NEIL J. SMELSER AND
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THE HANDBOOK OF ECONOMIC SOCIOLOGY

The Handbook of Economic Sociology

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Richard Swedberg EDITORS

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23 A Sociological Approach to Law and the Economy

Lauren B. Edelman and Robin Stryker

Ironically, law is "all over," yet marginal in economic sociology. Despite law's centrality to classical sociological understandings of the economy (see Smelser and Swedberg, this volume), law is not often a sustained object of inquiry in its own right for "new" economic sociologists. In addition, there has been scant attention to systematizing and critically examining the way economic sociologists have treated law or law's role in sociological explanations for economic behavior and institutions. We agree with Swedberg (2002, 2) that there is need to develop a "general sociological analysis of the role that law plays in economic life."

We work toward this goal by combining ideas in economic sociology with sociological perspectives more directly addressing connections among law, politics, and culture. We develop a conceptual framework for examining interrelationships between law and the economy, so that an "economic sociology of law" becomes an integral part of a more general economic sociology. This in turn will enable economic sociologists to capture more fully the social character and situatedness of economic action, and thus to offer a compelling alternative to economists' accounts.

Our key premise is that both law and the economy are deeply embedded in social action and organization and linked through political and institutional mechanisms. Both sets of mechanisms underscore the centrality of power. In addition, because legal and economic concepts, rules and routines, and institutions are mutually or reciprocally constructed and reconstructed over time *through* political and institutional mechanisms, it does not make sense to treat law as only an "independent" variable or only a "dependent" variable with respect to the economy. Rather, an economic sociology of law should theorize and research how law, politics, and culture—and their interplay—shape the nature of, and causal relationships among, "economic variables" and "legal variables" themselves.

The theoretical framework we suggest is less an "economic sociology of law" (Swedberg 2002) than it is a *sociology of law and the economy*. Whereas the former term would suggest that we were using existing *economic sociology* perspectives to explain the role of law in society, the latter term implies theorizing and empirically investigating the *multiple social mechanisms or processes* through which legal and economic action and institutions become part of an *interconnected causal dynamic*.

Our sociological model stands in stark contrast to the current dominant paradigm for understanding the relation of law to the economy: post-Coasean "law and economics" (Mercuro 1989; Cooter and Ulen 2000; Posner 1987, 1998). An offshoot of neoclassical economics, post-Coasean law and economics assumes that individuals are rational actors who seek to maximize their preferences. Law and economics scholarship generally treats preferences as fixed and as exogenous; the social (and indeed, legal) origins of preferences are outside the economic model.[1]

In virtually all economic accounts, moreover, the individual is the fundamental unit of economic behavior. Aggregate constructs such as "society" are dismissed in favor of understandings of aggregation as no more than the sum of the individual parts. The interaction of rational individuals, each maximizing his or her own self-interest, tends toward an "equilibrium" or steady state that will not change in the absence of outside forces. Markets tend toward the steady state of "efficiency," an equilibrium state that maximizes the preferences of the participating actors.[2] A "market" is the aggregate result of individuals maximizing their preferences; there is nothing "social" or "cultural" or "political" about markets.

From a law and economics perspective, government regulation is unnecessary and counterproductive in perfectly competitive markets, but it is justified by various market failures. These include monopoly, information asymmetries together with strategic behavior, "free-rider problems" (where a

good is available to the public without cost so that there is little incentive for private support), and "externalities" (or costs incurred by parties not directly involved). In these cases, the market "fails" to provide efficient outcomes, and regulation may be used as a remedy for market inefficiencies.

Law and economics scholarship offers a theoretically informed set of principles for identifying how law can promote efficiency in policy arenas ranging from the economic realm (e.g., property and antitrust law) to areas generally thought to be outside economics (e.g., criminal law). The seminal principle underlying the field is the Coase theorem, which states that "when parties are free to bargain costlessly they will succeed in reaching efficient outcomes regardless of the initial allocations of legal rights" (Donahue 1988, 906). But law and economics scholars recognize (as did Coase) that bargaining almost always involves "transaction costs"; parties to a dispute, for example, incur costs when they hire lawyers or consultants, when they travel to negotiation sites or miss work, or when they must expend resources to discover information.

Employing the notion of transaction costs, law and economics scholars analyze how, and under what circumstances, legal rules can be used to restore allocative efficiency where transaction costs produce inefficient outcomes. Normative law and economics offers advice to policymakers on what types of legal rules are efficient under various circumstances, whereas positive law and economics seeks to explain common-law trends in terms of efficiency principles. The "new institutional economics" uses similar principles to show how transaction costs can explain the relative efficiency of markets and bureaucratic governance (Williamson 1975, 1979).

Law and economics scholarship is important for our purposes primarily because it attends to the relationship between legal and economic orders. In contrast, sociological thinking about law tends to theorize the relation of law to social structure, norms, and culture, de-emphasizing connections between law and the economy. From a sociological perspective, a major problem with post-Coasean law and economics is that its search for parsimonious models renders irrelevant the social, political, and legal construction of efficiency. The questions of how law and culture shape individual preferences and constrain individual "choice" are "outside the box" for most law and economists.[3] Yet these questions must be central for a sociology of law and the economy, which seeks to elucidate causes and consequences of the unequal resource distributions across social strata. To the extent that culture or politics shapes individuals' economic expectations or visions of justice, preferences must be understood as *endogenous*—determined *within* the analytic model of law and the economy rather than outside of it. Sociological studies of inequality suggest, for example, that extant wage patterns lead women to expect lower wages than do men for the same work, that workplace stratification and work-family concerns condition women to "prefer" lower-status and lower-paid jobs, and that the prevalence of racial discrimination and poverty can make it difficult for minorities to imagine (and therefore to "prefer") the same housing or credit or contract terms that whites might prefer (see, e.g., Schultz 1990). In short, preferences are a product of social background, cultural expectations, and experience. Political actions, public policy, legal rights, and social norms affect experience and thus preferences, as politics, culture, and law both produce and limit realms of active, economic choice.

By treating individual preferences as exogenous and their collective maximization as resource-efficient, law and economics tends to treat efficiency as a *neutral* (and hence, fair) criterion. As law and economics scholarship increasingly permeates the judiciary and the legal academy, ideas about justice are progressively infused with this logic of efficiency. But by bracketing out the question of the social construction of preferences, law and economics' concepts of efficiency tend to favor the status quo. A sociology of law and the economy offers an important corrective to law and economics, by identifying conditions under which maximizing individual preferences perpetuates the very injustices that legal rights seek to restructure.

By introducing the legal and cultural construction of preferences and the social embeddedness of economic action, a sociology of law and the economy will necessarily be less elegant than post-Coasean law and economics. Many questions about the law's value and impact that have clear answers through economic analyses will have murky answers or no definitive answer when addressed through a sociological lens. But what is lost in parsimony will be gained in accuracy because life—even economic life—is complex.

While our model of a sociology of law and the economy differs markedly from post-Coasean law and economics, it draws inspiration and important orienting principles from classical sociological theory, especially Weber, and from early-twentieth-century institutional economics (sometimes called Progressive Era law and economics—see, e.g., Hovencamp 1990).[4] In addition, our model draws

on extant work in economic sociology, and research in political economy, political sociology, sociology of law, and legal history. Putting concepts and insights of these approaches together, we can highlight and correct underdeveloped aspects of new economic sociology. We also sketch a research agenda for examining the social mechanisms linking legal and economic behavior and institutions.

To present our sociological model of law and the economy, we first discuss the nature of law. In contrast to the notion of law as formally enacted edicts that characterize both economic sociology and scholarship in law and economics, we argue that law should be understood as a broad set of norms, customs, schema, and symbols. These include, but are not restricted to, formal rules. We further argue that, given this broader conception of law, the appropriate unit of analysis is the "legal field," or the social realm surrounding legal institutions. Second, we suggest that law and the economy be understood as overlapping social fields that are mutually constituted through two processes: institutional meaning-making processes and political power-mobilization processes (Edelman 1964; Stryker 1980; Edelman 1992; Stryker 1994). Third, we draw on Edelman and Suchman's (1997) typology of legal environments both to provide a systematic review of extant research on the intersection of law and the economy and to further elucidate how institutional and political processes link law and the economy. We conclude by providing a summary of our theoretical model and discussing its implications for future research both in economic sociology and in law and economics. Because of space limitations, we confine our discussion to the role of law in the development and dynamics of capitalist political economies. We encourage readers intrigued by our conceptual framework to treat Stryker (2003) as a companion piece, especially in its extended concrete examples of cultural and political processes through which labor and employment statutes, executive orders, regulations, and court decisions have shaped the U.S. economy.

The Nature of Law

Economic sociologists tend to equate law with formal rules (particularly statutes) promulgated by state actors, including legislatures and courts. They generally portray legal rules as among determinants of economic growth and development, and also of the reach, organization, institutional logic (including models of competition and conceptions of control), and even the existence of markets (Fligstein 1990, 2001; Fligstein and Stone Sweet 2002; Dobbin 1994; Dobbin and Dowd 2000; Evans 1995; Evans and Rauch 1999; Carruthers, Babb, and Halliday 2001; Spicer 2002; Schneiberg 2002).

Law is relevant to the economy primarily because it facilitates and promotes particular kinds of economic interactions and organization, and because it provides an incentive structure in which firms' rational strategizing occurs. By altering perceived costs and benefits of taking one route over another, law can help favor development of some economic strategies while eliminating others (Fligstein 1990, 2001). For example, law specifies property rights; facilitates commerce (guiding economic exchange through contract doctrine as well as banking, finance, and credit laws); stipulates standards for trade and competition (through various regulatory regimes and antitrust law); and protects consumers, employees, and others (through employment, product, environment, and health and safety laws). In addition, a political economy organized according to the "rule of law" provides the stability and predictability needed for a full-blown capitalist economy.

The vision of law in extant economic sociology captures and elaborates some of the key themes emphasized by classical sociologists such as Durkheim and especially Weber, when they theorized the relationship between legal change and economic modernity (see Stryker 2003 for details). But because extant economic sociology associates law with state-promulgated formal rules and because law is generally treated as an exogenous, determinative, and coercive force, economic sociologists miss the full power of law to "make a world" (White 1985).

We suggest that a sociology of law and the economy must adopt a more sociological conception of law—one that goes beyond law as public edict to recognize the cultural and political elements of law. Just as economic sociologists theorize markets as embedded within a broader social and political realm (Smelser and Swedberg, this volume), we suggest that law should be understood as intricately interwoven with social forces. We draw on the sociology of law to propose some basic, empirically grounded assumptions about the nature of law.

Law as Legality

The sociology of law rejects the legal formalism (or the focus solely on formal codes and judicial decisions) that tends to be found in traditional jurisprudence and much contemporary legal scholarship. Instead, sociologists of law emphasize a much broader idea of law, including not just codified

rules but also social behaviors that mobilize and enact law and ritual and the symbolic (or meaning-making) elements of law. In addition, sociologists of law emphasize the ambiguous boundaries between formal rules and social norms, the role of social context in fixing law's form and impact, and the interplay between legal language and broader cultural language and ways of thinking. Thus reconceptualized, law includes *both* state-promulgated formal rules and law-related ideas, ideals, principles, and rituals that permeate society.

Law is not just formalized doctrine; it is *legality* (cf. Ewick and Silbey 1998; Selznick 1969). The idea of legality suggests that formal legal "rules on the books," for example, statutes, directives, executive orders, and judicial opinions, are important, but cannot be understood fully apart from their social context. Two key elements of that social context are the *law in action*, which refers to the behavior of law, legal actors, and legal institutions; and *legal consciousness*, which refers to how law is experienced and understood by individuals in and through their legal experiences.

Research on law in action suggests that a narrow focus on formal law misses a great deal. The vast majority of legal action takes place far from the courtroom and with only the most tangential (if any) reference to formal law. Much economic exchange occurs in the absence of formal contracts, and few disputes that arise within contractual relationships are resolved by courts, or even with the involvement of lawyers (Macaulay 1963; Lempert and Sanders 1986). Local norms matter more than does formal law in guiding grievants toward solutions (Ellickson 1986, Engel 1998; Merry 1979).

In fact, only a miniscule proportion of persons who believe that they have been wronged take any legal action. Most resort instead to informal nonlegal methods of dispute resolution such as self-help, gossip, violence, or other forms of retribution, third-party conciliation by ministers or other nonlegal personnel, consultation with government agencies, or (as is most often the case) doing nothing (Mnookin and Kornhauser 1979; Erlanger, Chambliss, and Melli 1997; Bumiller 1987, 1988; Miller and Sarat 1980; Saks 1992). In many cases, persons who have legal rights do not even recognize that they have suffered a legal injury (Felstiner, Abel, and Sarat 1980).

Conversely, judges, lawyers, magistrates, clerks, cops, mediators, and other legal system actors play a role in bringing society into the law. They act as gatekeepers and filters, using their discretion and invoking their biases and misconceptions in ways that greatly influence how and when law matters (Friedman 1975, 1984; Frohmann 1997; Resnik 1982; Adamany and Grossman 1983; Gibson 1981; Heinz and Laumann 1977; Sarat and Felstiner 1995; Nelson 1988; Suchman and Cahill 1996; Harcourt 2001).

Research on legal consciousness focuses on the symbolic elements of law, and on the meaning of law to individuals (Sarat 1990; Silbey 2001; Ewick and Silbey 1998; Kostiner 2003; Nielsen 2000; Sarat 1990; Engel 1998; Merry 1986; Levine and Mellema 2001). This work emphasizes the multiple (and sometimes contradictory) meanings of law. The formal legal ideal of an autonomous and just (in Weber's terms "formal rational") legal order coexists in legal consciousness with alternative visions of law. People can simultaneously see the law (as well as lawyers and legal institutions) as just and as oppressive, as a tool to be used and as a formidable enemy (Sarat 1990; Ewick and Silbey 1998). How people envision the law in turn affects whether and how people mobilize legal tools at their disposal (Fuller, Edelman, and Matusik 2000).

Legal consciousness is important not just as a set of rules but as a cultural resource. Not withstanding the definition of law and rights by legislatures, or their interpretation by courts, the language of law and legal rights operates as a general cultural resource and does significant cognitive work. Law helps to define moral boundaries and is, in turn, often the terrain on which moral boundaries are contested (Gusfield 1966). The symbolism of law, moreover, helps to constitute social discourse. To characterize a demand as a "right" rather than as a "need" tends to confer legitimacy on the demand and to define the claimant as a rights-bearer. To articulate a grievance as a violation of law frames not only the claim but the debate that takes place around that claim (Silbey and Sarat 1989; Milner 1989; Minow 1987; McCann 1998).

Following work in the sociology of law, then, we suggest that a sociology of law and the economy understand law as legality. The notion of law as legality provides a richer toolkit for conceptualizing both how legal schemas shape economic schemas (including ideas of rationality and efficiency), values and interests, behavior and institutions, and conversely, how law is responsive to all these aspects of the economy.

The Legal Field as Unit of Analysis

Drawing on our understanding of law as legality, we suggest that the appropriate unit of analysis

for the study of law is the *legal field*. Centered on legal institutions and actors, legal fields also include the much broader set of legal ideals and norms, rituals and symbols, social behaviors that mobilize and enact the law, and patterns of social thought related to legal ideals (Bourdieu 1987; Edelman, Fuller, and Mara-Drita 2001; Edelman 2002). Professional understandings of law, managerial rhetoric about law, symbolic representations of law, and negotiations in the shadow of law are important elements of legal fields.

The idea of the legal field is analogous—and complementary to—new institutionalist ideas about economic (or organizational) fields. As elaborated in neoinstitutional organization theory, economic fields include producers of particular products or services, in interaction with their key suppliers, consumers, and state regulators (DiMaggio and Powell 1983; Powell and DiMaggio 1991; Fligstein 2001). Economic fields are centered on economic actors and organizations, but they also include prevailing ideas about efficiency and rationality, ideas about the value of work and workers, prevalent technologies, and scientific knowledge (Stryker 2003).

By focusing on legal and economic fields as the primary units of analysis, our sociology of law and the economy can portray the social embeddedness of both law and markets. Further, this conceptualization allows us to focus our analysis on the intersection of legal and economic fields as the key site for reciprocal construction and reconstruction of legal and economic actors, institutions, and consciousness.

The intersection of legal and economic fields provides rich terrain for cross-fertilization. It is in this social space that legal procedures, norms, and concepts work together to shape economic actors and institutions, and that economic structures, norms, and rituals shape the law. Just as law shapes the economy, the everyday conflicts of the workplace—and organizational solutions to those conflicts—are raw materials that legislators, regulators, and judges use to construct the law. Formal law, including statutes and judicial decisions, depends on what conflicts are brought into the public arena and how those conflicts are framed.

A Political-Institutional Perspective on the Intersection of Law and the Economy

Building on the broad conception of law as legality that we presented in the previous section, we now turn to our sociological framework for understanding law and the economy. We suggest that two distinct but interrelated social processes are at work in linking law and the economy: *institutional* processes that involve the production and widespread acceptance of particular constructions of law and compliance, and *political* processes that help to shape which constructions of law are produced and become institutionalized and who benefits from those constructions. We discuss these processes (and review the literature that supports them) in this section.[5]

We will show that institutional and political processes operate to embed markets deeply within legal frameworks and to infuse law with economic logic so that the development of legal and economic fields are linked. Through institutional and political processes, law shapes all things economic, including understandings of rationality, efficiency, and even what constitutes an economic actor. Conversely, law and legal institutions are constituted and reconstituted by economic institutions and actors.

Our perspective suggests that both market rationality and law are "socially constructed" or given meaning through social interaction. In contrast to post-Coasean law and economics, which treats preferences as exogenous, we suggest that preferences are shaped not just by formal legal policy but by the law in action and legal consciousness that defines that policy. And in contrast to economic sociology, which treats law as exogenous, our perspective will show how the meaning and enactment of law take form within economic fields.

Institutional Processes of Social Change

Neoinstitutional organization theory highlights an evolutionary vision of change, in which models of rationality are socially constructed, diffused, and "institutionalized" over time within organizational fields (Meyer and Rowan 1977; DiMaggio and Powell 1983; Meyer and Scott 1983; Powell and DiMaggio 1991).[6] Within these fields, organizations tend to incorporate institutionalized models less because of strategic, cost-benefit calculations and more because certain actions, forms, or rituals come to be understood as proper and natural.

Different versions of neoinstitutional theory emphasize different mechanisms by which institutionalized models spread throughout organizational fields. DiMaggio and Powell (1983) identify three mechanisms of institutionalization: mimetic isomorphism (organizations imitate the apparently rational structures of other organizations); norma-

tive isomorphism (professionals advocate particular structures); and coercive isomorphism (rules, usually issued by the state, mandate particular structures). Suchman and Edelman (1996) distinguish cognitive institutional models (in which organizations incorporate structures because they are so taken-for-granted as to appear natural, proper, and rational) from normative institutional models (in which organizations more actively seek to respond to cultural norms) and behavioral institutional models (which are agnostic as to the causal mechanism but focus on the diffusion of models).

Institutional processes have proved quite useful to explain the legalization of organizational life over time (Edelman 1990, 1992; Sutton et al. 1994; Dobbin and Sutton 1998; Edelman and Petterson 1999; Edelman, Uggen, and Erlanger 1999; Heimer 1999). In her research on compliance with equal employment law, Edelman (1990, 1992) argues that organizations are highly responsive to their *legal environments* or the law-related aspects of organizational fields. Legal environments include formal law and its associated sanctions; informal practices and norms regarding the use, nonuse, and circumvention of law; ideas about the meaning of law and compliance with law, and the broad set of principles, ideas, rituals, and norms that may evolve out of law (Edelman and Suchman 1997; Cahill 2001). Organizations most vulnerable to public scrutiny respond early to change in their legal environments by elaborating formal structures to mimic elements of the public legal order, such as formal due process mechanisms that mimic courts, special compliance offices that mimic administrative agencies, and rules that mimic legislation. Over time, these structures become institutionalized symbols of compliance, and other organizations become increasingly likely to adopt them (Edelman 1992).

Friedland and Alford (1991) provided the key insight that fields are imbued with "institutional logics." While logics become institutionalized in one field, they may flow into and influence other fields. This insight may be extended to show the interplay between legal and economic fields. As laws and legal principles are constructed, interpreted, and institutionalized by economic actors (managers, employers, compliance officers, legal counsel), the law tends both to influence ideas of rationality and to become infused by managerial and capitalist logic. Edelman and her colleagues (Edelman, Uggen, and Erlanger 1999; Edelman, Fuller, and Mara-Drita 2001; Edelman 2002), for example, suggest that over time, managerial logic and strategies of compliance, such as the construction of employee due process grievance procedures within the firm, tend to receive the formal imprimatur of law. This, in turn, reaffirms the legitimacy of such managerial ideas and effectively changes the meaning and requirements of formal law.

Two lines of work, one in sociology of law, the other in political sociology, extend the notion of institutional logics by suggesting that new ideas form at the intersection of fields with differing logics (Edelman 2002; Edelman, Uggen, and Erlanger 1999; Clemens and Cook 1999; Stryker 2000a, 2002). Specifically elaborating the idea of overlap between legal and organizational fields, Edelman argues that law is *endogenous*, or constructed within the social fields that it seeks to regulate. In this view, legal ideas and forms of compliance are constructed and institutionalized within organizational fields. But because the logics of organizational and legal fields overlap, courts tend to accept—sometimes unwittingly—institutionalized ideas of legality that developed within organizational fields. Change in legal institutions, then, is part of an interrelated, continuous *social change system* in which law's content, mobilization, and reach are simultaneously products and sources of economic behavior.

Consistent with ideas of law as legality and symbols, legal power resides not only in the overt exercise of law but also in the form of cultural hegemony—in subtle understandings of rights, responsibilities, and rational action. Beliefs and practices that are highly institutionalized are a very potent form of power, acquiring mythical status as rational or proper or fair, with the result that they go unchallenged and become nonissues. For example, it is widely thought to be rational and fair for employers to pay employees "market wages," or the wage that an employee could (at least in theory) receive from other employers. Employees, employers, and even courts commonly accept this rationale without recognizing that institutionalized ideas about paying employees their "market value" may systematically disadvantage female or minority workers (Nelson and Bridges 1999; England 1993; Edelman 2002).

Political Processes of Social Change

Whereas neoinstitutional theories emphasize concepts of institution and institutionalization that imply cognitive and normative taken-for-grantedness as a primary mechanism of change and stabilization in legal fields, political theories emphasize

overt conflict and contestation (see Stryker 2000a, 2002). Political approaches view legal change less as a result of nonconflictual diffusion of ideas, norms, and ideals and more as a result of diverse types of manifest conflict over and involving legal schema.

Following Weber, economic sociologists generally have a "power-oriented concept of economic action" (Swedberg and Granovetter 1992, 8). Likewise, explicitly political approaches to market structuration are prominent in economic sociology (Fligstein 2001). In parallel fashion, albeit in somewhat different ways, both sociologists of law and political sociologists draw on Marx and Weber to suggest that law is linked to the economy through processes involving both overt resource mobilization and the exercise of covert power.

The general tenets of Marx's historical materialism relegate "bourgeois" law—along with the rest of the democratic state—to reflecting and reinforcing the domination of capital. But Marx's (1967) analysis of the nineteenth-century Factory Acts in *Capital* evidences a more nuanced appreciation for law as an object of class conflict. In that work, Marx argues that the Factory Acts, which limited the length of the working day in Britain, were an outgrowth of sustained working-class organization and struggle.

Sociologists of law tend to emphasize the role of law as ideological superstructure (Stone 1985). Sociologists of law point out that formal-rational law differs from overt politics in that it depends for its legitimacy on the liberal legal notion that its rule application is *apolitical*. Legal liberalism maintains that, although legal disputes are a form of institutionalized conflict, legal principles applied to resolve them are generally and universally applicable, and autonomous from partisan political interests, social classes, formal politics, or other aspects of society (Sarat 1998). In contrast, neo-Marxist work in the sociology of law suggests that the liberal legal ideal is, in fact, a hegemonic ideology masking political-economic power while simultaneously legitimating that power. Neo-Marxist scholars suggest that both form and content of the law consistently favor interests of the dominant class or dominant elites, even while celebrating ideals such as equal protection and due process for all (Balbus 1977; Genovese 1976; Spitzer 1983; Collins 1982; Stone 1985; Chambliss 1964; Klare 1998; Freeman 1990).

Sociolegal scholarship on rights is similarly skeptical about the justice- and equality-enhancing impact of rights. Scheingold (1974) identifies the "myth of rights" inherent in liberal legal ideology, suggesting that rights are valuable only to the extent that they are politically mobilized (cf. McCann 1994; Rosenberg 1991). Critical legal scholars point to the instability and political manipulability of rights (Tushnet 1984; Aron 1989). Feminist legal scholars suggest that rights embody male norms and therefore tend to harm women (Olsen 1984; MacKinnon 1989). And critical race scholars appreciate the ideological aspects of rights, but contend that rights may be socially empowering for minorities even when they are hard to mobilize in court (Williams 1991; Minow 1987).

Scholars focusing on law in action analyze legal institutions as arenas for resource mobilization and conflict. In a classic essay, Marc Galanter (1974) suggests that the structure of adversary litigation gives substantial advantages to parties that have greater organizational and economic resources. Numerous studies since then have documented a variety of advantages for "haves" over "have-nots" in civil litigation (Bumiller 1988; Yeager 1990; Nielsen 2000; Yngvesson 1988; Albiston 1999; Edelman and Suchman 1999).

While much sociology of law emphasizes the inherent tendency of law to favor the power elite, political sociologists emphasize the contests and power struggles themselves. Building on Weber's (1978) definition of power as the capacity to realize one's will even against resistance in overt conflict, political sociologists suggest that both the form and content of law are actively constructed and mobilized as power-resources. Stryker (2000a, 2003), for example, portrays law as both a resource for and a result of political conflict; she invokes a broad definition of politics as the mobilization and countermobilization of resources in interest-based, value-based, and cognitively based conflicts, whether these are played out in the formal political sphere or elsewhere. Pedriana and Stryker (1997) show, however, that law's resource value does not flow automatically from formal statutes. Because its resource value at any given time results from a prior politics of law interpretation and enforcement, law is a "moving target" (Pedriana and Stryker, 2004).

Law is mobilized not just by dominant classes and class segments, but also by subordinate classes and class segments, diverse race, gender, ethnic, or religious groups, myriad non-class-based social movements and groups, and diverse professional and technical experts, to help enhance economic well-being, income and wealth, social status and prestige, self-esteem and dignity, and authority, au-

tonomy, and power (Sabatier 1975; Lempert and Sanders 1986, Yeager 1990; Stryker 1994; Saguy 2003). A standard assumption is that law is limited in its capacity for restraining market logic and economic power (Stryker 1989; Yeager 1990).[7] However, under some conditions, law can also serve as a force for enhancing equality and justice in capitalist political economies (Sabatier 1975; Pedriana and Stryker 1997, 2004; Stryker 2003).

Political sociology, then, reiterates the theme in critical sociology of law that legal power operates covertly, by creating political "nonissues" as well as issues (see Lukes 1974). Law as politics involves stabilizing and transforming both concrete legal rules and broader visions of legality. Like current writings in the sociology of law, current research in political sociology emphasizes that visions of a neutral, apolitical legally legitimate capitalism, contain conflict in institutionalized forms, and channel it away from revolutionary rupture toward reform. Paradoxically then, when "have-nots" succeed in mobilizing legal discourse and procedures for concrete social, political, or economic gains, they help validate the idea of law as autonomous from economic elites. In turn, this helps elites prevent more radical redistributions of economic wealth and power.

The political mobilization and countermobilization of law are also evident in historical accounts. For example, Tomlins (1985, 1993) and Forbath (1991a, 1991b) show that changing concepts of property and criminal conspiracy in common law and changes in statutory antitrust law shaped the interests and strategies, cognitions, values and collective identity of the American labor movement. Legal power both overt and covert is involved in their accounts of why the American labor movement abandoned class-based radical politics and legislative reform for "economic voluntarism" and business unionism. For example, in fighting court injunctions against labor collective action, union leaders mobilized "recessive, radical strains and possibilities" in the rhetoric of private rights that pervaded constitutional law (Forbath 1991a, 135). At the same time, union leaders reinforced the economic and legal power of this constitutional rights discourse, "ratify[ing] many of industry's asymmetries of power" (Forbath 1991a, 135). In comparative view, legal differences, including an absence of judicial review and divergent legal procedures and substantive law even in common-law Britain (otherwise more similar to the United States than were the code law nations of Continental Europe) helped ensure enduring differences of ideology and of collective identity, as well as of strategy and structure, between labor movements in the United States and Europe (Rogers 1990; Forbath 1991b; Voss 1993).

Historical and comparative scholarship on labor movements highlights the complexity inherent in law's political nature. Because overt mobilization of law on behalf of subordinate economic actors occurs within a broader political-economic environment in which formal-legal discourse and legal culture reinforce the ideological hegemony of capital, law is a resource for equality and justice, but only within limits leaving private ownership, market logic, and the economic power asymmetries between capital and labor intact (Stryker 2003).[8]

In sum, just as political approaches in economic sociology conceptualize economic action as conflictual and political (Fligstein 2001), we suggest that likewise, law is conflictual, political, and deeply implicated in the stabilization and transformation of power, *including* economic power and control (Stryker 2003). The financial, technical, and organizational resources accompanying economic power *do* provide economic "haves" with systematic advantages in "realizing their will" in formally egalitarian legal processes. But because legal principles operate as resources in complex and contradictory ways, law in capitalist political economies also provides openings for "have-nots."

An Institutional and Political Approach

To understand the interplay of law and the economy in today's globalized, multilevel, and highly institutionally differentiated political economy, we combine the ideas of institutionalization and of politics in legal fields. Following Stryker (2000a, 2002, 2003), we suggest that neoinstitutional theories of organization be modified to emphasize *both* institutional conditions under which taken-for-grantedness is likely to prevail *and* institutional conditions in which taken-for-grantedness is likely to be fragile, such that latent conflicts of meaning, values, and interests evolve into manifest conflicts.

Clearly, both institutional and political forces help to forge the intersection of law and the economy. Institutional processes may lead to widespread acceptance of certain forms of corporate compliance and constructions of legal rules affecting industries and organizations. But political contestation and power are critical factors in determining *which* legal principles and structures, forms of compliance, and constructions of rules come to

dominate the economic world. To understand the interplay of law and the economy in today's differentiated and globalized political economy thus requires us to combine the ideas of institutionalization and of politics in legal fields. We must analyze how legal and economic ideas and ideals, norms and values, interests and power, behavior and institutions are mutually endogenous. To analyze endogeneity, we should examine the role of conflict and contestation—as well as their circumscription and limitation—in particular historical contexts.

The Intersection of Law and the Economy

In this section, we review the extant theoretical and empirical work in light of the political-institutional framework on law and the economy that we outlined in the previous section. We draw on the extant literature to further elucidate how institutional meaning-attribution and political power-mobilization processes combine, so that legality shapes almost every aspect of economic life, and economic actors and institutions shape legality. No one piece of research explicitly examines all aspects of how law and the economy interrelate through the political and institutional processes we have specified. However, our political-institutional framework helps us systematize contributions and clarify gaps in the empirical research.

Our framework presumes that legal constructs, principles, and institutions shape the organizational forms and identities of economic actors, and they shape central elements of capitalist economic fields, such as valuation, exchange, and strategies of competition and cooperation. They do so both because legal constructs and institutions are incorporated into the logic and assumptions of economic activity, and because they serve as—or to help construct—cultural resources that economic actors can mobilize. In turn, as legal actors reframe economic conflicts in legal language so that they can adjudicate them, law necessarily incorporates some of the assumptions, language, and institutional logic of economic fields. Just as a capitalist economy is endogenous to law, law is endogenous to the economy. Law is shaped within economic fields by the very actors whose interactions the law seeks to constitute, facilitate, and regulate. Although framed in terms of recent developments in organizational and political sociology and the sociology of law, our framework is quite consistent with Max Weber's (1978) vision of how the rationalization of law—itself achieved through power struggles among social groups—facilitated, promoted, legitimated, and reinforced economic rationalization.

We draw on Edelman and Suchman's (1997) typology of legal environments to show how extant research fits into our political-institutional framework and to help identify areas for future research. Edelman and Suchman suggest that legal environments operate as *facilitative* tools allowing organizations to structure their relations with competitors, customers, and suppliers; as *regulatory* edicts actively imposing societal authority on various aspects of economic life; and as *constitutive* constructs subtly influencing ideas about efficient organizational form and structure. In each of these forms, legal environments operate as portals through which legality constructs and is constructed by the economy.

Facilitative, regulatory, and constitutive legal environments should be understood as ideal types analytically distinguishing among diverse ways in which law matters to actors in economic fields. While we organize the literature in terms of these types, it is important to note that research often implicitly addresses two or all three of these types as well as the linkage between them. Far from representing intellectual sloppiness, the insight that each type of legal environment is likely to shape the others through a combination of institutional and political processes (so that any concrete empirical situation involves more than one of the types) is an essential feature of our theoretical framework.

The Facilitative Legal Environment

The *facilitative legal environment* includes passive procedural vehicles and forums that organizations may mobilize to resolve disputes, to structure their relations with other organizations, to govern their employees, to influence the behavior of regulatory agencies, and to gather information. When the facilitative environment is mobilized, it becomes implicated in overt political processes, as economic actors draw on legal constructs, procedures, and techniques as resources in the production, distribution, exchange, and consumption of goods and services, and to enhance their competitive position. At the same time, institutional processes play a role in the attribution of meaning to, and diffusion of, facilitative legal environments.

The role of the facilitative legal environment can be seen in Weber's (1978) comparative studies of law and the rise of capitalism. Weber showed that such legal tools as agency, negotiability, and the

idea of the juristic or legal person facilitated development of capitalist economic action and institutions that had a very high degree of predictability, calculability, and systematization. For example, agency is the idea that one person (an agent) represents another (the principal) with the other's consent. Negotiable instruments include checks, banknotes, and other representations of unconditional promises to pay. Without these ideas and tools, commerce would be more difficult and less predictable. Without the idea of the legal person, a complex business organization could not be a legitimate party to a contract, because it would not be possible to know the standing of a business firm or its parts (see Trevino 1996 for an especially accessible discussion of Weber's ideas).

Further development and empirical instantiation of Weber's arguments may be found in contemporary work emphasizing the enabling aspects of corporation law (Sklar 1988; Roy 1990; Hurst 1970, 1982). Hurst (1970) highlights the key role of limited liability in promoting shareholder investment and economic growth in the early history of the United States, when commercial banks and business loans were not available to entrepreneurs. Differences in legal schema pertaining to the status of land (with the United States accepting land as a fully fledged tradable commodity) helped set divergent paths for U.S. and British economic development (Hurst 1982). Fligstein (2001) and Waarden (2002) emphasize law's role in stabilizing markets by reducing uncertainty, coordinating competition, and facilitating economic survival and growth. Fligstein (1990), and Carruthers, Babb, and Halliday (2001) highlight the role of law as a tool for additional economic resource acquisition or for managing debt.

Horowitz (1977) argues that in the pre–Civil War period, courts and judges adopted a new, "instrumental" view of the common law. In contrast to their eighteenth-century counterparts, who interpreted common-law rules with reference to fairness among private litigants, nineteenth-century judges interpreted these rules according to a different standard: how a given decision would affect American commerce. This fundamental shift made common law a powerful force for American economic development. Far from merely responding to "new or special economic or technological pressure," innovative reconceptualization of the role of common law often preceded economic innovation (Horowitz 1977, 3).

Sklar (1988) provides an account of the reciprocal relationship between specific legal and economic changes in the late-nineteenth- and early twentieth-century United States. Sklar (1988) highlights the many contradictions and inconsistencies in legal doctrine, noting for example, that from 1897 to about 1911–14, changes in property law established both legal and intellectual grounds for the corporate reorganization of property, while antitrust law still worked to inhibit this very same economic reorganization.

A key tool in the management of competition and conflict, the facilitative legal environment also comes into play in businesses' use of civil litigation (Cheit 1991; Galanter and Rogers 1991) and in the concomitant rise in the number and status of both in-house counsel and independent corporate law firms (Galanter and Rogers 1991). The increase in litigation itself results in increased insurance use (Cheit 1991); elevated bankruptcy rates (Delaney 1989); and less willingness to undertake high-risk innovation (Cheit 1991).

Organizations also engage the facilitative environment when they seek legal constraints on the market or the regulation of competitive industries. Industries use law strategically to secure direct government subsidies and rules that limit entry into the industry, that hinder competitors or otherwise provide an advantage against competitors, and that allow the management of competition (Stigler 1971; Gable 1953; Pfeffer 1974; Zhou 1993). Industries and organizations also seek favorable rule-making outcomes from administrative agencies (Posner 1974; Clune 1983; Hawkins 1984; Blumrosen 1993).

Often, alignments between industries and regulators come about over time through meaning-attribution and power-mobilization processes of law enforcement that we outlined previously. In the case of property insurance, for example, rate regulation was enacted over industry opposition but produced institutions and political settlement that protected insurance companies and agents from price competition (Schneiberg 1999; Schneiberg and Bartley 2001). In an important article on enforcing environmental laws, Sabatier (1975) emphasized that monitoring and active political mobilization by citizens' groups help counteract ordinary technical, financial, and access advantages of powerful firms and industries.

While our discussion so far has focused on formal legal procedures, the facilitative legal environment also provides an arena in which institutionalized norms and rituals develop around legal processes, often becoming more influential than formal law itself. Macaulay's (1963) seminal study

of contract disputes showed that businessmen preferred to handle exchange relationships informally and to resolve disputes according to the norms of the business community rather than through lawsuits. Business culture is central to Macaulay's analysis, but businessmen themselves see informal dispute resolution as more efficient than litigation.

More recent work shows a rise in the use of alternative dispute resolution techniques such as mediation and arbitration to handle interbusiness disputes (Lande 1998; Morrill 1995) as well as a dramatic rise in the use of internal grievance procedures and various informal dispute resolution techniques for handling intraorganizational conflict (Edelman et al. 1993; Edelman and Cahill 1998; Edelman, Uggen, and Erlanger 1999; Edelman and Suchman 1999). Other work focuses on differences in disputing norms across organizations (Cahill 2001) and nations (Gibson and Caldiera 1996; Kagan and Axelrad 2000; Kagan 2001; Cahill 2001). This work suggests that when negotiation occurs in the "shadow of the law" (Mnookin and Kornhauser 1979), bargaining forms and outcomes are determined by a combination of expectations about what would happen if the dispute were negotiated in court and by institutionalized norms about economic behavior that depend on history, culture, and power (Commons 1924; Lempert and Sanders 1986).

In sum, the literature on the facilitative environment reveals both institutional and political processes at work. While the facilitative environment provides an arena in which certain types of transactions, relationships, and governance structures come to be taken-for-granted forms of economic exchange, it is also an arena of political struggle and the reproduction of power (Dezalay and Garth 1996). Legal procedures that facilitate economic activity for some actors often constrain the economic activity of other actors. Legal constraints on certain types of economic relationships render some industries more powerful than others, enhance the power and prestige of some professions, and alter the balance of power between labor and management. For example, the same legal principles in U.S. property and contract law that facilitated large-scale industrial organization and growth simultaneously constrained unionization and working-class collective action (Commons 1924; Tomlins 1993; Forbath 1991a).

Thus, facilitative legal environments provide a venue for the institutionalization of forms of economic exchange, association, and competition and for the reproduction of economic inequality and power. Our political-institutional perspective on law and the economy suggests that questions of *what the law facilitates* and *for whom* should be important guides to empirical research.

The Regulatory Legal Environment

The *regulatory legal environment* consists of substantive rules that impose societal authority on various aspects of organizational life. Antitrust, health and safety, environmental, and labor and employment statutes and directives all regulate organizations. Enforcement agencies such as the U.S. Environmental Protection Agency, National Labor Relations Board, and Equal Employment Opportunity Commission issue myriad administrative regulations, standards, and adjudicative rulings and guidelines, and courts issue substantive decisions articulating common-law principles and interpreting constitutions, treaties, statutes, directives, and administrative regulations. The regulatory environment also includes informal norms that have lawlike functions, for example, norms about diversity or consistent treatment of employees.

Both institutional and political processes operate in the regulatory context. Economic actors incorporate and respond to the normative ideals of their regulatory environments, just as legal actors incorporate and respond to the normative ideals that evolve in economic fields. Meanwhile, regulatory environments are sites for overt contestation over normative rules, as well as for mobilizing these rules as resources.

The politics of mobilization and countermobilization are particular salient in the context of regulation (see Stryker 2000b; Kagan and Axelrad 2000). Regulatory "capture" is said to occur when organizational power leads regulators to overlook or even to facilitate legally questionable practices of regulated organizations (Blumrosen 1965, 1993; Wirt 1970; Ackerman et al. 1974; Conklin 1977; Diver 1980; Clune 1983; Vaughan 1983; Hawkins 1984; but see Levine 1981; Horwitz 1986; Luchansky and Gerber 1993). Industry exercises significant power over regulators because of cash flow to political candidates who then appoint regulators and also because public agencies tend to rely on industry for expertise, information, and personnel to staff their agencies (Bardach 1989; Breyer 1982; Makkai and Braithwaite 1992; Yeager 1990).

Political processes are also evident in research showing how the consistent mobilization of social movement pressures on behalf of economically disadvantaged groups can help combat regulatory

capture (Sabatier 1975; Pedriana and Stryker 1997, 2004). Stryker (1989) and Pedriana and Stryker (2004) showed that, in contexts of relentless social movement pressures from below, the National Labor Relations Board, the Equal Employment Opportunity Commission, and ultimately the Supreme Court interpreted and applied new statutory principles of labor or employment law in ways that, at least for a time, expanded employment and other workplace benefits for labor, minorities, and women. Capture is less likely when regulatory agencies actively organize the information acquisition and monitoring capacities of citizen groups (Sabatier 1975), when the federal government intervenes on behalf of women and minorities (Burstein 1991), and when employees can mobilize cultural resources to influence management (Scully and Segal 2002).

Research highlighting political processes emphasizes that legal rules may produce unintended economic results (see, e.g., Sklar 1988; Roe 1994; Fligstein 2001). For example, Dobbin and Dowd (2000) show how a Supreme Court decision unexpectedly upholding central provisions of the Interstate Commerce and Sherman Acts set off a chain of interest-based adaptation that had profound, though not readily predictable, results. The Court ruling made collusion among competitors illegal without mandating an alternative, so the Court undermined cartels without providing a business replacement. A politics of mobilization and countermobilization of alternative business competition principles ensued, and finance capitalists prevailed, giving them disproportionate influence on subsequent economic development.

Institutional approaches to the regulatory environment suggest that regulation also affects economic fields through more subtle institutional processes that do *not* hinge on such overt conflict. Because much law regulating organizations is ambiguous, the meaning of compliance tends to be collectively constructed by organizations over time. Organizations respond to ambiguous legal norms by creating "symbolic structures" such as affirmative action offices or discrimination grievance procedures that visibly demonstrate a commitment to legal ideals. Over time, those structures tend to acquire an institutionalized status as "rational" forms of compliance (Edelman 1992). The regulatory environment takes form gradually through organizational mimicry, the diffusion of professional norms, and the normative influence of state rules. In general, private organizations that are closer to the public sector—either through administrative or contractual linkages—tend to incorporate institutionalized ideas earlier than organizations further from the public sector (Edelman 1990, 1992; Sutton et al. 1994; Dobbin et al. 1993; Dobbin and Sutton 1998; Edelman, Uggen, and Erlanger 1999; Heimer 1999; Kelly and Dobbin 1998).

Although institutional processes lead to a diffusion of legalized symbolic structures, those structures may become vehicles for the transformation of legal ideals. Professionals who manage legal requirements and handle law-related complaints tend to recast legal norms in ways that infuse law with managerial logic (Edelman, Erlanger, and Lande 1993; Edelman, Abraham, and Erlanger 1992; Edelman, Fuller, and Mara-Drita 2001). Furthermore, as these "managerialized" understandings of law become widely accepted, they appear increasingly rational and gain legitimacy in the eyes of judges and juries. Courts tend to reconceptualize law in a way that subtly incorporates organizationally constructed forms of compliance, rendering the law "endogenous" to organizational fields (Edelman, Uggen, and Erlanger 1999; Edelman 2002).

There is debate within the literature about whether organizations experience their regulatory environment primarily as a set of externally imposed constraints altering their cost-benefit calculi, or as a set of normative ideals and institutionalized models of compliance. Economists, including law and economics scholars, generally favor the first approach, while sociologists of law generally favor the second. Economic and political sociologists are divided.

Work by economists investigating the impact of civil rights law on the employment of women and minorities suggests that regional and historical differences in laws and their enforcement promoted region- and time-specific incentive structures for employment by race and gender (Donahue and Heckman 1991; Smith and Welch 1984; Leonard 1984, 1986). Scholars who view organizations primarily as rational actors in their response to law suggest that organizations will calculate the relative value of compliance and noncompliance and alter their behavior accordingly (Diver 1980; Paternoster and Simpson 1996; Braithewaite and Makkai 1991; Genn 1993).

However, sanctions associated with noncompliance often are insufficient to deter illegal behavior because the risk of legal judgments or administrative fines often seems minimal compared to market-related risks such as product failure. That is, legal sanctions usually are too small and slow to affect ra-

tional organizational planning (Stone 1975; Jowell 1975). Moreover, decentralization tends to obscure the locus of negligence in organizations and to foster interdepartmental competition that subordinates legal compliance to market performance.

In short, rational choice deterrence models give a misleading picture of compliance. This does not, however, negate the idea of economic interest-based adaptation to regulatory environments. Rather, as we have tried to show, perceived strategic adaptations are socially constructed through the very institutional and political processes that we previously have outlined. For example, Edelman, Uggen, and Erlanger (1999) show that when personnel professionals began to advocate internal due process grievance procedures as devices to insulate organizations from external lawsuits, these procedures did not, in fact, decrease external lawsuits. Yet, over time, courts acknowledged and incorporated these procedures as evidence of compliance, so that what had been entirely "rational myth" began to confer economic cost savings.

In addition to Dobbin and Dowd's (2000) research showing how late-nineteenth-century constitutional law helped promote new models of business competition, mid-twentieth-century changes in antitrust legislation and—even earlier—in Justice Department enforcement strategies promoted new concepts of business control (Fligstein 1990). In general, antitrust laws in the United States and Europe shaped firms and markets in both intended and unintended ways (Jacoby 1985; Roy 1990; Fligstein 2001). Much scholarship documents the impact of labor law on unionization and strikes and analyzes cross-national variation in regulatory regimes (Rubin, Griffin, and Wallace 1983; Isaac and Griffin 1989; Ebbinghaus and Visser 1999; McCammon 1990; Kagan and Axelrad 2000). Streeck (this volume) shows that laws involving pension provision and financing, unemployment insurance, and social assistance have affected employment, wages, and unionization. Deregulation of capital flows appears to intensify the relationship between methods of social security financing and unemployment rates (Scharpf and Schmidt 2000). Stryker and Eliason (2003) suggest that cross-national variation in laws pertaining to day-care provision and labor market flexibility contributes to variation in female labor force participation across Europe.

The empirical patterns detailed by all these authors are consistent with an assumption that economic actors' perceptions of their interests, and the costs and benefits of alternative lines of action, do play some role in law-economy connections. However, because economic sociologists ordinarily view law as exogenous to economic fields, there has been little recognition of how what is perceived to be economically and legally strategic is *mutually constituted* through interrelated institutional and political processes. Fligstein's *The Architecture of Markets* (2001, 84) exemplifies the view of law as exogenous:

> The transformation of existing markets results from exogenous forces: invasion, economic crisis or political intervention by states. . . . I propose an exogenous theory of market transformation that views the basic cause of changes in market structure as resulting from forces outside the control of producers, due to shifts in demand, invasion by other firms, or actions of the state [including law].[9]

In sum, research on the regulatory environment shows that both overt political processes and more subtle institutional processes shape the form and impact of regulation on the economy and infuse economic interests into the law. Extant work on institutional processes has focused on the United States. Thus, it is important that economic sociologists researching other parts of the world examine empirically how institutional processes interact with the political processes that have—to date—been emphasized in research on regulation in Europe (e.g., Weiler 1990; Majone 1994; Vogel 1996).

Similarly, in contrast to the portrait of law as exogenous that is found in much economic sociology, some recent research suggests that regulation often follows and reflects business practices and institutions that were themselves responses to the regulatory environment. Thus, researchers would do well to abandon models of law as exogenous influence in favor of an explicitly dynamic view that examines the reciprocal reshaping of legal and economic actors and institutions. Fligstein's research with Stone Sweet (2002) on the interrelated dynamics of law and markets in the European Community is exemplary in this regard, although it focuses almost exclusively on political mechanisms of institutionalization. The authors show that contests between the European Court of Justice and national legal regimes affected trade patterns, which in turn spurred more litigation. More litigation both further expanded cross-border trade and promoted EC-level legislation and lobbying, which then increased trade still further. Another excellent example of an endogenous approach to regulation is Schneiberg's (forthcoming) nuanced analysis of how state policies and market failures altered polit-

ical alignments and institutional arrangements in the American property insurance industry, allowing new groups to mobilize legal resources to reshape policy and markets.

Future research should treat the endogeneity of law and the relative role of political and institutional processes as empirical questions. It is likely that under certain conditions, law acts as an exogenous shock and under other conditions is simultaneously constitutive of and constituted by economic forces within intersecting legal and economic fields. It is also likely that in some situations law operates primarily as a set of incentives and disincentives and in others as a set of normative ideals.

The Constitutive Legal Environment

The *constitutive legal environment* consists of concepts, definitional categories, labels, and ideas that play a subtle and often invisible role in how economic actors, including but not restricted to organizations, come into existence, organize their activities and relationships, and arrange their governance. Rather than providing procedural tools or substantive rules—as do facilitative and regulatory legal environments—the constitutive legal environment provides cognitive possibilities and values that influence the structure, form, and strategies of organizations.

For example, law generates understandings of what is and is not a corporation, of who is and who is not an employee, and of what constitutes a binding agreement between employer and employee or between organizations. Similarly, law helps define "economic" categories of competition, cooperation, and exchange, as well as such fundamental constructs as economic fairness, efficiency, rationality, and value. Legal labels such as *corporate person*, *employee*, *union*, *property*, *mutual fund*, *security*, and *bankruptcy* help to define which interactions and activities are legitimate and which are not. Further, many conceptual dichotomies that are central to the economy, such as employer/employee, public/private, procedure/substance, capital/labor, labor market/domestic labor, exempt/nonexempt, full time/part time, and permanent/contingent, derive meaning and impact in part from the constitutive legal environment. Similarly, the constitutive environment confers meaning on labor-market related concepts such as "labor pool," "applicant," "qualified," and "merit."

Legal categorizations define opportunities and limits for economic actors to take formal-political roles, defining rules of the game for fund-raising and lobbying. Similarly, legal constructs such as "standing to sue," "limited liability," "corporate veil," "sovereign immunity," and "federal question" define which economic disputes may be resolved within the legal system and which are outside the purview of law.

The constitutive legal environment is also a key factor in legitimating and institutionalizing various organizational institutions, so that organizational routines for hiring, firing, and promotion, or practices and policies regarding leave, dress, language, or accent appear natural and normal. Constitutive legal environments, moreover, shape abstract economic thinking about the nature of markets, of capitalism, and of how economy and polity are distinct, differentiated realms (cf. Krippner 2001). For example, Majone (1994) points out that a key impact of the European Court of Justice and the recent creation of "American-style" regulatory agencies to police newly privatized industries in Europe was that, for the first time, the concept of regulation had a meaning in Europe similar to its meaning in the United States.

The constitutive legal environment, then, is the arena of meaning-making with regard to both law and the economy. Consistent with our political-institutional framework, material manifestations of normative and cognitive frames are socially constructed through *both* institutional processes and political processes. A number of studies that have already been discussed in connection with the facilitative and regulatory legal environments also address the constitutive environment.

Among such research are studies on employee governance structures and logics (e.g., Edelman 1992; Sutton et al. 1994), conceptions of control and models of competition in firms, markets, and economic fields (Roy 1990; Fligstein 1990, 2001; Dobbin and Dowd 2000), and the collective identity and behavior of the U.S. labor movement (Forbath 1991a; Tomlins 1985, 1993). Also included are studies of such new organizational forms and actors in the economy as corporations and their boards of directors (Commons 1924; Hurst 1970, 1982), multinationals and conglomerates (Fligstein 2001), investment funds and capital markets in post-Communist Russia (Spicer 2002), financial markets in the United States (Roe 1994), cooperative and mutual organizational forms in the United States (Schneiberg 2002), and trading areas and monetary unions (Majone 1994; Fligstein and Mara-Drita 1996; Scharpf 1999; Fligstein and Stone Sweet 2002). Some of these studies emphasize the causal significance of institu-

tional processes (e.g., Edelman 1990, 1992; Edelman, Uggen, and Erlanger 1999; Dobbin and Sutton 1998; Sutton et al. 1994); others of these studies emphasize the causal significance of political processes (e.g., Fligstein 1990, 2001; Fligstein and Mara-Drita 1996; Fligstein and Stone Sweet 2002; Spicer 2002; Schneiberg 2002; Dobbin and Dowd 2000; Scharpf 1999).

Research on the constitutive legal environment also has addressed ways in which contract law delineates symbols and rituals for forming binding agreements (Suchman 1995); how property law shapes ideas about organizations' control over resources and ideas (Campbell and Lindberg 1990); and how bankruptcy law affects organizations' priorities with respect to their various stakeholders (Delaney 1989). Other studies show that law generates particular organizational features, such as affirmative action policies (Edelman and Petterson 1999) or the "poison pill" takeover defense (Powell 1993; Davis 1991). Yet other research suggests that law codifies ground rules for entire organizational forms. For example, law helped to construct the modern limited-liability corporation (Coleman 1974, 1990; Seavoy 1982; Roy 1990; Creighton 1990; Klein and Majewski 1992) and to shape the boundaries between, and forms of, private firms, public agencies, collective enterprises, and nonprofit organizations (Nee 1992; Hansmann 1996; Campbell and Lindberg 1990).

There is much empirical research showing that the rise of the regulatory state and cross-national differences in its form and content are bound up with the creation of new occupational categories in the economy. Edelman (1992), Edelman, Uggen, and Erlanger (1999) and Edelman, Fuller, and Mara-Drita (2001) show that the post-1964 American regulatory state gave rise to the professional roles of diversity trainer and affirmative action officer. Similarly, Jacoby (1985), Sutton et al. (1994), Dobbin and Sutton (1998), and Baron, Dobbin, and Jennings (1986), highlight how legal changes both before and especially after World War II influenced growth of the personnel profession in the United States. Stryker (1994) emphasizes how "technocratization" of law in regulatory states created new occupational roles, such as the professional expert witness, for scientists. Halliday (1987) shows that changing capacities of the American state influenced the collective identity of the American legal profession over time. Finally, Rueschemeyer (1986) highlights differences in state structures in the United States, Germany, Britain, and Japan that resulted in cross-national variation in these countries' legal professions.

At the most fundamental level, the constitutive legal environment profoundly shapes social norms about human agency, responsibility, and accountability (Lempert and Sanders 1986). Likewise, it shapes concepts of economic rationality and efficiency, offering basic logics that seep into the culture and infrastructure of social interaction within organizations. In a now classic article, Meyer and Rowan (1977) emphasized that both modern organizations and modern law embrace a logic of legal rationality, or the importance of general and distinctively legal rules. Legal rationality is not entirely the product of formal law; formal-legal and organizational actors interact in ways that reinforce the logic of legal rationality in both law and the economy, generating lawlike ideas of industrial citizenship (Selznick 1969) and fairness (Edelman 1990).

As we discussed in prior sections, research by Edelman and her colleagues (e.g., Edelman 1992; Edelman, Uggen, and Erlanger 1999) elucidates institutional mechanisms through which constitutive legal environments work. Edelman (Edelman, Uggen, and Erlanger 1999; Edelman, Fuller, and Mara-Drita, 2001) describe reciprocal meaning-attribution processes through which economic and formal-legal actors interact to make their world. Managers and professionals in organizations construct the meaning of compliance, and courts incorporate these interpretations into the meaning of formal law. In all this research, endogeneity of law works by infusing into the law evolving ideas of justice, legality, and rationality in the economic realm.

Edelman, Uggen, and Erlanger (1999) show that ideas about good-faith efforts at compliance and rational organizational governance that were devised by organizations in response to the overt politics of the civil rights movement and attendant civil rights legislation in the 1960s were uncritically accepted as rational and just by courts in the 1980s. And Edelman, Fuller, and Mara-Drita (2001) show that ideas about civil rights were transformed in the context of managerial rhetoric about diversity. Similarly, courts tend to accept ideas about "rational" economic behavior that originate in economic fields, thus legitimating organizational practices such as word-of-mouth hiring, accent and language requirements, dress codes, internal labor market procedures, and market-based pay rates (Edelman 2002; Edelman, Uggen, and Erlanger 1999; Nelson and Bridges 1999).

Research on the constitutive environment, then,

suggests that because of the overlap between economic and legal fields, ideas about the rationality of economic institutions that develop within economic fields flow easily into legal fields. Thus when employers cite the "efficiency" of particular practices, courts tend to accept that logic as legitimate and to overlook the role of these practices in perpetuating disadvantage for groups that the law views as requiring extra protection. For example, word-of-mouth hiring often severely disadvantages racial minorities (Kirschenman and Neckerman 1991), historical race and gender stereotypes are perpetuated through apparently neutral internal labor market job categorizations (Baron 1991), and internal grievance procedures may legitimate discriminatory practices (Edelman, Erlanger, and Lande 1993).

While much of the work of the constitutive environment occurs through subtle institutional processes, overt politics also play a role as organizations and lawyers seek to construct their legal environments through litigation and lobbying—often devising new conceptual categories or manipulating legal symbols for political advantage (Powell 1993; Suchman 1995). For example, employers successfully defended Title VII discrimination claims based on comparable worth principles, by mobilizing taken-for-granted market logics to argue against their own responsibility and legal liability (England 1993). Similarly, employers successfully mobilized such logics in equal pay litigation, diminishing the resource value of equal pay legislation for American women (Nelson and Bridges 1999). Yeager (1990) shows that taken-for-granted notions of the worthiness of private business activity led regulators to treat environmental crime as less deserving of moral disapprobation than street crime, and thus to weaken environmental enforcement.

In short, political and institutional processes operate in tandem to produce meanings that are shared across legal and economic fields.[10] Research on the constitutive environment highlights "the limits of law." While court adjudication is a realm for overt resource mobilization, as is the contestation and negotiation between regulatory agencies and regulated parties, taken-for-granted assumptions shape how these conflicts are framed and may limit the impact of regulation. More generally, research suggests that the constitutive legal environment plays a critical role in shaping facilitative and regulatory legal environments. The cross-fertilization of ideas at the intersection of legal and economic fields provides fodder for new ways of employing law in economic transactions and new ways of responding to or circumventing regulation.

Further research on the constitutive environment should explore the interplay between overt political contestation of meanings and more covert institutional diffusion of meanings. It may be that we should expect an overt politics of law to dominate in periods of economic or political crisis, while institutional processes dominate during periods of more routine response to law. At the same time, both theoretical and empirical work show that overt politics are not banished in "more routine" settings, but rather contained within substantive and procedural limits (Stryker 1994, 1996).

Research should also examine cross-national differences in the meanings attributed to legal constructs. Legal concepts may be expressed in superficially similar language, yet have a long history of diverse meanings across contexts. For example, the meaning of *employment* in Britain simply denotes an occupation undertaken for remuneration and subordinate to an employer. It does not imply any rights of protection whereas the French *emploi* (employment) does invoke norms of protection (Clarke, Gijsel, and Janssen 2000).

Conclusion

The framework that we have developed in this chapter offers a sociological approach to the interplay of law and the economy. It builds on classical social theory—in particular the work of Max Weber—and on the broader notion of law as legality that is central to the sociology of law. The central tenet of our approach is the endogeneity of both law and the economy: legality derives meaning from and sustains economic structures, action, and power, while economic structures, action, and power draw on and reconstitute legality. The reciprocal construction and reconstruction of law and the economy occurs at the intersection of legal and economic fields, which are social realms that are centered upon legal and economic institutions, respectively. We identify two processes that promote this endogeneity: institutional processes that involve taken-for-granted meanings, and political contests and power struggles that involve overt conflict. The two are interrelated in multiple ways: for example, institutionalized rituals and taken-for-granted routines shape interests and coalitions and help to define the boundaries of disputes; actors mobilize institutionalized rituals and models as symbolic resources for political struggles; political

shifts may disrupt institutionalized patterns and allow new institutional processes to arise. The interaction of institutional and political processes helps to explain both stability and change in legal and economic fields.

To review extant knowledge about the interplay of law and the economy, we used Edelman and Suchman's (1997) typology of legal environments. The three facets of legal environments that we discussed represent different aspects of intersection between legal and economic fields and further illuminate how legality and market logics may be mutually constitutive through institutional and political processes.

The facilitative legal environment is the realm of procedure. Here law provides a set of tools, norms, and routines that shapes the form of economic action. And conversely, economic strategies and political interests shape the range of legal tools that are available and conventions about how and under what conditions these tools are used. The facilitative legal environment is simultaneously a set of institutionalized conventions that shape the use of law and a set of resources that may be mobilized in power struggles over market share, occupational boundaries, the use of technology, conditions of labor, and many other elements of economic life.

The regulatory legal environment is the realm of normative social control. Here law operates both as a set of incentives and disincentives and as a set of normative ideals that shape the behavior of firms. In contrast to accounts that see regulation as an exogenous force to which organizations respond, our model suggests that the norms embodied by the regulatory environment are responsive to the everyday problems and institutionalized rituals of economic life and that they are often the subject of battles between industries, labor and management, and other economic constituencies. Political lobbying, regulatory capture, structural networks, and social movements render the regulatory legal environment as much the product as the producer of economic life.

The constitutive legal environment is the realm of meaning-making, symbols, and culture. Institutional processes within the constitutive legal environment powerfully bind the logics of legal and economic fields as legal language and constructs shape the form and basis of capitalism and capitalist logics shape legal conceptions of fairness, efficiency, rationality, and business necessity. But political processes are also operative as opposing forces contest the meaning of law and justice.

In all three types of legal environments, we emphasized both the overt and covert exercise of power. We showed how the interplay of these two forms of power contributed to the complex and sometimes contradictory nature of the role that law plays in overlapping legal and economic fields. Capitalist political economies are characterized both by opportunities for enhanced justice and by the "limits of law." The openings that law provides to increase the well-being of disadvantaged economic actors are circumscribed in ways that keep fundamental asymmetries of economic power intact.

While the three facets of legal environments are presented as analytically distinct ideal types, any empirical situation (say, firms responding to antitrust law or unions responding to labor law) is likely to involve multiple facets at once. More important, the three types of legal environments affect each other through interrelated institutional and political processes. Changes in the constitutive legal environment affect the legal tools available through the facilitative environment and the meaning of rules in the regulatory environment, and the reverse is true as well. Regulation is itself a facilitative tool in some contexts as industries seek to control competition through rate regulation or tariffs or antitrust maneuvers. And the facilitative environment shapes the constitutive and regulatory environments, as the creative use of legal procedures often generates new symbols, meanings, norms, principles, and substantive rules.

The political-institutional model we propose has significant implications for economic sociology. First and foremost, our model suggests that the insights of economic sociology on the social embeddedness of markets must be extended to law. While law may operate under some circumstances as an exogenous shock to economic fields, law and legality are more often both produced by and a product of economic constructions. Most obviously, economic actors lobby and litigate for particular legal rules and administrative interpretations of rules. Somewhat less obviously, judicial constructions of law necessarily reflect conceptions of rationality, efficiency, fairness, and compliance that are tested, contested, institutionalized, and sometimes fractured within economic fields. Lawyers, judges, personnel professionals, employers, and employees act as conduits of institutionalized ideas and as contestants in political battles to shape the meaning of law in overlapping legal and economic fields. It is therefore critical that economic sociology treat law not as a force outside of the socially embedded economy but rather as a force within, and a product of, that economy. Ordinarily, legal

and economic fields will be mutually endogenous, through a reciprocal, causal dynamic that is, at once, institutional and political.

Our model also stands as a sociological alternative to law and economics scholarship. We incorporate the notion from economic sociology that markets should be understood not as the interaction of individual preference-maximizing rational actors but rather as social fields in which ideas about rationality are collectively defined and institutionalized. But by also incorporating a broader notion of law as legality manifested in institutionalized social fields overlapping with economic fields, we challenge the idea that "economic rationality" can be understood apart from its law-related social construction.

Law both incorporates and reinforces economic understandings of rational action, and of the preferences that economic models usually treat as exogenous. Rather than providing a context within which actors make "rational choices," law tends to reify ideas of rationality that predominate in economic fields. To the extent that institutionalized ideas in economic fields bolster the power of capitalists over workers or support organizational practices that discriminate against minorities and women, law tends to legitimate those power relations. Extraordinary conditions, such as economic crises and depressions, and massive crises of political legitimacy coupled with sustained social movement pressure from below, loosen the taken-for-grantedness of prior economic routines. This creates somewhat larger openings for the disadvantaged to influence institutionalization in intersecting legal and economic fields. Short of such extraordinary conditions, law in capitalist political economies tends to legitimate and reify the status and power hierarchies that are played out in economic life.

Notes

1. Preferences, moreover, are often understood as "revealed" through an individual's choices. Thus the actions that individuals take are assumed to reveal their preferences irrespective of social constraints that may shape individual actions, rendering the revealed preference theory tautological (Gould 1992). Choices that appear to deviate from rationality, moreover, tend to be explained as involving the maximization of a different dimension or are attributed to lack of information.

2. Economists define *Pareto efficiency* as the condition where no person can be made better (according to his own preferences) without another person being made worse off. A variant, *Kaldor-Hicks efficiency*, holds that some persons could be made better off if they would at least in theory be willing to compensate those who are made worse off (Cooter and Ulen 2000).

3. Recently, some law and economics scholars have begun to elaborate neoclassical economic theory to posit endogenous preferences (Dau-Schmidt 1990; Sunstein 1993). Although these accounts come considerably closer to recognizing the social embeddedness of economic action, they generally recognize the role of law but not of culture in shaping preferences, and they retain the assumption of preference-maximizing rational actors.

4. Building on the Progressive Era tradition, Rose-Ackerman's (1988, 343) "reformist law and economics" takes issue with dominant strands of contemporary law and economics. While operating within the basic paradigm of economic theory and retaining methodological individualism, Rose-Ackerman does not presume the primacy of existing property rights distributions or the superiority of common law to legislation.

5. There are multiple strands of institutional theory in sociology, and each conceptualizes institutions and institutional processes somewhat differently (see Scott 2003; Stryker 2003). Those who emphasize how state institutions shape the relationship between politics and policies sometimes call themselves political or historical institutionalists. Neoinstitutionalists of organization have been criticized for insufficiently attending to political conflicts, but some have emphasized such conflicts (see Powell and DiMaggio 1991; Stryker 2000a). To enhance the analytic clarity and utility of our framework, we provide particular conceptualizations of "institutional" and "political" processes, highlighting the two as *distinct* social (and causal) mechanisms. However, because broader traditions labeled institutional and political intersect, some of the literature we cite can be appropriated fairly by either or both traditions.

6. Prior to the 1970s, most work in organization theory focused on organizations as the key unit of analysis and conceptualized organizations as rational and goal-oriented. Consistent with much thinking in economics, scholars sought to understand how organizations could most efficiently respond to their technological needs, hire and manage labor, and manage competition (Blau and Scott 1962; Thompson 1967; Pfeffer and Salancik 1978; see Scott 2003 for a review).

7. Debating issues such as the "relative autonomy of the state," neo-Marxist political sociology in the 1960s and 1970s provided a foundational set of concepts and social mechanisms to specify possibilities and limits of progressive social reform in democratic capitalism (e.g., Miliband 1969; Poulantzas 1973; Offe 1975; Therborn 1978; Block 1987). Causal mechanisms often were divided into those considered "instrumental" and those considered "structural." The former operated through overt resource mobilization, whereas the latter operated covertly, including through capital's ideological hegemony. Structural mechanisms also depended on the fact that capitalist states were excluded from private economic production, but depended on capital accumulation in the private economy for their capacity and legitimacy in governing.

8. For a more complete summary of this argument, including extended elaboration of examples, see Stryker 2003. The legal history literature makes much the same points about the constitutive power of law as do sociologists of law who emphasize law as legality.

9. Fligstein (2001) recognizes that law as a dependent variable varies according to the balance of power among diverse political-economic actors. But his 2001 book does not

recognize that legal and economic forms, norms, and fields are intricately intertwined in an endogenous system.

10. Interestingly, post-Coasean law and economics scholarship implicitly incorporates elements of the constitutive environment without appreciating its full implications. For example, law and economics scholars note that law may affect the relative appeal of "constituting" market contracts as opposed to hierarchical organization through its impact on bargaining costs or "transaction costs" (Williamson 1975, 1981, 1985, 1991; Posner 1972; Masten 1990). Likewise, law in many ways constitutes the market and the economy by establishing property rights and other rules that affect the power balance among economic actors (Campbell and Lindberg 1990). Yet law and economics scholars do not recognize the *social construction* of economic rationality and of economic efficiency. The social construction of efficiency is a clear implication of our explicit development of the ideas of the constitutive legal environment and the mutual endogeneity of law and the economy.

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