

The case for an economic sociology of law

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There currently does not exist what can be called *an economic sociology of law* – that is, a sociological analysis of the role of law in economic life.¹ Before trying to outline what such an analysis would look like, it may be useful to address the issue of whether an economic sociology of law is needed in the first place. There does, after all, already exist a well-established field in economics and many law schools called law and economics. 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 correct, but it can also be argued that none of these approaches has accomplished 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 in its analyses. It 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 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.

The sociology of law has also paid some attention to the economy and produced a few studies that are of much relevance to the economic sociology of law.² Still, its main interest is usually in law and society in general, and it has definitely not singled out economic topics. This is also on the whole true for the law and society movement in the United States.³ Finally, Marxist sociologists of law have produced surprisingly few studies of concrete legal phenomena that are of relevance to

the economy, and have mostly preferred to discuss general aspects of the impact of capitalism on the legal system.⁴ Moreover, these sociologists are hampered by viewing the law as part of the superstructure.⁵

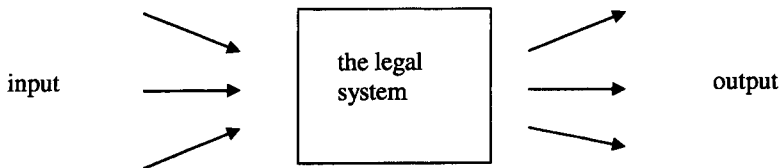
Nonetheless, what would be the task of an economic sociology of law? Generally, it should produce careful empirical studies of the role that law and regulations⁶ play in the economic sphere – drawing primarily (I myself would add) on an analysis that highlights not only social relations but also interests. To use the word “careful” in this context may seem odd, but the few studies that exist in this genre 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 answers to the question of how legal institutions function in the economy, including the question of the overall role of law and regulations in the economy. To study the role of law in the ongoing economy would be one way to describe what the main task of the economic sociology of law should be.

As with the sociology of law, one task for the economic sociology of law 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. As in the case of the Marxist sociology of law, the economic sociology of law would look at the way in which economic forces influence legal phenomena; but in addition it would also analyze how law affects the economy, again with reservations for the complexity involved. Finally, in an approach similar to that of law and economics, the economic sociology of law would study the way in which the legal system helps to further economic growth, and perhaps also show how the spirit of a commercial society can come to pervade parts of the law other than those that directly have to do with the economy. To this should be added the task of studying how law can slow down and block economic growth – a task that is implied in research programs for law and economics but is rarely carried out.

It is possible to outline the kind of topics that an economic sociology of law should cover on a general level by drawing on a scheme that Weber introduces in his essay on objectivity from 1904 in which he describes the area of social economics (*Sozialökonomik*). This scheme can be called a society-centered scheme, meaning that the phenomenon to be analyzed (law) is seen as being dependent on society, rather than being independent (see Figure 1). The goal, in all brevity, is to produce a type

of analysis in which law is subordinate to the general development of society (including the economy), rather than one in which law and its evolution are seen as primary. The key point is that what happens in law is usually dependent on what goes on in society, including the economy.

A. A law-centered view



B. A society-centered view

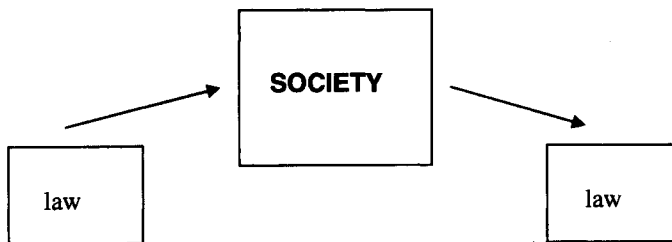


Figure 1. The role of law in society: A law-centered view versus a society-centered view.

Comment: It is common in the law and society literature to speak of an internal versus an external analysis of law. By an internal analysis is meant an analysis that primarily looks at the legal system, while by an external analysis is meant an analysis that studies the input into the legal system as well as the impact of the legal system on society (see A., which comes from an article by legal scholar David Gordon). A different way of conceptualizing the relationship between law and society, however, has been proposed by Lawrence Friedman, a legal historian. Here society is central, not the law; and this means that the law is in principle dependent for its development on the general evolution of society. "Major legal change follows and depends on social change" (Friedman 1975: 269).

Sources: For A., see David Gordon, "Introduction: J. Willard Hurst and the Common Law Tradition in American Legal History," *Law and Society Review* 10 (Fall 1975), 10. For B., see Lawrence Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975).

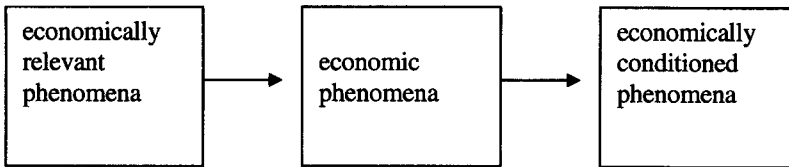
The general idea of a society-centered analysis can be made more precise, and also applied to the relationship between law and the economy; and this is where Weber's scheme for social economics comes into the picture. Social economics, Weber argues in his 1904 essay, should study three types of phenomena: "*economic phenomena*" (economic institutions and economic norms), "*economically relevant phenomena*" (non-economic phenomena that influence economic phenomena), and "*economically conditioned phenomena*" (non-economic phenomena that are partly influenced by economic phenomena). The three major forms of the modern economy – the capitalist economy, the official economy of the state, and the private economy of the household – are all covered by this definition.⁷ It should also be noticed that Weber introduces some qualifications into this scheme by arguing that economically relevant phenomena can never *totally* shape economic phenomena, nor are economically conditioned phenomena ever more than *partly* influenced by the economy. These qualifications are important to keep in mind.

If, instead of applying Weber's scheme to the relationship of the economy to society, we now apply it to the relationship of law to the economy, we get the following: there is first and foremost the economy *including* its legal dimension. This would include key economic institutions and norms, such as banks, corporations, and money. Law, in modern society, is *constitutive* for most economic phenomena, meaning by this that it is an indispensable as well as an organic part of them. Social scientists may separate out the non-legal part of economic phenomena from their legal part in their analyses. In reality, however, they are inseparable.

Besides the economy, including its legal dimension, there is also the (partial) impact of legal phenomena on economic phenomena, and the (partial) impact of economic phenomena on legal phenomena (see Figure 2). Note that the economy is at the center of this scheme – and this is why we may call it an economic sociology of law rather than something like a sociology of law which specializes in economic legislation. There is a primacy of the economy and how it works, in other words, and not the primacy of law.

In its efforts to understand the role of law in economic life, the economic sociology of law should draw on the insights of economic sociology in general. It has, for example, been well established in contemporary economic sociology that economic actions take place in networks,

A. Weber's view of the area to be covered in social economics



B. Weber's scheme applied to the relationship between law and economy

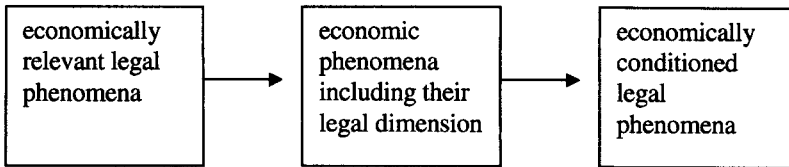


Figure 2. The subject area of the economic sociology of law.

Comment: This figure constitutes an attempt to outline the area that an economic sociology of law should cover. This is done by drawing on Weber's attempt to outline the area for social economics in his 1904 essay on objectivity (see A.). According to this scheme, social economics should cover "economic phenomena," "economically relevant phenomena" and "economically conditioned phenomena." This assures that the three main parts of the modern economy are covered: the corporate economy, the state economy and the household economy. If Weber's scheme is applied to the relationship between law and economy, we get the following (see B). There are first and foremost economic phenomena, including their legal dimension. Law is constitutive for this type of phenomena, in the sense that they cannot exist without a legal dimension. There also are legal phenomena that partly influence economic phenomena, and legal phenomena that are partly influenced by economic phenomena. At the heart of this scheme is the constitution of economic phenomena, including their legal dimension. There is consequently a primacy of the economy, not a primacy of law. Law is part of the functioning of the economy, not the other way around.

Source: Max Weber, "'Objectivity' in Social Science and Social Policy," in *The Methodology of the Social Sciences* (New York: The Free Press, 1949), 64–65.

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, different types of capital, and so on.

The economic sociology of law should also be able to make a 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; for example, law plays a marginal or nonexistent role in much of new economic sociology.

Law, however, is a factor that typically affects the economic actor, in the sense that she has to take law into consideration. If it can be disregarded in certain situations, this should be explicitly stated. The assumption that a decision by the state automatically translates into a law, and that this law is automatically 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; and it is always the case that what matters from a sociological perspective is the reaction of the actor to the law, not what the law or legal doctrine says.

To develop an economic sociology of law along these lines constitutes a huge challenge, since it demands 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 this task, as I show in the rest of this article. In the first section, some of these ideas emerge in the discussion of the general relationship between law and economics. The work of Max Weber, it should be emphasized, is what comes closest to an already existing program for an economic sociology of law. Weber's work also contains some important analyses of the relationship between law and economics.

The section on the general relationship between law and economics is followed by a discussion of the *lex mercatoria* and then by a discussion of a few legal institutions that are of particular importance to economic life, such as property (including intellectual property), inheritance, the contract, and the concept of the firm as a legal personality. The fourth section covers some studies in contemporary economic sociology that are of relevance to the economic sociology of law. There are also some works relevant to our purpose that have been produced in the law and economics tradition. Due to the strong presence in contemporary legal scholarship of this latter type of approach, I indicate in the fifth section

where the field of law and economics coincides with, as well as where it differs from, the economic sociology of law.

On law and the economy

There exist a number of different approaches to the general nature of law, both in jurisprudence and in the sociology of law. It has, for example, been argued that law is a “command of the sovereign” (Austin) and that the essential nature of law is connected to the idea of “legality” (Selznick). There seems to be no reason, however, why the economic sociology of law should be closely connected to one of these approaches, as opposed to some other. With this in mind, I nonetheless argue that law, from a sociological viewpoint, is closely connected to the notion of *order*, and that order is crucial to society as well as to power elites. From this perspective, law can be seen as one of the many weapons in the arsenal of power, similar to physical coercion. Law and violence, of course, do not exclude one another; they are often mixed. Law imposes a distinct order on things by stating what should be done in specific situations. This goes both for when the ruler is directly challenged as well as for ordinary conflicts. Conflicts emerge continuously in society, and unless they are solved on a continuous basis, chaos will eventually ensue. It is also clear that economic activities thrive on order, and that there exists a close link between the two.

Weber’s definition of law fits very well into this type of argument about the need for order in society, namely that law is present wherever there is a staff that has been specifically appointed to enforce a normative order. The exact definition is as follows: “An order will be called ... *law* if it is externally guaranteed by the probability that physical or psychological coercion will be applied by a *staff* of people in order to bring about compliance or avenge violation.”⁸ By “order” (*Ordnung*) in this context Weber roughly means institution.

Weber’s definition of law has been criticized for downplaying the role of ideals. It can, however, be argued that the nature of the order that Weber talks about is not specified. The legal system of a perfectly democratic society, for example, fits Weber’s definition just as well as the legal system of the Nazis did. It should also be pointed out that law can exist, according to Weber’s definition, in situations where no physical violence whatsoever is involved; what is minimally needed is *psychological* coercion.

Duration in time is central to the concept of order, and according to Weber a political order is likely to last much longer if people find it legitimate, and are not simply coerced to obey whoever is in power through the use of violence. "You can do anything with bayonettes," as Talleyrand is supposed to have said, "except for sitting on them." Weber does not address the issue of justice in his theory of legitimation, but it is clear that this is precisely where justice may come in, and that a regime based not only on legitimacy but also on justice would be very sturdy. There exist, according to Weber, several different types of domination, and each of these goes together with a certain type of law. Traditional domination rests primarily on customary law, charismatic domination on law established through inspiration, and legal authority on rational law.

Weber's argument about the important role of law in contemporary democratic society, where legal domination is the most common type of domination, does not mean that people always follow the legal rules and that, once we know what these rules are, we also know how people will act. Jurisprudence, as Weber is careful to point out, tells us what will happen under specific conditions, in the same way as the rules for a card game tell us how the game should be played.⁹ Sociology, however, has a very different approach to law: it tries to establish to what extent legal rules influence the behavior of people – to what extent they constitute "*actual determinants of human behavior*."¹⁰

From a sociological perspective it is consequently obvious that many factors other than the law determine why people engage in the behavior prescribed by the law. The extent to which it is the law, rather than some other factor that determines the behavior in question, has therefore to be decided in each particular case.¹¹ This can be termed the first principle of the sociology of law. In orienting her behavior to the legal order, it should be added, the actor may decide whether to obey the law or not. In the latter case, her behavior may still be influenced by the law. A thief, for example, will typically try to hide her action.

By introducing the notion of interest into the analysis of law and economy, I argue, it will grow in complexity as well as in realism. If economic interests are pitted against the law we expect, for example, tension and possibly disobedience, crime, and corruption. If economic interests, on the other hand, encourage some behavior that is also prescribed by the law, it will be hard to stop this behavior. And economic interests that are not only protected by the law but also viewed

as just and legitimate, would be even harder to stop. Note that some of these economic interests may lead to an increase in production, while others may slow it down or block it. Finally, one way to guarantee that laws are followed would be to make it in some people's interest to see to it that this is the case. Following Douglas Heckathorn, we may term this interest a "regulatory interest."¹²

According to Vilhelm Aubert, "the concept of interest has played an important role in law and jurisprudence."¹³ There also exists a school in legal philosophy called the Jurisprudence of Interests.¹⁴ A well-known legal thinker, Roscoe Pound, for example, assigned a key role to interests in his work. He defined rights as "interests to be secured," and saw society as evolving from "individual interests" to "social interests."¹⁵ Rudolf von Jhering viewed law as the result of struggle, and argued that this struggle could be very violent since interest often stands against interest:

In the course of time, the interests of thousands of individuals, and of whole classes, have become bound up with the existing principles of law in such a manner that these cannot be done away with without doing the greatest injury to the former. To question the principle of law or the institution, means a declaration of war against all these interests, the tearing away of a polyp which resists the effort with a thousand arms.¹⁶

David Hume's theory of law is similarly influenced by his general vision that interests influence human behavior.¹⁷ Justice is not so much an ideal, according to Hume, as a sense of right that people develop in relation to their interests. Law is instituted in society because people realize that it is in their "own and public interest" to have order in society. This way their property will be defended, trade will become possible, and so on.¹⁸ As two further examples of the way in which interests have been used in legal analysis, we have Vilhelm Aubert's argument about conflict resolution and Lawrence Friedman's theory of legal culture. According to Aubert, one can counterpose conflict resolution in the market to conflict resolution in the court. In markets it is often possible to reach a compromise, that is, to find a price that is acceptable to the buyer as well as to the seller. When people cannot negotiate a solution because they have different values or disagree about facts, however, a different way of solving the conflict than bargaining has to be resorted to – the court system.¹⁹

According to Lawrence Friedman, individuals and groups have "interests" but these are not relevant to the legal system until they have

been transformed into “demands.”²⁰ “Legal culture” is defined as that which converts interests into demands or permits this conversion. More generally, legal culture consists of “knowledge of and attitudes and behavior patterns toward the legal system.”²¹ Groups may, for example, feel that the legal system is unfair and does not translate their interests into demands. Legal professionals – lawyers, judges – have their own interests and also their own type of legal culture. As is clear from these two examples, values and customs are central to legal culture. Friedman summarizes his view on legal culture, interests, and law making, writing: “We can rephrase the basic proposition about the making of law as follows: social force, i.e. power, influence, presses upon the legal system and evokes social acts, when legal culture converts interests into demands or permits this conversion.”²²

Something also needs to be said about the general relationship between law and the economy. According to a well-known passage in *The Wealth of Nations*, no person with property would be able to sleep without fear of being robbed, unless her property was protected by the law.²³ David Hume’s interest theory of law was just referred to, and the three fundamental rules of justice that are mentioned in *A Treatise on Human Nature* are all related to the economy: “stability of possession,” “the transference [of possession] by consent,” and “the performance of promises.”²⁴

The thinker, however, who has made the most sustained attempt to establish the general relationships between law and the economy from a sociological perspective is Max Weber. In *Economy and Society* Weber suggests that it is possible to speak of six such relationships.²⁵ The three most important of these all refer to interests in some way:

- “Law ... guarantees by no means only economic interests but rather the most diverse interests ranging from the most elementary one of protection of personal security to such purely ideal goods as personal honor or the honor of the divine powers.”²⁶
- “Obviously, legal guaranties are directly at the service of economic interests to a very large extent. Even where this does not seem to be, or actually is not, the case, economic interests are among the strongest factors influencing the creation of law. For any authority guaranteeing a legal order depends, in some way, upon the consensual action of the constitutive groups, and the formation of social groups depends, to a large extent, upon constellations of material interests.”²⁷
- When economic interests go counter to the law “only a limited

measure of success can be attained through the threat of coercion supporting the legal order.”²⁸

Weber also states that it is not necessary that just the state guarantees economic interests via the legal order – other authorities will do as well. The last two of Weber’s general statements on law and the economy concern the situation in which there is a disjunction between what the law says and what actually goes on in the economy. Economic relationships may change, according to Weber, while the law remains the same; and an economic situation may be treated in different ways by the law, depending on what legal angle is involved.

The sweeping character of the six propositions is probably due to Weber’s intent to make them fit many different societies, from all periods of history. One can, however, also find a few statements in Weber’s work that are exclusively about capitalist society and its legal order, and that are more precise in nature. One of these is particularly interesting since it has to do with the capacity of law *to create new economic relationships*. The law, in brief, does not only consist of “mandatory and prohibitive [paragraphs],” when it comes to the economy, but also of “*empowering*” and “*enabling laws*.”²⁹ The key passage in Weber’s sociology of law on this topic reads as follows:

To the person who finds himself actually in possession of the power to control an object or a person the legal guaranty gives a specific certainty of the durability of such power. To the person to whom something has been promised the legal guaranty gives a higher degree of certainty that the promise will be kept. These are indeed the most elementary relationships between law and economic life. But they are not the only possible ones. *Law can also function in such a manner that, in sociological terms, the prevailing norms controlling the operation of the coercive apparatus have such a structure as to induce, in their turn, the emergence of certain economic relations.*³⁰

Weber adds that this type of law confers “privileges” of two distinct kinds: (1) they “[provide] protection against certain types of interference by third parties, especially state officials,” and (2) they “grant to an individual autonomy to regulate his relations with others by his own transactions.”³¹ As examples of this second type – legal institutions that further economic relationships – Weber cites the modern contract, agency, negotiable instruments, and the conception of the firm as an individual actor. We have here something of a Weberian research agenda for the economic sociology of law, as I see it; and several of these institutions are discussed later on in this article.

Legal historian Willard Hurst would later develop ideas that are parallel to those of Weber about the way in which law enables economic actions and helps modern capitalism along. According to Hurst, American law played this role especially during the nineteenth century, when it helped the economy to grow through “the release of energy,” to cite Hurst’s famous phrase.³² Hurst himself has characterized his work as “legal economic history” and “law and the economy”; and there do exist some interesting parallels between his approach and efforts by Posner and his followers.³³ What separates Hurst from Posner et al. however, is his sociological and empirical approach: legal and economic phenomena are to Hurst’s mind social in character and must be studied empirically, not through an exercise in analytical thinking.

Laying the legal foundation for modern capitalism:

The *lex mercatoria*

The innovations in commercial law that were made in Europe during the period of the late eleventh and twelfth centuries still constitute the foundation for capitalism. What happened in commercial law during this brief period can, to some extent, be compared to the technological innovations that ushered in the industrial revolution or the change in economic mentality that according to Weber came about with Protestantism. Given the enormous importance of *lex mercatoria* – which created “all characteristic legal institutes of modern capitalism” (Weber) – it seems natural that it should occupy an important place in the economic sociology of law.³⁴ After a presentation of the *lex mercatoria* or the Law Merchant, as it is also known, the question of why such great legal creativity came to characterize just this period will be addressed.³⁵

During the eleventh and twelfth centuries the Western economy experienced a very rapid growth in agricultural productivity and trade. New cities were founded and the number of merchants grew rapidly. Merchants crossed the sea as well as the countryside in search of profit, and they organized markets and fairs where these did not already exist. They also developed their own law, which soon came to coexist with canon law, urban law, and manorial law. Buying and selling, transporting goods and insuring them were all dealt with in the laws that now emerged from the merchants’ communities. Together these made up a fairly coherent set of rules – the *lex mercatoria* – which was accepted all over Europe.³⁶

The merchants had their own courts at the markets and fairs that they organized, and they appointed fellow merchants as judges. Merchants also served as judges at guild courts and urban courts during the Middle Ages. The proceedings at the merchants' courts were typically very fast, and technical legal arguments were discouraged. Professional lawyers were not welcome and equity inspired the verdicts. The merchants controlled what went on in the markets and the fairs, but had no formal power outside of these when it came to enforcing the decisions of their courts.

What is truly remarkable about the *lex mercatoria* is that it created a series of institutions that still very much constitute the legal foundation for capitalism. In doing so, it helped to systematize and institutionalize a series of novel economic activities. A list of the most important achievements of the *lex mercatoria* includes:

- protection of acquisition in good faith
- patents and trade marks
- the bond
- the modern mortgage
- the notion of the economic corporation as a legal entity
- symbolic delivery through contract replacing the actual transfer of goods
- the bill of lading and other transportation documents.³⁷

It is still somewhat unclear what accounts for the great legal creativity that could have produced the *lex mercatoria* in such a short period of time. In an aside, Weber has suggested that the emergence of the Law Merchant was facilitated by medieval society's allowance for the co-existence of different legal bodies, each of which "corresponded to the needs of concrete interest groups."³⁸ Harold Berman, a historian of legal thought, has similarly argued that the merchants constituted a fairly coherent and autonomous group in medieval society, and that they created a law that reflected this fact.³⁹ This was also a period of great economic expansion – what has been called "the commercial revolution of the middle ages"⁴⁰ – and merchants were quick to respond to the many opportunities that came in its wake.

A recent study of the *lex mercatoria* has drawn attention to the success of the merchants' courts at the Champagne Fairs in enforcing their verdicts, even though they had no state or similar political institution to back them up.⁴¹ What to some extent compensated for not having

access to a coercive machinery was the ability of the merchants' courts to destroy a merchant's reputation if he behaved in a dishonest manner. This sounds plausible, even if a systematic study of actual cases would be more convincing than the game theoretical exercises that have been marshaled as proof.⁴² It also seems that even if the merchants did not have recourse to the coercive apparatus of some state, political rulers often assisted them when called upon.

According to a number of legal authorities, a new type of the *lex mercatoria* has begun to emerge, from the 1960s onward, primarily in the West. Issues of international contracting, including international arbitration, are at the heart of this new legal phenomenon.⁴³ Some similarities between these developments and the medieval *lex mercatoria* do exist – both, for example, emerged outside of the state – even if these similarities should not be exaggerated.⁴⁴ A sociological study of international commercial arbitration was also produced a few years ago, by a student of Bourdieu and by a U.S. legal scholar.⁴⁵ Based on a series of interviews, the authors of *Dealing in Virtue* argue that an important change has recently taken place in international commercial arbitration. While this type of arbitration used to be dominated by a small club of European legal scholars, it has increasingly been taken over by American law firms.

Key legal institutions: Property, inheritance, the contract, and the concept of the corporation

To discuss the legal institutions that make up the *lex mercatoria* and to follow their development over the centuries up until today constitute an important task for the economic sociology of law, just as it is necessary to discuss the emergence of more recent legal innovations that are crucial to modern capitalism. In this section, however, I discuss only a few of the legal institutions that are central to the modern capitalist economy. The first of these – *property* – is of fundamental importance to all economies and has, as a consequence, been heavily regulated in law. Class as well as status are crucially related to property. Marx paid less attention to the legal dimension of property than to its social meaning, and basically subsumed it under his concept of “relations of production.” Durkheim lectured on the respect that people have had for property throughout history, and argued that the force behind this respect is ultimately derived from the moral authority of society.⁴⁶ Durkheim's analysis can be characterized as intriguing and highly speculative in nature.

Max Weber wrote voluminously on property, in his sociological as well as in his legal and historical writings.⁴⁷ It is also Weber who has so far made the most sustained attempt to conceptualize property from a sociological perspective and integrate the result into a broader framework of economic sociology.⁴⁸ Weber begins with the idea that property represents a distinct kind of social relationship, more precisely, it consists of a social relationship that allows for *appropriation*.⁴⁹ For property to exist, the relationship has to be closed – other people have to be excluded from it – and this allows the actor to monopolize the use of X for himself. This X can be an object, a person, and so on. When an actor has appropriated something for herself, she has what Weber terms a “right”; and when this right can be passed on through inheritance, there is “property.” If the property in addition can be bought and sold, there is “free property.”

One can find an enormous variation throughout history when it comes to dealing with property. We learn, for example, from Weber’s early work on antiquity that land property in Rome had to go through several stages before it could be freely bought and sold on the market.⁵⁰ At first the land was owned by the community and could not be sold at all. At a later stage it could be sold by an individual, but only on condition that the community gave its permission. And finally, land became perfectly alienable; it could be bought and sold at will.

Just as land and objects have been appropriated throughout history, according to Weber, so have human beings. Weber’s remarks on slaves as a form of property are well known, but less so is his observation that in many societies males have often had legal power over their wives and children, which is similar to the power slave owners have over their slaves:

This *dominium* [over wife and children in, e.g., Roman Law] is absolute.... The power of the house father extends with ritualistic limitations to execution or sale of the wife, and to sale of the children or leasing them out to labor.⁵¹

In *Economy and Society*, Weber attempts to enumerate the most important sociological types of property that have existed throughout history – in agriculture, industry, and so on.⁵² He also discusses what kind of property relations and forms of appropriation are most suitable for modern capitalism. When it comes to labor, his answer is identical to that of Marx: modern capitalism works best (for the owners, Weber specifies) if the workers do not own the means of production. When this is the case, the owner gets to choose which workers she wants to

hire, and is furthermore in a position to impose discipline on them. Weber also stresses that modern capitalism will be more efficient (again, from the viewpoint of the owners) if the managers, as opposed to the owners, are allowed to run the corporations. While the original owner and creator of a business may have once been a skillful manager, his heirs are less likely to be so than a handpicked manager.

Modern sociology has not devoted much attention to the concept of property.⁵³ Nonetheless, a nearly ontological grounding of individual property has been suggested by Erving Goffman in *Asylums*. People who are admitted to this type of institution are often not allowed to keep any private items, including those that are important for their personal appearance. This causes much grief:

One set of the individual's possessions has a special relation to self. The individual ordinarily expects to exert some control over the guise in which he appears to others. For this he needs cosmetic and clothing supplies, tools for applying, arranging, and repairing these, and an accessible, secure place to store these supplies – in short, the individual will need an “identity kit” for the management of his personal front.⁵⁴

In recent economic sociology there also exist a few attempts to analyze property with the help of the concept of property rights. These studies have typically taken their inspiration from the law and economics literature and not from Weber. It has, for example, been argued that sociologists tend to forget that the state can change existing property rights and introduce new ones, and in this way influence the economy.⁵⁵ In the United States, this happened for example when AT&T's monopoly over the telecommunications sector was challenged in the late 1950s and replaced by a competitive market.

The notion of property rights has also been used to get a better grip on the transition to capitalism in Eastern Europe and in China, and to theorize the “hybrid” type of property that has recently emerged, that is, property that is neither fully private nor fully public.⁵⁶ Drawing on the work of Harold Demsetz, some experts on China have, for example, recently suggested that the social structure of the rural industry in this country differs depending on the structure of the property rights of which there are four kinds: the right to ownership, the right to manage, the right to the income that is generated, and the right to enforce the existing order.⁵⁷ The great variety of social arrangements, under which the rural industry in China currently operates, lends itself very well to a flexible notion of property of this type (see Figure 3).

	ownership	management	right to income	enforcement
state	X		X	X
private owner		X	X	
village community				

Figure 3. Possible variations in property rights: The case of rural industry in China.

Comment: This figure was constructed with the help of the argument in Jean Oi and Andrew Walder, editors, *Property Rights and Economic Reform in China* (1999). In capitalism there is private ownership, the management is private, the right to the income is private, while the enforcement is carried out by the state. In socialism of the classical Soviet type, the state is not only the owner but also the manager; it has the right to the income and it does the enforcement. In contemporary China, however, the situation is somewhere in between capitalism and socialism, especially in the rural industry (see “X” in the figure). The state is, e.g., the owner, but the managers are private, and the right to income is divided between the state and the private managers.

A topic that has not been much explored in the sociology of property is that of intellectual property rights, which covers such items as patents, copyright, trade secrets, and trademarks. The Statute of Monopolies from 1523 in England is often cited as the first patent law but also the American Constitution of 1787 includes a famous passage on patents and copyright. According to the Constitution, the U.S. Congress has the power “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” The basic idea, as Abraham Lincoln famously put it, was to use the patent system to “add the *fuel* of interest to the *fire* of genius.”⁵⁸ The attempt to secure the rights of the “authors and inventors,” however, was soon replaced by the use of intellectual property law to secure the rights of corporations.⁵⁹ This took place in the nineteenth century when the first patent pools were also organized. Corporations, in other words, could from now on buy and sell each other patents. The value of intellectual property to big corporations has increased enormously during the twentieth century with the emergence of the music industry, the drug industry, and the computer industry – what are sometimes referred to as “the copyright and patent industries.”

An interesting aspect of intellectual property has been noted by Robert Merton, namely that the effort to encourage "the inventive interest" of the individual scientist was soon replaced by the internal reward system of scientists.⁶⁰ The scientist publishes her results and essentially is awarded the esteem of her colleagues. As science has become much more profitable, however, the applicability of this type of award system has shrunk considerably.⁶¹ This leads to the question of whether the current legal system still properly safeguards the interest of the inventor and encourages her activities.

Inheritance is closely related to the concept of property, as, for example, Weber's definition of property illustrates. This also means that it is part of the more general social mechanism of appropriation or of excluding other people from the opportunity to use a certain utility. While contemporary sociologists have paid little attention to inheritance, this is not the case with the classical sociologists.⁶² In *Democracy in America*, for example, Tocqueville devotes several pages to inheritance, which he regarded as a legal institution of great social and political importance.⁶³

According to Tocqueville, primogeniture is associated with the aristocratic type of society, and the equal right to inheritance with the democratic type. What especially impressed Tocqueville was that once certain types of inheritance laws are in place, they will slowly but inexorably reshape society according to their logic:

When the legislator has once regulated the law of inheritance, he may rest from his labor. The machine once put in motion will go on for ages, and advance, as if self-guided, towards a point indicated beforehand. When framed in a particular manner, this law unites, draws together, and vests property and power in a few hands; it causes an aristocracy, so to speak, to spring out of the ground. If formed on opposite principles, its action is still more rapid; it divides, distributes, and disperses both property and power.⁶⁴

Tocqueville also draws a distinction between the "direct" and the "indirect" impact of inheritance. By the former he means the impact of inheritance on some material object, for example when a landed property is divided into a certain number of plots. By indirect impact he refers to the fact that if landed property is divided, the division will also tend to dissolve the family's feeling for the property and the desire to keep it together.⁶⁵

Durkheim and Weber both judged inheritance to be of much importance to economic life. According to Durkheim, inheritance in modern society represents the survival of an archaic and collective form of property, which leads to inequality. "It is obvious," he states in one of his lectures, "that inheritance, by creating inequalities amongst men from birth that are unrelated to merit or service, invalidates the whole contractual system at its very roots."⁶⁶ In Durkheim's opinion, inheritance was incompatible with the spirit of individualism in modern society and should therefore be abolished; he also predicted its disappearance.⁶⁷

Like Durkheim, Weber regarded the concept of inheritance as belonging to the legal past, since it deals with the actor in her capacity as a member of a family, and not in terms of what she has accomplished.⁶⁸ The increasing freedom of testation in modern society Weber ascribed, among other things, to the need in families to adjust inheritance to the injustices of life. People "aim, in addition to munificence regarded as an obligation of decency, at the balancing of interests among family members in view of special economic needs."⁶⁹ Finally, Weber challenged the easy identification of primogeniture with aristocracy, by pointing out that equal division of land was the rule in France, before as well as after the creation of the famous Napoleonic Code.⁷⁰

When it comes to *the contract*, the most frequently cited work in sociology is without question *The Division of Labor in Society* by Durkheim. In a rebuttal to Herbert Spencer, whose political ideal was a society that operated exclusively on the basis of individual contracts, Durkheim pointed out that a contract can work efficiently only if there already exists a social structure to support it. "Everything in the contract is not contractual Wherever a contract exists, it is submitted to regulation which is the work of society and not that of individuals."⁷¹ When he lectured on the contract, Durkheim also discussed its evolution throughout history. What especially fascinated him, as well as several of his students, was that once a contract has been entered into, it is respected by the actors as well as by society. That a contract in this way can acquire a truly "binding force" was the result, he suggested, of "a revolutionary innovation in law" and could be explained only with the help of sociology.⁷²

To Weber, the law of contracts represents an "enabling law" par excellence since a contract allows the actors to engage in new types of behavior that they agree upon among themselves.⁷³ Contracts were

used very early in history, but not in the economy; and at this early stage they also involved the whole person (“status contracts,” in Weber’s terminology). The modern type of contract, in contrast, is primarily used in the economic sphere and has a narrow scope (“purposive contracts”). For rational capitalism to operate efficiently, it is absolutely essential that the transfer of property is stable and operates smoothly; and this is something that only the modern (purposive) contract can ensure.

Weber never got around to writing on the modern use of the purposive contract (or on the modern use of any of the other legal institutions that are central to rational capitalism). He does, however, occasionally touch on the structure of the modern employment contract; and what he has to say on this point is reminiscent of Marx, namely that the asymmetry of power between the worker and the employer makes the freedom of contract largely illusory.⁷⁴ Enabling laws, in other words, tend to promote formal freedom as opposed to substantive freedom:

This type of rules [that is, enabling rules] does no more than create the framework for valid agreements which, under conditions of formal freedom, are officially available to all. Actually, however, they are accessible only to the owners of property and thus in effect support their very autonomy and power positions.⁷⁵

At one point in *Economy and Society* Weber notes that businessmen rarely go to court to settle their disputes over a contract.⁷⁶ This insight is also central to an important article by legal scholar Stewart Macaulay, which deserves a special mention. In an article that appeared in 1963 in *The American Sociological Review*, and that is based on a study of businessmen in Wisconsin, the author argues that a common reason why businessmen hesitate to use the court system is that they feel that this is not the way to deal with business associates. Macaulay cites a businessman as saying the following:

if something comes up, you get the other man on the telephone and deal with the problem. You don’t read legalistic contract clauses at each other if you ever want to do business again. One doesn’t run to lawyers if he wants to stay in business because one must behave decently.⁷⁷

In a later study Macaulay has suggested that managers mainly avoid going to court because it is more expensive than settling a dispute through other means. In an interesting twist on this, he points out that money is also the reason why insurance companies do go to court in cases that involve huge claims in automobile accidents: “In such cases,

the amount involved is so substantial that no official in the company wants to assume responsibility for writing the check; it seems safer to do this under the compulsion of a court order.”⁷⁸

While the innovative nature of Macaulay’s research must be acknowledged, it should also be pointed out that it does *not* prove that businessmen always prefer to settle disputes about contracts between themselves. In a study from the 1990s, Macaulay and other researchers found a dramatic increase in the number of contractual disputes that were brought to court.⁷⁹ In the light of this later research, the “Macaulay Thesis” can perhaps be formulated in the following way: businessmen may prefer to settle contractual disputes between themselves, rather than go to court; exactly to what extent this is so, however, must be investigated in each particular case.⁸⁰

The sociological insight of Durkheim and others that the contract is embedded in society has been further developed in American legal thought under the heading of “relational contracting.” Classical contract theory, it is argued in this type of literature, deals with an idealized and isolated part of what actually goes on. In real life, everything from production to consumption is connected into one big whole of organically linked “relational contracts.”⁸¹ While there is some affinity between this type of argument and the way in which sociologists look at contracts, the notion of relational contracting has not attracted much interest from sociologists.

The reason for this neglect may well be related to the general lack of work done by modern sociologists on the contract in the first place. There do exist some exceptions, however, including a traditional concern with the labor contract.⁸² Oliver Williamson’s argument that the contract is linked to the market, just as authority relations characterize the firm, has also led to some debate among sociologists, including the suggestion that things are considerably more complex in reality.⁸³ In Carol Heimer’s study of insurance contracts, she investigates how risk is managed in this type of contract.⁸⁴ By trying to control for those parts of risk that have their origin in the observation that actors’ behavior is interrelated (“reactive risk,” in Heimer’s terminology), the probabilities for loss are stabilized.

The legal evolution of the modern corporation is clearly of much interest to an economic sociology of law, and the notion of the firm as a *legal personality* is a particularly relevant topic. Most importantly, it

is by virtue of this particular notion that the firm has been able to acquire full legal independence from individual persons. To cite Weber, "The most rational actualization of the idea of legal personality of organizations consists in the complete separation of the legal spheres of the members from the separately constituted legal sphere of the organization."⁸⁵ The notion of legal personality represents, in other words, a legal mechanism that allows individuals to act in novel ways. It is also an integral part of the structure of the modern Western firm.

Only two sociologists have paid more than cursory attention to the notion of legal personality: Max Weber and James Coleman.⁸⁶ According to Weber, this notion falls under the heading of "associational contracts" and can consequently be characterized as an enabling law.⁸⁷ Weber unfortunately traces only the early history of the notion of legal personality and notes that it was used for certain political and religious organizations rather than for economic ones during the Middle Ages. He does mention, however, that the complementary notion of a firm owning property of its own, which is distinct from the personal property of individuals, started to emerge during the early fourteenth century in Florence.⁸⁸ The notion of legal personality was eliminated from French law during the Revolution, but was soon reintroduced to facilitate market transactions. No such interruption occurred in England, on the other hand, where the notion of legal personality was first used in the thirteenth century, when charters were issued to towns. Still, it was not until the nineteenth century that the notions of limited liability and joint-stock corporation became common.⁸⁹

Although Weber discusses the notion of legal personality in his sociology of law, James Coleman assigns it a place in his general sociology.⁹⁰ According to Coleman, studying the notion of legal personality constitutes a way of tracking the evolution of a revolutionary innovation in human history, namely the discovery that people can create groups for their own specific purposes. People have always lived in groups, but it was first at a relatively late stage in history that they consciously began to create new ones. The conceptual breakthrough, according to Coleman, came in the thirteenth century, when an Italian jurist called Sinibaldo de' Fieschi (later known as Pope Innocent IV), introduced the notion that a "*persona ficta*" or a "fictitious person" should have the same legal standing as an individual, even though it lacked a physical body.⁹¹ This also meant that organizations could have their own interests, something that has had enormous consequences for the develop-

ment of society.⁹² Today we live in an “asymmetric society,” in which the individual has next to no power, compared to that of the modern corporation.⁹³

Current research in economic sociology

While no effort has been made to develop a systematic and 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 studies that would naturally fall into such a field.⁹⁴ In some studies, for example, economic sociologists have included a discussion of law in their analyses. One example of this is Neil Fligstein’s analysis of the way in which antitrust legislation has influenced the strategies and the internal power structure of American firms during the twentieth century.⁹⁵ Mark Granovetter has similarly noted that business groups can be defined as legally separate firms, and that anti-trust legislation constitutes a serious obstacle to the formation of business groups in the United States.⁹⁶ There also exist a number of studies that draw on a combination of organizational sociology and the sociology of law, and that have produced valuable insights into the relationship of legal and economic forces.⁹⁷ In one study, finally, the law and economics movement has been criticized for legitimizing gender inequality in the labor market.⁹⁸ Research on the informal economy also suggests that informal economic activities can be defined as activities that evade laws and regulations.⁹⁹

But it is also possible to pick out some general themes of research that discuss certain aspects of the role that law plays in the economy. There exists, for example, an attempt in several studies to focus on the firm as a distinct legal actor. Several attempts have also been made to study the role of bankruptcy as well as what happens when a firm or some of its employees break the law. The most innovative of these three themes, insofar as the study of law in general is concerned, 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.¹⁰⁰ 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 nonunion members and special offices for equal employment opportu-

nity and affirmative action.¹⁰¹ Observers, however, have also noted that many of the measures that have created this “legalization of the workplace” serve mainly 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 Lauren 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.”¹⁰²

Some interesting sociological studies have also been carried out on corporate crime – when firms break the law as well as when their employees engage in criminal activities.¹⁰³ 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.¹⁰⁴ While insider crimes and embezzlement constitute fairly straightforward phenomena from a conceptual viewpoint, this is much less the case with, for example, whistle-blowing and organizational crimes. In whistle-blowing enormous pressure is often put on the employee who accuses her firm of wrongdoing.

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 of money. In a recent study of price-fixing, it has been shown that the social structure of this type of activity lends itself very well to network analysis.¹⁰⁵ Price-fixing of standard products (e.g., switchgear) 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 the risk that she will be found out.

One form of economic legislation that has been studied quite a bit by sociologists is 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 400 percent and often involved middle class people.¹⁰⁶ 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 1986.¹⁰⁷ According to the authors, research on law and society has failed to understand

that legal professionals play a role not only in interpreting the law, but also in shaping the way in which it is changed and reformed. It is also emphasized that the general thrust of the law in the United States, as opposed to in England, is to encourage the reorganization (rather than the liquidation) of firms that are in trouble.

Law and economics

One of the most successful developments, not only in American legal thought but also internationally, is what is known as “law and economics,” which traces its origins to the early 1960s in the United States.¹⁰⁸ During its early phase, this type of analysis was quite radical and it insisted that the logic of neoclassical economics could be used to solve a number of important legal problems, economic as well as non-economic. Lately, however, law and economics has begun to include a number of institutional, psychological, and sociological approaches; and there seems to be no reason why one day the economic sociology of law should not be part of it as well.¹⁰⁹

The heart of the law and economics movement is sometimes referred to as “Chicago Law and Economics,” and this is a reminder that most of its founders were active at the University of Chicago. Of these it is Richard Posner who has done much to turn law and economics into a general approach in jurisprudence. He has, for example, produced the first and still very influential textbook – *Economic Analysis of Law* (1st edition 1972, 5th edition 1998) – and he has also regularly tried to survey and pull together the field.¹¹⁰ The basic idea in law and economics, according to Posner, is that the logic of economics can and should inform legal analysis as well as legislation. Every actor is driven by self-interest, be it a criminal, a legislator, or a lawyer. What especially informs judges and the legal system as a whole is “wealth maximization.”¹¹¹ A concern with justice, Posner says, is roughly the same as a concern with wealth. If you can rearrange the situation so that more social wealth is produced, you should do so. Judges, of course, also have to follow common law doctrines, but these often came into being during the nineteenth century when laissez-faire ideology was strong in American legal thought.

At the heart of Posner’s reasoning is the so-called Kaldor-Hicks concept of efficiency.¹¹² According to the theorem of Pareto superiority, an exchange should be made only if at least one actor is better off and no

one is worse off. The Kaldor-Hicks concept of efficiency is less demanding, and basically states that an exchange is efficient if there is an increase in social wealth – that is, if the change in wealth as a result of an exchange, minus any potential damage to a third party, is positive.

Posner has lately started to define himself more as a pragmatist than as a strict law and economics person; and also when we look at the second key figure in the law and economics movement it is possible to perceive a similar drift away from a neoclassical stance. This is R. H. Coase, author of the most influential writing in this field, “The Problem of Social Cost.”¹¹³ The standard interpretation of this article – the so-called Coase Theorem – can be summarized as follows.¹¹⁴ On the assumption of zero transaction costs (i.e., that it does not cost anything to draw up a contract, go to court and so on), it does not matter which of the two parties in a dispute about damages will be assigned the legal rights. The logic of the market will in both cases lead to the same result, namely, to the most efficient use of the resources.

The argument in Coase’s article is difficult to follow, but has been explicated in an exemplary manner by Mitchell Polinsky.¹¹⁵ Assume that the smoke from a factory causes damage to the laundry of some residents who live near by. The damage to the laundry is estimated at \$75 per household; and there are five households, making the total damage \$375. The damage can be eliminated in two ways. Either a smokescreen can be installed in the chimney of the factory, at a cost of \$150, or each resident can be given an electric dryer, at a cost of \$50 per resident. The efficient solution is clearly to choose the smoke-screen, since this will cost only \$150 – considerably less than the total damage, which amounts to \$375, or buying dryers for \$250 ($5 \times \50).

Coase’s argument, to repeat, is that if transaction costs are zero, the efficient solution will be the same, regardless of who is assigned the legal rights in the situation – be it the factory owner or the residents. This can be shown in the following way. Assume, to start out with, that the factory owner is assigned the legal rights (in this case: an entitlement to clean air). The residents will then have to decide if they want to suffer the full damage of \$375, the cost for buying dryers for \$250, or the cost of installing a smokescreen for \$150. The last is the obvious efficient solution. Assume now that the legal rights are assigned to the residents. The owner of the factory can now choose between compensating the residents for the initial damage (\$375), buying them dryers

(\$250), or installing a smokescreen (\$150). Again – and this clinches the argument – the most efficient solution is to install a smokescreen.

To look at what represents the most efficient solution to various conflicts, followers of Coase have argued, allows them to approach many legal problems in a novel manner and to generate suggestions for judges to follow. One may also advance legal thought by gradually making Coase's argument more complex, for example, by introducing various types of transaction costs. This is done, for example, in *An Introduction to Law and Economics* by Mitchell Polinsky, where the Coase Theorem is applied to a number of issues, such as breach of contract, nuisance law, and pollution control.¹¹⁶

That law and economics contains more than strict neoclassical reasoning can, however, be illustrated by Coase's own apparent tendency not to subscribe to the so-called Coase Theorem. The reason why he assumed zero transaction costs in his analysis, according to Coase himself, was to show that one should not automatically assume that the best way to solve cases involving damage is simply to let the guilty party pay for the whole damage. By introducing the idea of market forces, one can show that other – and more efficient – solutions are also possible. Coase has also pointed out that the main thrust of his argument in "The Problem of Social Cost" had to do with situations where transaction costs *are* involved:

Because of this, the rights which individuals possess, with their duties and privileges, will be, to a large extent, what the law determines. As a result, the legal system will have a profound effect on the working of the economic system and may in certain respects be said to control it.¹¹⁷

Another well-known study that shows the breadth as well as the creativity of the law and economics approach is Robert Ellickson's *Order without Law*. Ellickson was an expert in law and economics and a believer in the Coase Theorem when he set out to test it through an empirical study in Shasta County, California.¹¹⁸ The situation he chose to investigate was precisely the one discussed in Coase's article on the problem of social cost, namely when cattle belonging to landowner A stray onto the property of landowner B and cause some damage. According to the Coase Theorem, as we know, it should not matter in this situation if it is A or B who has the legal rights, given zero transaction costs. What Ellickson found in his study, however, was that people in Shasta county mostly chose to ignore the law because of the high transaction costs, or rather because it was so expensive to settle

things according to the law. When damages of the type that Coase describes did occur, however, people tended to rely on local norms to settle their disputes. Ellickson also discovered that people were ignorant about the law. In brief, the Coase Theorem is of little use in analyzing reality.

Another insight of Coase that has received a neoclassical twist as well as a broader interpretation is that property rights are of great importance in the analysis of most economic phenomena. A major point in "The Problem of Social Cost," according to the author, was to make clear that "what are traded on the market are not, as is often supposed by economists, physical entities but the rights to perform certain actions, and the rights which individuals possess are established by the legal system."¹¹⁹ This idea has shown itself to be very productive, to judge from the enormous literature on property rights that has emerged since the 1960s.¹²⁰ Once picked apart, it turns out that the concept of property covers a number of complex situations, as exemplified by the kind of property rights that are associated with such diverse economic institutions as land, capital, shareholding corporations, mutual savings institutions, and so on. The property rights perspective also invites a historical as well as a comparative perspective; and a number of studies along these lines have also been produced.

While it is obvious that many studies in the law and economics literature fail to single out and analyze the impact of social relations, it should also be clear from what has just been said that the law and economics movement is quite diverse and broad enough to encompass different types of analyses, including an economic sociology of law. This latter type of analysis may one day have quite a bit to offer the law and economics movement. In the meantime, however, law and economics has much that is of interest to the sociologist, both in terms of ideas and empirical research.¹²¹ When it comes to ideas, the notion of property rights is a case in point and has already been discussed. As to empirical research, there is much to choose from, including Rafael La Porta and his coauthors' attempt to compare the impact of common law on economic growth to that of civil law.¹²² What these authors found was that the rights of minority shareholders as well as shareholders in general were much better protected in countries with legal systems that belong to the common law tradition than to the civil law tradition. Finally, it is time for sociologists to realize that law and economics is not a conservative or right-wing project.¹²³ It has

practitioners who are liberals, social democrats, and the like. More importantly, many of its key ideas can be very helpful to economic sociology.

Concluding remarks on the agenda for an economic sociology of law

In this article, I have attempted to outline the field of what can be called the economic sociology of law, and also to draw up a research agenda for this type of study. The latter was primarily done by referring to the work of Max Weber and the tradition coming out of the research program of Willard Hurst, and by pointing to a number of topics that should be part of the economic sociology of law (such as property, contracts, inheritance, and other key institutions of capitalism). I have also noted that the effect of law and regulations on the economy is not only to restrain economic activities, but to make certain economic actions possible. Contract law is the paradigmatic example of this latter type of law. Law can be “enabling” (Weber) and it can “release energy” (Hurst).

An alternative way of outlining the agenda for an economic sociology of law, which has the advantage of being more systematic in nature and also easier to recall, would be to look at the role of law and regulations in the three main sectors of the economy: *the corporate economy*, *the state economy*, and *the household economy*. Again, the emphasis would be on law and regulations as part of ongoing economic life. It is not what the law says that is of primary interest to the economic sociologist, but the role that law plays in the way that the economy operates on an everyday basis.

In *the corporate economy* – which is what economic sociologists usually focus on – law plays a key role in regulating the economic interests of individuals and firms. Typical topics include property rights, and economic relationships inside as well as between economic organizations. Some organizations also have as their main task to regulate what goes on in markets, how labor relations are to be structured, and the like. While some sociological studies exist of such topics as anti-trust law, corporate bankruptcy, and the legal situation of employees, much research remains to be done within this sphere.

In *the state economy* – which amounts to one third (or more) of the GNP in modern capitalist societies – the economic and legal situation

is often different from what it is in the corporate economy. This is very much due to the mixture of economic and political interests that is characteristic of this part of the economy. As an example of this, one can mention the special economic and legal situation of employers and employees in the state economy. While the corporate economy is self-regulating in many ways, the state economy is also self-regulating in the sense that it is the state itself that issues many of the formal laws and regulations. Courts are directly related to the state, in one way or another, while they have a different type of relationship to the corporate economy. The great flows of money in the state sector, which come from taxes, fees, and so on, also raise special legal issues – as does redistribution in the form of pensions, welfare benefits, and the like. Since economic sociologists rarely single out the state economy as a distinct economic sphere of its own, little attention has been devoted to it, including its legal dimension.

The household economy covers the economic situation of single persons, with or without children, and couples, with or without children. In terms of interests, there is often a mixture of economic and emotional interests in this sphere of the economy, which sometimes also include sexual interests. The economic situation of women in the household has changed during the last few decades, due to their increasing participation in the labor market, and this has had many economic and legal repercussions in the household that need to be better understood. The same is true for changes in the structure of the family; what happens when there is a divorce, when a parent dies, and the like has a great impact on the economic and legal structure of the household. Children have also during the last ten to fifteen years emerged as a topic of study, in sociology in general as well as in economic sociology.

It should finally be noted that even if it is crucial to take all three spheres of the economy into account, when one discusses the agenda of the economic sociology of law, there is also the fact that these are strongly connected to each other in many ways. Flows from the corporate economy and the state economy to the household economy are characteristic of modern capitalist societies and have important legal dimensions. Here, as elsewhere, however, what is imperative in the economic sociology of law is not so much to study what the law proclaims, but rather how it operates in the economy on an everyday basis.

Notes

1. This article draws on my forthcoming book *Principles of Economic Sociology* (Princeton University Press, forthcoming 2003). It was written while I was a Fellow at the Center for Advanced Study in the Behavioral Sciences in 2001–2002, and I am very grateful for financial assistance from the Center General Fund and The William and Flora Hewlett Foundation Grant # 2000-5633. I am also grateful for helpful comments from the fellows at CASBS, the participants at the Fourth Annual Conference on Economic Sociology at Princeton University February 22–23, 2002, Bruce Carruthers, Robert K. Merton, Harriet Zuckerman, Mauro Zamboni, and reviewers for *Theory and Society*.
2. See, e.g., Philip Selznick, *Law, Society and Industrial Justice* (New York: Russell Sage Foundation, 1969); Vilhelm Aubert, *In Search of Law: Sociological Approaches to Law* (Totowa, N.J.: Barnes & Noble Books, 1983); Pierre Bourdieu, "The Force of Law: Toward A Sociology of the Juridical Field," *Hastings Journal of Law* 38 (1987): 209–248; and Lauren Edelman and Mark Suchman, "The Legal Environments of Organizations," *Annual Review of Sociology* 23 (1997): 479–515. Cf. Richard Posner, "The Sociology of the Sociology of Law," *European Journal of Law and Economics* 2 (1995): 265–284.
3. See, e.g., Richard Abel, editor, *The Law and Society Reader* (New York: New York University Press, 1995); Bryant Garth and Joyce Sterling, "From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State," *Law and Society Review* 32/2 (1998): 409–471.
4. See, e.g., Karl Spitzer, "Marxist Perspectives in the Sociology of Law," *Annual Review of Sociology* 9 (1983): 103–124. See also Paul Phillips editor, *Marx and Engels on Law and Laws* (Totowa, New Jersey: Barnes & Noble Books, 1980); Karl Renner, *The Institutions of Private Law and Their Social Function* (Boston: Routledge & Kegan Paul, [1904] 1949); and Michael Tigar, *Law and the Rise of Capitalism* (New York: Monthly Review Press, 2000).
5. For an effort within Marxism to overcome this view, see especially the work of E. P. Thompson, e.g., *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon, 1975). Cf. D. H. Cole "An Unqualified Human Good: E.P. Thompson and the Rule of Law," *Journal of Law and Society* 28/2 (2001): 117–203.
6. The study of regulations is integral to the economic sociology of law, which could equally well be called the economic sociology of law and regulations. In this article I sometimes refer to "law" and sometimes to "law and regulations." In the former case, "law and regulations" is usually meant.
7. One of the reviewers of this article made the important point that economic sociologists think of the corporate economy, when they refer to "the economy," and tend to forget about those parts that involve the state and the household – what I will call the state economy and the household economy. The informal economy mainly falls within the corporate economy.
8. Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (Berkeley: University of California Press, [1922] 1978), 34, cf. 313–319.
9. Weber, *Critique of Stammerer* (New York: The Free Press, [1907] 1977), 118–143.
10. Weber, *Economy and Society*, 312, emphasis added.
11. E.g., *ibid.*
12. E.g., Douglas Heckathorn, "Collective Sanctions and the Creation of Prisoner's Dilemma Norms," *American Journal of Sociology* 94: 535–562, Heckathorn's point of departure is the situation when a whole group is punished for the actions

- of an individual; and where each member of the group consequently has an interest in regulating the actions of other members.
13. Vilhelm Aubert, *Inledning till rättssociologin (Introduction to the Sociology of Law)* (Stockholm: Almqvist & Wicksell, 1980), 20.
 14. For an introduction, see Magdalena Schoch, editor, *The Jurisprudence of Interests* (Cambridge: Harvard University Press, 1948).
 15. E.g., Roscoe Pound, "A Theory of Social Interests," *Papers and Proceedings of the American Sociological Society* 15 (1920): 17–45.
 16. Rudolf von Jhering, *The Struggle for Law* (Chicago: Callaghan, [1872] 1915), 10–11.
 17. David Hume, *A Treatise on Human Nature* (Oxford: Oxford University Press, [1739–1740] 1978), 477–573; cf. Friedrich von Hayek, "The Legal and Political Philosophy of David Hume," 335–360, in V. C. Chappell, editor, *Hume* (Notre Dame: University of Notre Dame Press, 1968).
 18. Hume, *A Treatise on Human Nature*, 496.
 19. E.g., Aubert, *In Search of Law*; for a critique, see, e.g., Lawrence Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 225–228.
 20. Friedman, *The Legal System*, 193–267; cf. 150–154.
 21. Friedman, *The Legal System*, 193.
 22. Ibid.
 23. Adam Smith, *The Wealth of Nations* (Oxford: Oxford University Press, [1776] 1976), 710.
 24. Hume, *A Treatise on Human Nature*, 526.
 25. Weber, *Economy and Society*, 333–327.
 26. Ibid., 333.
 27. Ibid., 334.
 28. Ibid.
 29. Ibid., 730; emphasis added.
 30. Ibid., 667; emphasis added.
 31. Ibid., 668.
 32. E.g., James Willard Hurst, *Land and the Condition of Freedom in the Nineteenth-Century* (Madison, Wis.: University of Wisconsin Press, 1956); *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin 1836–1915* (Cambridge, Mass.: The Belknap Press, 1964); for an introduction to the work of Hurst, see, e.g., William Novak, "Law, Capitalism, and the Liberal State: The Historical Sociology of James Willard Hurst," *Law and History Review* 18/1 (2000): 97–145.
 33. See especially Willard Hurst, "J. Willard Hurst: An Interview Conducted by Laura L. Small" (University of Wisconsin, University Archives Oral History Project, 1981), 43–53; cf. Richard Posner, *Economic Analysis of Law*, fifth edition (Boston: Little, Brown and Company, 1998).
 34. Weber, *Economy and Society*, 1464, emphasis added.
 35. For commercial legislation in non-Western legal systems, see Weber as summarized in Richard Swedberg, *Max Weber and the Idea of Economic Sociology* (Princeton: Princeton University Press, 1998), 90–98.
 36. For the actual *lex mercatoria*, see, e.g., Levin Goldschmidt, *Universalgeschichte des Handelsrechts* (Stuttgart: Verlag von Ferdinand Enke, [1891] 1957); Weber, "Zur Geschichte der Handelsgesellschaften im Mittelalter," 312–443 in *Gesammelte Aufsätze zur Sozial- und Wirtschaftsgeschichte* (Tübingen: J. C. B. Mohr, [1889] 1988); and Harold Berman, "Mercantile Law," 333–356 in *Law and Revolution*:

- The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983).
37. Cf. Goldschmidt [1891] 1957; Weber, *Economy and Society*, 1464; and Berman, "Mercantile Law."
 38. Weber, *Economy and Society*, 688.
 39. Berman, "Mercantile Law," 334, 354.
 40. Robert Lopez, *The Commercial Revolution of the Middle Ages, 950-1350* (Cambridge: Cambridge University Press, 1976).
 41. Paul Milgrom, Douglass North, and Barry Weingast, "The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs," *Economics and Politics* 2/1 (1990): 23.
 42. Cf. Avner Greif, "Reputation and Coalitions in Medieval Trade: Evidence on the Maghribi Traders," *Journal of Economic History* 49 (1989): 857-882; "Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Trader's Coalition," *American Economic Review* 83 (1993): 525-548. Greif's writings in general, including these two articles, are characterized by a combination of abstract game theory and detailed historical work.
 43. E.g., Klaus Peter Berger, *The Creeping Codification of the Lex Mercatoria* (The Hague: Kluwer Law International, 1999).
 44. E.g., Oliver Volckart and Antje Mangels, "Are the Roots of the Modern *Lex Mercatoria* Really Medieval?" *Southern Economic Journal* 65/3 (1999): 427-450.
 45. Yves Dezalay and Bryant Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of A Transnational Legal Order* (Chicago: University of Chicago Press, 1996).
 46. Emile Durkheim, *Professional Ethics and Civic Morals* (Westport, Conn.: Greenwood Press, [1950] 1983), 110-170.
 47. E.g., Weber, "Zur Geschichte der Handelsgesellschaften"; *General Economic History* (New Brunswick: Transaction Publishers, [1923] 1981).
 48. Thorstein Veblen, "The Beginnings of Ownership," *American Journal of Sociology* 4 (1898): 352-365.
 49. Weber, *Economy and Society*, 44; cf. Talcott Parsons, "Weber's Economic Sociology," 40 ff. in Max Weber, *The Theory of Social and Economic Organization* (New York: Oxford University Press, 1947), 40 ff.
 50. Max Weber, *Die römische Agrargeschichte in ihrer Bedeutung für das Staatsrecht und Privatrecht. Max Weber Gesamtausgabe I/2* (Tübingen: J. C. B. Mohr, [1891] 1986).
 51. Weber, *General Economic History*, 48.
 52. Weber, *Economy and Society*, 130-150.
 53. E.g., Alvin Gouldner, "Toward A Sociology of Property," 304-313, in *The Coming Crisis of Western Sociology* (New York: Avon, 1970).
 54. Erving Goffman, *Asylums* (New York: Anchor Books, 1961), 20.
 55. John Campbell and Leon Lindberg, "Property Rights and the Organization of Economic Activity by the State," *American Sociological Review* 55 (1990): 634-647.
 56. E.g., David Stark, "Recombinant Property in East European Capitalism," *American Journal of Sociology* 101 (1996): 993-1027. For a critique of Stark's argument, see Eric Hanley, Lawrence King, and Janos Istvan Toth, "The State, International Agencies, and Property Transformation in Post-Communist Hungary," *American Journal of Sociology* (forthcoming).
 57. Jean Oi and Andrew Walder, editors, *Property Rights and Economic Reform in China* (Stanford: Stanford University Press, 1999). Cf. Victor Nee, "Organiza-

- tional Dynamics of Market Transition: Hybrid Forms, Property Rights, and Mixed Economy in China," *Administrative Science Quarterly* 37/1: 1–27; Andrew Walder, "Property Rights and Stratification in Socialist Redistributive Economies," *American Sociological Review* 57 (1992): 524–539.
58. Amy Harmon, "Is the 'Idea War' A Fight to Control a New World Currency?" *New York Times* November 11, 2001, Section 3: 1, 12.
 59. E.g., Lawrence Friedman, *A History of American Law* (New York: Simon & Schuster, 1985), 255–256, 435–438.
 60. Robert K. Merton, "Fluctuations in the Rate of Industrial Invention," *Quarterly Journal of Economics* 49 (1935): 4544–4574.; "Priorities in Scientific Discovery," 286–324, in *The Sociology of Science* (Chicago: University of Chicago Press, 1973); and e-mail to the author, dated November 14 and 15, 2001.
 61. E.g., Harriet Zuckerman, "Introduction: Intellectual Property and Diverse Rights of Ownership in Science," *Science, Technology and Human Values* 13 (Winter and Spring 1988): 7–16.
 62. See, however, Stephen McNamee and Robert Miller, "Estate Inheritance: A Sociological Lacuna," *Sociological Inquiry* 59 (Winter 1989): 7–29; Jens Beckett, *Negotiated Modernity: Inheritance in France, Germany, and the United States since 1800* (forthcoming).
 63. E.g., Alexis de Tocqueville, *Democracy in America* (New York: Vintage Books), Vol. 1, 48–54; Vol. 2, 368–370.
 64. Tocqueville, *Democracy in America*, Vol. 1, 50.
 65. *Ibid.*, 50–51.
 66. Durkheim, *Professional Ethics*, 213.
 67. Durkheim, *Professional Ethics*, 216–217; cf. T. Schwartz, "Durkheim's Prediction about the Declining Importance of the Family and Inheritance: Evidence from the Wills of Providence, 1775–1985," *Sociological Quarterly* 37 (Summer 1996): 503–519.
 68. Weber, *Economy and Society*, 669.
 69. *Ibid.*, 670.
 70. Weber, *General Economic History*, 108.
 71. Emile Durkheim, *The Division of Labor in Society* (Glencoe, Illinois: The Free Press, [1893] 1933), 211.
 72. Durkheim, *Professional Ethics*, 178, 203; cf. Roger Cotterrell, *Emile Durkheim: Law in A Moral Domain* (Stanford: Stanford University Press, 1999), 119–133.
 73. Weber, *Economy and Society*, 666–752.
 74. E.g., Weber, *Economy and Society*, 729–730; cf. Marx, *Capital* (New York: The Modern Library, [1867] 1906), 195–196.
 75. Weber, *Economy and Society*, 730.
 76. *Ibid.*, 328.
 77. Stewart Macaulay, "Non-Contractual Relations in Business: A Preliminary Study," *American Sociological Review* 28 (1963): 61.
 78. Stewart Macaulay, "Elegant Models, Empirical Pictures, and the Complexities of Contract," *Law and Society Review* 11 (1977): 514.
 79. Stewart Macaulay, Lawrence Friedman, and John Stokey, editors, *Law & Society: Readings in the Social Study of Law* (New York: W.W.Norton, 1995), 103.
 80. For studies that follow up on Macaulay's initial article, see, e.g., Macaulay, Friedman, and Stokey, *Law & Society*, 103–104.
 81. E.g., Ian Macneil, "Contracts: Adjustment of Long-Term Economic Relations under Classical, Neoclassical, and Relational Contract Law," *Northwestern University Law Review* 72 (1978): 854–905; "Relational Contracting: What We Do and Do Not Know," *Wisconsin Law Review* 1985: 483–525.

82. E.g., Wolfgang Streeck, "Revisiting Status and Contract: Pluralism, Corporatism and Flexibility," 41–75, in *Social Institutions and Economic Performance* (London: SAGE, 1992).
83. E.g., Arthur Stinchcombe, "Contracts as Hierarchical Documents," 121–171, in Arthur Stinchcombe and Carol Heimer, *Organization Theory and Project Management* (Oslo: Norwegian University Press, 1985).
84. Carol Heimer, *Reactive Risk and Rational Action: Managing Moral Hazard in Insurance Contracts* (Berkeley: University of California Press, 1985).
85. Weber, *Economy and Society*, 707.
86. A special mention should also be made of the work of John Commons, who was an economist but in many respects was close to sociology. *The Legal Foundations of Capitalism* contains, among other things, a discussion of the concept of legal personality. See John Commons, *The Legal Foundations of Capitalism* (New Brunswick: Transaction Publishers, [1924] 1985), 143 ff.
87. Weber, *Economy and Society*, 705–729.
88. Weber, *General Economic History*, 228.
89. For this development in the United States., see, e.g., Morton Horwitz, "Santa Clara Revisited: The Development of Corporate Theory," 65–108, in *The Transformation of American Law 1870–1960: The Crisis of Legal Orthodoxy* (New York: Oxford University Press, 1992), 65–108; for the situation in England, see, e.g., Ron Harris, *Industrializing English Law: Entrepreneurship and Business Organization, 1720–1844* (Cambridge: Cambridge University Press, 2000).
90. E.g., James Coleman, *Power and the Structure of Society* (New York: W.W. Norton, 1974); *The Asymmetric Society* (Syracuse: Syracuse University Press., 1982); "The Rational Reconstruction of Society," *American Sociological Review* 58 (1993): 1–15.
91. Coleman, "Rational Reconstruction," 2.
92. Coleman, *Asymmetric Society*, "Rational Reconstruction."
93. Cf. James Coleman, "Social Inventions," *Social Forces* 49 (1970): 163–173.
94. Cf. Robin Stryker, "It's the Law! An Agenda for Socio-Economics," Presidential Address at SASE, October 10, 2001. See also Lauren Edelman and Robin Stryker, "Law and the Economy," forthcoming in Neil Smelser and Richard Swedberg, editors, *The Handbook of Economic Sociology*, 2nd edition (New York and Princeton: Russell Sage Foundation and Princeton University Press).
95. Neil Fligstein, *The Transformation of Corporate Control* (Cambridge: Harvard University Press, 1990); Frank Dobbin and Timothy Dowd, "How Policy Shapes Competition: Early Railroad Findings in Massachusetts," *Administrative Science Quarterly* 42 (1997): 501–529.
96. Mark Granovetter, "Business Groups and Social Organization," forthcoming in Smelser and Swedberg, editors, *The Handbook of Economic Sociology*, 2nd edition.
97. See, e.g., the study of law firms in Silicon Valley, in Mark Suchman, *On Advice of Council: Law Firms and Venture Capital Funds as Information Intermediaries in the Structuration of Silicon Valley*, Ph.D. thesis, Stanford University, Department of Sociology, 1985; "Dealmakers and Counselors: Law Firms as Intermediaries in the Development of Silicon Valley," 71–97, in Martin Kenney, editor, *Understanding Silicon Valley: The Anatomy of an Entrepreneurial Region* (Stanford: Stanford University Press, 2000).
98. Robert Nelson and William Bridges, *Legalizing Gender Inequality: Courts, Markets, and Unequal Pay for Women in America* (Cambridge: Cambridge University Press, 1999).

99. Alejandro Portes and Walter Haller, "The Informal Economy," forthcoming in Smelser and Swedberg, editors, *The Handbook of Economic Sociology*, 2nd edition.
100. E.g., Lauren Edelman, "Legal Environments and Organizational Governance: The Expansion of Due Process in the American Workplace," *American Journal of Sociology* 95 (1990): 1401–1440; Edelman and Suchman, "Legal Environments of Organizations."
101. See, e.g., John Sutton, Frank Dobbin, John Meyer, and Richard Scott, "The Legalization of the Workplace," *American Journal of Sociology* 99 (1994): 944–971; Frank Dobbin and John Sutton, "The Strength of a Weak State: The Rights Revolution and the Rise of Human Resources Management Division," *American Journal of Sociology* 104 (1998): 441–476; Erin Kelly and Frank Dobbin, "Civil Rights Law at Work: Sex Discrimination and the Rise of Maternity Leave Policies," *American Journal of Sociology* 105 (1999): 455–492; Robin Stryker, "Disparate Impact and the Quota Debates: Law, Labor Market Sociology, and Equal Employment Practices," *The Sociological Quarterly* 42/1 (2001): 13–46. For a review of the relevant issues and findings, see Frank Sutton, *Law/Society: Origins, Interactions, and Change* (Thousand Oaks: Pine Forge Press, 2001), 185–220.
102. Lauren Edelman, "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights," *American Journal of Sociology* 97 (1992): 15–67.
103. For an introduction, see, e.g., Sally Simpson, *Corporate Crime, Law, and Social Control* (Cambridge: Cambridge University Press, 2002).
104. E.g., Susan Shapiro, *Wayward Capitalists: Target of the Security and Exchange Commission* (New Haven: Yale University Press, 1984); cf. Mary Zey, *Banking on Fraud: Drexel, Junk Bonds, and Buyouts* (New York: Aldine de Gruyter, 1993); Mitchell Abolafia, *Making Markets: Opportunism and Restraint on Wall Street* (Cambridge: Harvard University Press, 1996).
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106. See Teresa Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (New York: Oxford University Press, 1989); Teresa Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, *The Fragile Middle Class: Americans in Debt* (New Haven: Yale University Press, 2000); and Elizabeth Warren, "The Market for Data: The Changing Role of the Social Sciences in Changing the Law," *Wisconsin Law Review* 1 (2002): 1–43.
107. Bruce Carruthers and Terence Halliday, *Rescuing Business: The Making of Corporate Bankruptcy Law in England and the United States* (Oxford: Clarendon Press, 1998); see also Kevin Delaney, "Power, Incorporate Networks, and 'Strategic Bankruptcy,'" *Law and Society Review* 23/4 (1989): 643–666; and Bruce Carruthers and Terence Halliday, "Professionals in Systemic Reform of Bankruptcy Law: The 1978 U.S. Bankruptcy Code and the English Insolvency Act 1986," *The American Bankruptcy Law Journal* 74 (Winter 2000): 35–75.
108. For an overview, see, e.g., Nicholas Mercuro and Steven Medema, *Economics and the Law: From Posner to Post-Modernism* (Princeton: Princeton University Press, 1997).
109. E.g., Robert Ellickson, "Symposium on Post-Chicago Law and Economics: Bringing Culture and Human Frailty to Rational Actors: A Critique of Law and Economics," *Chicago-Kent Law Review* 65 (1989): 23–55; Ian Macneil, "Other Sociological Approaches," 694–718, in Vol. 1, of Boudewidja Bouckaert and Gerrit

- De Geest, editors, *Encyclopaedia of Law and Economics* (Cheltenham: Edward Elgar, 2000); and Steven Medema, Nicholas Mercuro, and Warren Samuels, "Institutional Law and Economics," 418–455, in Vol. 1, *Encyclopaedia of Law and Economics*.
110. E.g., Richard Posner, "The Economic Approach to Law," *Texas Law Review* 53 (1975): 757–782; "The Economic Approach to Law," 353–392, in *The Problems of Jurisprudence* (Cambridge: Harvard University Press, 1990).
 111. E.g., Posner, "Economic Approach," 1990, 356ff.
 112. E.g., Posner, *Economic Analysis of Law*, 14 ff.
 113. R. H. Coase, "The Problem of Social Cost," *Journal of Law and Economics* 3 (October 1960): 1–44.
 114. E.g., Steven Medema and Richard Zerbe, "The Coase Theorem," 836–892, in Vol. 1, *Encyclopaedia of Law and Economics*.
 115. A. Mitchell Polinsky, *An Introduction to Law and Economics* (Boston: Little, Brown and Company, 2nd edition, 1989), 11–14.
 116. Polinsky, *Introduction*.
 117. R. H. Coase, *The Institutional Structure of Production* (Stockholm: The Nobel Foundation, 1991), 9.
 118. Robert Ellickson, *Order without Law: How Neighbors Settle Disputes* (Cambridge: Harvard University Press, 1991).
 119. R. H. Coase, *The Institutional Structure of Production* (Stockholm: The Nobel Foundation, 1991), 9.
 120. E.g., Louis De Alessi, "The Economics of Property Rights: A Review of the Evidence," *Research in Law and Economics* 2 (1980): 1–47; Elinor Ostrom, "Private and Common Property Rights," 332–379, in Vol. 2, *Encyclopaedia of Law and Economics*.
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 122. E.g., Rafael La Porta et al., "Law and Finance," *Journal of Political Economy* 106 (1998): 1113–1155.
 123. E.g., Susan Rose-Ackerman, "Progressivism and the Chicago School," 14–27, in *Rethinking the Progressive Agenda* (New York: The Free Press, 1992).