) which will indeed permeate what the economic sociology of law – as sketched out here – is supposed to do on an empirical level. The following accounts, or rather reconstructions, of the three interdisciplinary research fields that have evolved in-between the aforementioned disciplines thus already follow the principles of macro-contextualisation and micro-translation. The general idea behind is that from a sociological point of view ‘epistemological obstacles’ (Bourdieu et al. 1991) inherent in conventional economic and legal perspectives on markets, regulations and their interrelations could be overcome and, thus, new insights could be gained. To illustrate this point, I would like to emphasize three concepts (integration, embeddedness, governmentality) that exemplify a broader view on legal and economic phenomena. These concepts are closely related on the level of social theory but will in the following be linked to different research fields (law and society, economy and society, law and economy), in order to briefly summarize the lessons that can be learned from each discourse and made available for an economic sociology of law.

Against this background, the first research field to be addressed here, namely law and society, teaches us about the relations ‘between facts and norms’ (Habermas 2006) in a broad range of empirical subjects and, thus, about the conditions of and conflicts behind ‘integration through law’. This also applies to questions of transnational legal integration which, nevertheless, do not figure prominently in socio-legal studies. In a previous work, I have already explored the paradigm case of European ‘integration through law’ from a different social-theoretical perspectives and traditions and suggested to re-interpret the legal-political

concept of the European Community of Law in sociological terms, that is, to exploit and rescale notions of a ‘societal community’ mainly integrated through law (Frerichs 2008).

Whereas socio-legal studies thus in principle deal with aspects of normative, or moral, integration (i. e. social integration in the narrow sense) and its factual social substrate, socio-economic studies generally approaches the problem of social order from a different angle. Therefore, not integration (through law) but embeddedness (of markets) can be taken as the core concept in the research field of ‘economy and society’ and has indeed been widely discussed both on the ‘macro’ level of structures and systems, and the ‘micro’ level of actions and interactions (Rizza 2006; Krippner/Alvarez 2007; Gemici 2008). Building on the notions and dialectics of disembedding and reembedding as they have been spelled out in political economy and economic sociology, the point here would be to bring in legal institutions and also account for the ‘endogeneity of law’ (Edelman 2007) in the sphere of economic exchange. This goes even more for the study of transnational markets, including the completion and complementation of the single European market (Caporaso/Tarrow 2008).

The reason to subsume the field of ‘law and economy’ in general and ‘law and economics’ in particular under the headline of governmentality (Foucault 2007; 2008) is certainly least obvious and owes most to sociological reconstruction. The idea behind this link gets clearer when the focus is not on the economic analysis of law (i. e. law and economics in the narrow sense) but on the political economy of law and on law as a constituent part of the political economy. In this political economic perspective, the ‘law and economics’ movement (including different waves of ordo- and neoliberalisms) can be understood as challenging traditional conceptions of the law and thus forwarding new governmental rationalities. In this respect, I will build on a related argument that draws on the governance debate (Frerichs 2008). In other words, governance and governmentality discourses have their merits in contextualizing the ‘state’, or rather the government, and thus contribute to reconceptualizing the relations between political, legal and economic spheres, both at national and transnational levels.

These three concepts (integration through law, embeddedness of markets, governmental rationalities) thus provide basic orientations for an economic sociology of law that is located but not lost between three rather broad interdisciplinary research fields. [In the remaining parts of this paper, I will further elaborate how the different aspects mentioned in this ‘programmatic’ introduction can be integrated and applied in a field theoretical research design that builds on the notion of ‘conceptions of control’ put forward by Neil Fligstein (1990; 2001).]

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Fig. 1

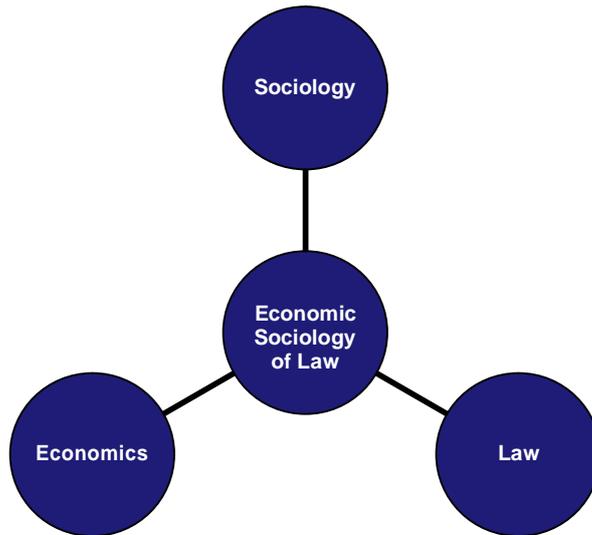


Fig. 2

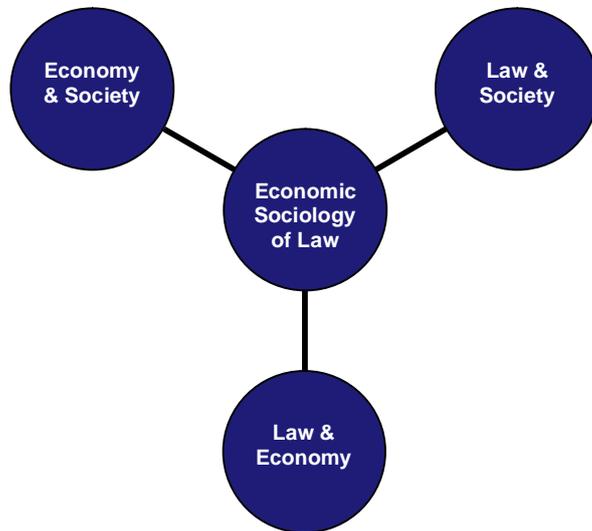


Fig. 3

