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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" form 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 perspective 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, dynamic 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.