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LAW AND ECONOMY

THE NEED FOR A SOCIOLOGICAL APPROACH

By

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In this article I will argue that economic sociologists need to devote much more attention to the role of law in the economy than they have done till now.¹ There are a number of reasons for this. Law, for one thing, is important to *any economy* in the sense that it is needed to settle conflicts and ensure property. Doing this will help to ensure peace in society—and the economy thrives on peace. Law is also crucial to *the modern capitalist economy*, since this type of economy needs predictability to work. And a certain type of legal system is very helpful to ensure predictability, as we know since Weber.

To these two general reasons why it is important to study the role of law in economic life, the following two facts can be added. First, the legal dimension of modern economic life often involves enormous sums of money. One example of this would be patents, another copyright. It is also very expensive to pay for the legal system, from the policemen who guard private property (among other things) to the lawyers who work for the modern corporation. If one could put together a bill for all of these expenses, using Europe as an example, the sum would easily be in billions of euros.

For all of these reasons, as I see it, there exists a definite need for what can be called *an economic sociology of law*—that is, for a sociological analysis of the role of law in economic life. Before saying something about attempts to move in this direction, it may be useful to first address the issue of whether an economic sociology of law is needed at all. There does, after all, already exist a well-established field called law and economics among the economists. Furthermore, sociologists of law (including its Marxist proponents) have for many decades analyzed the relationship between law and society, including the economy.

All of this is true—but it can also be argued that none of these approaches have tried to accomplish what an economic sociology of law would set out to do. The law and economics literature does not approach legal phenomena in an empirical and sociological manner, as the economic sociology of law would do. Instead it relies heavily on the logic of neoclassical economics to explain why legal decisions are made the way they are. The law and economics tradition, as opposed to the economic sociology of law, is also explicitly normative in nature and advocates how judges *should* behave and how legislation *should* be constructed, usually so that wealth is maximized (Posner). While the economic sociology of law is only concerned

¹ This article draws on a talk given at the fourth annual conference on economic sociology at Princeton University, February 22-23, 2002. For comments I thank Jens Beckert and Frank Dobbin.

with the legal aspects of economic life, the law and economics approach argues that one should extend the logic of economics to the analysis of *all* types of law.

Also the sociology of law has paid some attention to the economy and produced a few studies which are of much relevance to the economic sociology of law (e.g., Selznick 1969, Aubert 1983, Bourdieu 1987, Edelman and Suchman 1997; cf. Posner 1995). Still, its main focus—and this is what is being discussed just now—is usually on law and society in general. And the same can be said about the law and society movement in the United States which can be described as generally sociological in nature (e.g., Abel 1995, Garth and Sterling 1998). Finally, Marxist sociologists of law have produced surprisingly few studies of specific legal phenomena which are of relevance to the economy, and have mostly preferred to discuss general aspects of the impact of capitalism on the legal system (e.g., Spitzer 1983). There is the additional difficulty that many sociologists who work in this tradition mainly view law as part of the superstructure (for an effort to overcome this, see Thompson 1975, 2001).

What would then be the main task of an economic sociology of law? A general answer would be that it should produce careful empirical studies of the role that law plays in the economic sphere, drawing primarily (I myself would add) on an analysis that highlights not only social relations but also interests. To use the word “careful” in this context may seem odd, but the few studies in this genre that do exist testify to such a degree of complexity in the interaction of law and economy that one would like to issue a general warning for studies that produce sweeping and general answers to the question of how legal institutions function in the economy, including the question of the overall role of law in the economy. To study “mankind in the ordinary business of life”, and how this relates to law and economy, would constitute the main task of the economic sociology of law.

Similar to the sociology of law, complementary tasks would be to analyze the relationship of law and economy to other spheres of society, such as the political sphere or the private sphere of the family. Just as the Marxist sociology of law, the economic sociology of law would look at the way in which economic forces influence legal phenomena; but it would in addition analyze how law impacts on the economy, again with reservations for the complexity involved. Finally, just as the law and economics approach, the economic sociology of law would study the way that the legal system helps to further economic growth and perhaps even to show how the spirit of a commercial society can come to pervade other parts of the law than those that directly have to do with the economy. To this should also be added how law can block and impede economic growth—a task which is implied in the research program for law and economics, but rarely carried out.

In its efforts to analyze the role of law in economic life, the economic sociology of law should surely draw on the insights of economic sociology in general, but it should also be able to make important contributions to economic sociology of its own. It has, for example, been well established in contemporary economic sociology that economic actions take place in networks, and that these networks connect corporations to one another, corporations to banks, individuals to corporations, and so on. In all of these relationships law is present; and the concepts of networks and economic (social) action can therefore be used in an attempt to reach a better understanding of the role that law plays in the economy. This is similarly true for other concepts and approaches in economic sociology, such as the concept of the field, the idea of markets as social structures, economic actions as a form of culture, and so on.

But there is also the fact that the economic sociology of law should be able to make a distinct contribution to economic sociology as it currently exists. To introduce law into the picture typically means to add another factor, without which the picture would be incomplete. In mainstream economics before the 1950s, it was generally agreed that the legal system could safely be disregarded since it did not affect the typical course of events, and one sometimes gets the impression that this has also been the view in economic sociology. Law, for example, plays a marginal or non-existing role in the analyses of most new economic sociologists.

Law, however, is a factor that typically affects the economic actor, in the sense that she has to take law into consideration; and if it can be disregarded in certain economic situations, this should be explicitly specified. The assumption that a decision by the state automatically translates into a law, and that this law is generally followed, should not be made since there is no simple one-to-one causality involved. Law introduces, so to speak, *an extra layer* in the analysis. There is typically a story behind the creation of every law; every law has to be interpreted; and, very importantly, those who are subject to the law will react to it in different ways, depending on a host of factors.

To develop an economic sociology of law along these lines constitutes a huge challenge, since it demands some knowledge of three different social sciences—law, economics and sociology—as well as a capacity to wring something novel and sociological out of the combination. But there already exist some suggestive ideas for how to go about things, as will be shown in the next section of this brief article.

Studies of Law and Economy in Current Sociology

While no effort has been made to develop a general analysis of the role that law plays in economic life—what has here been called an economic sociology of law—there do exist a number of individual studies that naturally would fall into such a field and from which much can be learned. Three different literatures are helpful in this respect, even if their main thrust, to repeat, differs from the economic sociology of law: the law and society movement in the United States, sociological studies (especially by sociologists of law and economic sociologists), and law and economics. Quite a bit could be said about each of these, but here I will only look at studies produced by contemporary sociologists. My reason for choosing just sociological studies is simply that I want to underscore that the enterprise I am suggesting is not utopian in nature—beginnings already exist.

A study with which many people are familiar is Neil Fligstein's analysis of the way that antitrust legislation has influenced the various strategies and structures of American firms during the 20th century (Fligstein 1990). There also exist a number of studies in organizational sociology and in the sociology of law which have produced valuable insights into the relationship of legal and economic forces (see e.g., the study of law firms in Silicon Valley, in Suchman 2000, and of international commercial arbitration in Dezalay and Garth 1996). The law and economics movement has also served as an object of critique, in the area of gender and inequality of pay (e.g., Nelson and Bridges 1999).

It is possible to pick out a few distinct themes of research which discuss some aspect of the role that law plays in the economy. There is, for example, the attempt in a few studies to focus on *the firm as a distinct legal actor*. Several attempts have also been made to study the role of

bankruptcy and what happens when a firm or some of its employees break the law. The most innovative of these three themes may well be the work on the firm as a legal actor. This type of research has grown out of new institutional analysis in organizational sociology and uses as its point of departure the idea that law is part of every firm's surroundings (e.g., Edelman 1990, Edelman and Suchman 2000). Through a series of studies of the 1964 Civil Rights Act and related legislation it has been shown why certain firms rather than others have responded positively to this type of law and implemented a series of legal measures, such as formal grievance procedures for non-union members and special offices for equal employment opportunity and affirmative action offices (for a summary, see e.g., Sutton 2000:185-220). It has, however, also been noted that many of the measures that make up this "legalization of the workplace" mainly serve to legitimize the firm in the eyes of its surroundings; and that management is careful to see to it that these new legal measures do not interfere with important interests in the firm. In Edelman's formulation: "Organizations' structural responses to law mediate the impact of law on society by helping to construct the meaning of compliance in a way that accommodates managerial interests" (Edelman (1992:1567).

Some interesting sociological studies have also been carried out on *corporate crime*—when firms break the law as well as when some employees engage in criminal activities. Policing the stock exchange constitutes an important and difficult task, given the enormous values that are at stake and the temptations that exist for the individual (e.g., Shapiro 1984; cf. Zey 1993). While insider crimes and embezzlement constitute fairly straightforward phenomena from a conceptual viewpoint, this is much less the case with e.g., whistle-blowing and organizational crimes, including corruption. In whistle-blowing enormous pressure is put on any single employee who dares to publicly challenge a firm for some wrongdoing (e.g., Alford 2001). As an example of organizational crime, that is criminal behavior that benefits the firm, but not necessarily the individual, one can mention price-fixing, which is common in all industrial countries and involves enormous amounts. In a recent study of price-fixing it has been shown that the social structure of trusts lends itself very well to networks analysis (e.g., Baker and Faulkner 1993). Price-fixing of standard products (e.g., switchgear and transformers) typically leads to decentralized networks, since little direction is needed from above, while the opposite is true for more complex products (e.g., turbines). The more links there are to an actor in a price-fixing network, the larger is also the risk that she will be found out. Corruption, finally, is a crime that should be on the agenda of economic sociology since it plays an important role in modern capitalism.

One form of economic legislation that has been studied quite a bit by sociologists is that of *bankruptcy*. For more than a decade research on personal bankruptcies has been conducted in the United States, and one of the findings is that during the 1977-1999 period these increased more than four hundred per cent and often involved middle class people (see Sullivan, Warren and Westbrook 2000). But there also exist a growing number of studies of corporate bankruptcies. The most important of these—*Rescuing Business* by Bruce Carruthers and Terence Halliday—is a comparative study of the 1978 U.S. Bankruptcy Code and the English Insolvency Act from 1986 (Carruthers and Halliday 1998). According to the authors, research on law and society has failed to understand that legal professionals do not only play a role in interpreting the law but also in shaping the way that it is changed and reformed. In this particular case, it is furthermore argued, the United States and England changed their bankruptcy legislation to make it easier to reorganize a business that has failed, as opposed to dissolve it.

Concluding Remarks

Space prohibits a detailed argument about an economic sociology of law and what its various tasks would be (see however Swedberg forthcoming). It deserves nonetheless to be stated once more that law is absolutely essential to the everyday workings on economic life, and that this is a fact that economic sociologists have not paid much attention to. To properly understand economic life, you have to understand the role of law. Another way of stating this is as follows: the economic sociology of law, in brief, opens up new exciting opportunities and deserves to be on the agenda for economic sociology in the years to come.

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