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# **BEYOND EMBEDDEDNESS: RESHAPING AN ECONOMIC SOCIOLOGY OF LAW**

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*The errors, as always, are mine.*

## Abstract

Economic Sociology of Law (ESL) is a scholarly response to econo-centric approaches that have dominated debates and policy-making at the intersection of law and economy (the 'econolegal') for many decades. ESL challenges the dominance of economics and reintegrates the econolegal into wider multi- and interdisciplinary debates. But ESL is limited by its ongoing commitment to the concept of the "embeddedness" of the economy (and the law) in society. Used with precision, embeddedness can be a valuable relational descriptor of legal, economic and social phenomena. But its explicit and implicit ubiquity means that embeddedness now acts as an unthought rationality, shaping the language we use to speak about the econolegal, and the mental models we use to imagine it. It separates out the economic, legal and social, working against the reintegrative aspirations of ESL and constructivist understandings of social interaction. The result is a constraint on our ability to respond to, and rethink, the current way we do, think and talk about the econolegal.

The implications of ESL's conceptual commitment to embeddedness result in internal inconsistency ("*what are we talking about?*") and external incompatibility ("*are we entrenching disciplinary or aspiring to interdisciplinarity?*"). These two limitations are explored through three mini case studies: a proposed *academic* data collection project in Sri Lanka, the World Bank's Investment Climate *policy* campaign, and an analysis of econolegal literature directed to a *lay* audience. Having exposed the inability of embeddedness to fully respond to the real (academic, policy or lay) world, the thesis demonstrates how two conceptual shifts can help ESL to move *beyond* embeddedness: a shift from actors to interactions, and from embeddedness to feedback loops. These shifts offer a dynamic, flexible framework for talking about econolegal regimes and rationalities; one that is consistent with the sociological orientation, constructivist assumptions and reintegrative goals of ESL.

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## Frequently used terms<sup>1</sup>

Terms I use:	What I mean by them:
<b>The 'econolegal'</b> <sup>2</sup>	The interaction of, and relationship between, economic and legal phenomena, understood sociologically as constructed and performed through and within social interactions
<b>Regimes</b>	<i>What we do</i> , in the sense of collections of similar behaviours that can be gathered together and recognized as a social institution/a way of <i>doing</i> (operates at the macro level of social interaction) <sup>3</sup>
<b>Rationalities</b>	<i>How we think</i> about what we do, in the sense that we can collect together similar ways of thinking about <i>doing</i> throughout society, as these are perceived, conceived, received and re-enacted through interactions. In other words, a way of <i>thinking</i> (operational at the meta level of social interaction)
<b>Empirical</b> <sup>4</sup>	The <i>how (and sometimes what)</i> of the research: the facts and methods used. The real-world application.

<sup>1</sup> I have tried to avoid “jabberwocky”, and have used the minimum number of helpful neologisms. Gunther Teubner, ‘How the Law Thinks: Towards a Constructivist Epistemology of Law’ (1989) 23 *Law and Society Review* 727. Paul Hirsch, Stuart Michaels and Ray Friedman, ‘Clean Models vs. Dirty Hands: Why Economics Is Different from Sociology’, *Structures of Capital: The social organization of the economy* (Sharon Zukin and Paul DiMaggio, eds) (Cambridge University Press 1990); Amanda J Perry-Kessaris, ‘Meeting Experimental Attitude in Legal Development Work with Experimental Attitude in Sociolegal Research’, *Transnational law and development, in Oxford Handbook of Transnational Law, P Zumbansen (ed)* (Oxford University Press 2019).

<sup>2</sup> This term, along with econosociolegal (both with and without hyphens), is attributed to Amanda Perry-Kessaris, who has acknowledged the discomfort of the term and the difficulties expressing a constructivist understanding of the legal and economic linguistically in a way that does not re-entrench the disciplinarity that has come to define academic approaches. See Amanda J Perry-Kessaris, ‘Approaching the Econo-Socio-Legal’ [2015] *Annual Review of Law and Social Science*.

<sup>3</sup> The terms micro, meso, macro and meta are discussed more fully below, along with the ways in which regimes and rationalities are sited and interact at these levels.

<sup>4</sup> The empirical, analytical and normative aspects of re-socializing the econolegal are borrowed from the work of Amanda Perry-Kessaris and Sabine Frerichs. While the term analytical was initially used to refer to concepts and relationships, it is generally seen as more accessible to talk about the conceptual aspects. See Amanda J Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’, *Socio-Legal Approaches to International Economic Law: Text, Context, Subtext* (Routledge 2012)

<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2085007](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2085007)> accessed 13 March 2017; Perry-Kessaris, ‘Approaching the Econo-Socio-Legal’ (n 2); Sabine Frerichs, ‘Studying Law, Economy, and Society: A Short History of Socio-Legal Thinking’ [2012] SSRN eLibrary <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2022891](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2022891)> accessed 27 July 2012; Sabine

<b>Conceptual (analytical)</b>	The <i>how</i> of the research: the concepts and relationships that structure and ground the empirical.
<b>Normative</b>	The <i>why</i> of the research: the underlying biases, voices, interest and values that inform both the empirical and the analytical.
<b>Substantive</b>	The <i>what</i> of the research: encompassing the empirical, analytical and normative.
<b>ESL</b>	Economic Sociology of Law, understood as taking heritage from both sociolegal traditions and economic sociology scholarship.
<b>“unthought known”<sup>5</sup></b>	A term borrowed from legal geography scholarship that sums up things we know about society, interactions and how to get along in the world, but which does not require explanation. In other words, common social knowledge.
<b>Unthought rationality</b>	Combination of terms that describe the implications of the conceptual commitment to embeddedness, both within ESL and more broadly, in particular when the term is implied but continues to shape our way of thinking.

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Frerichs, ‘The Legal Constitution of Market Society: Probing the Economic Sociology of Law’ (2009) 10 Economic Sociology, The European Electronic Newsletter.

<sup>5</sup> Rebecca Bernstein and others, ‘There Is No Local Here, Love’, *After Urban Regeneration: Communities, Policy and Place* (Policy Press at the University of Bristol 2015) 4.

## **PART I – THE CONTEXT**

### **1. Introduction**

This project grew out of an interest in the role of law in development. Specifically, it set out to understand what we know about legal regulations and their impact on levels of inward investment, what was common practice in this area, and what was still unknown. As the research progressed and with reference to the World Bank’s investment climate campaign, it became clear that there are limitations with the way we currently talk about, think about, and do law and economic development.<sup>6</sup>

The mainstream approaches rely on macroeconomic theories, grammar and vocabulary that have three main limitations, set out in the first part of the thesis.

In the process of considering how we might challenge these limitations, I became familiar with an economic sociology of law (ESL). Set at the interface of economic sociology and sociolegal scholarship, this innovative approach challenges the limitations identified in the mainstream. It also sets out an alternative vocabulary and grammar for approaching law and economics in the context of development. As the first main contribution, the thesis sets out an ESL as the ideal alternative lens for understanding the interface between law and economics.

But as the research developed, it became clear that there is a significant limitation with the core concept of ESL; namely, embeddedness. Ironically, while seeming to be both helpful and ubiquitous, ESL’s commitment to the concept of embeddedness both reinforces the current status quo and forecloses innovative, sociological approaches. Therefore, as the second main contribution, the thesis proposes an alternative ESL lens that moves us beyond embeddedness, banishing the concept altogether. This is achieved through two shifts in focus from the actor to the

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<sup>6</sup> The “investment climate” campaign is a “portmanteau phrase” that aggregates separate concepts to the point of obfuscation. See Amanda J Perry-Kessaris, ‘Recycle, Reduce and Reflect: Information Overload and Knowledge Deficit in the Field of Foreign Investment and the Law’ (2008) 35 *Journal of Law and Society* 65.

interaction, and from embeddedness to the feedback loops within each social interaction.

The third main contribution, and original approach taken here, is the use of three vignettes that are developed into mini case studies to both empirically illustrate and question the arguments. These are set in academic, policy and lay contexts, and explore in turn the limitations of the mainstream, the advantages of ESL, the problems with embeddedness, and then the possibilities presented by an ESL-inspired lens. In this sense, the thesis departs from an orthodox sociolegal or empirical case study approach, although it answers Cotterrell's call for law to be understood empirically.<sup>7</sup> It addresses three areas of real world application directly to explore both the implications of the arguments advanced, and the questions and consequences arising from these.

This project is important for scholarship, practice, and wider society both in the approaches it proposes and the questions it raises. For scholarship, the thesis challenges current ways of doing and talking about research at the interface of the legal and economic, and proposes a new lens that is compatible with sociological approaches. For policy and practice, the research asks what we could achieve by altering the vocabulary and grammar of law and economics. The suggestion is that a deeper and more accurate understanding of real world interactions could close the gap between "development policy in theory" and "development policy in practice", both increasing efficacy and reducing inadvertent side effects. For wider society, the research raises broad questions about how we talk about, think about and do law and economics. Significantly, it asks how this shapes our actions and interactions, and whether the language of neoclassical economics subtly moulds our thoughts

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<sup>7</sup> Cotterrell argues that law should be understood empirically "through detailed examination of variation and continuity in actual historical patterns of social co-existence, rather than in relation to idealized or abstractly imagined social conditions". Roger Cotterrell, 'Why Must Legal Ideas Be Interpreted Sociologically?' (1998) 25 *Journal of Law and Society* 171, 183. This contrasts with the Nuffield Inquiry which refers to empirical research as study through direct methods such as interviews, participant observation, ethnography, and so on. See Hazel Genn, Martin Partington and Sally Wheeler, 'Law in the Real World: Improving Our Understanding of How Law Works' (2006) <<https://www.nuffieldfoundation.org/sites/default/files/Law%20in%20the%20Real%20World%20ful%20report.pdf>> accessed 13 July 2019.

and actions to those of *homo economicus* - even without our knowledge. The suggestion is, then, whether a shift in the way that we talk about law and economics can (re-)shape our behaviour, and society in the process. In the light of ongoing responses to the 2008 financial crisis, this has profound implications for those who research, for those who shape policy, and for all of us who must live with the consequences.

### **1.1 The setting: Imagine...**

Imagine you are an academic researcher. You want to understand more about the relationship between the law and the economy, and the dynamic and unpredictable way in which these interact in a social context. Your current research investigates the role of the legal system in promoting economic growth, with particular reference to levels of inward investment into a country. To explore this further, you have a trip planned to Sri Lanka in a few months' time to interview local business people and investors in the south of the island about the developments taking place in that country. You have read online about the upheavals local populations have faced as a result of large-scale Chinese investment and infrastructure building, but you want to know about the challenges and issues facing the business community and the role of Sri Lanka's legal reforms in this wave of foreign investment. But how can you frame the questions, and understand the answers? How should this research be approached to avoid an overly narrow, or overly broad understanding of the complex interactions at play here?

Now imagine you are employed at a multilateral development agency or finance institution like the World Bank.<sup>8</sup> You deliver knowledge and research that informs

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<sup>8</sup> The International Bank for Reconstruction and Development (IBRD), hereafter referred to as the World Bank. See inter alia World Bank, 'World Development Report 2005; A Better Investment Climate for Everyone' (World Bank (Oxford University Press) 2004) <[http://siteresources.worldbank.org/INTWDR2005/Resources/complete\\_report.pdf](http://siteresources.worldbank.org/INTWDR2005/Resources/complete_report.pdf)> accessed 6 November 2012; Gordon Barron, 'The World Bank and Rule of Law Reforms' [2005] LSE Working Paper No.05-70.

and shapes policy, and like most of your colleagues, you have a background in mainstream economics, even though you have studied law, international relations, and other disciplines. Nevertheless, your goal is to improve the lives of millions around the world through development, and to this end, your research and recommendations draw on doctrinal, orthodox papers within high level economics journals and mainstream publications.<sup>9</sup> However, you are aware that there have been several crises in confidence about the efficacy of development policy and practice over the past few decades. Despite all the research, all the interventions, and a good deal of progress, there remain areas where theory and practice stubbornly refuse to join up. You suspect that some of the models and assumptions at the heart of the research are not offering a full understanding of the complex realities that the development industry engages with on a daily basis. But how could the legal and economic aspects of development be better understood and contextualized in a way that translates into a more detailed understanding of what people do in the real world? And could this make policy more effective?

Finally, imagine (although less imagination might be needed here) that you are a lay observer and concerned bystander reviewing the ten-year anniversary of the financial crisis. You had hoped for greater change but are dismayed that despite the tightening of some regulations, the way society thinks about and performs economics and law remains virtually unchanged.<sup>10</sup> Having read widely about the financial crisis, you have noticed something strange about the way most authors

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<sup>9</sup> The term “development” is open to interpretation and has been recognised as problematic. See Donatella Alessandrini, *Value Making in International Economic Law and Regulation: Alternative Possibilities* (Kindle, 1st edition, Routledge 2016) 119. I acknowledge the difficulties here and use the term as sparingly as possible.

<sup>10</sup> Regulatory reforms have sought to enhance supervision and resilience and reduce risk, see *inter alia* Claudia Buch and B Gerard Dages, ‘Structural Changes in Banking after the Crisis’ (Committee on the Global Financial System, Bank for International Settlements 2018) 60 <<https://www.bis.org/publ/cgfs60.pdf>> accessed 11 July 2019. Others note that the reforms are unambitious. See *inter alia* John Lanchester, ‘After the Fall: John Lanchester on the Decade of Doom That Followed the 2008 Financial Crash’ *The Sunday Times* (9 September 2018) <<https://www.thetimes.co.uk/article/after-the-fall-john-lanchester-on-the-decade-of-doom-that-followed-the-2008-financial-crash-cxscrmj9>> accessed 13 July 2019; Noah Smith, ‘What Economists Still Don’t Get about the 2008 Financial Crisis’ *Bloomberg Opinion* (30 July 2018) <<https://www.bloomberg.com/opinion/articles/2018-07-29/what-economists-still-don-t-get-about-2008-crisis>> accessed 11 July 2019.

refer to the economy; that it either *is*, or *ought to be*, (re-)embedded in society. You notice that, given that law and economy are both social phenomena, this seems an odd way of talking about these. It also prevents us from thinking about both phenomena *as aspects* of social life. You begin to realise that this is a symptom of a wider issue; namely, the untouchable nature of orthodox, neoclassical economics within society, and the laws that regulate and de-regulate this. You worry that if we are prevented from rethinking economics and law as the social phenomena they are, we might simply be heading for further challenges.

While appearing different in context and focus, these three settings share common themes that are explored throughout the thesis. They also offer a recurring empirical link with reality that both illustrates the arguments set out in this thesis, as well as suggesting further questions and possible solutions. The remainder of this section explores the shortcomings of current approaches, the potential alternatives, in particular with regard to an economic sociology of law (ESL), as well as the challenges that ESL currently faces.

## **1.2 Three limitations of mainstream approaches**

The three vignettes set out above offer academic, policy, and lay settings for exploring the challenges and proposed solutions set out in the following chapters. As noted, the mainstream approach that tends to dominate research, policy, and lay discussion draws on neoclassical economics and purposive notions of the law.<sup>11</sup>

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<sup>11</sup> See *inter alia* World Bank, 'Economic Development and the Quality of Legal Institutions' (*The World Bank*) <<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LegalInstitutionsTopicBrief.pdf>> accessed 15 November 2016; World Bank, 'Law and Development Movement' (*The World Bank*) <<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LawandDevelopmentMovement.pdf>> accessed 15 November 2016; Richard Posner, 'Creating a Legal Framework for Economic Development' (1998) 13 *The World Bank Research Observer* 1; Amanda J Perry-Kessaris, *Global Business, Local Law: The Indian Legal System as a Communal Resource in Foreign Investment Relations* (Ashgate 2008) <<http://eprints.soas.ac.uk/10473/>> accessed 24 October 2010; Perry-Kessaris, 'Recycle, Reduce and Reflect' (n 6); Jonathan Kirchner, 'Whistling Past the Graveyard' *Boston Review* (9 April 2019) <<https://bostonreview.net/class-inequality/jonathan-kirchner-whistling-past-graveyard>> accessed 18 April 2019; Steven Levitt and Stephen J Dubner,

Economic interactions are assumed to conform to narrow, fixed assumptions presented as a science, while the law and its reform is expected to bring about the desired results.

There are three main limitations with the mainstream approach. Firstly, neoclassical economics in the context of development relies on correlation between indicators, overlooking any deeply understood, empirically-grounded causation.<sup>12</sup> Secondly, it privileges the voices that fit easily into its pre-existing categories, and these tend to be those of the archetypal *homo economicus* who rationally maximises his utility in possession of perfect information. And thirdly, by claiming scientific impartiality, it places beyond challenge the values and interests that underpin and inform the models and frames it uses as well as the biases and norms that are inherent in any social science. By returning to the vignettes, we can explore what this means in practice.

To understand the interactions between law and inward investment flows in Sri Lanka, our academic researcher had planned interviews with foreign investors about their experiences with the Sri Lankan legal system. If she relies on mainstream approaches, she would draw on the literature that identifies the legal system as a determinant of external finance and which shaped the World Bank's ideal investment climate campaign. This includes the archetypal studies carried out in the 1990s by Lopez, La Porta, Schleifer, and Vishny (LLSV), as well as studies carried out by Djankov, Acemoglu and Pistor.<sup>13</sup> This wave of literature built on the

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*Freakonomics: A Rogue Economist Explores the Hidden Side of Everything* (William Morrow and Company 2005).

<sup>12</sup> Questions of identification, or the differentiation of correlation and causation have become more central within mainstream economics in the past decade, although the World Bank's investment climate campaign still lags in this area, see Henrik Jacobsen Kleven, 'Language Trends in Public Economics' (Princeton University, July 2018) <[https://www.henrikkleven.com/uploads/3/7/3/1/37310663/languagetrends\\_slides\\_kleven.pdf](https://www.henrikkleven.com/uploads/3/7/3/1/37310663/languagetrends_slides_kleven.pdf)> accessed 11 July 2019; Noah Smith, 'How Econ Went from Philosophy to Science' *Bloomberg Opinion* (2 August 2018) <<https://www.bloomberg.com/opinion/articles/2018-08-02/how-economics-went-from-philosophy-to-science>> accessed 11 July 2019. But cf. World Bank, 'World Development Report 2017: Governance and The Law' (World Bank 2017) <<http://www.worldbank.org/en/publication/wdr2017>> accessed 21 May 2017.

<sup>13</sup> See *inter alia* Rafael La Porta and others, 'Legal Determinants of External Finance' (1997) 52 *Journal of Finance* 1131; Rafael La Porta and others, 'The Quality of Government' (1999) 15 *Journal*

Law and Development movement to justify the expansion of intervention into the regulatory systems of developing countries, mainly based on the purposive nature of law to create the ideal economic environment.<sup>14</sup> The belief that regulatory systems could catalyze inward investment and economic growth was based on the observation that “western” legal systems typically see higher rates of inward investment.<sup>15</sup> The ideal investment climate put forward in World Bank policy, and informing our researcher’s primary assumptions and initial starting point for research, is based on correlation between (sometimes proxy) indicators and investment flows.<sup>16</sup> Moreover, her identification of relevant actors might be

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of Law, Economics and Organization 222; Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, ‘The Economic Consequences of Legal Origins’ (2008) 46 *Journal of Economic Literature* 285; Rafael La Porta and others, ‘Legal Determinants of External Finance’ (National Bureau of Economic Research, Inc 1997) <<http://ideas.repec.org/p/nbr/nberwo/5879.html>> accessed 5 November 2010; Rafael La Porta and others, ‘Law and Finance’ (1998) 106 *Journal of Political Economy* 1113; Rafael La porta and others, ‘Investor Protection and Corporate Valuation’ (2002) 57 *Journal of Finance* 1147; Simeon Djankov and others, ‘The Regulation of Entry’ (2002) 117 *The Quarterly Journal of Economics* 1; Simeon Djankov and others, ‘The Regulation of Labor’ (2003) No. 9756 National Bureau of Economic Research Working Paper Series <<http://www.nber.org/papers/w9756>> accessed 4 November 2010; Edward L Glaeser and others, ‘Do Institutions Cause Growth?’ (2004) No. 10568 National Bureau of Economic Research Working Paper Series <<http://www.nber.org/papers/w10568>> accessed 4 November 2010; Open Letter to the World Bank from Daron Acemoglu and others, ‘A Review of Doing Business’ (May 2013) <<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Methodology/Open-Letter-Review-of-the-Arguments-on-DB.pdf?la=en>>; Daron Acemoglu, Simon Johnson and James Robinson, ‘Institutions as the Fundamental Cause of Long-Run Growth’ (2004) No. 10481 National Bureau of Economic Research Working Paper Series <<http://www.nber.org/papers/w10481>> accessed 4 November 2010; Daron Acemoglu, James Robinson and Simon Johnson, ‘The Colonial Origins of Comparative Development: An Empirical Investigation’ (2001) 91 *American Economic Review* 1369.

<sup>14</sup> See *inter alia* David M Trubek and Marc Galanter, ‘Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States’ (1974) 1974 *Wisconsin Law Review* 1062; MJ Trebilcock, ‘What Makes Poor Countries Poor? The Role of Institutional Capital in Economic Development’, *The Law and Economics of Development (E Buscaglia, W Ratliff, R Cooter, eds.)* (Conneticut: JAI Press 1997); Katerina Pistor, ‘The Standardization of Law and Its Effect on Developing Economies’ (2002) 50 *American Journal of Comparative Law* 97; Katerina Pistor, ‘Rethinking the “Law and Finance” Paradigm’ (2009) 1647 *Brigham Young University Law Review*; Katerina Pistor and Philip Wellons, *The Role of Law and Legal Institutions in Asian Economic Development 1960-1995* (New York, Oxford University Press 1998); SF (Simon F) Deakin and Katharina Pistor, *Legal Origin Theory* (Edward Elgar Pub 2012); Daniel Berkowitz, Katharina Pistor and Jean-Francois Richard, ‘Economic Development, Legality, and the Transplant Effect’ (2003) 47 *European Economic Review* 165; Katharina Pistor, ‘The Standardization of Law and Its Effect on Developing Economies’ (2002) 50 *American Journal of Comparative Law* 97.

<sup>15</sup> See *inter alia* World Bank (n 8).

<sup>16</sup> Perhaps the most egregious example is Acemoglu, Robinson and Johnson (n 13) 3. The authors state “Our most parsimonious specification is to regress current performance on current institutions, and instrument the latter by settler mortality rates”.

correspondingly narrow, given that mainstream approaches take a narrow view of the economic and affected actors. Such an approach also struggles to capture voices and interests that do not conform to the narrowly economic definitions available.<sup>17</sup> She will therefore interview foreign investors, but is unlikely to look further than the gates of the investment zones to investigate the econolegal interface. This is an important oversight, given the recent riots in surrounding villages in southern Sri Lanka following waves of foreign investment and the social upheaval that has rippled through surrounding society as a result.<sup>18</sup> Furthermore, a narrow focus solely on foreign investors, their experiences with the legal system in Sri Lanka and why they chose to invest in that country raises issues of self-selection bias, as well as testing the memories of investors. Finally, the values integral to neoclassical economics are tacit, and remain hidden behind the veneer of scientific impartiality. It is unlikely, then, that she will be able to challenge the norms, biases and assumptions that shaped the investment climate models that are exemplified in the LLSV literature.

Returning to the second vignette, our policy researcher working at the World Bank will also experience the limitations of mainstream approaches to economics and law. Despite recent inclusions of behavioural economics and experimentalism in some World Bank methodologies, the Bank still cites the LLSV literature and the wave of research it prompted in its flagship development reports.<sup>19</sup> Thus,

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<sup>17</sup> This is despite the inclusion of behavioural economics and experimentalism in World Bank policy formulation more recently.

<sup>18</sup> Michael Safi and Amantha Perera, “‘The Biggest Game Changer in 100 Years’: Chinese Money Gushes into Sri Lanka” *The Guardian* (26 March 2018) <<https://www.theguardian.com/world/2018/mar/26/the-biggest-game-changer-in-100-years-chinese-money-gushes-into-sri-lanka>> accessed 13 June 2018; Amantha Perera, ‘Sri Lankan Rice Farmers Vow to Fight Chinese Investors’ *Reuters* (9 February 2017) <<https://www.reuters.com/article/sri-lanka-landrights-investment/sri-lankan-rice-farmers-vow-to-fight-chinese-investors-idUSL5N1FF6FG>> accessed 13 July 2019; Amantha Perera, ‘China’s Billion-Dollar Re-Entry in Sri Lanka Met with Public Protests’ *Inter Press Service News Agency* (Beragama, 9 January 2017) <<http://www.ipsnews.net/2017/01/chinas-billion-dollar-re-entry-in-sri-lanka-met-with-public-protests/>> accessed 8 October 2018.

<sup>19</sup> See *inter alia* World Bank, ‘Doing Business: Reforming to Create Jobs - Comparing Business Regulation for Domestic Firms in 190 Economies’ (The World Bank 2018) <<http://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2018-Full-Report.pdf>> accessed 2 October 2018; World Bank (n 8); World Bank, ‘Doing Business, Why Aggregate, and How to Do It’ (World Bank Doing Business)

correlation of indicators still plays a significant role in policy formation, resulting in episodes where the theory and reality do not always match up. Issues like the Georgia problem appear, where countries have theoretically ideal legal systems on paper and top the league tables, but in reality, attract relatively little inward investment.<sup>20</sup> There also remains a relatively narrow range of voices prioritised in the research – those that fit conveniently into the neoclassical economic “cookie cutter” approach to development.<sup>21</sup> This highlights and prioritises the voices and interests of typically economic actors, such as foreign investors and business people. By failing to see economics and law as social phenomena contained in, and performed through social interactions, our researcher misses out on the other aspects and implications of legal reform and economic development that ripple throughout the community, both resulting from, and informing interventions. Similarly, our policy researcher is unable to challenge the norms and assumptions that guide and inform her recommendations, as these are tacit and usually hidden. Thus, the presentation of neoclassical economics as a quasi-natural science that is value-neutral masks the reality that economics and law are about people and how they act are both deeply imbued with values and norms. When these are hidden, they become unavailable to methodological examination or challenge.<sup>22</sup>

With regard to the third vignette and our lay observer of economic discourse in the wake of the financial crisis, the tacit values hidden in mainstream discourse becomes more of an issue. Norms and assumptions that are integral to neoclassical economics are not only hidden behind the scientific presentation of mainstream

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<<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Methodology/Other/why-aggregate-doing-business-2006.pdf>> accessed 17 November 2018.

<sup>20</sup> Georgia has soared up the Doing Business rankings, despite less obvious progress on the ground. See World Bank, ‘Georgia and the World Bank Group: 25 Years of Partnership. Promoting Prosperity for the People’ (World Bank 2017) 40–41

<<http://pubdocs.worldbank.org/en/393661505116118995/ECCSC-Georgia-for-web-0904.pdf>> accessed 11 July 2019.

<sup>21</sup> Pilar Domingo, ‘Rule of Law, Politics, and Development: The Politics of Rule of Law Reform’ (Overseas Development Institute 2016) 5 <<https://www.odi.org/sites/odi.org.uk/files/resource-documents/10420.pdf>> accessed 11 July 2019.

<sup>22</sup> Roger Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (2013) 40 *Journal of Law and Society* 49.

economics, but the grammar and vocabulary of this approach subconsciously yet actively shapes the public discourse about economics and law. This can be seen in the way that neoclassical economics provides the grammar and vocabulary that we have available to discuss events like the financial crisis. It functions like an operating system that both facilitates some understanding while precluding alternative concepts and responses.

Embodying Giddens' notion of the double hermeneutic – that social science ideas 'leak' into the real world and shape real interactions – neoclassical economics has had a marked effect on the way we do, talk about, and think about economic and legal aspects of interactions.<sup>23</sup> We talk of “the economy” as a self-referential system, and the “self-regulating market” as an inevitable phenomenon, to be studied apart from the society in which it operates. We assume that if the set of preferences and incentives are accurately predicted and implemented, people will change their behaviour accordingly.<sup>24</sup> In short, we are assumed to be *homo economicus*, and policy and research has adapted to embody and perform these assumptions. But more interestingly, there is some evidence that by absorbing and performing these assumptions, norms and values, society begins to embody them. Our behaviour changes to become more like that of the rational economic man when we use the language associated with neoclassical economics. The Eurobarometer research, discussed further in the third part of the thesis, suggests that the way we talk about, and think about, economics and law, has a tangible impact on the way that we act.<sup>25</sup> By talking like *homo economicus*, using the vocabulary of neoclassical economics, do we in fact become more like him, and less like his sociological cousin, *homo sociologicus*?<sup>26</sup> More importantly, what does this

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<sup>23</sup> Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (Polity 1984) xxxv, 284, 374.

<sup>24</sup> This description is a simplification, and one that mainstream economists would take issue with. Nevertheless, the main points are valid, even if care is taken not to make a straw man of economic theory.

<sup>25</sup> See John Law, 'Seeing Like a Survey' <version of 24th July 2008, available at <http://www.heterogeneities.net/publications/Law2008SeeingLikeASurvey.pdf>> accessed 3 July 2018. This is discussed further in chapters 7 and 8.

<sup>26</sup> Donald MacKenzie and Yuval Millo, 'Constructing a Market, Performing Theory: The Historical Sociology of a Financial Derivatives Exchange' (2003) 109 *American Journal of Sociology* 107, 145.

mean for society? And what does this mean for our ability to be able to respond to events like the 2008 financial crisis? If we are locked in to the grammar and vocabulary of neoclassical economics, are we able to conceive of an alternative way of doing, talking about, and thinking about economic and legal aspects of interactions? And what options might appear if we choose to take economics and law back into the social sciences, deny their scientific neutrality, and question their values, biases, and norms?

One way of addressing the three challenges with mainstream approaches identified here is to take a sociologically-informed approach such as an economic sociology of law (ESL). The following section introduces an ESL. It then returns to the three vignettes to explore what they might look like through an existing ESL lens. It then identifies the “core concept” and common denominator of ESL – embeddedness.<sup>27</sup> This establishes the starting point for the discussion in the following chapters which examine ESL’s ongoing conceptual commitment to the term as well as its limitations.

### **1.3 Imagine... but now through an ESL lens**

Returning to the first vignette, our academic researcher has chosen to use an economic sociology of law-based lens to guide her research. However, there are still myriad options, as an ESL is more a “frame of mind” rather than a fixed methodology.<sup>28</sup> She has decided upon a lens that draws on sociological and sociolegal frames, and which offers a sociological viewfinder on economic and legal phenomena. She finds that an ESL lens challenges the limitations of existing

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<sup>27</sup> Greta Krippner, ‘The Elusive Market: Embeddedness and the Paradigm of Economic Sociology’ (2001) 30 *Theory and Society* 775, 800.

<sup>28</sup> See generally Diamond Ashiagbor, Prabha Kotiswaran and Amanda Perry-Kessaris, ‘Introduction: Moving towards an Economic Sociology of Law’, *Journal of Law and Society*, vol 40 (2013); Diamond Ashiagbor, Prabha Kotiswaran and Amanda Perry-Kessaris, ‘Continuing towards an Economic Sociology of Law’ (2014) 65 *Northern Ireland Legal Quarterly* 259. “Frame of mind” from discussions with the authors.

approaches while simultaneously offering a structured and scientific approach.<sup>29</sup>

The lens prompts her to undertake a deep analysis of causation by careful empirical investigation into the actions, interactions, motivations and interests of a wider group of actors. She is also asked to look further than the narrowly economic by reference to the Weberian interaction ideal-types, which site economic and legal aspects of interactions in a social context. She is also reminded that she necessarily brings to her research her own personal views and interests, and should seek to uncover those of her interviewees. The lens rejects impartiality as a possibility, but instead encourages the identification of existing norms, rationalities and motivations.

In the second vignette, our policy maker working at the World Bank similarly sees the potential of readjusting her approach to understand the economic and the legal as social phenomena. She can see how the focus on careful empirical studies could help confirm the findings of the big data on which policy can be based, while challenging those areas in which theory and reality misalign. Such a lens can also include a wider range of voices which can help policy development by understanding the knock-on impact of legal reform mandates on the wider local population. Finally, she is hopeful that the requirement to recognize existing interests and norms could enable her to challenge the neutrality of mainstream approaches.

Finally, in the third vignette, our lay observer is particularly excited by a lens like ESL. She wonders what could be achieved by taking economics and law back into the social sciences and refocusing the debate on real human interactions, including their flaws, unpredictability and imperfections. She wonders what society could achieve by adjusting the vocabulary and grammar that is available to talk about economics and law, and the extent to which this can help challenge existing notions contained within mainstream views. In particular, could an alternative lens like ESL challenge the way that neoclassical economics has contributed to the shaping of

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<sup>29</sup> Ashiagbor, Kotiswaran and Perry-Kessarlis, 'Introduction: Moving towards an Economic Sociology of Law' (n 28).

society and the individual actor, and could reformulating the discourse enable new possibilities to emerge of what society could reasonably expect from the economy and its regulation?

## **1.4 Why ESL, and why embeddedness?**

As the three vignettes explored, an ESL lens is necessary for the sociological challenge it offers to the three limitations of mainstream orthodox, econo-centric approaches. These draw on neoclassical economics models that assume the individual actor (*homo economicus*) to be atomistic, with perfect information, and engaged in the sole maximization of his utility.<sup>30</sup> These assumptions are then fed into regressions and aggregations to analyse likely outcomes.<sup>31</sup> Thus, programmes like the World Bank's Investment Climate campaign are based on (usually) correlated regressions of occasionally proxy indicators, echoing much of the Law and Economics literature that informs it.<sup>32</sup> This does not appear to match the reality uncovered by detailed empirical studies that have undertaken qualitative research into investor requirements, and certainly spares little thought for the requirements of host state governments or surrounding civil society.<sup>33</sup>

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<sup>30</sup> Amanda J Perry, 'An Ideal Legal System for Attracting Foreign Direct Investment? Some Theory and Reality' (2000) 15 *American University International Law Review* 1627; Amanda J Perry, 'Finding and Facing Facts about Legal Systems and Foreign Direct Investment in South Asia' (2003) 23 *Legal Studies* 649; Perry-Kessaris, *Global Business, Local Law* (n 11).

<sup>31</sup> Examples of this include the "LLSV" set of literature which inspired the investment climate campaign, La Porta and others, 'Legal Determinants of External Finance' (n 13); La Porta and others, 'The Quality of Government' (n 13). See also *inter alia* Acemoglu, Robinson and Johnson (n 13); Daron Acemoglu and others, 'A Review of Doing Business' (2013) <<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Methodology/Open-Letter-Review-of-the-Arguments-on-DB.pdf?la=en>> accessed 13 July 2019; La Porta and others, 'Legal Determinants of External Finance' (n 13); La Porta and others, 'The Quality of Government' (n 13).

<sup>32</sup> See *inter alia* here Rafael La Porta and others, 'Legal Determinants of External Finance' (n 13); Djankov and others, 'The Regulation of Entry' (n 13); La Porta, Lopez-de-Silanes and Shleifer (n 13). Notable is Acemoglu, Robinson and Johnson (n 13).

<sup>33</sup> Amanda J Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (Kluwer Law International 2001) <<https://lrus.wolterskluwer.com/store/product/legal-systems-as-a-determinant-of-fdi-lessons-from-sri-lanka/>> accessed 24 October 2010; Perry-Kessaris, *Global Business, Local Law* (n 11).

The three limitations of approaches like the Investment Climate campaign, set out in Table 1 (below), are a reliance on correlated indicators (rather than causation), a partiality of voices (that privileges the economic), and a normative silence (that masks underlying biases and assumptions).<sup>34</sup>

*Table 1 - Limitations of mainstream approaches and ESL's response*

<b>Econo-centric problem</b>	<b>ESL Response</b>
Reliance on correlated proxy indicators and methods such as regression analyses, leaving the indicator to perform as a “technology of global governance”. <sup>35</sup>	ESL relies on both quantitative and qualitative data to produce empirically-grounded, theoretically informed research.
Indicators capture a narrow range of voices and interests that privilege economic values while silencing the non-economic.	By reconceptualising economic and legal aspects of interactions (the econolegal) sociologically as part of wider social life, ESL is able to capture a broader and more diverse range of voices and interests.
The indicators claim scientific neutrality, denying the political and normative preferences contained in their identification, collection and presentation. <sup>36</sup>	ESL accepts that the neutral, impartial scientific observer is a fiction; and requires reflexivity and openness as to conceptual frames and normative biases contained in, and shaping, the research, findings, and recommendations.

<sup>34</sup> There has been a shift towards awareness of identification and a focus on randomized controlled trials and observation, Smith, ‘How Econ Went from Philosophy to Science’ (n 12).

<sup>35</sup> Kevin E Davis, Benedict Kingsbury and Sally Engle Merry, ‘Indicators as a Technology of Global Governance’ <<https://ssrn.com/abstract=1583431> or <http://dx.doi.org/10.2139/ssrn.1583431>> accessed 7 May 2017.

<sup>36</sup> See *inter alia* Amanda J Perry-Kessaris, *Law in Pursuit of Development: Principles into Practice* (Routledge-Cavendish 2010); Amanda J Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (2011) 7 *International Journal of Law in Context*

An ESL responds to all of these by (re-)viewing economic and legal phenomena sociologically. It responds to “economics imperialism”,<sup>37</sup> “absolutization” in the social sciences,<sup>38</sup> and “physics envy” by returning the focus of enquiry to the social (the human).<sup>39</sup> In addition to capturing a wide range of interactions, values and interests, it also requires the acknowledgement of the normative and conceptual assumptions and biases that underpin the approach. Empirical research by Amanda Perry-Kessaris, Diamond Ashiagbor, Prabha Kotiswaran and others shows how this can provide a scientific framework for empirically-grounded, theoretically-informed research in the social sciences in a way that responds to the limitations of orthodox frames.<sup>40</sup>

By sociologically reconceptualizing the econolegal, an ESL offers a lens to capture diversity and complexity in a rigorous, scientific frame. Empirically, it mandates a forceful link with reality in the sense that statements made need to be grounded in careful empirical research that reflects reality.<sup>41</sup> And finally, reflectiveness requires

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401; Amanda Perry-Kessaris, ‘International Economic Organisations and The Modern Law and Development Movement’ (1999) <<http://eprints.soas.ac.uk/10488/>> accessed 24 October 2010; Perry, ‘An Ideal Legal System for Attracting Foreign Direct Investment?’ (n 30); Perry, ‘Finding and Facing Facts about Legal Systems and Foreign Direct Investment in South Asia’ (n 30).

<sup>37</sup> Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36); Ben Fine and Dimitris Milonakis, *From Economics Imperialism to Freakonomics* (Routledge Ltd) <<https://www.dawsonera.com/abstract/9780203880289>> accessed 16 August 2018. Chapters 2 and 4 set out ESL as a response to the imperialist tendencies of economics in its emulation of the natural sciences.

<sup>38</sup> Bernard Barber, ‘All Economies Are “Embedded”’: The Career of a Concept, and Beyond’ (1995) 62 *Social Research* 387.

<sup>39</sup> Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* (ebook (Kindle), Random House Business 2018).

<sup>40</sup> Ashiagbor, Kotiswaran and Perry-Kessaris, ‘Introduction: Moving towards an Economic Sociology of Law’ (n 28); Ashiagbor, Kotiswaran and Perry-Kessaris, ‘Continuing towards an Economic Sociology of Law’ (n 28); Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4); Amanda J Perry-Kessaris, ‘Reading the Story of Law and Embeddedness Through a Community Lens: A Polanyi-Meets-Cotterrell Economic Sociology of Law?’ (2011) 62 *Northern Ireland Legal Quarterly* (Special Issue on Socialising Economic Relationships) 401; Diamond Ashiagbor, ‘Embedding Trade Liberalisation in Social Policy: A Research Agenda on Social Regionalism and the Global South’ (2014) 65 *Northern Ireland Legal Quarterly* 265; Prabha Kotiswaran, ‘Born Unto Brothels: Toward A Legal Ethnography of Sex Work in an Indian Red-Light Area’ (2008) 33 *Law and Social Inquiry* 579.

<sup>41</sup> Cotterrell, ‘Why Must Legal Ideas Be Interpreted Sociologically?’ (n 7); Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (n 22); Ashiagbor, Kotiswaran and Perry-Kessaris,

awareness of the researcher about her field, her identity and relationship to the research, and about existing mental models and social assumptions and norms of the society in which she is researching.<sup>42</sup> This challenges the assertion that research in the social sciences can ever be neutral or apolitical.

Being more a frame of mind, there are various ESL lenses available to the researcher, including communal networks,<sup>43</sup> ANT,<sup>44</sup> relational work,<sup>45</sup> and the more expansive so-called third generation sociological theories.<sup>46</sup> Chapters 2, 3 and 4 explore other possible approaches, and find a commonality in the way that most look back to the works of Max Weber and Karl Polanyi.<sup>47</sup> There is also an acknowledgement of the importance of the intervening Economic Sociology literature of Mark Granovetter amongst others.<sup>48</sup> This sought to respond sociologically to the wave of economics imperialism in the latter half of the 20<sup>th</sup> century.<sup>49</sup> It is therefore not surprising that embeddedness is a central concept to ESL; either in the Polanyian (macro-sociological) sense of describing the relationship between society and the economy, or in the Granovetterian (micro-sociological)

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'Introduction: Moving towards an Economic Sociology of Law' (n 28); Ashiagbor, Kotiswaran and Perry-Kessaris, 'Continuing towards an Economic Sociology of Law' (n 28).

<sup>42</sup> This is explored further in chapter 3.

<sup>43</sup> Roger Cotterrell, 'A Legal Concept of Community' (1997) 12 *Canadian Journal of Law and Society* 75; Perry-Kessaris, 'What Does It Mean to Take a Socio-Legal Approach to International Economic Law?' (n 4); Amanda J Perry-Kessaris, 'Anemos-Ity, Apatheia, Enthousiasmos: An Economic Sociology of Law and Wind Farm Development in Cyprus' (2013) 40 *Journal of Law and Society* 68.

<sup>44</sup> Emilie Cloatre, 'TRIPS and Pharmaceutical Patents in Djibouti: An ANT Analysis of Socio-Legal Objects' (2008) 17 *Social and Legal Studies* 263.

<sup>45</sup> Viviana Zelizer, *Economic Lives: How Culture Shapes the Economy* (Princeton University Press 2010); Viviana Zelizer, *The Social Meaning of Money* (Princeton University Press 1997); Greta Krippner and others, 'Polanyi Symposium: A Conversation on Embeddedness' (2004) 2 *Socio-Economic Review* 109.

<sup>46</sup> See the general theories of society and social interaction of *inter alia* Foucault, Bourdieu, Giddens, Habermas, Luhmann, although these are dismissed by Hirsch et al, who concludes his chapter with reference to the "'grand theorists', as they are derisively known to most of the rest of the discipline" and who are "in practice ignored by most sociologists". Hirsch, Michaels and Friedman (n 1) 53.

<sup>47</sup> Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press 1978); Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (Routledge 1992); Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (2nd edition, Beacon Press 1944).

<sup>48</sup> Mark Granovetter, 'Economic Action and Social Structure: The Problem of Embeddedness' (1985) 91 *American Journal of Sociology* 481.

<sup>49</sup> These are discussed further in Chapter 4 below, but see in particular, Weber, *Economy and Society* (n 47); Polanyi (n 47); Granovetter (n 48).

sense of describing actors as embedded in networks.<sup>50</sup> Occasionally, readings of embeddedness are proposed that seek to marry these interpretations, and this thesis draws on one of these, by Sabine Frerichs, in later chapters.<sup>51</sup>

This cannot be the end of the story though. As the “core concept” and “common denominator” of ESL, “embeddedness” has both explicitly and implicitly shaped the way we talk about, think about and do economic and legal aspects of interactions.<sup>52</sup> The concept is so central to the lens, that it has remained despite a great deal of discussion and soul searching.

The concept is useful in giving us the vocabulary to identify existing problems with the relationship between economy and society (“the economy has become *disembedded* from society”). It also offers us tools to suggest a remedy (“we need to *re-embed* the economy in society”). However, the concept is disjointed and lacks any consistent meaning in the academic, policy or lay literature. More strikingly though, it re-entrenches the separation between the disciplines referenced, preventing any sociological reconceptualisation of either law or economics. These two limitations currently constrain the potential of an ESL to fully mount a sociological challenge to current mainstream approaches.

ESL’s conceptual commitment to embeddedness raises problems which relate to the term’s ubiquity and accessibility. As an everyday term, most people understand embeddedness as a visual metaphor that describes the relationship between two phenomena. We say that “X is embedded in Y”, and understand that X and Y are conceptually distinct but have a close or proximal relationship, potentially sharing the same space and time, as might be visualized in Figure 1, below.

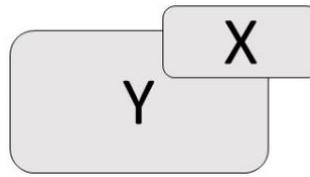
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<sup>50</sup> Polanyi (n 47); Granovetter (n 48); Krippner and others (n 45).

<sup>51</sup> Sabine Frerichs, ‘Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law’, *Karl Polanyi, globalisation, and the potential of law in transnational markets*, Joerges and Falke (eds) (Hart Publishing 2011) <<https://helda.helsinki.fi/handle/10138/209595>> accessed 6 August 2018.

<sup>52</sup> Krippner and others (n 45).

Figure 1 - "X is embedded in Y"



Indeed, in describing the relationship between the economy and society, the term was initially borrowed by Polanyi from the descriptions of coal “embedded” in the walls of a coal mine.<sup>53</sup> It provided an easy reference point to describe the relationship between two conceptually distinct phenomena that coexist to a variable degree in space and time. However, in the intervening years, several changes have occurred. The disciplinarity of the social sciences has become entrenched. Continental drift within the academe has seen the disciplines become silos of endeavour that compete with, and talk at, each other. While the social sciences previously enjoyed greater integration across the disciplines, the departmentalisation, differentiation and separation that has taken place, along with the emergence of the “science” of economics emulated by other fields within the social sciences, means that it is more difficult to talk about the “embeddedness” of one discipline within another.<sup>54</sup> While the original use of the term ‘embeddedness’ was a visual descriptor of a flexible relationship between integrated social phenomena, the development of the social sciences has meant that we are now describing the relationship between conceptually, methodologically, and empirically separate fields. Thus, to maintain embeddedness as a relational descriptor against a backdrop of a movement towards constructivism and reintegration of social science approaches is problematic. The concept serves to entrench the difference between them, perpetuating the differentiation between disciplines that any truly sociological lens must seek to overcome.

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<sup>53</sup> Fred Block, ‘Introduction’, *The Great Transformation, Karl Polanyi* (Beacon Press, Boston 2001).

<sup>54</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 10.

At the same time, the concept of embeddedness has lost the dynamism and flexibility it might once have enjoyed, and has become ubiquitous in the way we talk about the econosociolegal relationship – both explicitly and implicitly.<sup>55</sup> While ESL’s conceptual commitment to embeddedness is acknowledged and offers a useful exploration of the implications, its ubiquity more broadly has gone largely unchallenged.<sup>56</sup> Where it might have implied a changing relationship, it now represents a static descriptor of metaphor, concretised into the discourse. We can talk about “the law” and “the economy”, as if both of these were tangible objects, rather than metaphors signalling collections of social behaviours.<sup>57</sup>

Finally, stating that the economy is (or should be) embedded in society no longer implies a dynamic nexus of interactions, but often refers to little more than the scaling back of mathematics and the introduction of other factors that struggle to find space in neoclassical economic models, such as environmental protection, happiness, social cohesion, equality and so on. Figure 2, below, visualises the relations, interests, voices and depth of interactions that different approaches are able to capture. Taking econo-centric frames as the narrowest lens on social interactions, an ESL based on the concept of embeddedness offers a broader frame. However, as proposed in the third part of the thesis, an ESL lens that moves beyond embeddedness, and that sociologically reconceptualizes the econolegal *as aspects* of the social, is able to capture the broadest range and depth of interactions.

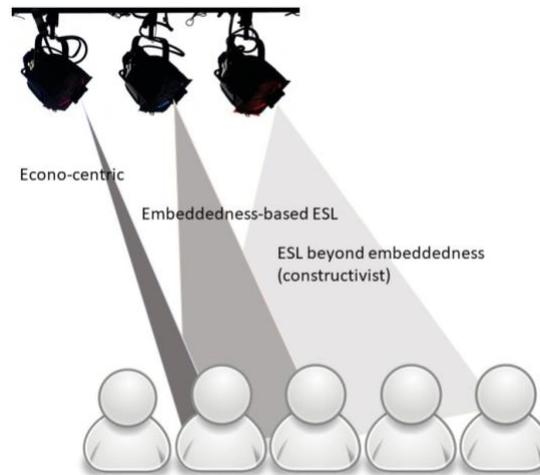
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<sup>55</sup> “Econosociolegal” is a portmanteau phrase attributed to Amanda Perry-Kessaris, who has acknowledged the linguistic, musical, and constructivist problems with this (discussions with the author). The term conveys a focus on the combined interface between all three disciplines while emphasising the importance of a sociological approach to the interactions between the economic and the legal (the econolegal). The inherent black box problem with the terminology is returned to in chapters 3 and 9.

<sup>56</sup> There has been a great deal of head scratching and soul searching over embeddedness within scholarship, see *inter alia* Krippner and others (n 45); Krippner (n 27); Granovetter (n 48); Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (n 22).

<sup>57</sup> George Lakoff and Mark Johnson, *Metaphors We Live By* (University of Chicago Press 1980).

Figure 2 - The concept of embeddedness is like a torch, visualising the range of interactions, relations, voices and interests that alternative approaches are able to capture



Used without precision, the term “embeddedness” can obscure as much as it highlights, in the same way as a torch illuminating a topographical landscape. When any use of a term becomes systemic, it takes on the form of a mental model or *rationality* – a way of apprehending and thinking about the world – which can both conceal and reveal.<sup>58</sup> The imprecise use of embeddedness is the same, with the result that the imprecision also becomes cemented into mental models, creating a *rationality* that has no clear or consistent common understanding.

While this has been accompanied within ESL by a great deal of head scratching and soul searching, the ubiquity of the conceptual commitment to embeddedness has occurred unbidden.<sup>59</sup> As a *rationality*, embeddedness shapes the way that an ESL is

<sup>58</sup> The phrase “mental model” also echoes the introduction of behavioural economics in the World Bank’s World Development Report 2015, where “thinking with mental models” was given as one of the three principles of human decision making. See World Bank, ‘World Development Report 2015: Mind, Society and Behavior’ (World Bank) <<http://www.worldbank.org/en/publication/wdr2015>> accessed 21 May 2017. The World Bank states that “Economic and political forces influence mental models, but mental models can have an independent influence on development by shaping attention, perception, and interpretation”. World Bank, ‘Thinking with Mental Models’ (World Bank Group) <[https://elibrary.worldbank.org/doi/abs/10.1596/978-1-4648-0342-0\\_ch3](https://elibrary.worldbank.org/doi/abs/10.1596/978-1-4648-0342-0_ch3)> accessed 12 November 2018.

<sup>59</sup> See *inter alia* Granovetter (n 48); Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (n 22); Krippner (n 27); Barber (n 38); Ashiagbor, Kotiswaran and Perry-Kessarar, ‘Continuing towards an Economic Sociology of Law’ (n 28).

able to capture, analyse and present the real world. In describing the relationship between the economic, the legal and the social, the systemic nature of the concept means that it is unthought, unchosen, and unbidden.<sup>60</sup> As an *unthought rationality* however, it shapes the way we are able to perceive, conceive, and think about the ongoing, dynamic relations between economic and legal aspects of the social. Thus, in the third vignette, our concerned bystander observing responses to the financial crisis is restricted in her vocabulary and grammar to making sense of the crisis through the existing lenses, such as embeddedness. It shapes her mental models, as well as her possible responses and suggestions.

Nevertheless, the conceptual incompatibility at the heart of the concept of embeddedness is a central limitation. The term necessarily requires the user to accept *a priori* a conceptual distinction between the two phenomena being described. I cannot say that “the law is embedded in society” without accepting that these are separate phenomena, distinguishable from each other. This is nonsense as neither the law nor the economy can exist without society.<sup>61</sup> Both are performed by, created and recreated within, and throughout society, within each and every social interaction.<sup>62</sup> The constructivist turn in sociology has sought to recognize this, urging us to see the legal and the economic as elements, aspects, or flavours of each social interaction, constructed, or performed, through interaction.<sup>63</sup>

At the same time, the sociological lens that allows us to speak of legal and economic aspects of interactions also lets us challenge the ontological metaphors of “the economy” and “the law” that currently shape the debate.<sup>64</sup> In a reintegrative

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<sup>60</sup> The phrase “unthought known” is borrowed from Bernstein and others (n 5) 4.

<sup>61</sup> See Perry-Kessaris, ‘Approaching the Econo-Socio-Legal’ (n 2).

<sup>62</sup> Performativity is discussed in chapter 7. Donald MacKenzie, Fabian Muniesa and Lucia Siu, *Do Economists Make Markets? On the Performativity of Economics* (Princeton University Press 2008).

<sup>63</sup> The notion of law as a “flavour to any social relation” is borrowed from Patricia Ewick and Susan Silbey, *The Common Place of Law* (University of Chicago Press) 217

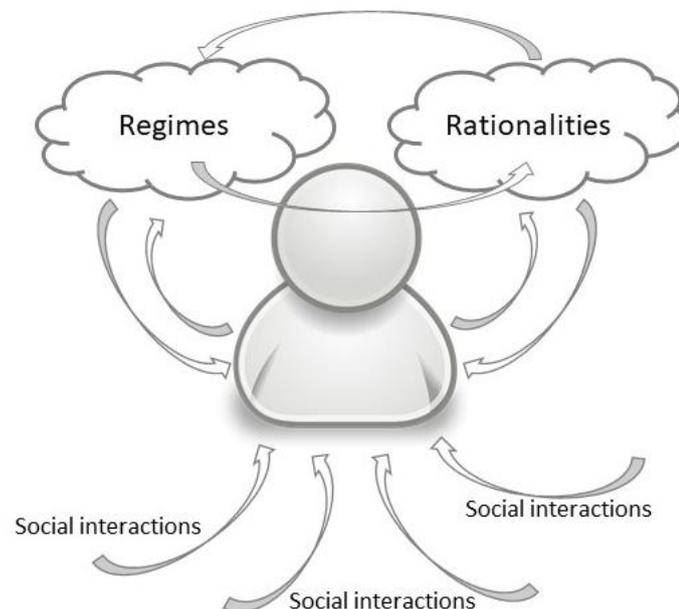
<<https://www.press.uchicago.edu/ucp/books/book/chicago/C/bo3615912.html>> accessed 27

August 2018; Marja Alastalo, ‘The History of Social Research Methods’, *The SAGE Handbook of Social Research Methods (Alasuutari, Bickman, Brannen, eds)* (Sage Publications 2009); Marina Kurkchiyan, ‘Perceptions of Law and Social Order: A Cross-National Comparison of Collective Legal Consciousness’ (2011) 29 *Wis. Int’l LJ* 366.

<sup>64</sup> Lakoff and Johnson (n 57).

context, a conceptual commitment to embeddedness as a descriptor, metaphor, or illustration of the relationship between law, economy and society, becomes an oxymoron. If we accept that an ESL is seeking to reintegrate social science research by taking law and economics back to their social origins and understanding both through a sociological lens, we have to confront the constructivist turn in sociology. The core argument is that the re-entrenchment of disciplinarity that occurs as a result of the commitment to the concept of embeddedness is incompatible with a social constructivist approach that sees the econolegal *as an aspect of* the social. By contrast, this approach sees the econolegal as re-co-constituted through and within social interactions, as expressed in a simplified form in Figure 3, below.

*Figure 3 - A simplified visualisation of social constructivism, illustrating the feedback loops that re-co-constitute the actor along with her regimes and rationalities through and within each social interaction*



To summarise, the *unthought rationality* of embeddedness, therefore, has two main limitations which mean that ESL is unable to consistently and coherently address

real world problems and interactions. These can be summed up as firstly its internal *conceptual inconsistency* (what are we talking about?), and secondly its *conceptual incompatibility* with background, constructivist assumptions and the reintegrative goals of an ESL. These are set out in Table 2, below.

*Table 2 - the two limitations of ESL's conceptual commitment to embeddedness*

<b>Limitation</b>	<b>What this means</b>	<b>Why this matters</b>
<b>Conceptual inconsistency</b>	Is the economy embedded in society? Or is society embedded in the economy? Is law embedded in society? Or is society embedded in law? There is an entrenched commitment to use the term, but deep disagreement about where, how, why, and to describe what. Explicit and implied use of the concept both reveals and conceals.	The academic literature in economic sociology, economic history, economic sociology of law, and sociolegal scholarship remains undecided and divided on what is embedded, and in what it is embedded. As we cannot agree, we end up talking at cross purposes and the term becomes meaningless, as Granovetter has openly conceded. <sup>65</sup>
<b>Conceptual incompatibility</b>	The conceptual commitment to embeddedness necessitates the conceptual separation of the phenomena described. ESL is attempting to reintegrate the social sciences sociologically, and necessarily sees the econolegal as socially	Simply put, a conceptual commitment to embeddedness is incompatible with the reintegrative aspirations and constructivist assumptions of its sociological context. Its use re-entrenches disciplinarity and econo-centric dominance, and precludes a

<sup>65</sup> Krippner and others (n 45) 113.

	constructed and performed. These positions are incompatible.	sociological reconceptualization of the econolegal.
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This is not to deny that there are versions of ESL that sidestep embeddedness altogether. Ruth Dukes sets out an Economic Sociology of Labour Law that avoids Polanyian embeddedness and which looks to Weber to offer an alternative foundation for the lens.<sup>66</sup> Other authors have used the term lightly and descriptively to illustrate the relationship between phenomena that can be conceptually distinguished from each other. John Ruggie’s “embedded liberalism”, and Peter Evens’ work on “embedded autonomy” both show that the term can be useful, even indispensable, when used in the appropriate context.<sup>67</sup>

Nevertheless, the pervasiveness and ubiquity of embeddedness in shaping the discourse, and in shaping what we do and how we think about what we do (our regimes and rationalities), is generally unacknowledged. Even when not stated explicitly, the term has, through notions of performativity, come to shape our accepted mental models, our thought processes and also our “unthought knowns” – the facts we know about the world that we do not need to verbalise to understand, acknowledge, or reproduce.<sup>68</sup> Embeddedness acts as an unthought rationality, shaping wider discourse tacitly. This has implications for the way we act, raising

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<sup>66</sup> See *inter alia* Ruth Dukes, ‘From the Labour Constitution to an Economic Sociology of Labour Law’ (2018) 9 *Jurisprudence* 418; Ruth Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (Oxford University Press 2014); Ruth Dukes, ‘Introduction to Special Issue on Labour Laws and Labour Markets: New Methodologies’ (2018) 27 *Social and Legal Studies* 407. This echoes the work of Holmes who suggests that society might be interpreted as the context of the market, potentially overcoming the sharp distinction between the two, although this interpretation still does not address the conceptual incompatibility.

<sup>67</sup> See *inter alia* John Gerard Ruggie, ‘International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order’ (1982) 36 *International Organization* 379; Peter Evans, *Embedded Autonomy: States and Industrial Transformation* (Princeton University Press 1995).

<sup>68</sup> Bernstein and others (n 5). See also Giddens, *The Constitution of Society* (n 23); Anthony Giddens, *The Consequences of Modernity* (Polity Press 1990).

questions of whether our current regimes and rationalities are being reformed in the shape of dominant mainstream econo-centric regimes and rationalities through linguistic tools, even without our awareness. If an ESL is to be successful in reintegrating social science research and providing an alternative means of talking about the way we *do*, and *think about* economic and legal phenomena, it must offer linguistic tools that make available mental models capable of challenging current regimes and rationalities. Its current conceptual commitment to embeddedness prevents this.

### **1.5 Imagine again: Embeddedness in practice**

It is useful at this point to return to the three vignettes to explore what ESL's continuing commitment to embeddedness looks like in a real world setting. The following sections develop the vignettes into case studies, which the thesis returns to repeatedly to maintain a close empirical link with reality as well as moving the discussion forward in line with the questions an empirical illustration can raise.

#### **1.5.1 Beragama, Sri Lanka**

The original starting point and intellectual curiosity for the research was the World Bank's Investment Climate campaign and its application in Sri Lanka. Over the course of the research, however, the 2016-17 riots in Beragama, southern Sri Lanka, became a pinch point. This was a defining moment where the dislocations and dissatisfactions of the local population became tangible. Moreover, their social relations and mental models (what we *do* and *how we think* about what we do), became visible through the riots, which offered an extreme example of what can go wrong when foreign investment is mishandled, and when the voices and interests of some actors are neither seen nor heard. Indeed, this was part of the problem, in the sense that the mainstream models used by the World Bank to justify and shape the Investment Climate campaign had become too dependent on neoclassical economic theories. Not only did these bear little resemblance to reality, but were incapable of incorporating non-economic interests. In other words, the other priorities of

Beragama's villagers – traditional ties to their familial lands, affective ties to the local community, belief-based ties to the history of the land – effectively counted for nothing against the instrumental (narrowly economic) goals privileged in orthodox frames central to the World Bank's Investment Climate.<sup>69</sup>

Nevertheless, those same villagers were expected to abide by the laws of the country, which the Sri Lankan government has been reforming in the shape of the "ideal investment climate" according to the World Bank.<sup>70</sup> The government of Sri Lanka has openly admitted that it was targeting a certain place in the World Bank's Doing Business rankings, a sister project to the Investment Climate campaign.<sup>71</sup> This was a jump that could be achieved by implementing legal reforms to improve the business environment, which in turn would theoretically lead to greater levels of inward investment, catalysing the economy and spurring development.<sup>72</sup> In privileging the economic, the "discourse of 'investment climates' is far too investor-centric to serve as a framework for assessing the role of host state legal systems in investor-government-civil society relations".<sup>73</sup> While foreign investors may be able to pick and choose which jurisdictions they engage with, the local community and civil society around Beragama is necessarily living with the consequences of law reforms carried out by the Sri Lankan government on the advice of the World Bank

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<sup>69</sup> The Weberian ideal types here (instrumental, belief-based, affective and traditional) are used by Roger Cotterrell in his community lens, and as this lens is applied to empirical work by Perry-Kessarar. See *inter alia* Cotterrell, 'A Legal Concept of Community' (n 43); Roger Cotterrell, 'Community as a Legal Concept? Some Uses of a Law-and-Community Approach in Legal Theory' (Social Science Research Network 2011) SSRN Scholarly Paper ID 1971610

<<https://papers.ssrn.com/abstract=1971610>> accessed 26 November 2016; Perry-Kessarar, 'Reading the Story of Law and Embeddedness Through a Community Lens' (n 40); Perry-Kessarar (n 43).

<sup>70</sup> World Bank (n 8); World Bank, 'Rule of Law and Development' (*The World Bank*) <<http://web.worldbank.org>> accessed 23 December 2012; World Bank, 'Rule of Law as a Goal of Development Policy' (*The World Bank*) <<http://web.worldbank.org>> accessed 23 December 2012. But then cf. Perry-Kessarar, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (n 36); Perry-Kessarar, 'Recycle, Reduce and Reflect' (n 6); Perry-Kessarar, *Global Business, Local Law* (n 11).

<sup>71</sup> World Bank, 'Doing Business: Measuring Business Regulations' <<http://www.doingbusiness.org/data/exploreeconomies/sri-lanka>> accessed 5 July 2018; World Bank, 'Doing Business, Why Aggregate, and How to Do It' (n 19); World Bank (n 19).

<sup>72</sup> Cheranka Mendis, 'Lanka Aims Leapfrog for Ease of Business' *Financial Times, ft.lk* (27 October 2012) <<http://www.ft.lk/top-story/lanka-aims-leapfrog-for-ease-of-business/26-116863>> accessed 2 October 2018.

<sup>73</sup> Perry-Kessarar, *Global Business, Local Law* (n 11) 4.

for the purposes of attracting FDI.<sup>74</sup> The knock-on effect of unmanageable levels of investment – the forfeiture of their lands in and around Beragama – is the most egregious decision taken by the government. And the problem here is that, as we have already noted, their attachment to their land is not wholly economic – in fact this may not even be the greatest issues given the community’s ancestral ties to the land. Nevertheless, the non-economic struggles to find traction in mainstream economic arguments and within the discourse of investment climates, resulting in the effective minimisation and silencing of the voices and interests of the local community.

While this is all true, there are more layers to this story. The riots in Beragama, led by monks and villagers, were in response to Chinese investment (now debt) in Sri Lanka, which the government has been unable to service, let alone repay.<sup>75</sup> Accordingly, China is now acquiring a stake in the infrastructure it financed, meaning that large portions of land and primary infrastructure are being signed over to Chinese ownership. This includes the ancestral lands of Beragama’s villagers which are perfectly sited for an industrial zone to support the port of Hambantota (also now in Chinese ownership).<sup>76</sup>

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<sup>74</sup> Law reforms have generally focused on expediting access to permits, computerizing procedures and reducing time delays, see ‘Welcome to BOI’ (*Sri Lanka Board of Investment, Economic Overview/Facts and Figures*)

<[http://www.investsrilanka.com/why\\_sri\\_lanka/developed\\_infrastructure](http://www.investsrilanka.com/why_sri_lanka/developed_infrastructure)> accessed 14 June 2018; Board of Investment, ‘Sri Lanka Board of Investment’

<<http://investsrilanka.com/services/investment-incentives/>> accessed 11 July 2017. The main government decision impacting civil society in Beragama though is the forfeiture of their lands in favour of Chinese investors.

<sup>75</sup> See *inter alia* Jeff M Smith, ‘China and Sri Lanka: Between a Dream and a Nightmare’ *The Diplomat* (18 November 2016) <<https://thediplomat.com/2016/11/china-and-sri-lanka-between-a-dream-and-a-nightmare/>> accessed 13 June 2018; Safi and Perera (n 18).

<sup>76</sup> China’s lack of loan conditions has made it an attractive alternative source of finance to the World Bank, however a lack of viability studies and due diligence have resulted in “white elephants”. See Wade Shepard, ‘The Story Behind The World’s Emptiest International Airport’ (*Forbes*, 28 May 2016) <<https://www.forbes.com/sites/wadeshepard/2016/05/28/the-story-behind-the-worlds-emptiest-international-airport-sri-lankas-mattala-rajapaksa/#7bf0e4867cea>> accessed 5 July 2018; Wade Shepard, ‘For Sale: The World’s Emptiest International Airport’ (18 July 2016) <<https://www.forbes.com/sites/wadeshepard/2016/07/18/for-sale-the-worlds-emptiest-international-airport-mattala-international-hambantota-sri-lanka/2/#4e796f541730>> accessed 5 July 2018; Smith, ‘China and Sri Lanka: Between a Dream and a Nightmare’ (n 75).

By providing access to development capital without the accompanying normative or political conditionalities, China has been able to challenge the soft power and meta-regulation of the World Bank. The Bank is unable to compete, either financially,<sup>77</sup> or politically, given its reputation as an inherently “interventionist lender”.<sup>78</sup> At the same time, the scale of China’s lending and its ambitions to create a new silk route and “string of pearls” across the Indian ocean in trade infrastructure has led to accusations of a neo-colonialism.<sup>79</sup> The Sri Lankan media have voiced fears that the country is being bought out from underneath their feet.<sup>80</sup>

So, against the backdrop of investment by the World Bank-blacklisted CCCC,<sup>81</sup> the riots in Beragama were triggered by the direct implications of mismanaged, unsustainable foreign investment.<sup>82</sup> To this end, chapter 6 offers two approaches that our academic researcher might make use of in exploring the relations and interactions in and around Beragama. While both respond to the limitations of mainstream approaches, their comparison illustrates the issues and limitations of ESL’s ongoing conceptual commitment to embeddedness. By contrasting two interpretations of Polanyian embeddedness and using these to identify relevant actors in and around Beragama, the lack of clarity, precision and consistency results in the identification of different actors, interests and voices. The importance of trust also varies between interpretations used, as well as the depth of relationships

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<sup>77</sup> China’s outbound FDI is expected to reach \$2 trillion by 2020, having boomed from almost nothing a decade ago. See Jamil Anderlini, ‘China to Become One of the World’s Biggest Overseas Investors by 2020’ (*Financial Times*, 25 June 2015) <<https://www.ft.com/content/5136953a-1b3d-11e5-8201-cbdb03d71480>> accessed 24 September 2018.

<sup>78</sup> Perry-Kessaris, *Global Business, Local Law* (n 11) 21.

<sup>79</sup> See *inter alia*, Perera, ‘Sri Lankan Rice Farmers Vow to Fight Chinese Investors’ (n 18); Safi and Perera (n 18); Akhilesh Pillalamarri, ‘Sri Lanka to Go Ahead with Chinese Port Project’ *The Diplomat* (7 February 2015) <<https://thediplomat.com/2015/02/sri-lanka-to-go-ahead-with-chinese-port-project/>> accessed 14 June 2018.

<sup>80</sup> *Ibid.*

<sup>81</sup> ‘World Bank Applies 2009 Debarment to China Communications Construction Company Limited for Fraud in Philippines Roads Project’ (World Bank 2011) Press Release <<http://www.worldbank.org/en/news/press-release/2011/07/29/world-bank-applies-2009-debarment-to-china-communications-construction-company-limited-for-fraud-in-philippines-roads-project>>. See also Mendis (n 72).

<sup>82</sup> On the role of inter-ethnic violence and civil war in shaping social and institutional norm compliance, see Shalini Perera, *Ownership and Control in Corporate Governance and Economic Development: Lessons from Sri Lanka* (World Scientific 2009).

explored and the linguistic tools used by actors. This has the potential to result in different research projects and findings depending on the interpretation of embeddedness used which, the thesis suggests, is problematic for a coherent and consistent lens that claims to challenge the shortcomings of mainstream approaches.

Furthermore, by foreclosing a sociological reconceptualization of the econolegal, ESL's commitment to the concept of embeddedness not only prevents the actors from responding fully to the problems of econo-centrism in their own lives. It also prevents the researcher from fully appreciating the range and depth of social interactions and relations, given that these are likely to be expressed in the linguistic tools most readily available to actors; econo-centric. These claims are taken further in the second case study.

### **1.5.2 The World Bank's Investment Climate**

The second vignette introduced a researcher working for an international finance institution like the World Bank and offers an institutional backdrop to the first case study.<sup>83</sup> To develop this into the second case study, it is helpful to focus in on the World Bank's investment climate campaign. This states that there is one "ideal investment climate" for the attraction of inward investment, usually mirroring the western paradigm of regulation.<sup>84</sup> The investment climate campaign has been central to the Bank's development assistance for decades, and mandates regulatory

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<sup>83</sup> See, *inter alia*, T Abeysinghe and A Jayawickrama, 'Singapore's Direct Investment Links with Sri Lanka: Past Experiences and Future Prospects', *Renaissance of Asia: Evolving Economic Relations Between South Asia and East Asia* (World Scientific Publishing Co Pte Ltd 2014); Nagendra V Chowdary, *Sri Lankan Economy: An Introduction* (ICFAI University Press 2005); Saman Kelegama, *Development Under Stress: Sri Lankan Economy in Transition* (Sage Publications 2006); Aquinas V Tambimuttu and Thamil Venthan Ananthavinayagan, 'Sri Lanka: Legal Research and Legal System - GlobalLex' (October 2016) <[http://www.nyulawglobal.org/globalex/Sri\\_Lanka1.html#\\_ednref3](http://www.nyulawglobal.org/globalex/Sri_Lanka1.html#_ednref3)> accessed 14 June 2018; Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33); Perera, *Ownership and Control in Corporate Governance and Economic Development* (n 82).

<sup>84</sup> World Bank (n 8); Perry-Kessaris, *Global Business, Local Law* (n 11); World Bank (n 12).

reform to benefit businesses and investors.<sup>85</sup> To this end, law reform conditionalities, where the Bank recommends law reform in order to attract foreign investment, have often been attached to development finance.<sup>86</sup> This interface of the econolegal makes the Bank's investment climate campaign a useful setting to examine the interactions between the legal and the economic.<sup>87</sup>

The investment climate campaign was built on the Law and Development and Law and Economics movements, and reflects the apogee of neoclassical, orthodox economics-based research frames, and of economics imperialism.<sup>88</sup> Additionally, the World Bank gathers and collates statistics about income, regulations, GDP, and so on, and these are presented in the Investment Climate and Doing Business datasets as country rankings, showing investors the best jurisdiction for their investment.<sup>89</sup> Thus, the faceless foreign investor is imagined as a floating *homo economicus*, seeking out the ideal investment destination through the use of indicators and statistics. In particular, the investment climate statistics and indicators rank countries according to their legal systems, and offer comparisons based on the number of processes required to register a company, or the time taken for permits to be granted, for example.<sup>90</sup> The assumption throughout is that regulation should be kept to a minimum, and that investors are more likely to flock to territories where they are unburdened by state interference.

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<sup>85</sup> Behavioural economics and experimentalism have more recently been added to the lexicon of World Bank development assistance. See Deval Desai and Michael Woolcock, 'Experimental Justice Reform: Lessons from the World Bank and Beyond' (2015) 11 *Annual Review of Law and Social Science* 155; World Bank (n 58).

<sup>86</sup> Celine Tan, 'The New Disciplinary Framework: Conditionality, New Aid Architecture and Global Economic Governance', *International Economic Law, Globalization, and Developing Countries* (Faundez and Tan, eds) (Edward Elgar, Cheltenham, UK 2010).

<sup>87</sup> For the term "campaign", see Perry-Kessaris, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (n 36). See also World Bank (n 8); World Bank (n 70); World Bank (n 70); World Bank, 'Law and Development Movement' (n 11).

<sup>88</sup> Perry-Kessaris, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (n 36); Perry-Kessaris, 'Recycle, Reduce and Reflect' (n 6); Fine and Milonakis (n 37).

<sup>89</sup> World Bank (n 71); World Bank, 'Doing Business, Why Aggregate, and How to Do It' (n 19); World Bank (n 19).

<sup>90</sup> See generally, World Bank (n 8).

Yet research carried out in Sri Lanka, along with subsequent research into the reasons that foreign investors choose to invest, challenge the underlying assumptions of the Investment Climate campaign.<sup>91</sup> Also noteworthy is the effect of comparing indicators. Minimal regulation of business therefore becomes aspirational, giving the indicators the soft power of a “technology of governance” and encouraging a regulatory race to the bottom.<sup>92</sup>

Finally, the investment climate provides an illustration of the conceptual implications of a commitment to embeddedness. Through the investment climate campaign, we can explore what happens when economics imperialism is re-entrenched in development policy, and the implications that conceptual inconsistencies and incompatibilities have as a result. The World Bank’s investment climate campaign therefore provides a tangible example of the application of neoclassical economic theories to development and the impact on the lives of those in developing countries who, though generally voiceless, have “development” done “to them”.<sup>93</sup>

### **1.5.3 Doughnut economics and The Econocracy**

The final case study develops the third vignette. This introduced a lay bystander, concerned at the fallout from the 2008 financial crisis and engaging with media and literature debates about the economy and its regulation. A decade on from the 2008 financial crisis, there has been a plurality of voices urging a rethink of economics.<sup>94</sup> This has been echoed to a lesser degree for law, legal theory, and the

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<sup>91</sup> See, inter alia, Amanda Perry, ‘Law as a Determinant of External Finance: The Case of Sri Lanka’ (London School of Economics 2000); Perry-Kessarar, ‘Global Business, Local Law’ (n 12).

<sup>92</sup> Davis, Kingsbury and Merry (n 35).

<sup>93</sup> The Sri Lankan government has stated publicly that it is targeting higher places in the rankings through reforms of laws and procedures. Mendis (n 72).

<sup>94</sup> See, inter alia, Raworth (n 39); Joe Earle, Cahal Moran and Zach Ward-Perkins, *The Econocracy: On the Perils of Leaving Economics to the Experts* (Kindle Edition, Penguin Books 2018); Anthony Annett, ‘Restoring Ethics to Economics’ (*International Monetary Fund - Point of View*, March 2018) <<https://www.imf.org/external/pubs/ft/fandd/2018/03/point2.htm>> accessed 14 October 2018; Stephanie Lee Mudge, ‘Explaining Political Tunnel Vision: Politics and Economics in Crisis-Ridden Europe, Then and Now’ (2015) 56 *European Journal of Sociology* 63; Lanchester (n 10).

social sciences more broadly in the context of their continental drift.<sup>95</sup> Our lay observer has noticed something strange in the way we talk about the economy, and this can be illustrated by comparing two pieces of popular economic literature published since the financial crisis.

Firstly, as our lay observer has noticed, there is an inconsistency in the way we talk about the economy. Raworth's *Doughnut Economics* states that the economy is embedded in society.<sup>96</sup> Earle et al's *The Econocracy* states that society is embedded in the economy.<sup>97</sup> Which is correct? While she may not realise it, our lay bystander is replaying the same debate between Fred Block and Gareth Dale about interpretations of Polanyi's work that is so central to economic sociology and ESL.

The lack of consistency both of identifying the problem and proposing a solution raises questions about the potential of the current discourse to challenge existing mainstream approaches. If the embeddedness concept separates out the economy and society, are we missing out on potential new ways of thinking and doing?

This case study therefore applies the debate about conceptual inconsistency explored in case studies one and two to ongoing responses to the financial crisis, and asks what this might mean for broader questions about society and its relationship with the econolegal. This includes both the explicit and implicit use of embeddedness to describe and prescribe econolegal understanding. The inherent separation of the concepts at issue preclude any truly integrative sociological reconceptualisation of econolegal phenomena, which has implications for what

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<sup>95</sup> See, *inter alia*, Ashiagbor, Kotiswaran and Perry-Kessaris, 'Introduction: Moving towards an Economic Sociology of Law' (n 28); Ashiagbor, Kotiswaran and Perry-Kessaris, 'Continuing towards an Economic Sociology of Law' (n 28); Ruth Dukes, 'Insiders, Outsiders, and Conflicts of Interest', *Re-Imagining Labour Law for Development: Informal Work in the Global North and South*, Diamond Ashiagbor (ed) (Hart 2018); Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (n 66); Dukes, 'From the Labour Constitution to an Economic Sociology of Labour Law' (n 66).

<sup>96</sup> Raworth (n 39). Loc. 912, 1050, 1225, 1273.

<sup>97</sup> Earle, Moran and Ward-Perkins (n 94) 8.

society is able to imagine and create in the way of economic and legal interactions and institutions.<sup>98</sup>

This discussion is taken further in chapter 7, where more recent research suggests that our ways of talking impacts our actions and interactions, and suggesting that the discourse we engage in can shape our actions accordingly. As the discussion in chapter 7 explores, the performativity of discourse to shape our regimes and rationalities has implications for whether we act like *homo economicus* or *homo sociologicus*, whether we are aware of this or not.<sup>99</sup>

Table 3, below, sets out the three case studies, the level of analysis and social ranking. These are according to the rankings of social interaction set out by Frerichs and which are explored further as an integral aspect of the proposed ESL lens in chapter 7.<sup>100</sup>

*Table 3 - The three case studies used in the thesis, and their type and level of analysis*

<b>Case Study</b>	<b>Why is this helpful?</b>	<b>What level and type of analysis and implications are described?</b>
<b>Beragama: an academic investigation</b>	A micro-level exploration of the implications of using different interpretations of embeddedness. The result is that different actors, voices and interests are identified, meaning that embeddedness is not a consistent tool for describing relationships in empirical	Empirical implications of the conceptual commitment to embeddedness, relating to facts and methods.

<sup>98</sup> Amanda J Perry-Kessaris, 'Legal Design for Practice, Activism, Policy and Research' [2019] *Journal of Law and Society* 188.

<sup>99</sup> MacKenzie and Millo (n 26) 141.

<sup>100</sup> Frerichs, 'Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law' (n 51).

	work, and a conceptual commitment to the term is unhelpful.	Micro-meso level of interactions
<b>World Bank's Investment Climate campaign: a policy investigation</b>	A macro level illustration of the embodiment and impact of the continental drift and silos within the social sciences, as well as economics imperialism and supposed pseudo-scientific neutrality. It is a real-world application of how we do, think about, and talk about, the econolegal. A conceptual commitment to embeddedness is unhelpful here because it re-entrenches the disciplinarity of existing silos of endeavour, and reinforces current perceptions of the econo-socio-legal, preventing constructivist reappraisals.	Conceptual implications of the conceptual commitment to embeddedness, relating to concepts and relationships.  Macro level (regimes)
<b>Doughnut Economics vs. The Econocracy: A lay investigation</b>	Illustrates the extent of the commitment to the concept of embeddedness as an unthought rationality that shapes our mental models and linguistic tools, and which shapes the way we do, think, and talk about econolegal regimes and rationalities.  The concept has become static, concretized into the debate, but retaining its power to shape the	Normative implications of the conceptual commitment to embeddedness, relating to voices and interests.  At the meta level, although questions then relate to the performance of these

	rationalities available to us to challenge existing regimes.	at the macro level through regimes.
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## **1.6 Breaking the conceptual commitment: beyond embeddedness**

Given the conceptual inconsistencies and incompatibility of embeddedness, this thesis suggests that ESL might break its commitment to the concept and move beyond embeddedness.<sup>101</sup> This can be achieved through two shifts in focus; namely a shift from actors to *interactions*, and from embeddedness to *feedback loops*. Moving beyond embeddedness also entails stepping back from ubiquitous ontological metaphors like “economy” and “law”.<sup>102</sup> Instead, the thesis suggests conceptualizing the economic and the legal as *aspects* of social interactions, as they are produced, performed and re-co-constituted in and through each interaction. These ideas are set out briefly below, and explored in more detail in Chapters 7 and 8.

Removing the *metaphors* of “the economy” and “the law” and the commitment to the concept of embeddedness enables a sociological review. The econolegal therefore becomes an aspect – among many others – of social interactions. The thesis therefore proposes an alternative lens and linguistic tools that offer

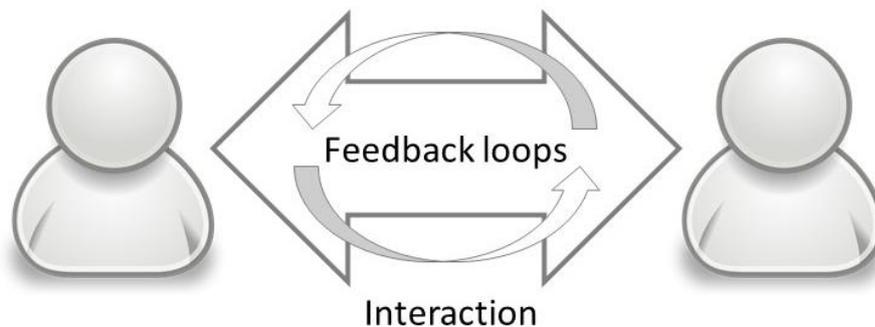
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<sup>101</sup> This is not to suggest methodological holism, as has been used by some to describe spaces on the individualism-collectivism continuum, see Teubner (n 1) 729. I use the term here more generally to indicate some degree of reintegration without intending to site the discussion precisely on the methodological individualism-collectivism spectrum.

<sup>102</sup> Lakoff and Johnson (n 57). Ontological metaphors are discussed further in chapter 3. The term “ontological metaphor” is taken from Lakoff and Johnson (n 33) and is discussed further in relation to language in methodology below. It sums up the argument that there is no such thing as “an economy” or “the law”; merely a collection of social behaviours and phenomena that have characteristics in common. I do acknowledge that on a deeper reading of this, the name “Economic Sociology of Law” appears to fall at the first hurdle in that the disciplines are individually identified, potentially re-entrenching their separation in terms of values, concepts, and interests. Amanda Perry-Kessaris has acknowledged that the name is problematic, see Perry-Kessaris, ‘Approaching the Econo-Socio-Legal’ (n 2).

alternative ways of doing, thinking about, and talking about the re-co-constitution of the econolegal sociologically. The proposed lens combines the horizontal elements of Roger Cotterrell's community lens with the vertical elements of Sabine Frerichs' ranking of principles of social organization.<sup>103</sup> With the added insights from some of the literature on performativity, this offers a combined frame within which the empirical, conceptual, and normative aspects of substantive research can be structured.<sup>104</sup> This responds to the goals of ESL while also replying to charges levelled at econo-centric frames. It also provides a dynamic way of talking about interactions and the re-co-constitution of economic and legal phenomena through feedback loops in a way that acknowledges the complexity and flexibility of the social. Figure 4 visualises the two proposed shifts in focus.

*Figure 4 - Two shifts in focus; to interactions and the feedback loops that operate within these*



<sup>103</sup> Roger Cotterrell, *Law's Community: Legal Theory in Sociological Perspective* (New Ed, Clarendon Press 1997); Frerichs, 'Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law' (n 51).

<sup>104</sup> MacKenzie and Millo (n 26); MacKenzie, Muniesa and Siu (n 62); Michel Callon, 'What Does It Mean to Say That Economics Is Performative?', *Do Economists Make Markets: On the Performativity of Economics* (MacKenzie et al, eds) (Princeton University Press).

## **1.7 Imagine again... beyond embeddedness in practice**

It is helpful to return to the three case studies to explore what it means to move beyond embeddedness. To illustrate the proposed lens and how this might look in real world scenarios, each of the case studies are revisited and explored through the new lens. The suggested implications and potential results are set out in Table 4.

In the first case study carrying out academic research into the riots in Beragama, the proposed ESL lens offers greater scope for capturing a range of voices and interests in a consistent and coherent way. In looking at the interactions between groups of actors (here, simplified down to civil society – government – foreign investors), we are reminded to look for not only the instrumental, but the affective, belief-based and traditional.<sup>105</sup> This is expanded upwards from the micro and meso interactions to the macro regimes and meta rationalities, allowing us to appreciate differences between the regimes and rationalities of the groups of actors that might have led to the unrest.<sup>106</sup> To be clear, our researcher has a lens for systematically and scientifically understanding the econolegal through the words, actions and mental models of all impacted actors, evidenced through their interactions. In categorising these clearly, coherently and comprehensively, we can then understand how legal and economic institutions can be adjusted accordingly to balance these interests. The frame also prompts the researcher to look for expressions of trust between (and within) the groups, legal and economic gateways to social and community participation, and legal and economic spaces in which diverse interests and voices are co-ordinated and communicated.<sup>107</sup> Thus, while Beragama is referred to as an illustration of a setting in which an ESL-informed approach can helpfully frame research at the interface of the economic and legal while challenging the

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<sup>105</sup> These categories are borrowed from Perry-Kessaris, *Global Business, Local Law* (n 11).

<sup>106</sup> These rankings of social interactions are borrowed from Frerichs, 'Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law' (n 51).

<sup>107</sup> These three categories – expressions of trust, gateways to participation and spaces for co-ordination – are borrowed from Roger Cotterrell's communal networks work. Cotterrell, 'Community as a Legal Concept?' (n 69); Cotterrell, 'A Legal Concept of Community' (n 43); Perry-Kessaris, *Global Business, Local Law* (n 11).

Investment Climate, the wider point is made that as a framework, it can be applied to any setting in which economic and legal elements are present.

In the second case study exploring development policy at the World Bank, we can explore the reintegrative potential of an ESL within the social sciences and what this might mean in a policy context. We can better integrate social science disciplines if we are working with language that is flexible, adaptive and dynamic, and which does not re-entrench the existing silos and differences. While the World Bank has expanded its frames of reference with behavioural economics and experimentalism, an ESL lens could include many more goals, aspirations and targets than the narrowly economic, offering a new and different way to both “do” and measure development.<sup>108</sup> What could result if wellbeing and equality were given equal priority in development to measures like GDP and FDI flows? And to what extent can a lens like that proposed in this thesis contribute to a deeper understanding of the complexities and dynamism of interactions that are so central to realising developmental goals?

The third case study, comparing lay literature in the wake of the financial crisis, returns to the broader debate about the relationship between the social and the econolegal. Using the implications from some performativity research, in addition to social constructivism, the normative implications of moving the debate beyond embeddedness raise several “what if” questions. Currently, the tools we have to talk about the econolegal are broken. This thesis suggests that we will only be able to *do*, and *think about* the econolegal differently if we have the linguistic tools to imagine something different and challenge the current status quo. Recognizing the problems with embeddedness, and then moving beyond the concept, is central to this. We are then left with questions such as whether we might act more like *homo*

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<sup>108</sup> World Bank (n 58); Ben Fine and others, ‘Nudging or Fudging: The World Development Report 2015’ (2016) 47 Development and Change 640; Perry-Kessaris, ‘Meeting Experimental Attitude in Legal Development Work with Experimental Attitude in Sociolegal Research’ (n 1); Desai and Woolcock (n 85).

*sociologicus* if our vocabulary and grammar enabled these mental models.

Moreover, what might this mean for society more broadly?

While the third case study is helpful in illustrating the problems with sloppy use of terminology, the unintended consequences of its explicit and implicit use are currently unacknowledged, in the sense that we do not know how much we do not know. The potential for reshaping the debate in a way that lets society reimagine the role of both the economic and the legal and the impacts of this is conjecture. As Giddens points out with reference to his double hermeneutic, the ability of ideas to leak into the real world and alter the universe of enquiry is unbounded, unknowable, and unpredictable.<sup>109</sup> The suggestion is that embeddedness has even come to shape the discourse implicitly, and therefore shapes the way we both do and think about econolegal phenomena. Therefore, moving the discourse beyond embeddedness can have implications for our ability to rethink not only the social sciences and research (as the first two case studies explored), but how we live, perform and construct the econolegal through daily interactions. It also has implications for what we expect of the econolegal, society, and our ability to realise this.

Table 4, below, summarises the empirical implications of moving the debate beyond embeddedness.

*Table 4 - Summary of the implications of moving beyond embeddedness*

<b>Case study</b>	<b>Implications of moving beyond embeddedness</b>
Beragama: academic investigation	We have a greater set of conceptually consistent linguistic tools to understand the social comprehensively and scientifically, including competing regimes and rationalities.

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<sup>109</sup> On the double hermeneutic and implications for the researcher, see Giddens, *The Constitution of Society* (n 23).

World Bank: policy investigation	We can reintegrate social science approaches, challenging entrenched economics imperialism and offering new ways of perceiving, conceiving and understanding policy in a way that can prioritize a range of interests, voices and goals.
<i>Doughnut Economics</i> v <i>The Econocracy</i> : lay investigation	We can challenge current ontological metaphors of “the economy” and “the law” as well as the relationship between them and with society. By looking at interactions and feedback loops, we can challenge current regimes and rationalities. By suggesting a different way to <i>talk about</i> these phenomena, we can re-assess and re-address the way we currently <i>do</i> and <i>think about</i> the econolegal sociologically, potentially imagining something different.

The thesis concludes with a summary of the issues discussed and the potential benefits of moving ESL beyond embeddedness. The final chapter sets out three main questions that arise from the excision of ESL’s “core concept”.<sup>110</sup> The suggestion is that while embeddedness is currently a central feature of the lens, it is not the only defining characteristic of the approach. ESL’s goals, purposes and aspirations remain constant, and might be better met by moving beyond embeddedness.

The following chapter turns in more detail to the supporting literature and explores the development of disciplinary silos and economics imperialism within the social sciences. This provides some context to the requirement for an ESL, as well the background for its continuing commitment to the concept of embeddedness. It also highlights the problems with the way we talk about the econolegal, and what this means for the way we are able to perceive and conceive of these.

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<sup>110</sup> Krippner (n 27) 800.



## 2. Literature

This chapter builds on the elements and arguments set out in Chapter 1. It addresses the literature and resulting lacunae that both necessitate an ESL, and an examination of ESL's ongoing conceptual commitment to embeddedness. It firstly turns to the three limitations of econo-centric frames by examining the World Bank's Investment Climate campaign. The discussion cites the World Development Reports and their supporting literature, as well as modest expansionist efforts to review the narrow purview of the campaign. To offer more background, the chapter then explores the rise of economics imperialism within academic research as well as more broadly, which led to the Investment Climate in its current guise. The implications of these are addressed before the discussion turns to sociological responses to this movement, essentially setting out the "family tree" and intellectual heritage of ESL.

The chapter does not examine some of the tangential arguments to the Investment Climate campaign. These include the main assumptions informing the Investment Climate campaign. Included in these are the assumptions that certain legal systems attract more inward investment, and that inward investment leads to economic growth and development.<sup>111</sup> Further, claims that investment leads to growth and development, or catalyses the economy, are not assessed, nor are the normative claims that these outcomes are desirable. Nevertheless, it is worth noting that while there is a strong *correlation* between high levels of inward investment and high GDP, supporting evidence for the assertion that FDI can increase economic development is "surprisingly hard to come by".<sup>112</sup> Similarly, there is little evidence

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<sup>111</sup> For greater discussion of these issues, see *inter alia* Barron (n 8); Desai and Woolcock (n 85); Julio Faúndez and Celine Tan (eds), *International Economic Law, Globalization and Developing Countries* (Edward Elgar 2010); Fine and others (n 108); David M Trubek and Alvaro Santos (eds), *The New Law and Economic Development* (Cambridge University Press 2008) <[http://www.cambridge.org/gb/knowledge/isbn/item1173476/?site\\_locale=en\\_GB](http://www.cambridge.org/gb/knowledge/isbn/item1173476/?site_locale=en_GB)> accessed 13 November 2012; Shahid Yusuf and others, *Development Economics through the Decades: A Critical Look at Thirty Years of the World Development Report* (30th Anniversary Edition, World Bank Publications 2009).

<sup>112</sup> Peter Nunnenkamp and Julius Spatz, 'Foreign Direct Investment and Economic Growth in Developing Countries: How Relevant Are Host-Country and Industry Characteristics?' (Social Science Research Network 2003) SSRN Scholarly Paper ID 425260 1

to direct governments how to make the best use of inward investment to boost their economies. There is also little assistance on how to tread the fine line between underdevelopment (the dependency theory of FDI) and “economic colonialism” at the other extreme.<sup>113</sup> While avoiding a discussion of the normative implications of the investment climate, some conceptual and normative context is helpful to understand the choice of case studies and their implications.

## **2.1 The World Bank’s Investment Climate and its three limitations**

An exploration of the World Bank’s Investment Climate campaign is useful for several reasons. Firstly, the Investment Climate campaign provides some broader, institutional and intellectual context to the Sri Lankan government’s drive to attract inward investment. It is therefore part of the wider context for the resulting Beragama riots and the first case study. Secondly, the Investment Climate is used as a second case study because the campaign exemplifies the excesses of economic imperialism and embodies its apogee when the theory is applied to the real world. The second case study explores the conceptual implications of a commitment to embeddedness, and discusses the disciplinary silos and continental drift that has taken place in academic research over the past decades. The emulation of the natural sciences by economics, and the conquest of most other areas of inquiry by neoclassical economics, is the context in which the conceptual commitment to

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<<https://papers.ssrn.com/abstract=425260>> accessed 21 May 2017; Ewe-Ghee Lim, ‘Determinants of, and the Relation Between, Foreign Direct Investment and Growth A Summary of the Recent Literature’ (Social Science Research Network 2001) IMF Working Paper WP/01/175 ID 880230 <<https://papers.ssrn.com/abstract=880230>> accessed 21 May 2017; OECD, ‘Foreign Direct Investment for Development: Maximising Benefits, Minimising Costs’ (OECD 2002) <<https://www.oecd.org/investment/investmentfordevelopment/1959815.pdf>> accessed 21 May 2017.

<sup>113</sup> Most studies emphasise careful regulation, requirements of technology transfer and training, and limits on the repatriation of profits. See *inter alia* Michael P Todaro, *Economic Development* (11th ed, Addison-Wesley 2012); Prema-chandra Athukorala, *Multinational Enterprises in Asian Development* (Edward Elgar, Cheltenham, UK 2007); Peter T Muchlinski, *Multinational Enterprises and the Law* (2nd Edition, OUP Oxford University Press 2007); Kenneth J Vandavelde, ‘The Political Economy of a Bilateral Investment Treaty’ (1998) 92 *The American Journal of International Law* 621, 626; Kenneth J Vandavelde, ‘Introduction’ (1997) 91 *Proceedings of the Annual Meeting (American Society of International Law)* 485, 485.

embeddedness has been able to take root.<sup>114</sup> It has, unquestioned and unchallenged, shaped the mental models and linguistic tools through which we *do* and *talk about* the econolegal. These trends have been applied to the field of development by the World Bank, with the resulting limitations that are identified.

The World Bank's "discovery of the rule of law" and its place in development typifies broader beliefs among those who write about and "do" development to those living in less developed countries (to whom development is "done").<sup>115</sup> The World Bank sits at the forefront of development practice and praxis, and has led the charge "on this new frontier" of economics imperialism, meaning that "any serious intellectual discussions" on law and development must address "the contribution of the Bank".<sup>116</sup> While this march of economics imperialism into law and development may have brought with it a certain "discipline and energy", it has often been at the expense of "non-economic values and interests that are equally central to genuinely comprehensive development".<sup>117</sup>

The Investment Climate "campaign" started to gain ground from 2001, where it was recognized as "a 'portmanteau phrase', which lumps together the 'law, politics, economy and infrastructure' of a given nation or subnational region".<sup>118</sup> The "enhancement" of these "investment climates" was named as a "corporate priority" by the World Bank, while the term itself has entered into common parlance of media outlets.<sup>119</sup> The campaign states that, as inward investment flows are essential for technology and capital which in turn spur development, the legal

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<sup>114</sup> Perry-Kessaris, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (n 36); Perry-Kessaris, 'Recycle, Reduce and Reflect' (n 6); Fine and Milonakis (n 37).

<sup>115</sup> Barron (n 8) 2; Amanda J Perry-Kessaris, 'The Re-Co-Construction of Legitimacy of/through the Doing Business Indicators' (2017) 13 *International Journal of Law in Context*, Special Issue on Global Social Indicators: Constructing Transnational Legitimacy 498.

<sup>116</sup> Julio Faúndez, 'Rule of Law or Washington Consensus: The Evolution of the World Bank's Approach to Legal and Judicial Reform' [2009] Warwick School of Law Legal Studies Research Paper Series 1 <<https://ssrn.com/abstract=1510186>> accessed 11 July 2019; Perry-Kessaris, *Law in Pursuit of Development* (n 36); Perry-Kessaris, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (n 36) 406.

<sup>117</sup> Perry-Kessaris, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (n 36) 403.

<sup>118</sup> *ibid* 402.

<sup>119</sup> *ibid*.

system (both the laws themselves and their implementation) is crucial for attracting investment.<sup>120</sup> Thus, laws and legal institutions are determinants of foreign direct investment (FDI).<sup>121</sup>

The main way in which the Bank goes about implementing this “campaign” is through “marketization, mathematization and quantification”, which equate to the “normative, analytical and empirical approaches of choice in mainstream economics”.<sup>122</sup> The quantifiable measurement and comparison of indicators (some direct, others proxy) which rank countries on their “Ease of Doing Business”, their “Distance to Frontier”, and their general investment climate then act as a “technology of global governance”.<sup>123</sup> This in turn spurs governments to engage in reform efforts to climb the ranking, to appear to be ideal destinations for investors, and to thereby compete for foreign investment.<sup>124</sup> Nirvaad Cabral’s declaration that Sri Lanka was “targeting 30th position” in the rankings through legal reforms and technological innovation illustrates the impact of the Indicators on governments;<sup>125</sup> after all, in the “law reform Olympics”,<sup>126</sup> “[a]s in sports, once you start keeping score everybody wants to win”.<sup>127</sup>

The meta-regulation, backed up by the “reputational capital” that the World Bank exercises through its use of indicators and the Investment Climate campaign has been described as being simultaneously both thin and thick.<sup>128</sup> The former refers to

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<sup>120</sup> See the Law and Development and the Law and Economics literature, discussed further below.

<sup>121</sup> Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 402; Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33).

<sup>122</sup> Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 403.

<sup>123</sup> See generally Davis, Kingsbury and Merry (n 35) 15.

<sup>124</sup> World Bank (n 71).

<sup>125</sup> Mendis (n 72).

<sup>126</sup> Veronica L Taylor, ‘The Law Reform Olympics: Measuring the Effects of Law Reform in Transition Economies’ (Social Science Research Network 2005) SSRN Scholarly Paper ID 893682 <<https://papers.ssrn.com/abstract=893682>> accessed 28 April 2017.

<sup>127</sup> World Bank, ‘Doing Business, Why Aggregate, and How to Do It’ (n 19) 1.

<sup>128</sup> Perry-Kessaris, *Global Business, Local Law* (n 11) 21; Bronwen Morgan, *Social Citizenship in the Shadow of Competition: The Bureaucratic Politics of Regulatory Justification* (Dartmouth, Ashgate 2003); Davis, Kingsbury and Merry (n 35); Benito Arruñada, ‘Pitfalls to Avoid When Measuring Institutions: Is “Doing Business” Damaging Business?’ (Social Science Research Network 2007) SSRN Scholarly Paper ID 997225 3 <<https://papers.ssrn.com/abstract=997225>> accessed 5 May 2017.

its “capacity to influence laws and norms” both through loan conditionalities and through the implementation of its policies within projects. This includes directions to developing countries to ensure that their legal systems are “efficient and predictable”.<sup>129</sup> Further, that these are “stable, accessible and clear laws; limited bureaucratic discretion; low corruption; and the separation of executive, judicial and legislative powers”, and that legal systems are “rule-based” rather than “discretionary”.<sup>130</sup> This comprises the application of solely economic values to assess the creation and validity of laws, silencing and dismissing the other, the “non-rational” (or “differently rational”) as unimportant.<sup>131</sup> The remit of loan “conditionality” has “expanded dramatically towards restructuring the policy and institutional framework of aid recipient countries as an end in itself rather than as a means to an end”, increasing the Bank’s meta-regulatory impact as new areas become relevant to development.<sup>132</sup>

The Bank’s “thick meta-regulation” is free market-oriented in approach, facilitating a shift in allocative power from the state.<sup>133</sup> This not only changes laws, but shapes the way investors (and society) *think* about what a “good” legal system might be. The full impact of this in facilitating foreign investment is explored in the discussion on performativity in Chapters 7 and 8, below. But the role of the World Bank in shaping the global regimes and rationalities of actors in the shape of neoclassical economics models and values is relevant. The recognition of the Bank that it is engaging in shaping mental models is also apparent and celebrated, this interference having been given the respectability and scientific veneer of behavioural economics.<sup>134</sup>

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<sup>129</sup> Perry-Kessaris, *Global Business, Local Law* (n 11) 21; Pistor and Wellons (n 14).

<sup>130</sup> Perry-Kessaris, *Global Business, Local Law* (n 11) 21; Pistor and Wellons (n 14).

<sup>131</sup> Perry-Kessaris, *Global Business, Local Law* (n 11) 22; Cotterrell, ‘Community as a Legal Concept?’ (n 69) 9–10. Cotterrell identifies altruism, welfare and fiduciary relations as examples of those that defy rational analysis but which the law must address.

<sup>132</sup> Tan, ‘The New Disciplinary Framework: Conditionality, New Aid Architecture and Global Economic Governance’ (n 86) 120.

<sup>133</sup> Perry-Kessaris, *Global Business, Local Law* (n 11) 22.

<sup>134</sup> World Bank (n 58); World Bank (n 58).

The problem with this is that, by only focusing on one aspect of interactions (the economic, or rational), the whole panoply of other aspects (traditional, affective and belief-based) is tacitly side-lined. The “vitality of the social requires law to engage sensitively with” all aspects of social relations, and when it fails to do this by focusing exclusively on only one aspect (the economic), situations like that which arose in Beragama are a foreseeable result.<sup>135</sup>

More recently, commentators have questioned the domineering role of economics and statistics in World Bank doctrine, obliterating any value added by lawyers, sociologists, historians, geographers, and so on.<sup>136</sup> Additionally, while the assumptions and models behind the indicators might be available to criticism, the actual data itself can also be wrong. Misrepresentations, or reinterpretations following methodological revisions on the part of the Bank have been documented, meaning that the indicators allow comparison between countries but not over time.<sup>137</sup> Additionally, the Bank has addressed the potential mismatches between theory and reality. Certain countries have been able to leapfrog the rankings by having ideal legal systems on paper but which are less than ideal in practice, and a move towards experimentalism in development policy is seen as a response.<sup>138</sup>

Moreover, while we know that investors think the legal landscape is important, the question of how a developing state should structure the legal system remains

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<sup>135</sup> Cotterrell, ‘Community as a Legal Concept?’ (n 69) 11.

<sup>136</sup> Ralf Michaels, ‘Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law’ (2009) 57 *The American Journal of Comparative Law* 765, 766. Perry-Kessaris points out that economists are generally the “most influential disciplinary community” within the World Bank biome, given their ability to convert everything into “value added”. See Perry-Kessaris, *Global Business, Local Law* (n 11) 23.

<sup>137</sup> For experiences finding that the data used by the World Bank is simply wrong and prone to bugs, see Perry-Kessaris, ‘Recycle, Reduce and Reflect’ (n 6). For a discussion of Sri Lanka’s experiences yo-yoing around in the Indicator rankings following changes in methodology by the World Bank, see Clare Williams, ‘What Can an ESL Offer to the Data Collector? Describing, Defining, Designing and Deploying an Alternative ESL Approach’ (2014) 65 *Northern Ireland Legal Quarterly* 345, 345–6. There is also a disclaimer include in most World Bank publications to the effect that the Bank “does not guarantee the accuracy of the data included in this work”. See *inter alia* World Bank (n 19) 2.

<sup>138</sup> For example, Georgia is ranked 9<sup>th</sup> in the Doing Business rankings having implemented 47 business reforms since the inception of the Doing Business project in 2003, making it the most improved country. See World Bank (n 19) 3; Desai and Woolcock (n 85); Perry-Kessaris, ‘Meeting Experimental Attitude in Legal Development Work with Experimental Attitude in Sociolegal Research’ (n 1).

unaddressed.<sup>139</sup> There is some evidence that “the size of the eventual markets” may persuade investors to invest or remain in states with less predictable legal and political systems, as well as a positive response to incentive packages and natural resources location advantages.<sup>140</sup> Similarly, a ‘hostile’ investment environment has been shown to encourage outflows of FDI.<sup>141</sup>

### 2.1.1.1 Problem 1: Correlation v Causation

A good deal of the literature establishing the legal system as a determinant of external finance takes its starting point (and usually main methodology) from the 1997 study by Lopez, La Porta, Shleifer and Vishny (the “LLSV set” that McCloskey has referred to).<sup>142</sup> This broke new ground in its quantification of the legal system and initiated a wave of similar studies. Lopez et al originally found that countries with “poorer investor protection, measured by both the character of legal rules and the quality of law enforcement”, had “smaller and narrower capital markets”.<sup>143</sup> This tendency to extract, abstract and compare through the use of (proxy) indicators not only uses the analytical tools of economics (measuring and counting), but its normative tools of comparison and competition.<sup>144</sup> The context of this

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<sup>139</sup> It is often impossible to pin down the national origin of a MNE, especially as the labour market is global, and firm representatives may not share legal cultural experience with the company they represent. UNCTAD, ‘World Investment Report 2016’ (UNCTAD DIAE 2016) 124 <[http://unctad.org/en/PublicationsLibrary/wir2016\\_en.pdf](http://unctad.org/en/PublicationsLibrary/wir2016_en.pdf)> accessed 21 May 2017.

<sup>140</sup> Wenjie Chen, David Dollar and Heiwai Tang, ‘Why Is China Investing in Africa? Evidence from the Firm Level’ [2005] Brookings Institute Working Paper <<https://www.brookings.edu/wp-content/uploads/2016/06/Why-is-China-investing-in-Africa.pdf>> accessed 21 May 2017; Douglas Bullis, *Succeed in Business: The Essential Guide for Business and Investment* (Graphic Arts Center Pub Co (Portland, Or) 1997); Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33) 28; Ndiva Kofele-Kale, ‘The Political Economy of Foreign Direct Investment: A Framework for Analysing Investment Laws and Regulations in Developing Countries’ (1992) 23 *Law Policy and International Business* 619, 646–655.

<sup>141</sup> Chen, Dollar and Tang (n 140) 1; Kofele-Kale (n 140) 665.

<sup>142</sup> La Porta and others, ‘Legal Determinants of External Finance’ (n 11); for the earlier literature that inspired this landmark, see inter alia Silvio Borner, Aymo Brunetti and Beatrice Weder, *Political Credibility and Economic Development* (Palgrave Macmillan UK 1995) <<http://www.palgrave.com/gb/book/9780312123765>> accessed 27 August 2018. For a thorough account of generations of law and development scholarship, see Trubek and Santos (n 111).

<sup>143</sup> Rafael La Porta and others, ‘Legal Determinants of External Finance’ (n 13) 1131.

<sup>144</sup> The *Doing Business* project (a sister project to the investment climate) grew out of the coalescence of several factors, but ultimately developed from the work of World Bank economist

approach sees the quantification of social systems as a response to, and within, the boundaries of the Weberian belief in the power of formal rational legal systems.<sup>145</sup>

The Law and Economics movement's practice of applying classical economic theories to the law exemplifies this. Its subtext includes the Law and Economics movement's justification of the application to law of economic methods, and the use of economic concepts like competition, efficiency and utility maximisation.<sup>146</sup>

In the intervening decades, the growth in quantitative legal analysis was so impressive that the authors reconvened in 2008 for a follow-up paper surveying their impact on the landscape.<sup>147</sup> The field has, like economics, "demonstrated a special knack for finding new 'failures' and 'gaps' and [...] worrying about these for years without alighting on robust and widely applicable solutions".<sup>148</sup> Indeed, the application of empirical, conceptual and normative economics-based approaches, or "economics imperialism on the shores of law and development", has produced a wave of literature that has reshaped both national and supranational frames and methods of 'doing' development.<sup>149</sup> While counting might give the impression of progress and clarity, some things lend themselves to quantification more readily than others and ingenious solutions and proxies have appeared.<sup>150</sup> Perhaps the most egregious example, by Acemoglu et al., used local mortality rates as a proxy for the quality of institutions, admitting this to be their "most parsimonious specification".<sup>151</sup> Similarly, Yusuf reflects that "[t]he net is cast widely, and whatever is caught is classified as fish".<sup>152</sup> "Now, Acemoglu and Zilibotti (2001) are claiming that growth might be a prisoner of institutions that are linked to colonial conquests,

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Simeon Djankov who pioneered the "survey method" of measuring legal systems. Djankov and others, 'The Regulation of Entry' (n 13).

<sup>145</sup> Frerichs, 'Studying Law, Economy, and Society' (n 4).

<sup>146</sup> The text, subtext and context categories are borrowed from *ibid* 10.

<sup>147</sup> La Porta, Lopez-de-Silanes and Shleifer (n 13).

<sup>148</sup> Yusuf and others (n 111) 57.

<sup>149</sup> Perry-Kessaris, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (n 36) 401.

<sup>150</sup> Djankov, quoted in *Unblocking Business*, *The Economist*, 15<sup>th</sup> September 2005, cited in Arruñada (n 128) 734.

<sup>151</sup> See Acemoglu, Robinson and Johnson (n 13) 1372.

<sup>152</sup> Yusuf and others (n 111) 41.

resource endowments, and geographic location” and there is no end to the “making or unmaking of institutions” in the pursuit of development.<sup>153</sup> However, the “eclectic selection of evidentiary material and the absence of robust, econometrically reliable results running from a limited and uniform set of explanatory investment climate variables to growth raises questions”.<sup>154</sup>

The quantification of legal systems and their correlation to development indicators came to be codified by the World Bank in its 2005 World Development Report.<sup>155</sup>

“The report has served as one of the principal and most widely read vehicles encapsulating the Bank’s knowledge of and policy recommendations on key issues”.<sup>156</sup> It provides a unique perspective “on the evolution of thinking, policy making, and practice” in development.<sup>157</sup> Similarly, the report also “tracks the waxing and waning of policy concerns and the cycling of policy fashions” as perceived by the World Bank.<sup>158</sup> It “reveals the beliefs and ideological leanings of the Bank’s management and principal shareholders” which filter perceptions of development and “subliminally shape the operational activities of the Bank”.<sup>159</sup> Accordingly, the annual Reports are clues to the World Bank’s values and interests, theories, methodologies and political economy.

The shifts set out in the 2015 and 2017 Reports, which focus on behavioural economics (2015) and law and development (2017) respectively, are therefore notable, as has the expansion of reference points to include experimentalism.<sup>160</sup> Studies in Sri Lanka and India have begun to address this, and the results appear to suggest that there is little causal link to be found, supporting assertions that certain

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<sup>153</sup> *ibid* 58.

<sup>154</sup> *ibid* 41.

<sup>155</sup> World Bank (n 8).

<sup>156</sup> Lin, J., *Foreword*, in Yusuf and others (n 111) ix.

<sup>157</sup> *ibid* 2.

<sup>158</sup> Yusuf, S., “A Star is Born”, in *ibid*.

<sup>159</sup> *ibid*.

<sup>160</sup> World Bank (n 58); World Bank (n 12); Desai and Woolcock (n 85); Amanda J Perry-Kessaris, ‘Meeting Experimental Attitude in Legal Development Work with Experimental Attitude in Sociolegal Research’ (2017). The impact of “nudge” units here has been acknowledged. See Fine and others (n 108).

legal rules lead to increased inward investment flows.<sup>161</sup> Other factors have also been explored including the size of the business or investment, the unwillingness of disputants to have recourse to the formal legal system,<sup>162</sup> and the fact that the shape of the legal system might be less important than actors' perceptions of what the rules say.<sup>163</sup> Similarly, other studies have found that law "was not irrelevant" to economic growth and development, although elements like natural resources and trade relations may carry more weight as determinants of investment.<sup>164</sup>

### **2.1.2 Problem 2: A partiality of voices**

When the "non-economic" and "non-rational" voices are minimised or silenced, the "economic" voices and interests that are represented in indicators are partial in their understanding of reality. This reflects the claims of neoclassical economics that it is a positive science that has no need for engagement with the messy realities of normative and analytical biases that other disciplines have to face.<sup>165</sup> Thus, the political preferences and any other choices, interests and motivations made by actors tend to be minimized. This has been encouraged by the willingness of policy makers to embrace the "clean hands" of neoclassical economics, avoiding the dirty, messy realities of social complexity.<sup>166</sup>

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<sup>161</sup> Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33); Perry-Kessaris, *Global Business, Local Law* (n 11).

<sup>162</sup> Robert C Ellickson, *Order without Law* (Harvard University Press 1994) <<http://www.hup.harvard.edu/catalog.php?isbn=9780674641693>> accessed 28 August 2018; Stephan Haggard, Andrew MacIntyre and Lydia Tiede, 'The Rule of Law and Economic Development' (2008) 11 *Annual Review of Political Science* 205.

<sup>163</sup> See William Ratliff and Edgardo Buscaglia, 'Judicial Reform: Institutionalizing Change in the Americas', *The Law and Economics of Development* (Edgardo Buscaglia, William Ratliff and Robert Cooter, eds) (JAI Press 1997) 323; David Campbell and Sol Picciotto, 'Exploring the Interaction Between Law and Economics: The Limits of Formalism' (1998) 18 *Legal Studies* 246.

<sup>164</sup> Pistor and Wellons (n 14); Kofele-Kale (n 140) 628.

<sup>165</sup> Perry-Kessaris, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (n 36).

<sup>166</sup> Hirsch, Michaels and Friedman (n 1).

This is compounded by the exclusionary function of neoclassical economics terminology, equations, regressions, analyses and models.<sup>167</sup> Those not schooled in undergraduate economics are prevented from engaging with the policy debates, even on their own terms. The potential expansion of frames of reference in recent World Development Reports is noteworthy.<sup>168</sup> Cynically, the plurality of discourse might be attributed to the influence of the Report's financial backers who were engaged in behavioural economics.<sup>169</sup> Further, the Bank's role performing an "international public good" as a "clearing house for knowledge about development" and as a "disseminator of [...]policy lessons", needs to be set against the backdrop of captured interests.<sup>170</sup>

More recently, the principle focus on identifying the underlying determinants of policy effectiveness has seen little reference to alternative perspectives, or "dissonant discourse".<sup>171</sup> Moreover, charges of "crony intellectualism" and a degree of intellectual "inbreeding", where the Bank becomes its own echo chamber of "paradigm maintenance", are well recognised.<sup>172</sup> Accepted norms, assumptions, incentives, methods and frameworks, both internally and between the global economy and development can serve to reinforce these.<sup>173</sup>

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<sup>167</sup> Perry-Kessaris, 'The Re-Co-Construction of Legitimacy of/through the Doing Business Indicators' (n 115).

<sup>168</sup> 'World Development Report 2005; A Better Investment Climate for Everyone' (n 36); but cf. 'World Development Report 2015: Mind, Society and Behavior' (n 20); 'World Development Report 2016: Digital Dividends' (World Bank) <<http://www.worldbank.org/en/publication/wdr2016>>; 'World Development Report 2017: Governance and The Law' (n 118).

<sup>169</sup> Fine and others (n 108) 643. Citing Stone and Wright, (2007) *The World Bank and Governance; A Decade of Reform and Reaction*, Routledge, at 14. The UK government was heavily engaged with its own "behavioural insight team" and "nudge unit" at the time.

<sup>170</sup> *ibid.*

<sup>171</sup> World Bank (n 12) 32; Robin Broad, 'Research, Knowledge, and the Art of "Paradigm Maintenance": The World Bank's Development Economics Vice-Presidency (DEC)' [2006] *Review of International Political Economy* 387, 388.

<sup>172</sup> D Kapur, 'Do as I Say Not as I Do: A Critique of G-7 Proposals on Reforming the Multilateral Development Banks', *G-24 Discussion Paper Series* (2003) 12; Celine Tan, *Governance through Development: Poverty Reduction Strategies, International Law and the Disciplining of Third World States* (Routledge 2011) <<http://www.routledge.com/books/details/9780415495547/>> accessed 4 August 2012; Broad (n 171); Robert Hunter Wade, 'US Hegemony and the World Bank: The Fight over People and Ideas' [2002] *Review of International Political Economy* 201.

<sup>173</sup> Broad (n 171) 388.

### 2.1.3 Problem 3: Normative silence

Despite a willingness to expand frames of reference, the inability of Investment Climate literature to fully address the normative assumptions underpinning the frames of reference remains. This is once again a manifestation of the belief in neoclassical economics to be a quasi-natural science that is positive in approach. Most visible in the 2017 World Development Report, used here to exemplify the Bank's approach, law is similarly narrowly defined as "the de jure rules",<sup>174</sup> and any discussions about the role of law in a social context, which is given as one of the Report's explicit aims, are precluded.<sup>175</sup> While both the political and moral *context* and *subtext* of the law are excluded, so are the myriad regulatory systems that co-exist and interact throughout society. This is hinted at in later comments that touch on the broader social spheres in which law functions, such as the formal and informal mechanisms of dispute resolution which "are often effective precisely because they reflect the social norms and power relations in which they are embedded".<sup>176</sup>

The tacit, normative regulatory impact is clearly visible, both in political statements and in legal reforms, and in both the thin and thick forms of meta-regulation explored above. At the same time, the reduction of complex social processes to a single figure has the impact of disguising the assumptions that support the indicator. However, the impact of the indicators on their target audience, foreign investors, remains unsupported by qualitative research.<sup>177</sup> Furthermore, echoing the discussion on crony intellectualism, the indicators appear in academic literature as a means of assessing legal reform and broader theories of legal culture, legal

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<sup>174</sup> World Bank (n 12) 84.

<sup>175</sup> *ibid* 97.

<sup>176</sup> *ibid* 104.

<sup>177</sup> Perry, 'Law as a Determinant of External Finance: The Case of Sri Lanka' (n 91); Perry-Kessaris, *Global Business, Local Law* (n 11); Perry, 'An Ideal Legal System for Attracting Foreign Direct Investment?' (n 30).

tradition and comparative development.<sup>178</sup> The sheer scale of the research produced by the Bank as leader of the ‘development knowledge’ industry is noteworthy, some 15,000 books and articles since 1995.<sup>179</sup> Despite this, the “methodology and formal techniques of economics” and the value of indicators, remain largely unchallenged.<sup>180</sup> In non-“dissonant discourse” literature, this reinforces the status of the indicators at the heart of the “traditional” law and economics literature.<sup>181</sup> The “dissonant discourse” literature itself rarely makes it into the Reports to challenge the existing paradigms that continue to bounce off the internal walls of the Bank’s “echo chamber”.<sup>182</sup> Indeed, the self-referential and non-critical nature of the supporting literature further precludes theoretical and methodological diversity or plurality that might allow an assessment of the normative claims made by the Bank.<sup>183</sup>

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<sup>178</sup> Kenneth W Dam, ‘China as a Test Case: Is the Rule of Law Essential for Economic Growth?’ [2006] SSRN eLibrary <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=880125](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=880125)> accessed 14 November 2012; Yusuf and others (n 111) 48. Yusuf notes that “[m]ost WDRs receive 20-30 citations per year” in academic literature.

<sup>179</sup> Fine and others (n 108) 643–44.

<sup>180</sup> *ibid* 647.

<sup>181</sup> Kapur (n 172) 12; Broad (n 171) 388.

<sup>182</sup> Broad (n 171); Wade (n 172); Kapur (n 172) 12.

<sup>183</sup> The papers cited are Mark Roe and Jordon Siegal, ‘Finance and Politics: A Review Essay Based on Kenneth Dam’s Analysis of Legal Traditions in the Law-Growth Nexus’; Avinash K Dixit, ‘Governance Institutions and Economic Activity’ <[http://www.princeton.edu/~dixitak/home/PresAd\\_F1.pdf](http://www.princeton.edu/~dixitak/home/PresAd_F1.pdf)> accessed 7 May 2017; Thorsten Beck, Asli Demirgüç-Kunt and Ross Levine, ‘Law and Finance: Why Does Legal Origin Matter?’ [2002] SSRN eLibrary <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=355820](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=355820)> accessed 14 November 2012; Ulrike Malmendier, ‘Law and Finance “At the Origin”’ <<http://eml.berkeley.edu/~ulrike/Papers/JELDraft70.pdf>> accessed 7 May 2017; Rafael La Porta and others, ‘Legal Determinants of External Finance’ (n 13); Gani Aldashev, ‘Legal Institutions, Political Economy, and Development’ (2009) 25 *Oxford Review of Economic Policy* 257; Edward L Glaeser and Andrei Shleifer, ‘Legal Origins’ (2002) 117 *Quarterly Journal of Economics* 1193; Simeon Djankov, Caralee McLiesh and Rita Ramalho, ‘Regulation and Growth’ 92 *Economics Letters* 395; Pistor, ‘Rethinking the “Law and Finance” Paradigm’ (n 14); Acemoglu, Robinson and Johnson (n 13); Aron Balas and others, ‘The Divergence of Legal Procedures’ (2009) 1 *American Economic Journal: Economic Policy* 138; La Porta, Lopez-de-Silanes and Shleifer (n 13); Ross Levine, ‘The Legal Environment, Banks, and Long-Run Economic Growth’ (1998) 30 *Journal of Money, Credit and Banking* 596; Oliver Hart, Andrei Shleifer and Robert Vishny, ‘The Proper Scope of Government’ (1997) 112 *Quarterly Journal of Economics* 1127; La Porta and others, ‘The Quality of Government’ (n 13); Edward L Glaeser and Andrei Shleifer, ‘The Rise of the Regulatory State’ (2003) 41 *Journal of Economic Literature* 401; Carmine Guerriero, ‘Endogenous Legal Traditions and Economic Outcomes’ (2016) 44 *Journal of Comparative Economics*.

Existing studies assessing foreign investors' attitudes towards the legal system tend to be ambiguous, retrospective, and partial in the sense that respondents are offered a pre-selected list of options to choose from.<sup>184</sup> While most studies of this nature find that the legal system is an important factor in the decision to invest, there is insufficient specificity to say whether this is due to the nature of the investment, the characteristics of the investor, or whether this is a by-product of self-selection bias.<sup>185</sup>

As noted in Limitation 1 however, qualitative empirical studies probing investor attitudes find them to be relatively insensitive to the host state legal system.<sup>186</sup> Investors are interested more in the time and costs involved, although this might vary according to nationality, export orientation and size of investment.<sup>187</sup> Despite this, and possibly because institutional economists have models that say so, a common sense notion persists that the legal environment must be a factor in both growing and supporting FDI, and consequently, multilateral organizations have set out standards for the treatment of foreign investors.<sup>188</sup>

The Bank's assumption – and its advice to developing countries – was that if the right incentives were put in place, citizens would modify their behaviour

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Also cited is de Soto, Hernando, (1989), "The Other Path", *New York, Harper and Row*, although the link is to an entirely different paper, namely one by White, Michelle, (2007), "Bankruptcy Reform and Credit Cards", *Journal of Economic Perspectives*, 21(4), 175-199.

<sup>184</sup> By 'partial', I mean that they offer a tick-box list of pre-determined factors to choose from, narrowing investors' decisions before they have been made. For a concise discussion of the literature from 1960-2000, see Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33) 26. The discussion on performativity in chapter 7 addresses this further.

<sup>185</sup> If you target a group of people and ask how important X is to them, they are likely to say that it is important. But this gives us no idea of relative importance. Compare this with the Eurobarometer surveys, discussed in chapter 7, which highlight the potential impact of the wording used in the survey on the outcomes.

<sup>186</sup> Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33). There does appear to be some consensus that MNEs benefit more from an export-oriented economy, as well as from some defined resource-endowment factors like human capital development and an entrepreneurial advancement. See Athukorala (n 113) 3.

<sup>187</sup> Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33).

<sup>188</sup> Examples include the OECD Guidelines on the Multinational Enterprise, 1976; the UN Draft Code on the Conduct of Transnational Corporations, 1977; and the World Bank Convention for the Settlement of Investment Disputes, 1965, Treaty Establishing the Multilateral Investment Guarantee Agency, 1985, and Guidelines on the Treatment of Foreign Investment, 1992. Muchlinski (n 113) ch 16. See also Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33) 28.

accordingly.<sup>189</sup> This belief in the power of neoclassical economics to positively shape behaviour tends to be reinforced with the attitude that the reforms and recommendations are sound advice. If they don't work, the fault is in the implementation. Notably though, indicators and their role in the Investment Climate campaign represent a "distinctive method of producing knowledge about societies" in a way that tacitly embodies "theories about both the appropriate standards against which to measure societies (or institutions) and the appropriate ways in which to measure compliance with those standards".<sup>190</sup> Any use of such an indicator necessitates the acceptance of these. Moreover, the "shrouding" of these tacit theories in an indicator can, depending on the circumstances, "make them either more or less influential and either more or less open to various forms of contestation and regulation".<sup>191</sup> Indeed, the massive influence of the indicators also exemplifies "the range of mechanisms through which power can be exercised beyond the state".<sup>192</sup>

#### **2.1.4 Conclusions**

The three limitations identified above with the World Bank's Investment Climate campaign epitomize the problems that arise when social science silos and economics imperialism are applied to the real world. In order to understand how World Bank development doctrine came about, it is useful to review the research that led to economics imperialism. The Law and Development and the Law and Economics movements are central here, as well as the reactionary movements that challenged the conquest of all spheres of social interaction by neoclassical economics. At the same time, the ability of the discourse to shape our mental

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<sup>189</sup> Yusuf and others (n 111); Perry-Kessaris, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (n 36).

<sup>190</sup> Davis, Kingsbury and Merry (n 35) 4.

<sup>191</sup> *ibid* 4–5.

<sup>192</sup> Sam Scheuth, 'Assembling International Competitiveness: The Republic of Georgia, USAID, and the Doing Business Project' (2011) 87 *Economic Geography* 51. Cited in Davis, Kingsbury and Merry (n 35) 33.

models and linguistic tools is referred to, as well as the conceptual commitments to various themes, the most relevant of which here is embeddedness.

## **2.2 The rise of economics imperialism**

### **2.2.1 Economics imperialism**

The imperialist tendencies, or “colonization” of the subject matter of other social sciences by economics is “a widely – if not well – recognized phenomenon”.<sup>193</sup> Despite their differences, Marx and Weber started out from similar assumptions that economic (and legal) phenomena were at their heart manifestations of social processes, and should be studied accordingly, reflecting the pre-disciplinarity of the time.<sup>194</sup> Adam Smith was well versed in deductive and inductive reasoning, and while Ricardo pioneered deductivism, this only became widespread to the exclusion of other approaches in the marginalist revolution. This saw the establishment of economics as a discipline its own right and with its own battle of methods.<sup>195</sup> This also left economics as the study of the “rational”, implying that the nascent study of society (along with the other social sciences) were ultimately the study of the “non-rational”, and the “non-market”.<sup>196</sup> This development saw the shift from a pluralist economics, in the decades before the Second World War, to one in which a triple reductionism had boiled down the field.<sup>197</sup> This made the principles universally applicable, but in the process detached any historical links and saw the social, political, and historical elements marginalised and eventually eclipsed.<sup>198</sup> Along with this, the normative biases of the discipline were also buried, leaving its focus on “the allocation of scarce resources, with corresponding attention to the individual

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<sup>193</sup> Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 401.

<sup>194</sup> For a short history of the study of law, economics, and sociology, see Frerichs, ‘Studying Law, Economy, and Society’ (n 4).

<sup>195</sup> Fine and Milonakis (n 37) 2.

<sup>196</sup> *ibid* 4.

<sup>197</sup> See *inter alia* <<https://economicpluralism.org/>> which campaigns for economic pluralism in teaching, policy and research.

<sup>198</sup> Fine and Milonakis (n 37).

choice, efficiency and equilibrium”.<sup>199</sup> This in turn provided an impetus for applying the principles to ever broader areas of inquiry.

As Fukuyama has stated, while “economic activity is inextricably linked with social and political life, there is a mistaken tendency, encouraged by contemporary economic discourse, to regard the economy as a facet of life with its own laws, separate from the rest of society”.<sup>200</sup> According to this viewpoint, “the economy is a realm in which individuals come together only to satisfy their selfish needs and desires before retreating back into their ‘real’ social lives. But in any modern society, the economy constitutes one of the most fundamental and dynamic arenas of human sociability. There is scarcely any form of economic activity [...] that does not require the social collaboration of human beings”.<sup>201</sup>

The phrase “economics imperialism” was first coined by Ralph William Souter in 1933.<sup>202</sup> This was an immediate response to Robbins who defined economics as “the science which studies human behaviour as a relationship between ends and scarce means which have alternative uses”.<sup>203</sup> As the models and assumptions became more refined, usually by a process of reductionism, they therefore became more widely applicable, and so, despite being able to do less and less, were applied to more and more. Whether this was an invasion, as the term “imperial” implies, is unclear. Hirsch et al suggest that economics was in fact invited in by those seduced by its cleanliness, neatness, positivism and ability to provide binary answers (yes or no, right or wrong) in the absence of the messy normativity that imbues the real world.<sup>204</sup>

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<sup>199</sup> *ibid* 5.

<sup>200</sup> Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (Hamish Hamilton, 1995) 6.

<sup>201</sup> *ibid*.

<sup>202</sup> Lionel Robbins, *An Essay on the Nature and Significance of Economic Science* (Macmillan 1932) <<https://mises.org/library/essay-nature-and-significance-economic-science>> accessed 13 July 2019. Cited in Fine and Milonakis (n 37) 4.

<sup>203</sup> Fine and Milonakis (n 37) 4.

<sup>204</sup> Hirsch, Michaels and Friedman (n 1); Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36).

Nevertheless, “the extension of economic analysis to subject matter beyond its traditional borders” saw authors like Gary Becker apply “neoclassical technical economic apparatus to the social sphere”.<sup>205</sup> This involved “treating other areas of the social cosmos as if they were markets, rather than bringing the social back into economic theorizing on any other terms”.<sup>206</sup> Indeed, the work of Becker and Buchanan (both of whom won Nobel Prizes for their work), who have “built careers extending economic methodology to what are usually regarded as non-economic phenomena like politics, bureaucracy, racism, the family, and fertility”.<sup>207</sup> As a result, “[t]he political science departments of many major universities are now filled with followers of so-called rational choice theory, which attempts to explain politics using an essentially economic methodology”.<sup>208</sup> The question was, then, to what extent could the social be reduced to the individual (an “ideal” of a rational, utility-maximising, economic man) both in terms of behaviour and the non-market?

### **2.2.2 Transaction Cost Economics and why institutions matter**

“Law was given a civilised economic once-over as early as 1937”, when Ronald Coase introduced transaction cost economics.<sup>209</sup> His 1937 paper “The Nature of the Firm”, was written several years after Lionel Robbin’s “An Essay on the Nature and Significance of Economic Science”.<sup>210</sup> It set out his observation that business people could reduce their costs by adopting different legal forms - contracts, partnerships, firms and so on, rendering social interactions as now little more than mere costs, and law as a cause or an effect of them.<sup>211</sup> Economics also claimed to be a “positive

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<sup>205</sup> Fine and Milonakis (n 37) 9.

<sup>206</sup> *ibid.*

<sup>207</sup> Fukuyama (n 200) 17.

<sup>208</sup> *ibid.* 17.

<sup>209</sup> Ronald Coase, *The Firm, the Market, and the Law* (1987)

<<https://www.press.uchicago.edu/ucp/books/book/chicago/F/bo5954330.html>> accessed 18 August 2018; cited in Perry-Kessaris (n 4) 404.

<sup>210</sup> Robbins (n 202).

<sup>211</sup> Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 404; Fine and Milonakis (n 37) 79.

science without normative content”, dealing with the “rational”, and applying these universal principles across the board.<sup>212</sup> However, the flip side of this, and a problem that Coase returned to in his later life is that “the entities whose decisions the economists are engaged in analyzing have not been made the subject of study and in consequence lack any substance”.<sup>213</sup> This has also been lamented by Douglass North, in his complaint that neoclassical economics has not given much attention to the actual market that sits at the centre of the theory, or to individual actors.<sup>214</sup> Similarly, Coase has referred to “the firm” as the “black box” of neoclassical theory and attempted to uncover why firms exist through transaction cost analysis.<sup>215</sup> This developed into the transaction cost economics that came to be associated with the work of Williamson, Simon and Coase, although all three are still regarded as depending heavily on the classical liberal tradition.<sup>216</sup>

The expanded application of economics models to ever-wider areas of social and political life reached its apogee with Becker, whose “prodigious reductionism” used “the neoclassical micro-economic model of rational utility maximisation to explain and predict all human behaviour”.<sup>217</sup> While met with initial scepticism, by the 1960s, public choice theory, or the application of economics to politics, was mainstream. Becker’s work was based on three main assumptions. Firstly, that individuals seek to maximise their utility (or profit). Secondly, that markets “with varying degrees of efficiency co-ordinate the actions of different participants individuals, firms, even nations – so that their behaviour becomes mutually consistent”.<sup>218</sup> And thirdly, that the preferences of actors are stable. The lack of

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<sup>212</sup> Fine and Milonakis (n 37) 6.

<sup>213</sup> Coase (n 16); cited in Fine and Milonakis (n 10) 79.

<sup>214</sup> Michel Callon, ‘Introduction: The Embeddedness of Economic Markets in Economics’, *The Laws of the Market* (Callon, ed) (Cambridge: MA Blackwell 1998) 1, 54; Fine and Milonakis (n 37).

<sup>215</sup> Fine and Milonakis (n 37) 80.

<sup>216</sup> *ibid.*

<sup>217</sup> Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 404; Fine and Milonakis (n 37) 5.

<sup>218</sup> Gary Becker, (1976) *The Economic Approach to Human Behavior*, Chicago University Press, 5; cited in Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 405. Becker’s initial applications of economics was to racial discrimination.

social and historical context made these propositions universally applicable in theory, but of only so much use in any given context due to their abstract nature.

As Hirsch et al sum up, “[t]oo many scholars prefer clean models to dirty hands”.<sup>219</sup>

By this, they are referring to the neatness and separation from reality of the mathematical models that sit at the heart of orthodox economics. This contrasts with the “sloppy reality” that sociologists inevitably become mired in when undertaking empirical research “in the real world”.<sup>220</sup> Indeed, while economists “influence” the “form and style” of legal indicators, their “intended audience is an economics and policy one, which does not seek noisy, messy data from law”.<sup>221</sup> Embodying this, Becker states that the “economic approach is not restricted to material goods and wants or to markets with monetary transactions, and *conceptually* does not distinguish between major and minor decisions or between ‘emotional’ or other decisions”.<sup>222</sup> Furthermore, “the economic approach provides a framework applicable to all human behaviour - to all types of decisions and to persons from all walks of life”.<sup>223</sup> Thus the approach is “*basically a way of thinking*” that assumes that all human behaviour is rational, utility maximising, and with perfect information.<sup>224</sup> The absence of historical, personal, cultural and political factors – or more precisely the fact that these are seen as unnecessary – means that where, how and why preferences, choices and interests change is not seen as relevant or important.

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<sup>219</sup> Hirsch, Michaels and Friedman (n 1) 46.

<sup>220</sup> *ibid.*

<sup>221</sup> Twining (2009) *General Jurisprudence: Understanding Law from a Global Perspective*, Cambridge University Press, 253-54; Taylor (2005) *The Law Reform Olympics: Measuring the Effects of Law Reform in Transition Economies* 19, available at <

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=893682](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=893682)>, cited in Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 403.

<sup>222</sup> Gary Becker (1981), *A Treatise on the Family*, Cambridge Mass: Harvard University Press, at p.iv, cited in Hirsch, Michaels and Friedman (n 1) 46. An even stronger statement of the unashamed imperialism of economics is set out in George J Stigler and Gary Becker, ‘De Gustibus Non Est Disputandum’ (1977) 67 *The American Economic Review* 76.

<sup>223</sup> Hirsch, Michaels and Friedman (n 1) 46.

<sup>224</sup> Paul Heyne, “The Economic Way of Thinking”, 2nd ed. Chicago: Science Research Associates Inc., 1976, p.1, cited in *ibid.* Emphasis in original.

Moreover, when economists do delve in to other fields of inquiry, they bring their existing approaches with them. So, to “present economic formulations of ‘sociological’ problems, they impose the definitional assumptions about instrumental motivation and self-interested rational actors, along with the methodological preference for aggregated data and deductive modelling”.<sup>225</sup> Rather than represent “humble contributions”, or fresh perspectives on familiar questions, they “effectively redefine a whole field and supplant previous work with economists' articulate and well-defined theoretical apparatus”, bulldozing all that went before.<sup>226</sup> While “economics increasingly claims universality, [...] it remains static and unable to incorporate major social changes into its models”.<sup>227</sup> It is also generally unable to cope with messy, awkward or other data that does not fit the pre-existing models. Similarly, “even when data are generated to test economic models, they are usually ignored when they run counter to economists' assumptions”, unless they can be “made to fit the model”.<sup>228</sup>

### 2.2.3 (New) Institutional Economics

Building on the work of Coase and the reductionism demonstrated by Becker, the New Institutional Economics (NIE) movement solidified economics imperialism in the 1980s, riding the wave of political neoliberalism. The political climate in the second half of the twentieth century of Thatcherism and Reaganism, and preferences for privatization, marketization and deregulation, set the scene for the “marginalist revolution”.<sup>229</sup> This both streamlined and overhauled economics, and set the stage for its “absolutization” and “physics envy” that have come to define both economics

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<sup>225</sup> *ibid* 47.

<sup>226</sup> *ibid*.

<sup>227</sup> *ibid* 49. There appears to be a lack of empirical data generally. Nobel Prize-winning economist Wassily Leontief analysed four years of *The American Economic Review*, finding that over half of the published papers comprised mathematical models without data, while around 0.5% of articles cited data. Some of this was about the utility maximization of pigeons though. See Robert Kuttner, "The Poverty of Economics" *Atlantic Monthly*, Feb.1985:74-84, cited in *ibid* 52.

<sup>228</sup> Hirsch, Michaels and Friedman (n 1) 52.

<sup>229</sup> Paul Hirsch, Stuart Michaels and Ray Friedman, “‘Dirty Hands’ versus ‘Clean Models’: Is Sociology in Danger of Being Seduced by Economics?” (1987) 16 *Theory and Society* 317, 318.

and the surrounding social sciences, and against which movements like ESL sit.<sup>230</sup> Microeconomics, as the core paradigm for the discipline as a whole, based on a highly abstract and deductive approach to social science research, came to embody the entirety of the discipline. In this sense, the style, elegance and “parsimony” is prized almost above their accuracy or function, and these models are designed to be predictive.<sup>231</sup> The microeconomic models were effectively “scaled up” to perform higher level (macro) analysis.<sup>232</sup> At the same time, “heuristic assumptions about human nature, [that take] the existence and pre-eminence of markets as a given” are added on to other “related principles such as fixed preferences” which are both assumed and generally unquestioned.<sup>233</sup> “The claim that these are all exogenously determined factors lying outside the realm of economics has a certain disingenuous quality”, and is a charge taken up by both economic sociology and ESL.<sup>234</sup>

As Rudolf Richter sets out, the methodological foundations of NIE are broadly the same as neoclassical economics: methodological individualism and individual rational choice given a set of constraints. But, “due to transaction or information costs, information is limited and thus institutions matter”.<sup>235</sup> As Douglass North stated, “the neo-classical result of efficient markets only obtains when it is costless to transact. When it is costly to transact, institutions matter”.<sup>236</sup> Moreover, what applied to institutions also applied to “just about everything else, including informal institutions such as customs and culture”.<sup>237</sup> Therefore, in an advance led by North, “the theory of the firm based on transaction costs could become a theory of

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<sup>230</sup> Respectively, Hirsch, Michaels and Friedman (n 1) 40; Barber (n 38); Raworth (n 39).

<sup>231</sup> Hirsch, Michaels and Friedman (n 1) 40.

<sup>232</sup> *ibid.*

<sup>233</sup> *ibid.*

<sup>234</sup> *ibid.* Indeed, the two books that comprise the third case study both actively rail against these assumptions, although in each of these cases, the conceptual commitment to embeddedness constrains the response.

<sup>235</sup> Rudolf Richter, “The New Institutional Economics: Its Start, Its Meaning, Its Prospects” (2005) *European Business Organization Law Review*, 6(2), 161-200, 171, cited in Fine and Milonakis (n 37) 78.

<sup>236</sup> Douglass North, “Five Propositions about Institutional Change” (1995) in Knight and Sened (eds) 18, cited in *ibid.* 80.

<sup>237</sup> *ibid.*

institutions with a corresponding allocation of activity and resources within and between the market and non-market".<sup>238</sup>

Thus, New Institutional Economics is very much neoclassical economics with bells on, in the form of added information and transaction costs. At this point though, property rights become indispensable for the analysis of economic organisations, and political (state) institutions are added as essentials and brought within the sphere of analysis. Building on the work of Coase, Williamson tried to construct a more complete theory of the economic institutions of capitalism, using Herbert Simon's concepts of "bounded rationality" and "satisficing", to which he added his own concept of "opportunism".<sup>239</sup> These additions mean that "the transaction costs of negotiating and enforcing a contract are that much greater due to information imperfections alone, and, in turn, lead to collective outcomes that promote *governance structures* [...] which, in turn, lower these costs".<sup>240</sup> Williamson's analytical schema included the mantras: "get the governance structure right", and "get the institutional environment right".<sup>241</sup> Additionally, "social theory is the broadest, first tier, encompassing 'embeddedness: informal institutions, customs, traditions, norms, religion'".<sup>242</sup> While the approaches drawing on this have been separated into two main strands, the differences should not be exaggerated. Simply put, by making transaction costs part of a more rigorous framework, it made these more acceptable to mainstream economists. As Zald has noted, "[i]t tempers and disguises the formalism", and is a way of creating "the articulation of the economic calculus with other aspects of institutional embodiment of a normative structure".<sup>243</sup>

World Bank rule of law and governance programs drew greatly on the justifications provided by New Institutional Economics in starting to reshape legal structures,

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<sup>238</sup> *ibid.*

<sup>239</sup> *ibid.* 82.

<sup>240</sup> *ibid.*

<sup>241</sup> *ibid.*

<sup>242</sup> *ibid.*

<sup>243</sup> Zald, "Review Essay: The New Institutional Economics" (1987) *American Journal of Sociology*, 93(3), 701-8, 707, cited in *ibid.*

institutions and their rules. The assertions that “institutions matter”, or “the rules of the game in society” matter for development outcomes has been challenged by McCloskey amongst others.<sup>244</sup> She contends that North was wrong about the role of property institutions and law enforcement, and that once this is accepted, much of the literature supporting the World Bank’s investment climate falls down.<sup>245</sup> This includes the legal origins research by the “LLSV set” (referring to the seminal papers by Lopez, La Porta, Schleifer and Vishny) and Acemoglu in particular that are discussed below. Nevertheless, the march of economics imperialism continued, pushing back new boundaries for forays into the social that are now justifiable economically. This is despite the lack of definition of terms, or of context (social or historical), while maintaining a definition between the “market” and the “non-market”, whatever these may be.

So, economics imperialism means that while economics has problems of its own, it spreads these wherever it colonizes, sharing these underlying issues of methodology with its newfound colony.<sup>246</sup> The issue of the “black box” has been mentioned, where certain concepts (originally the firm) were unavailable to economic analysis.<sup>247</sup> This is a problem that has been brought into economic sociology, where the market has been identified as unavailable for sociological analysis.<sup>248</sup> Further, while the categories of “market” and “non-market” remain central to the neoclassical approach, the boundaries between the two are unclear, as are definitions of what we mean by “the market”.<sup>249</sup>

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<sup>244</sup> Deirdre N McCloskey, ‘Why Economics Is on the Wrong Track’ (*Prudentia*, early 2007 2006) <<http://www.deirdremccloskey.com/articles/stats/why.php>> accessed 14 October 2018; Donald McCloskey, ‘The Rhetoric of Law and Economics’ (1988) 86 *Michigan Law Review* 752.

<sup>245</sup> See Douglass Cecil North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press 1996) 1; Deirdre N McCloskey, ‘The Institution of Douglass North’, *Bourgeois Dignity and Liberty: Why Economics Can’t Explain the Modern World [Vol.2 of The Bourgeois Era]* (2009) <[https://mpra.ub.uni-muenchen.de/21768/1/MPRA\\_paper\\_21768.pdf](https://mpra.ub.uni-muenchen.de/21768/1/MPRA_paper_21768.pdf)> accessed 7 May 2017.

<sup>246</sup> Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36).

<sup>247</sup> Coase (n 209); Fine and Milonakis (n 37).

<sup>248</sup> Krippner (n 27).

<sup>249</sup> Coase has criticised mainstream economics for its lack of precision on the market. Ronald Coase, ‘Economics and Contiguous Disciplines’ (1978) 7 *Journal of Legal Studies* 201, 207; cited in Ben Fine

As noted above, there can be no market without people interacting socially, and to speak of anything else sits somewhere between metaphor and fiction. From a theoretical perspective, the skirmishes at the boundary between economists and sociologists are indicative that there is no clear boundary between the two. But ultimately this is a moot point, as “the market” is a metaphor for a collection of, or certain type of behaviour.<sup>250</sup> Fine and Milonakis state that “something has to be taken as exogenous”, while for Ankarloo and Palermo, the assumption of markets “is not an expositional convenience but one of theoretical consistency”.<sup>251</sup> Kurkchiyan takes a similar approach to sociolegal research. While she sees the law as “socially constructed”, she states that it is necessary to separate out collections of similar behaviours and refer to these as “the law” for the purposes of the research, these then being later reintegrated into the real world.<sup>252</sup>

#### **2.2.4 Economics expands into development**

“With the emergence of the new information-theoretic and new institutional economics, based on the notions of informational asymmetries, transaction costs and other market imperfections, a new and more effective form of economics imperialism took hold”.<sup>253</sup> This saw the expansion of economics into domains hitherto thought of as social in nature, including development. Perry-Kessaris has defined this as “a notoriously contentious and slippery notion, variously regarded as essential, impossible and objectionable”.<sup>254</sup> In turn, this “can be defined as any attempt to improve (in the eyes of the developer) the lives of the relatively (locally,

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and Dimitris Milonakis, *From Economics Imperialism to Freakonomics* (Routledge Ltd) 7  
<https://www.dawsonera.com/abstract/9780203880289> accessed 16 August 2018.

<sup>250</sup> Lakoff and Johnson (n 57).

<sup>251</sup> Fine and Milonakis (n 37) 86; Daniel Ankarloo and Giulio Palermo, ‘Anti-Williamson: A Marxian Critique of New Institutional Economics’ (2004) 28 *Cambridge Journal of Economics* 413, 413. Accepting that there is no such thing as “the market” means that trying to define its boundaries on a map of social interaction is similar to trying to draw the boundaries of Neverland or Middle Earth.

<sup>252</sup> Kurkchiyan (n 63) 366–367.

<sup>253</sup> Fine and Milonakis (n 37) 9.

<sup>254</sup> Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 405.

nationally, regionally, internationally...) 'poor' (financially, culturally, socially...)”.<sup>255</sup> This is necessarily a loose definition, and while initially the work of Rostow and of Robert McNamara protected the field of development somewhat, allowing the discipline to retain some of its social and historical context, even this was swept away by the rise of political neoliberalism in the 1980s.<sup>256</sup> This turn ushered in the demonization of the state as wasteful, inefficient and rent-seeking, along with the belief in the power of the free market to bring about development by its unfettered operation. It also signalled the demise of development economics as a distinct branch of inquiry, replacing it with mainstream, neoclassical economics.

Fine notes that “[e]xactly the same universal principles” were thought to apply across developing and developed countries.<sup>257</sup> Historical differences and variations in “social and economic structure” were categorized as forming the environment, or “exogenous factors”.<sup>258</sup> Within these, *homo economicus* goes about maximising his utility, urged on by the economists who “dipped their toes, waded, then swam ever further from the jetties of trade, finance and investment, eventually ‘discovering’, à la Columbus, the shores of law and development”.<sup>259</sup> Their disembarking saw the progressive clearing of “socio-legal debris”, and the displacement and estrangement of the socio-legal Weberians who had previously occupied the territory.<sup>260</sup> Instead, “the seeds of individual rational utility maximisation that are characteristic of Chicago-inspired law and economics [were planted], and [the land was] remapped with the symbols of ‘good governance’ and ‘rule of law’ which are characteristic of new institutional economics”.<sup>261</sup>

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<sup>255</sup> *ibid.*

<sup>256</sup> Robert Strange McNamara served as President of the World Bank from 1968-1981. See Yusuf and others (n 111).

<sup>257</sup> Ben Fine, ‘The New Development Economics’, *The new development economics: After the Washington Consensus* (KS Jomo and B Fine, eds) (Zed Books 2007); cited in Amanda J Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (2011) 7, *International Journal of Law in Context* 401, 405.

<sup>258</sup> Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 405.

<sup>259</sup> *ibid* 405–6.

<sup>260</sup> *ibid* 406.

<sup>261</sup> *ibid.*

### 2.2.5 The role of law in development

The Law and Development movement saw the rise and fall of various approaches, some of which mirrored the approaches taken in economics. In later incarnations, Law and Development mirrored the Legal Origins literature, although earlier generations of scholarship are notable for their more integrated, historicist approaches. There have been three identifiable “moments” in the history of law and development, the first of these, in the 1950s and 60s focused on the role of the State in “managing the economy and transforming traditional societies”.<sup>262</sup> The law was seen as a tool that could bring about social change, and initially looked back to the foundations of sociology for an historical, integrated approach. As the World Bank noted in its 2017 World Development Report, “[m]any years ago German sociologist Max Weber [...] argued that rational legal authority (in contrast to traditional or charismatic authority) depends on a society’s belief in the legitimacy of order”.<sup>263</sup> Moreover, while bureaucratic efficiency has “an independent effect on economic development”,<sup>264</sup> having “a Weberian state at peace is a precondition not just for sustained growth, but for virtually all of the other development objectives (fair distribution, rule of law, democracy)”.<sup>265</sup> The movement mixed “liberal legalism” in the United States to examine the role of law in society.<sup>266</sup> It also examined its place in development, establishing the individual as the basic unit of analysis, controlled and coerced by purposive state rules. Law therefore was “good”

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<sup>262</sup> Trubek and Santos (n 111) 2.

<sup>263</sup> World Bank (n 12) 90.

<sup>264</sup> Philip Keefer, ‘A Review of the Political Economy of Governance: From Property Rights to Voice’ [2004] World Bank Policy Research Working Paper 3315, May 2004 21  
<<http://web.worldbank.org/archive/website01241/WEB/IMAGES/WPS3315.PDF>> accessed 13 July 2019.

<sup>265</sup> Brian Levy and Francis Fukuyama, ‘Development Strategies: Integrating Governance and Growth’ [2010] World Bank Policy Research Working Paper 5196  
<<https://openknowledge.worldbank.org/bitstream/handle/10986/19915/WPS5196.pdf;sequence=1>> accessed 21 May 2017.

<sup>266</sup> Trubek and Galanter (n 14) 1070. See also Lawrence M Friedman, ‘Legal Culture and Social Development’ (1969) 4 Law and Society Review 29; David M Trubek, ‘Toward a Social Theory of Law: An Essay on the Study of Law and Development’ (1972) 82 The Yale Law Journal 1. Additionally, Robert B Seidman, ‘Law and Development: A General Model’ (1972) 6 Law & Society Review 311.

in the sense of enabling development, both in terms of its ability to sustain individual freedom, but also to curb arbitrary government action.<sup>267</sup>

But as the 1960s and 70s progressed, a crisis in the legal liberalism and law and development approach arose. “[S]ome scholars [came] seriously to doubt the liberal legalist assumptions that ‘legal development’ can be equated with exporting United States institutions or that any improvement of legal institutions in the Third World will be potent and good”.<sup>268</sup> More worryingly, “[t]hey have come to see that legal change may have little or no effect on social economic conditions in Third World Societies”.<sup>269</sup> Conversely, “many legal ‘reforms’ can deepen inequality, curb participation, restrict individuals’ freedom, and hamper efforts to increase material well-being”.<sup>270</sup> Despite the many approaches explored in the intervening years, this is still an issue that projects like an ESL address.

In the decades that followed, the role of law in development shifted. From a focus on the exercise of state power, as the early Law and Development advocates posited, it moved to see the law as a frame for market activity. This made the rule of law an objective for development policy in its own right.<sup>271</sup> The neoliberal political agenda of the 1980s saw the rightful role of law as curbing the influence of the state and reducing regulation that acted as an “unnecessary intrusion” on the market while allowing the free market to function “naturally”.<sup>272</sup> A focus on good governance and public choice theory saw deregulation, privatization and marketization become the goal of public sector decision-making. This free market ideal was translated into World Bank policy as a “normative Coase theorem”

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<sup>267</sup> Trubek and Galanter (n 14) 1074. Following the Chile Law Program, the Studies in Law and Development (SLADE) in the 1970s set out to acquire “systematic and comparable information about law and social change”. For a thorough review, see generally John Henry Merryman, ‘Law and Development Memoirs II: SLADE’ (2000) 48 *The American Journal of Comparative Law* 713.

<sup>268</sup> Trubek and Galanter (n 14) 1080.

<sup>269</sup> *ibid.*

<sup>270</sup> *ibid.*

<sup>271</sup> Trubek and Santos (n 111) 1.

<sup>272</sup> *ibid.* 2. The possibilities for an ESL lens to respond to the neoliberal project is considered in the reflections below.

approach that echoed Weberian notions of law.<sup>273</sup> Building on the Legal Origins literature, the Law and Development movement,<sup>274</sup> although never “monolithic or well-integrated”, aspired to a “science” of law and development with the practicalities carried out by the (mostly American) development agencies.<sup>275</sup> This found form in some of the iconic literature of the time that came to underpin the World Bank’s approach to development, in particular the LLSV approach to quantification, comparison and measurement.<sup>276</sup> Lopez, La Porta, Schleifer and Vishny (LLSV) broke new ground with their initial research in 1997 and 1998

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<sup>273</sup> Robert D Cooter and Thomas Ulen, *Law and Economics Reading* (Massachusetts: Addison-Wesley Longman 1997) 89. For a full discussion of these paradigm shifts and an overview of the literature up to the millennium, see Perry, ‘Law as a Determinant of External Finance: The Case of Sri Lanka’ (n 91). See also Trebilcock (n 14) 30–31.

<sup>274</sup> Perry-Kessaris follows the lead of William Twining here in calling this “legal development”, see Perry-Kessaris, ‘Meeting Experimental Attitude in Legal Development Work with Experimental Attitude in Sociological Research’ (n 1).

<sup>275</sup> Trubek and Galanter (n 14) 1070, 1090; Trubek and Santos (n 111); Tan, *Governance through Development* (n 172); Faúndez and Tan (n 111); Dam (n 178); Kenneth W Dam, ‘Legal Institutions, Legal Origins, and Governance’ [2006] SSRN eLibrary <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=932694](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=932694)> accessed 14 November 2012; John Armour and others, ‘Law and Financial Development: What Are We Learning from Time-Series Evidence?’ [2009] *BYU L. Rev.* 1435; Mathias M Siems, ‘Numerical Comparative Law: Do We Need Statistical Evidence in Law in Order to Reduce Complexity’ (2005) 13 *Cardozo Journal of International and Comparative Law* 521; Haggard, MacIntyre and Tiede (n 162); Ndiva Kofele-Kale, ‘Good Governance as Political Conditionality’ (2001) 8 *The African Anthropologist*; Kofele-Kale (n 140).

<sup>276</sup> For World Bank reviews of literature informing its own policies, see *inter alia* The World Bank (n 93); World Bank, ‘Economic Development and the Quality of Legal Institutions’ (n 93); World Bank, ‘Law and Development Movement’ (n 93); Yusuf and others (n 61); ‘Governance: Promoting Sound Development Management’ (Asian Development Bank 1997) <<http://www.asianlii.org/asia/other/ADBLPRes/1997/1.pdf>>; ‘World Development Report 2005: A Better Investment Climate for Everyone’ (n 17); ‘Doing Business: Measuring Business Regulations’ <<http://www.doingbusiness.org/data/exploreeconomies/sri-lanka>>; The LLSV set of research also includes Rafael La Porta and others (n 22); Rafael La Porta and others (n 73); Rafael La porta and others, ‘Investor Protection and Corporate Valuation’ (2002) 57 *Journal of Finance* 1147; Rafael LaPorta and others, ‘Judicial Checks and Balances’ (National Bureau of Economic Research, Inc 2003) <<http://ideas.repec.org/p/nbr/nberwo/9775.html>> accessed 5 November 2010; La Porta and others, ‘The Quality of Government’ (n 21); La Porta and others, ‘Investor Protection and Corporate Governance’ (n 73); Glaeser and others (n 73); La Porta, Lopez-de-Silanes and Shleifer (n 22). Rafael La Porta and others, ‘Legal Determinants of External Finance’ (n 13); La Porta, Lopez-de-Silanes and Shleifer (n 13); La Porta and others, ‘Investor Protection and Corporate Governance’; Rafael La Porta and others, ‘Law and Finance’ (n 13); La Porta and others, ‘The Quality of Government’ (n 13); Djankov and others, ‘The Regulation of Entry’ (n 13); Djankov, McLiesh and Ramalho (n 183); Simeon Djankov and others, ‘The New Comparative Economics’ (National Bureau of Economic Research 2003) Working Paper 9608 <<http://www.nber.org/papers/w9608>> accessed 22 May 2017; Acemoglu, Robinson and Johnson (n 13).

concerning the legal protection of investors and its consequences.<sup>277</sup> The means of quantifying legal systems was quickly taken up and then expanded, allowing the comparison of quantified aspects of legal systems with the health and size of the corresponding economy.<sup>278</sup> This “legal origins” literature was central in providing apparent proof of the role of legal systems in economic development, and alongside the “LLSV set”, a wave of literature appeared on the economic impact of different legal systems.<sup>279</sup> The approach generally assumes that legal systems can be classified into families, counted and compared, and that the evolutionary process of development was linear.<sup>280</sup> This led to legal transplants, legal education and legal reform in the typically Weberian (formal legal rational) mould.<sup>281</sup> Accordingly, the belief was that such reform programmes would enable developing states to leapfrog the evolutionary process and achieve development more quickly.<sup>282</sup>

The growth of Law and Development from a fringe academic concern into a central guiding principle offered mixed results, prompted more soul-searching and reappraisal. This led to what Trubek and Santos have termed the third, and most recent, Moment in Law and Development.<sup>283</sup> Notably, many of the underlying

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<sup>277</sup> La Porta and others, ‘Legal Determinants of External Finance’ (n 13); Rafael La Porta and others, ‘Law and Finance’ (n 13); La Porta, Lopez-de-Silanes and Shleifer (n 13).

<sup>278</sup> Glaeser and Shleifer, ‘Legal Origins’ (n 183); Dam (n 275).

<sup>279</sup> La Porta and others, ‘Legal Determinants of External Finance’ (n 13); La Porta, Lopez-de-Silanes and Shleifer (n 13); La Porta and others, ‘The Quality of Government’ (n 13); Simeon Djankov and others, ‘Courts: The Lex Mundi Project’ [2002] SSRN eLibrary <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=304453](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=304453)> accessed 4 November 2010; Glaeser and others (n 13); La Porta and others, ‘Investor Protection and Corporate Governance’ (n 276); Rafael La Porta and others, ‘Law and Finance’ (n 13); Djankov and others, ‘The Regulation of Entry’ (n 13).

<sup>280</sup> See, *inter alia*, Weber, *Economy and Society* (n 47); Yuen Ang Yuen, ‘Beyond Weber: Conceptualising an Alternative Ideal Type of Bureaucracy in Developing Contexts’ [2016] Regulation and Governance <<http://pubdocs.worldbank.org/en/451281483436142033/Beyond-Weber-Ang-2016.pdf>> accessed 21 May 2017.

<sup>281</sup> Berkowitz, Pistor and Richard (n 14); Deakin and Pistor (n 14); Pistor, ‘Rethinking the “Law and Finance” Paradigm’ (n 14); Pistor and Wellons (n 14); Pistor, ‘The Standardization of Law and Its Effect on Developing Economies’ (n 14); Thorsten Beck, Asli Demirgüç-Kunt and Ross Levine, ‘Legal Theories of Financial Development’ (2001) 17 *Oxford Review of Economic Policy* 483; David M Trubek and Marc Galanter, ‘Scholars in Self-Estrangement: Some Reflections on Teh Crisi in Law and Development Studies in the United States’ [1974] *Wisconsin Law Review* 1062; Asli Demirgüç-Kunt and Ross Levine, *Financial Structure and Economic Growth: A Cross-Country Comparison of Banks, Markets, and Development* (MIT Press 2004); Beck, Demirgüç-Kunt and Levine (n 183).

<sup>282</sup> See generally, Yusuf and others (n 111).

<sup>283</sup> Trubek and Santos (n 111) 3–4.

assumptions are still being reviewed, but there is a general consensus that, following shock therapy in Russia, the Asian financial crisis, and the more recent 2008 financial crisis, that markets do not create the conditions for their own success.<sup>284</sup> Moreover, state intervention is – as Polanyi argued in 1944 – necessary for meeting the limits of markets and managing their worst excesses.<sup>285</sup> There has also been an acceptance that “economic growth” is not by itself sufficient, and that other factors like equity and sustainability are also important.<sup>286</sup>

There has also been a broadening of what we mean by “development” to include “human freedom” as well as a decentring of neoclassical economic goals and frames.<sup>287</sup> This has been bolstered by a renewed focus on local institutions and a recognition that a “one-size-fits-all” cookie-cutter approach to development does not work.<sup>288</sup> Crucially though, the shift means that whereas law reform was once justified on the basis that it brought about social change and enabled economic development, the legal system is now acknowledged as central to the development process and an end in itself.<sup>289</sup> This justifies the engagement of development institutions with legal reform, whether or not it brings economic benefits. More recently, the latest wave of economics imperialism, exemplified by “Freakonomics”, sees the application by Levitt and Dubner of economic models and analyses to virtually every aspect of social behaviour.<sup>290</sup> This takes ideas from behavioural economics and nudge theory to use economic insights to shape and guide not only

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<sup>284</sup> See generally Joseph E Stiglitz, *Globalization and Its Discontents* (New Ed, Penguin 2003); Joseph E Stiglitz, Amartya Sen and Jean-Paul Fitoussi, ‘Report by the Commission of the Measurement of Economic Performance and Social Progress’ (2009); Yusuf and others (n 111).

<sup>285</sup> Polanyi (n 47).

<sup>286</sup> See Nicholas Mercuro and Steven G Medema, *Economics and the Law, Second Edition: From Posner to Postmodernism and Beyond* (2nd edn, Princeton University Press 2006) 23. They argue that allocative efficiency says nothing about inequality and the social impact of this.

<sup>287</sup> Trubek and Santos (n 111) 8. Amartya Sen has long argued that law, democracy and freedom should be included in the very *definition* of development. Amartya Sen, *Development as Freedom* (First Edition, OUP Oxford 1999).

<sup>288</sup> Trubek and Santos (n 111) 7; Kerry Rittich, ‘The Future of Law and Development: Second-Generation Reforms and the Incorporation of the Social’, *The New Law and Development: A Critical Appraisal* (David M Trubek and Alvaro Santos (eds) (Cambridge University Press 2010) 204 <<https://doi.org/10.1017/CBO9780511754425.006>> accessed 20 August 2018; Perry, ‘Finding and Facing Facts about Legal Systems and Foreign Direct Investment in South Asia’ (n 30) 686.

<sup>289</sup> Trubek and Santos (n 111) 9.

<sup>290</sup> Levitt and Dubner (n 11); Fine and Milonakis (n 37).

policy but the choices we make on a daily basis.<sup>291</sup> Describing this as the most extreme form of the imperialist tendencies of economics, the approach has been met with other literature in the popular domain aimed at encouraging a rethink of the field. Two of the most popular best-sellers in this field are compared in case study 3 as they exemplify the unthought rationality stemming from an unconscious commitment to the concept of embeddedness.

### **2.2.6 The implications of economics imperialism**

Economics imperialism has a tangible impact in four ways that are relevant to the context of the current work. Firstly, there is a problem when economics colonizes politics, and international political economy, law, and development in the sense of what is lost or forgotten in the process. The impact of economic frameworks, “clean models” and apparently analytical and normative neutrality has made neoclassical economics greatly appealing to policy makers and those engaging in political, as opposed to academic, discourse. As Hirsch et al note with no little sense of irony, “‘having a clear argument’ is often more important than being ‘right’”.<sup>292</sup> The “[c]onsistency, purity, and elegance [of the models] are themselves of high value”, and to have a “‘complete’ explanation, and a core theory, is very convincing, rhetorically”.<sup>293</sup> The normative neutrality of the orthodox models and frameworks and their emulation of the scientific realism that has come to characterise the natural sciences is also greatly appealing to social policy makers. The fact that the normative biases hidden in these frameworks has become so deeply concealed means that the errant sociologist stumbling upon this problem and explaining it to non-economists and non-policy makers for the first time is usually met with blank

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<sup>291</sup> Richard H Thaler and Cass R Sunstein, *Nudge: Improving Decisions about Health, Wealth and Happiness* (Penguin 2009); Fine and others (n 108).

<sup>292</sup> Hirsch, Michaels and Friedman (n 1) 54.

<sup>293</sup> *ibid.*

stares and a fundamental disbelief that economics does not, and cannot provide “the truth”.<sup>294</sup> Or, more accurately, that there might be multiple “truths”.

Secondly, the issues with neoclassical economics arise when economics obscures and drowns out other work in sociology and law, giving rise to a need for an ESL, but effectively importing some of the existing limitations into new approaches. This refers to the “black box” problem that is picked up again later with respect to economic sociology and the unavailability of the market for sociological analysis, discussed in Chapters 4 and 5.<sup>295</sup> Nevertheless, the attraction of neoclassical economics to provide neat, precise answers is overwhelming, however right or wrong these might be. As Hirsch et al sum up, “[i]n contrast to economics, the discipline of sociology seems a tower of Babel”.<sup>296</sup> “Each substantive area has its own traditions of theory and research”.<sup>297</sup> Moreover, attempts at unification “are mainly the speciality of a minority of theorists (‘grand theorists’ as they are derisively known to most of the rest of the discipline) and at their best provide fodder for graduate courses and other grand theorists, but in practice are ignored by most sociologists”.<sup>298</sup> It is therefore “not surprising that most sociologists are prone to periodic infatuations with external models of scientific rigor and grace and that economics should serve as such a model”.<sup>299</sup> Nevertheless, by invasion or invitation, economics brought with it a lack of methodological plurality, a reluctance to question existing models and assumptions, and an almost complete absence of inquiry into the market itself.<sup>300</sup>

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<sup>294</sup> Hirsch, Michaels and Friedman (n 1).

<sup>295</sup> Krippner and others (n 45); Krippner (n 27). See also North and Coase, cited in Callon, ‘Introduction: The Embeddedness of Economic Markets in Economics’ (n 214) 1, 54.

<sup>296</sup> Hirsch, Michaels and Friedman (n 1) 53.

<sup>297</sup> *ibid.*

<sup>298</sup> *ibid.*

<sup>299</sup> *ibid.*

<sup>300</sup> Exceptions to this are two chapters noted by Callon. The first is by Marshall {1920} (1961) “On Markets”, *In Principle of Economics, Alfred Marshall (ed)* 323-330, London: Macmillan; and by Robinson {1974} (1979) “Markets”, *Collected Economics Papers Joan Robinson (ed)* 146-167, Oxford:Blackwell. Callon notes that the sociology of the market has not received any more attention, although he refers here to Baker (1984) “The Social Structure of a National Securities Market” *American Journal of Sociology* 89:775-811, White, (1981) “Where do markets come from?” *American Journal of Sociology* 87:517-547; and White (1988) “Varieties of Markets”, in *Social Structures, a*

Thirdly, problems with orthodox approaches are not confined to economics. Legal orthodoxy in the development field, as practiced by the World Bank, is not only informed by and structured according to economics, but engages in “isomorphic mimicry”.<sup>301</sup> This refers to the copying of institutions of rich countries in the hope that this will result in economic growth in the poorer country. This is compounded by an unwillingness to look beyond the seeming flawlessness of orthodox approaches which are “effectively impervious to change”.<sup>302</sup> As such, “development resources can continue to flow for years, concerns about corruption can be genuinely minimal, and credible completion reports can continue to be written, all without any real improvement in the capability of the legal system to respond to even the everyday concerns of citizens (let alone more complex and contentious tasks, such as taxation, regulation, and land reform)”.<sup>303</sup>

Fourthly and finally, the language of economics is exclusive. It constitutes a barrier that serves to exclude anyone who has not been initiated into the fold by means of an economics degree.<sup>304</sup> As a field of enquiry, the subject has its own vocabulary and grammar that at the same time seeps in to the real world and alters society’s regimes and rationalities while excluding from the heart of the debate “non-economists”.<sup>305</sup> This has tended to shape real world discourse, along with the normative and analytical preferences of neoclassical economics; privatization, deregulation and marketization.<sup>306</sup> These values and methods come to shape social interactions and are performed without too much thought: we think of ourselves as consumers rather than citizens. We are told that our goal is to maximise our utility,

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*Network Approach*, Wellman and Berkowitz (eds) Cambridge University Press; cited in Callon, ‘Introduction: The Embeddedness of Economic Markets in Economics’ (n 214) 54. Notably, methodological diversity is also made less attractive by the nature of publications, research impact and journal prestige within the social sciences, that has tended to attribute less authority to the fringes where there is more scope for methodological innovation.

<sup>301</sup> Desai and Woolcock (n 85).

<sup>302</sup> *ibid* 163.

<sup>303</sup> *ibid*.

<sup>304</sup> Perry-Kessaris, ‘The Re-Co-Construction of Legitimacy of/through the Doing Business Indicators’ (n 115).

<sup>305</sup> *ibid*.

<sup>306</sup> Giddens, *The Constitution of Society* (n 23).

regardless of other values and interests we might have. At the same time, the mental models and linguistic tools we have available to us are shaped by those neoclassical values and methods, rendering us incapable of responding fully to the status quo, or of challenging the way we *do* and *think about* social interactions. Both the thought and unthought rationality shapes the way we do economic and legal aspects of interactions, or econolegal regimes. At the same time, the regime of economics, being both exclusive but ubiquitous, reproduces its own elite status within the social sciences and the real world by at once shaping and excluding.<sup>307</sup>

### **2.3 Sociological responses to economics imperialism**

While we cannot return to the theoretically and methodologically integrated approaches of the nineteenth century, the “historicist” approaches, it is possible to bring both law and economics, as objects of social science inquiry, back into the social domain.<sup>308</sup> This can be accomplished through the use of sociological approaches, both within law (Law and Society, or sociolegal studies) and within economics (economic history and economic sociology).

Roger Cotterrell has called for careful empirical studies at the same time as arguing that law, as a social phenomenon, should be studied sociologically.<sup>309</sup> Smelser and Swedberg have argued that economic phenomena need to be analysed in their social context, and their suggestions are discussed further in the chapter on economic sociology and ESL.<sup>310</sup> The push back against the extremes of neoclassical approaches takes the form of sociological frames which can re-ground the research

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<sup>307</sup> A link can be drawn here to Luna Glucksberg, ‘A Gendered Ethnography of Elites: Women, Equality, and Social Reproduction’ (2018) 81 *Focaal—Journal of Global and Historical Anthropology* 16. She looks at the reproduction of elite status, which can be seen in the operation of economics as a discipline or rationality.

<sup>308</sup> Frerichs identifies three generations of sociological endeavour; historicist, realist and constructivist. Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 1.

<sup>309</sup> Roger Cotterrell, *Living Law: Studies in Legal and Social Theory* (Ashgate 2008) 65; See also more generally Cotterrell, ‘Legal Concept of Community, A’ (n 9); Cotterrell, ‘Community as a Legal Concept?’ (n 9).

<sup>310</sup> Neil J Smelser and Richard Swedberg, *The Handbook of Economic Sociology, Second Edition* (Princeton University Press 2010).

in the real world and refocus on human behaviour. The New Institutional Economics approach discussed above typifies the extent to which institutions have themselves “become understood as synonymous with anything that is not narrowly and directly economic”, meaning that “the institutional is the antithesis of the market”.<sup>311</sup> Responses within the social sciences have taken this grey area between the market and non-market, explored above, as a starting point.

In sociology, the response to the rise of economics imperialism can be seen in the new economic sociology, the foundations for which were laid by Mark Granovetter in his 1985 paper which stated that all markets were socially embedded in networks.<sup>312</sup> This set up a multi-layered debate that continues to shape the field and which is reviewed and assessed in more detail in Chapter 5.<sup>313</sup> As Fine and Milonakis note, the result of this was the creation of “chaos around the boundaries between economics and sociology” and inherent issues with the definition of the new economic sociology itself.<sup>314</sup> This included the questions of whether the field rejects mainstream economics altogether or whether it accepts it, but subject to refinements through the addition of other considerations and methods.<sup>315</sup> This is an important point to note, given that the ESL lens proposed here is itself, as a daughter of economic sociology, a product of methodological and territorial chaos stemming from economics imperialism and the various drives within academia to push back against this.<sup>316</sup>

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<sup>311</sup> Fine and Milonakis (n 37) 78.

<sup>312</sup> Granovetter (n 48).

<sup>313</sup> *ibid.*

<sup>314</sup> Fine and Milonakis (n 37) 79.

<sup>315</sup> *ibid.*

<sup>316</sup> Given the argument set out in Parts II and III of the thesis, this is a moot point. If we reconceptualize the econolegal as aspects of the social, we do not need to draw arbitrary boundaries around either.

### **2.3.1 Sociolegal responses, economic sociology, and ESL**

The “old institutional economics” and the historicist approach is characterized by the work of Marx, Durkheim, Weber and Tönnies, who, despite approaching legal and economic phenomena from different viewpoints, saw the endeavour as interlinked and as the preserve of the social sciences. Thus, the close connection between economic, legal and social phenomena were accepted.<sup>317</sup> Moreover, “[m]odern society was exemplified by the law which [was...] a natural subject matter of sociological enquiry”.<sup>318</sup> There followed a period of disciplinarity in which the “‘surface structures’ of academic institutions tended towards ‘specialization, professionalization, departmentalization, and fragmentation’”.<sup>319</sup> The realists, including Holmes, Pound and Llewellyn, sought to counter this continental drift, taking legal scholarship into the realm of “science”, from which the “law and economics” approach (exemplified by Posner), and the “law and society” approach (exemplified by Friedman) derived.<sup>320</sup> Reacting to this, the most recent generation of legal scholarship sees the world and its legal phenomena as socially constructed, and cites the work of Luhmann, Habermas and Bourdieu amongst its adherents.<sup>321</sup> This constructivist wave includes ESL approaches as well as social theories of law and “socio-legal thinking”. The general shift in legal scholarship to the so-called “third generation” of constructivist thinking has seen law “rediscovered as a sociological point of interest”.<sup>322</sup> There is, again, no monolithic approach, but the variations tend to agree that “modern society is differentiated into a number of functional spheres” including politics, economics and to a lesser extent law “each with distinctive ways of communication and forms of power”.<sup>323</sup> There is a general

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<sup>317</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 10.

<sup>318</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 11–12.

<sup>319</sup> *ibid*; Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 10.

<sup>320</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 1.

<sup>321</sup> *ibid*; For an overview of Habermas, Foucault and Luhmann, see Teubner (n 3).

<sup>322</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 10.

<sup>323</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 12.

recognition that studies should “attend to the world” and be something more than miscellaneous facts, and that this can be achieved through “careful empirical studies” into the social world.<sup>324</sup> Others have called for a “responsive law” or a “reflexive law”, and seen law as either “excessively coloniz[ing]” the life world (Habermas), or describing a self-referential aspect of the social (Teubner, Luhmann).<sup>325</sup> The question of the “natural limits of law” is therefore an ongoing debate, but one that an ESL offers an alternative perspective on, reconceptualising the legal (and the economic) as aspects of the social, available to sociological analysis.

Figure 5, below, visualizes the heritage and lineage of ESL, which seeks to reconceptualize law, economy and society “from a sociological point of view”.<sup>326</sup> It therefore sits between traditional academic disciplines, citing economic sociology and sociolegal approaches as the main sources of influence, heritage, and lineage. It also sits firmly in the third generation of constructivist approaches, not only responding to economics imperialism, but also to previous generations of historicism and realism within the sociolegal tradition.<sup>327</sup> It is therefore assumed that ESL, in aspiring to integrate econosociolegal research, is constructivist in its core assumptions. In Figure 5, the single direction arrows represent a scholarly response. Thus, economic sociology is set out as a scholarly response to neoclassical economics and the new institutional economics. Sociolegal scholarship is set out as a response to the law and development movement as well as the law and economics movement. This is a simplified illustration of ESL’s family tree, but illustrates the context in which it came about, and the main approaches that it both draws inspiration from and responds to.

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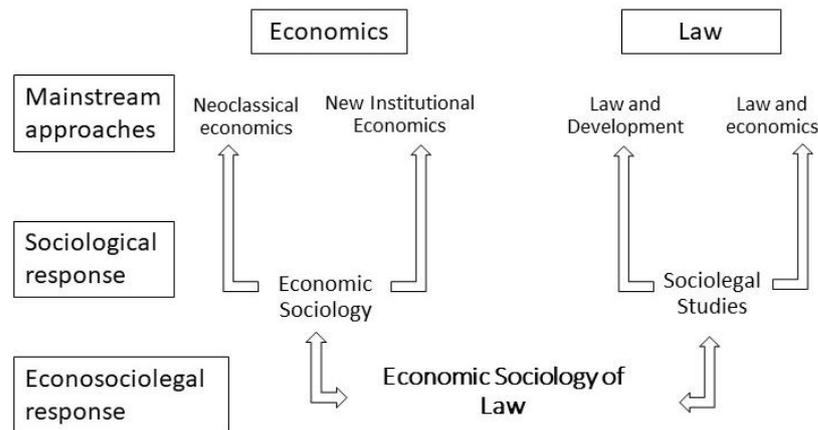
<sup>324</sup> Cotterrell, *Living Law* (n 309) 65; Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4); Cotterrell, *Law’s Community* (n 103); David Nelken, *Beyond Law in Context: Developing a Sociological Understanding of Law* (Ashgate 2009).

<sup>325</sup> Nonet and Selznick, and Teubner respectively, as described by Boaventura de Souza Santos, *Law: A Map of Misreading. Towards a postmodern conception of law*, *Journal of Law and Society* (1987) 14(3), 279, 280, cited in Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 403.

<sup>326</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 1.

<sup>327</sup> *ibid.*

Figure 5 - ESL's lineage as the daughter project of economic sociology and sociolegal approaches



## 2.4 Conclusions

This chapter has identified the central trends, movements and developments that have shaped our linguistic tools and mental models. It has set out the current incarnations of economics imperialism in the form of the World Bank's Investment Climate, while at the same time, identifying the limitations in the mainstream ways of speaking about, thinking about, and doing, econolegal aspects of interactions. It has also outlined some of the sociologically-inspired responses to economics imperialism and set out ESL as the daughter project of sociological movements within both law and within economics.

The World Bank's Investment Climate campaign has grown from, and been justified by, some of the main development in the social sciences, set out above. These have centred around the rise of econo-centric approaches and economics imperialism that have been applied to other areas of social life. The influence of Coase's transaction cost economics, and the new institutional economics are both significant movements in this regard. Sociological responses have sought to put empirical observation and human experience back at the centre of the debate,

refocusing the goal of legal reform which has been translated into “evidenced-based” policy by the World Bank.<sup>328</sup> More recently, there has been a shift to focus more on the “social, structural, and human dimensions of development”.<sup>329</sup> This includes a focus on human rights, gender equity, direct poverty alleviation, democracy, and access to justice, making development policy more holistic, and recognizing that the economic, social, political and legal aspects are in a relation of *interdependence*.<sup>330</sup>

Development theory and policy has nevertheless mirrored the trends and research in academia. The Law and Economics movement and the Law and Development Movement have been foremost in pushing forwards an agenda mirroring the analytical and normative tenets of neoclassical economics. These have sought to quantify, compare and foster competition between legal systems globally, while using indicators as a technology of governance to encourage compliance and uniformity. Similarly, a lack of plurality or diversity in the literature or debates has given rise to the echo chamber of development policy based on narrow, neoclassical, orthodox frames.

At the same time, the ability of the World Bank’s Investment Climate campaign to shape our mental models and linguistic tools should not be underestimated. This is both in relation to what we perceive to be important, and the influence of the Reports on academic literature, perpetuating its own influence, while simultaneously excluding those not schooled in the language of economics. Chapter 3 turns to methodology. It provides further context for an ESL, while also discussing

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<sup>328</sup> Posner (n 11); Barron (n 8); World Bank, ‘Economic Development and the Quality of Legal Institutions’ (n 11); World Bank, ‘Initiatives in Justice Reform’ (World Bank 2009) <<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JRInitiativestext2009.pdf>> accessed 2 November 2013; World Bank, ‘Law and Development Movement’ (n 11); World Bank (n 70); Tor Krever, ‘The Legal Turn in Late Development Theory: The Rule of Law and the World Bank’s Development Model’ (2011) 52 Harvard International Law Journal 288; World Bank (n 276).

<sup>329</sup> Trubek and Santos (n 111) 10.

<sup>330</sup> *ibid* 11–12; Rittich, ‘The Future of Law and Development: Second-Generation Reforms and the Incorporation of the Social’ (n 288).

the approaches taken in the thesis to address the conceptual commitment to embeddedness and the implications of this.

### **3. Methodologies**

The previous chapter explored current mainstream approaches to the econolegal, along with their limitations. It set out the World Bank's investment climate campaign as one example of econo-centrism in the field of development, where the orthodox approach has shaped our enquiry and understanding of the interaction between the economic and legal. The previous chapter then presented an economic sociology of law (ESL) as one possible response to the limitations of the mainstream, siting it as a daughter project of economic sociology and sociolegal scholarship. This provides some background for the further exploration of ESL and its core concept, embeddedness, in chapters 4 and 5, which is complimented by the present discussion on methodologies in this chapter. The following discussion sets out the approaches taken in this thesis, and addresses some of the epistemological questions central to the arguments put forward in chapters 7 and 8. This chapter also defines the terminology used throughout the thesis, as well as situating the thesis within social science methodology more broadly.

This chapter has two overriding aims. Firstly, it sets out the methods undertaken to carry out the research and writing. Relevant here are the requirements of reflectiveness about my own starting biases and assumptions, but also those of the wider societies in which the case studies and thesis are set. These shape the social mores, the wider rationalities, the linguistic tools, and the "unthought knows" that shape ways of thinking and doing.<sup>331</sup> The second, is to provide some context for the approach taken here, both theoretically, methodologically, and historically. This not only outlines some background to the methods used and why, but also sets out some of the methodological issues within the social sciences that an ESL is responding to. This chapter therefore builds on the previous chapter in setting out the context and need for an ESL, as well as outlining which way the approach should face to best respond to existing problems.

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<sup>331</sup> Bernstein and others (n 5) 4.

This dual approach to methodology also echoes the regime-rationality duality that shapes the later discussions, as the methodology discussion charts both the research processes, and the mental models behind these; how it is conceived, perceived and understood. In other words, this chapter focuses on what I did, and how I thought about what I did. Central to both of these are the linguistic tools we have available to talk about both doing and thinking, and how these can both reveal and conceal simultaneously. In regard to ESL's conceptual commitment to embeddedness therefore, and the way this has come to act as an unthought rationality, a discussion of both reflectiveness but also methodologies that can attempt to reach beyond words was necessary.

At the same time, a thorough methodological background also explores the movements within academic research leading up to the present-day commitment to the concept of embeddedness, used imprecisely and often unconsciously, both explicitly and implicitly. The chapter adds more context to an ESL within the social sciences, asking what the movement needs to do if it is to respond adequately to the existing issues and lacunae within social science research and methodology.<sup>332</sup>

### **3.1 Identifying methodology**

Methodology constitutes a “whole range of strategies and procedures that include: developing a picture of an empirical world”.<sup>333</sup> This includes “asking questions about that world and turning these into researchable problems; finding the best means of doing so – that involve choices about methods and the data to be sought, the development and use of concepts, and the interpretation of findings”.<sup>334</sup> Therefore, as Alasuutari et al point out, methods *per se* are only “one small part” of the methodological endeavour, although Nilsen points out that the meaning of the term

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<sup>332</sup> The majority of the works referenced are from western Europe and North America, meaning that the methodology draws on, and responds overwhelmingly to, Anglo-American scholarship.

<sup>333</sup> Herbert Blumer (1969) “Symbolic Interactionism: Perspective and Method”, Berkley California Press, 23, cited in Pertti Alasuutari, Leonard Bickman and Julia Brannen (eds), *The SAGE Handbook of Social Research Methods* (Sage Publications 2008) 1.

<sup>334</sup> *ibid.*

“method” has changed over time.<sup>335</sup> Durkheim’s writings on method came to be associated with multivariate analysis that associated method with technique, and the methodological works of Weber are also relevant here, but owing to their relatively late translations, Anglo-American social research methodology has remained a relatively inward-looking field.<sup>336</sup> Alastalo differentiates “method” as referring to “techniques of gathering and analysing data”, from “methodology” which she describes as “a normative attempt to find and discuss ‘the good and the bad practices’”, although it can also refer to “research performed on research methods”.<sup>337</sup> However, as Nilsen notes, the terms “method” and “methodology” are often used interchangeably, even though the latter tends to have a wider meaning than the mere techniques employed in the course of gathering data.<sup>338</sup> Kaplan has defined methodology as “the study – the description, the explanation and the justification – of methods, and not the methods themselves”.<sup>339</sup> He continues that the aim of methodology is “to help us *understand* [...] not the products of scientific inquiry but the process itself”.<sup>340</sup> Similarly, Harding notes that a methodology “is a theory and analysis of how research does or should proceed; it includes accounts of how the general structure of theory finds its application in particular scientific disciplines”.<sup>341</sup>

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<sup>335</sup> *ibid*; Ann Nilsen, ‘From Questions of Methods to Epistemological Issues: The Case of Biographical Research’, *The SAGE Handbook of Social Research Methods (Alasuutari, Bickman, Brannen, eds)* (Sage Publications 2009) 82.

<sup>336</sup> Durkheim ([1895]1972: 19) *Rules of Sociological Methods*, cited in Nilsen (n 335) 82.

<sup>337</sup> Alastalo (n 63) 26.

<sup>338</sup> Nilsen (n 335) 82.

<sup>339</sup> Kaplan (1964) “The Conduct of Inquiry: Methodology for Behavioural Science”, Scranton: Chandler Publishing Company, 18), cited in *ibid*.

<sup>340</sup> Kaplan (1964) “The Conduct of Inquiry: Methodology for Behavioural Science”, Scranton: Chandler Publishing Company, 23), cited in *ibid*.

<sup>341</sup> Harding (1987) “Introduction: Is there a feminist method?”, in Harding (ed) *Feminism and Methodology*, Milton Keynes: Open University Press, 3, cited in *ibid*.

### 3.2 My approaches

I relied primarily on two main sources in formulating the thesis, both of these text-based, secondary sources. Firstly, most of the conceptual aspects challenging the substantive basis of the World Bank's Investment Climate campaign have been published in books and journals and are available either in a library or online. Many of these heavily cross-reference each other, as while the fields of Law and Development, Law and Economics, Economic Sociology and Economic Sociology of Law are gaining ground, the literature is generally vulnerable to the charge of existing in its own "echo chamber".<sup>342</sup> Secondly, in analysing the empirical implications of embeddedness in the context of data collection in Beragama, many of the reports of the impact of the Investment Climate are from journalism. These are available online, generally without a paywall, and where reports of riots in Beragama and direct quotes from villagers impacted by inward investment are used to illustrate the effects of the policy, these are clearly indicated and where possible, cross-referenced with other sources. I have tried primarily to rely on well-known news channels, such as the Financial Times Sri Lanka and Forbes, as these sites have a degree of reputational capital that makes the journalism potentially more reliable.

One of the starting points for the thesis and a key goal of ESL are the problems underpinning data that informs the World Bank's Investment Climate, and I have summarised these above as a reliance on correlated indicators, a partiality of voices, and a normative silence. Criticism of the Investment Climate campaign is based in part on qualitative research directly targeting causation. This has been carried out by Amanda Perry-Kessaris who interviewed foreign investors in Sri Lanka and followed this up with questionnaires, as well as a range of affected actors in Bengaluru in a later ethnographic study.<sup>343</sup> This is backed up by other qualitative

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<sup>342</sup> See generally Kapur (n 172); Broad (n 171).

<sup>343</sup> Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33); Perry-Kessaris, *Global Business, Local Law* (n 11).

studies that have explored the links between levels of FDI and the host state's legal system and which challenge the associations claimed in the orthodox literature.<sup>344</sup>

I have primarily used text-based approaches to reconceptualise the way we think about economic and legal aspects of interactions. At the same time, and in an effort to make my points as clear as possible, I have also explored the issues visually, and have included diagrams, maps and tables within the thesis as a visual guide.<sup>345</sup>

There is potential for graphical depictions of sociological frames to aid communication by sidestepping the problems associated with language, terminology and jargon.<sup>346</sup> This has been referred to as the “Carlsberg effect” in the sense that arts-based and visual methods can often reach the parts that words are unable to, and can provide a useful tool for communicating concepts and notions that are not generally part of everyday speech.<sup>347</sup> Phrases like the “known-unnamed” and the “unthought-known” are useful here for trying to capture the elements of interaction unavailable to language.<sup>348</sup> Ways of seeing and imaging can also be critically approached in a way that addresses cultural meaning and power,<sup>349</sup> and a visual depiction is never just an illustration, but is “the site for the construction and depiction of social difference”.<sup>350</sup> The images themselves “provide ways of seeing social issues from particular cultural standpoints”, and thus will

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<sup>344</sup> Pistor and Wellons (n 14).

<sup>345</sup> This is inspired by, *inter alia*, Amanda J Perry-Kessaris, ‘The Case for a Visualized Economic Sociology of Legal Development’ (2014) 63 *Current Legal Problems* 169; Amanda J Perry-Kessaris, ‘The Pop-Up Museum of Legal Objects Project: An Experiment in “Socio-Legal” Design’ (2017) 68 *Northern Ireland Legal Quarterly* 225.

<sup>346</sup> As part of this, I submitted a poster to the SLSA Annual Conference in 2017 exploring an Economic Sociology of Law graphically, asking if we could visualize patterns of interaction and whether this permitted both the researcher and reader to sidestep the problems of language, terminology and jargon.

<sup>347</sup> On arts-based methods, see Bernstein and others (n 5). Antonia Layard talks about the “Carlsberg effect” to explain her use of arts-based research methods, taken from discussions with the author.

<sup>348</sup> *ibid*; but see also Erving Goffman, *The Presentation of Self in Everyday Life* (Doubleday 1959); Erving Goffman, *Interaction Ritual: Essays in Face-to-Face Behavior* (Routledge 1967); Giddens, *The Constitution of Society* (n 50). Goffman and Giddens both devote attention to describing these matters, although usually through discussions of epistemology.

<sup>349</sup> Gillian Rose, *Visual Methodologies: An Introduction to the Interpretation of Visual Materials* (Sage Publications 2001) 3 <<https://teddykw2.files.wordpress.com/2012/07/visual-methodologies.pdf>> accessed 15 July 2017.

<sup>350</sup> Fife and Law (1988) “Introduction: on the invisibility of the visible”, in G Fyfe and J Law (eds) *Picturing Power: Visual Depiction and Social Relations*, London: Routledge, 1-14, 1, cited in *ibid* 10.

change when the perspective of the observer duly changes, making them contingent on their context.<sup>351</sup>

At the heart of this thesis are three central notions: what we do, how we think about what we do, and how we talk about both of these. Further, we can then address how these have all been moulded by econo-centric and doctrinal frames of reference. When boiled down to this level, links and synergies to other strands of literature and doctrinal approaches to similar matters appear, suggesting alternative ways of accessing the “unthought known” and other forms of tacit knowledge.<sup>352</sup> References to “moral frameworks” and “social logics” echo the regimes and rationalities in this work.<sup>353</sup> Similarly, work in legal geography, legal anthropology, legal history, and even further afield can shed light on our ways of doing, thinking and talking, and have provided background, context and contrasts throughout. One example of this is the legal anthropology study by Glucksberg who has examined the reproduction of elite status within a community.<sup>354</sup> The core principles of this can equally be applied to the position of econo-centric frames and neoclassical economics within the social sciences, building on work by Perry-Kessarar into the exclusionary language of the discipline.<sup>355</sup>

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<sup>351</sup> Amir Marvasti, ‘Writing and Presenting Social Research’, *The SAGE Handbook of Social Research Methods* (Alasuutari, Bickman, Brannen, eds) (Sage Publications 2009) 603.

<sup>352</sup> Bernstein and others (n 5) 4. This terminology is borrowed from legal geography but seems to sum up neatly what some of the “grand” sociological theories spend chapters, if not entire books, attempting to define. For example, Giddens, *The Constitution of Society* (n 23). This devotes chapters to notions of the consciousness and unconscious knowledgeability of agents.

<sup>353</sup> Insa Koch, ‘Precarious Homes/Encounters with the Benefit System’, *Forthcoming* (Oxford University Press). Insa Koch defines her work broadly as legal anthropology.

<sup>354</sup> Glucksberg (n 307).

<sup>355</sup> Perry-Kessarar, ‘The Re-Co-Construction of Legitimacy of/through the Doing Business Indicators’ (n 115).

### 3.3 The Paradigm Wars: responding to economics imperialism

As the “means of knowing”, methodological debates have seen “furious disputes, generally known as the paradigm wars”,<sup>356</sup> which “contrast[...] epistemological and ontological positions that characterize quantitative and qualitative research and their various synonyms”.<sup>357</sup> Bryman notes that there tends to be a “hierarchy of status given to particular research designs within the quantitative tradition in which experimental methods with their superiority in offering causal explanations are positioned at the top”.<sup>358</sup> At an epistemological level, there is the issue of the desirability of a natural scientific programme for social research that looks for general rules and principles. This is contrasted with an approach that emphasizes people as constantly engaged in interpreting their environments subjectively within specific contexts.<sup>359</sup> It is a battle that is often drawn in terms of positivist versus interpretivist approaches, based on general methodological and theoretical positions such as phenomenology, symbolic interactionism and a *verstehende* approach to social action (based on the insight of those studied).<sup>360</sup> This is a battle that ESL responds to directly, arguing forcefully for empiricism and clear links with reality. This is not to deny the value of general rules or principles, as long as these are based on observable phenomena.

Contrasting the *natural* and *social* sciences, Kant distinguished between *phenomena*, or things-as-they-appear, and *nuomena*, or things-as-they-are.<sup>361</sup> As humans were distinguished on the basis of their sense-making abilities, *perception* emerged as an object of social science, in other words how things appear to a

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<sup>356</sup> Alasuutari, Bickman and Brannen (n 333) 9.

<sup>357</sup> Alan Bryman, ‘The End of the Paradigm Wars?’, *The SAGE Handbook of Social Research Methods* (Alasuutari, Bickman, Brannen, eds) (Sage Publications 2009) 13.

<sup>358</sup> *ibid* 9. Although c.f. Hirsch, Michaels and Friedman (n 1).

<sup>359</sup> Bryman (n 357) 13. For more on Habermas, Foucault and Luhmann, see Teubner (n 1).

<sup>360</sup> Bryman (n 357) 13.

<sup>361</sup> Kant (1781) “The Critique of Pure Reason” (translated by WS Pluhar and P Kitcher), Indianapolis: Hackett, cited in Linda Mabry, ‘Case Study in Social Research’, *The SAGE Handbook of Social Research Methods* (Alasuutari, Bickman, Brannen, eds) (Sage Publications 2009) 215.

participant in the scene, and how things appear to an observer. To the extent that case study researchers therefore document human perception and experiences using their own perceptions in the process, they engage in *phenomenology*.<sup>362</sup> Following the publication of Kant's work, the Vienna school "moved from *positivism's* insistence on the measurability of an *objective* reality" (as addressed by Comte) and the "notion that the truth of a statement depends upon its being in a one-to-one correspondence with an objective reality" (as stated by David).<sup>363</sup> Instead it shifted towards "*logical positivism's* less demanding requirement of the verifiability of real entities" (as discussed by Popper).<sup>364</sup> On the other side of the science divide, Nietzsche observed that "We behold all things through the human head", and set out his *subjective* viewpoint.<sup>365</sup> Dilthey advanced a theory of understanding referred to as *Verstehen*, which is based on subjective meaning-making from which the Chicago school developed ethnographic methods and theory during the 1920s and 1930s.<sup>366</sup>

At the ontological level, Bryman explains that the dichotomy is between those who believe that there is "a social realm waiting to be uncovered by the social researcher" which exists externally to, and independent of actors, and those who believe that reality is "in a continuous process of creation and recreation by its participants"; the objectivists versus the constructionists, in other words.<sup>367</sup> As Bryman adds, "[q]uantitative research is typically associated with a positivist and objectivist stance, while qualitative research is associated with an interpretivist and

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<sup>362</sup> *ibid.*

<sup>363</sup> Comte (1822) "Plan des Travaux Scientifiques Nécessaires pour Réorganiser la Société", Paris, Editions Aubier-Montaigne; David (2005) "The Correspondence Theory of Truth", in EN Zalta (ed) *The Stanford Encyclopaedia of Philosophy*; Popper (1935) *Logik der Forschung*, Vienna: Julius Springer Verlag; cited in *ibid.*

<sup>364</sup> *Ibid.*

<sup>365</sup> Nietzsche (1882) *The gay science* (trans. W Kaufmann), London, Vintage Books, cited in Mabry (n 361) 215.

<sup>366</sup> Dilthey (1883) "Einleitung in die Geisteswissenschaften", in HP Richman (ed) *W Dilthey: Selected Writings* (pp.157-263), London: Cambridge University Press, cited in *ibid.*

<sup>367</sup> Bryman (n 357) 13. Some of the "grand" theories of sociology have sought to bridge the major divides in the paradigm wars, and in this regard, see Giddens' structuration theory, Giddens, *The Constitution of Society* (n 23); Giddens, *The Consequences of Modernity* (n 68). For a scathing put down of the grand theories however, see Hirsch, Michaels and Friedman (n 1).

constructionist one”.<sup>368</sup> The question of how we can know the truth about others’ perceptions of a shared reality has continued to divide social science research methods and touches on a central theme of the present work. The approach suggested in this thesis responds directly to the rise in natural science methods within the social sciences. It also responds to the results of economics imperialism “on the shores of development” – namely, the quantification (empirical), mathematization (analytical) and marketization (normative) approaches of choice of neoclassical economics that inform World Bank research and policy.<sup>369</sup>

As the previous chapter discussed, a result of attempting to count the essentially uncountable means that existing research attempts to measure proxies and compare the results of these, adding in yet another layer of potential misunderstanding and misinterpretation.<sup>370</sup> Nevertheless, the aphorism that “what gets counted, gets done” seems entrenched in international economic policy institutions as the World Bank’s Doing Business statistics neatly demonstrate, despite McCloskey’s rhetorical observation that we can all count, but should we?<sup>371</sup>

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<sup>368</sup> Bryman (n 357) 13. The “embedded methods” argument, which states that a particular research method is associated with a set of epistemological assumptions, is both apposite and frustrating here, as it not only sums up one of the problems with many of the World Bank’s methodologies but is vulnerable to the “black box” accusation on the same level that an ESL is vulnerable to the argument. This is explored further in Chapters 5 and 6.

<sup>369</sup> Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (n 36) 406; Perry-Kessaris, ‘Approaching the Econo-Socio-Legal’ (n 2); Amanda J Perry-Kessaris and John Hatchard, *Law and Development: Facing Complexity in the 21st Century* (Routledge 2003) <<http://eprints.soas.ac.uk/10474/>> accessed 24 October 2010.

<sup>370</sup> See in particular the paradigmatic research by Rafael La Porta and others, ‘Legal Determinants of External Finance’ (1997) 52 *Journal of Finance* 1131; Rafael La Porta and others, ‘The Quality of Government’ (1999) 15 *Journal of Law, Economics and Organization* 222; Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, ‘The Economic Consequences of Legal Origins’ (2008) 46 *Journal of Economic Literature* 285; Simeon Djankov and others, ‘The Regulation of Entry’ (2002) 117 *The Quarterly Journal of Economics* 1; Simeon Djankov and others, ‘The Regulation of Labor’ (2003) No. 9756 National Bureau of Economic Research Working Paper Series <<http://www.nber.org/papers/w9756>> accessed 4 November 2010; but cf. Amanda Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (Kluwer Law International 2001) <<https://irus.wolterskluwer.com/store/product/legal-systems-as-a-determinant-of-fdi-lessons-from-sri-lanka/>> accessed 24 October 2010; A Perry-Kessaris, ‘Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development’ (2011) 7 *International Journal of Law in Context* 401.

<sup>371</sup> McCloskey writes “And the economists, oh, the economists, how they counted, and still count”, referring to the “insanity” of counting and quantifying as “a nitwit’s, or the Devil’s, tool”. See McCloskey, ‘Why Economics Is on the Wrong Track’ (n 244).

Correlation-Causation and Quantitative-Qualitative

Of note here is the contention, expressed by Bryman, that quantitative data are capable of establishing causation, as the World Bank implies through its lists of indicators and statistics. This is one of the three primary problems explored in the previous chapter with orthodox approaches that an ESL addresses. While these data may show correlation, they cannot prove causation when the data refer to the social world. This is due to the “*localized dependence structure*” that operates across space and time cannot be controlled for completely.<sup>372</sup> In fact causation, as an “epistemic relation” in that “causality is taken to be a feature of the way a subject reasons about the world”, comprises two categories; mechanistic, and difference-making.<sup>373</sup> While causation, or dependence structure might be debatable in theory, in the real world, given the number and complexity of variables, one of the best ways to begin to approach causation between the legal reforms advised by the Investment Climate and levels of inward investment is to ask those investors about their motivations.<sup>374</sup> This is, necessarily, qualitative, empirical research that ESL calls for, albeit in some cases with a retrospective self-selection bias.<sup>375</sup> The results from these do not always support the assumptions drawn from the correlated indicators.<sup>376</sup> This is not to disparage the use of correlation to identify trends and potential dependencies or to make a straw man of quantification. Nevertheless, correlation between indicators should be appreciated as just that,

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<sup>372</sup> Ned Hall, ‘Causation and the Aims of Inquiry’, *Statistics and Causality: Methods for Applied Empirical Research* (Wolfgang Wiedermann and Alexander von Eye, eds) (Wiley 2016) 7 <<https://ebookcentral.proquest.com/lib/soas-ebooks/reader.action?docID=4530803&ppg=7>> accessed 25 August 2018. Hall’s chapter addresses what we can understand by the term causation.

<sup>373</sup> Michael Wilde and Jon Williamson, ‘Evidence and Epistemic Causality’, *Statistics and Causality: Methods for Applied Empirical Research* (Wolfgang Wiedermann and Alexander von Eye, eds) (Wiley 2016) 31–2 <<https://ebookcentral.proquest.com/lib/soas-ebooks/reader.action?docID=4530803&ppg=7>> accessed 25 August 2018.

<sup>374</sup> Complexity theory addresses this issue, as do some systems dynamics and systems theories.

<sup>375</sup> Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33). In her Sri Lankan study, Perry interviewed investors in Sri Lanka. As such, there was a retrospective element whereby the research relied on investors’ recollections, but also a self-selection bias as investors who had chosen not to invest were unavailable and unidentifiable.

<sup>376</sup> Perry-Kessarlis, *Global Business, Local Law* (n 11); Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33).

and where careful qualitative studies highlight inconsistencies, this should be cause for further investigation.

### Uncovering bias

The use of counting and econometrics as a supposedly neutral, “scientific” method often obscures what are significant conceptual and normative biases underpinning the research methodologies. This leaves these biases unavailable to analysis and means that the rationale behind the neoliberal frames that tend to inform orthodox economics models remain largely unchallenged. This is the third primary problem set out above with orthodox approaches that ESL responds to. By taking a sociological approach to economic and legal phenomena and reorienting these as aspects of the social, the approach taken here responds to this by directly seeking to uncover the conceptual and normative. At the same time, it allows for both “counting” (quantitative) and “story telling” (qualitative) accounts in a way that responds to the paradigm wars but does not seek to resolve them. An economic sociology of law does not propose a fixed methodology but is a frame of mind that sets out to produce scientific, empirically-informed, theoretically-grounded research. As such, the approach suggested here tends towards the epistemologically interpretivist and ontologically constructionist, and overtly recognizes this. Nevertheless, an ESL does not need to exclude either end of the spectrum. Rather, it suggests a frame in which comprehensively scientific research can be carried out in a way that recognizes the starting assumptions of both the researcher and the surrounding social context.

The present thesis responds to this through the requirement for empirical, conceptual and normative aspects which focus questions on the biases and assumptions shaping the research. The third case study in particular raises many more questions about the starting assumptions of society in which these linguistic tools are expected to function. In addressing the implications of a conceptual commitment to embeddedness within the context of a western, liberal democracy, current political responses to the financial crisis, including the rise of populism, are necessarily one aspect of the story. While assumptions, biases and interests

contextualizing the present discussion are not monolithic, the implications for the prevailing “social logics” and “moral frameworks” within which the present discussion takes place is acknowledged.<sup>377</sup>

#### *Differentiating quantitative and qualitative research*

While I rely mainly on secondary sources and text-based analysis, much of the literature challenging the Investment Climate campaign as well as economics imperialism more generally tends to be qualitative in nature. Both approaches, quantitative and qualitative, have developed as a binary option in social science research methodologies. This was challenged in 1987 by Ragin whose approach drew on logic rather than statistical probability, allowing the possibility of a continuum of methods.<sup>378</sup> The rise in mixed methods has also moved the field a long way from Malinowski’s “Principles of Ethnography” in 1922 and Glaser and Strauss’ “grounded theory” in 1967 that were seen as definitive of qualitative approaches.<sup>379</sup> Denzin and Lincoln have identified seven movements or periods in the “history of qualitative research in the social and behavioural sciences”.<sup>380</sup> These move us from the traditional, through a crisis of representation, to the postmodern, experimental and post-experimental approaches. Indeed, trends towards cross-disciplinarity have become more prevalent with a shift in political priorities and funding of research since the 1980s, although this also “improves the transfer of knowledge between hitherto bounded disciplines thus constructing methodology as an arena and an area of expertise that spans disciplines”.<sup>381</sup>

#### *Embeddedness against a shifting methodological background*

The continental drift that has occurred within the social sciences and the silos of disciplinarity that characterise the field forms an integral part of the backdrop to

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<sup>377</sup> Koch (n 353).

<sup>378</sup> Charles Ragin, (1987) “The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies”, Berkeley, University of California Press, cited in Alasuutari, Bickman and Brannen (n 333) 2.

<sup>379</sup> *ibid.*

<sup>380</sup> Denzin and Lincoln (2000) “Introduction; The Discipline and Practice of Qualitative Research”, pp1-28 in *Handbook of Qualitative Research*, 2<sup>nd</sup> edition, edited by Denzin and Lincoln, Thousand Oaks, Sage, cited in *ibid* 3.

<sup>381</sup> *ibid* 5.

the thesis. Polanyi's notion of embeddedness was invoked prior to the full separation and differentiation of the disciplines and there was an understanding of the social sciences as interconnected and interdependent. The professionalisation, departmentalisation and distinction between the fields that has occurred in the intervening decades means that we come at the term from a different perspective. It no longer refers to an integrated approach to understanding, but one that has devolved into silos of enquiry into separate phenomena.

Following the neoliberal political watershed of the early 1980s, much explicitly Marxist analysis was superseded by "social constructionism and postmodern theoretical positions that also privilege subjectivity and experience over objectification and measurement".<sup>382</sup> Accordingly, cultural studies and constructionist research replaced overly economistic Marxist analyses and structural sociology, particularly in the UK. This trend within sociology sets the context for the development of ESL. It therefore not only responds to cross-disciplinary needs and methodological holism to reintegrate social science dialogues, debates and research, but counters economics imperialism and "physics envy" by focusing on people rather than mathematical models.<sup>383</sup> This required a rethink of not only the impact of post-structuralism, but on the relativism that constructionist theories could address, as well as the lingering side effects of ongoing dualisms in sociology and how best to bridge these.<sup>384</sup>

Chapter 5 identifies some of these trends as critical to the backdrop against which ESL's conceptual commitment to embeddedness is problematic. However, in arguing that we need to move beyond embeddedness, I suggest focusing on feedback loops operating within and throughout social interactions.<sup>385</sup> These can

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<sup>382</sup> Carl May (2005) "Methodological Pluralism, British Sociology and the Evidence-based State: A Reply to Payne et al", *Sociology*, 39(3), 519-28, at 522, cited in *ibid*.

<sup>383</sup> *ibid*. Raworth (n 39).

<sup>384</sup> Dualisms cited tend to include structure/agency, ontology/epistemology, realism/constructivism, macro/micro, embeddedness/relatedness, and so on.

<sup>385</sup> The term "feedback loops" is widely used in many fields, from engineering to sociology to economics. See *inter alia* Callon, 'What Does It Mean to Say That Economics Is Performative?' (n 104) 312. Giddens refers to "homeostatic loops" in his structuration theory, see Giddens, *The Constitution of Society* (n 23). The idea of mutual re-co-constitution of ideas and notions of legal culture is

then be enhanced with ideas from performativity and constructionism. “Theory-wise, different strands of constructionist thought have gained popularity, and the development has meant an increased interest in questions of identity” which in turn has fed into, and been fed by, politics.<sup>386</sup> In the United States by contrast, the popularity of qualitative research came about in response to the “scientific” sociology and deductive model research techniques. “The more inductive approach of qualitative research” was seen as a better way to explain social phenomena by delving into the meaning of social action while at the same time giving voice to the “underdog” and the oppressed, rather than the oppressor who traditionally featured in research.<sup>387</sup> On both sides of the Atlantic though, the trend has been away from determinism towards a theory of active agency and questions of subjectivity, and this extends to the part of the researcher and the social scientist who is expected to be reflective about their role.<sup>388</sup> ESL accepts that an objective, impartial approach is a fiction. It cannot claim to be neutral or objective; only reflective on its content and context.

In some respects, the ESL lens proposed here that moves beyond the current commitment to the concept of embeddedness looks back to some of the notions of structuralism. The lens refers to regimes - how we act and interact, or the institutions that constrain, shape and enable actions and which are also performed and continually re-co-constituted therein. It also refers to rationalities - how we think about how we act and interact, the way in which we perceive others and the regimes through which we interact. But by reinterpreting the econolegal sociologically as aspects of interactions, and shifting the focus to those interactions and the feedback loops that operate within them, the lens does not engage directly

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referenced, albeit without use of the term feedback loops, by the literature on legal culture and consciousness. See Friedman (n 266); Roger Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Ashgate Pub Co 2006); Kurkchian (n 63). From a design perspective, the term is used to describe mutually constitutive relationships and the importance of balance between positive and negative feedback loops in William Lidwell, Kritina Holden and Jill Butler, *Universal Principles of Design* (Rockport Publishers 2010) 92.

<sup>386</sup> Alasuutari, Bickman and Brannen (n 333) 6.

<sup>387</sup> *ibid.*

<sup>388</sup> *ibid.*

with the structure-agency duality central to sociology. As a frame of mind, ESL makes no conceptual or normative claims about the way in which these regimes and rationalities come in to being, or how they interact. It makes no structuralist claim that actors are constrained by, defined by, or indeed enabled by their institutional surroundings. Rather, these are categories that operate at different levels of social interaction. They remind the researcher to look for regimes (such as “the economy” or “the law”) and rationalities (such as “economics” and its theories, and “law” and its rules).

### 3.4 The truth?

The discussion of the limitations of econo-centric above and in chapter 2 painted sociological responses as messy, or somehow resulting in “dirty hands”.<sup>389</sup> Nevertheless, the ability of sociological responses to capture multiple truths, or at least a deeper, more comprehensive picture of one truth is acknowledged. But at the same time as requiring reflective research, Alasuutari reminds us that “[s]ocial science research not only speaks to particular social conditions; it reflects the social conditions of a society and the theories that dominate at the time”.<sup>390</sup> As such, sociological studies describe social reality in three ways; the representation dimension, the epistemic dimension, and the sociology of knowledge.<sup>391</sup> Firstly, the representational dimension of knowledge “report[s] knowledge about social relations”, although this knowledge depends on their conceptual framework and on the instruments of observation.<sup>392</sup> Secondly, the style of reasoning tells us about society, which can be referred to as the “*epistemic dimension*” of sociological

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<sup>389</sup> Hirsch, Michaels and Friedman (n 1).

<sup>390</sup> Alasuutari, Bickman and Brannen (n 333) 3.

<sup>391</sup> Pekka Sulkunen, ‘Social Research and Social Practice in Post-Positivist Society’, *The SAGE Handbook of Social Research Methods* (Alasuutari, Bickman, Brannen, eds) (Sage Publications 2009) 68–9.

<sup>392</sup> *ibid* 69.

knowledge.<sup>393</sup> Thirdly, “sociological studies report through their form and scientific practice quite special facts about society”, in particular about the relationship between the sociologist and the object of study, referred to as the “*positional*, or the *sociology of knowledge dimension* of sociological facts”.<sup>394</sup> As Sulkunen notes, “[t]he division of sciences into disciplines in itself is an important fact about the society that engenders it”.<sup>395</sup> “The fact that social sciences are today separated from natural sciences, and split into sub-disciplines each with their own dominant styles of reasoning, is not simply a consequence of the accumulation of knowledge but also a real factor which has an impact on what new knowledge it can produce”.<sup>396</sup> This point is central to an understanding not only of the dissolution, differentiation and departmentalization of the social sciences, but to an appreciation of how an ESL lens can work towards social research reintegration.

The move away from “Mode 1” social science research was based on the recognition that it was fallacious to assume that there was an objective, neutral reality. It understood that all social participants, (all of us), “possess enormous amounts of knowledge” about society without any need for social scientists to interfere.<sup>397</sup> Indeed, Giddens’ “double hermeneutic” explores the impact of the researcher on their field of research, as well as the tendency of social science ideas to “leak” into the “universe of meaning and action” that they are about, reshaping it in the process.<sup>398</sup> This is relevant for the empirical implications of a conceptual commitment to embeddedness which are explored in case study 1. By asking a foreign investor in Sri Lanka how important they believe the legal system to be, they are likely to say that it is very important. Moreover, the mere suggestion that this is

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<sup>393</sup> *ibid.*, drawing on Foucault’s term, “*epistème*”, which is given to refer to the “social facts that represent the relations of domination in a given society”. Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (Psychology Press 2005) 197. Emphasis in original.

<sup>394</sup> Bourdieu (1982) “La leçon sur la leçon”, Paris: Editions de Minuit, cited in Sulkunen (n 391) 70. This is also referenced in Giddens’ Structuration in the double hermeneutic, see Giddens, *The Constitution of Society* (n 23).

<sup>395</sup> Sulkunen (n 391) 70.

<sup>396</sup> *ibid.*

<sup>397</sup> Giddens (1979) “Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis”, London: Macmillan Press, 245-253, cited in *ibid* 73.

<sup>398</sup> Giddens, *The Constitution of Society* (n 23) xxxii.

the focus of the study, that the World Bank measures the legal system and actively promotes its importance as a determinant of inward investment, and that people generally think it is an important factor, is likely to impact the answers received in any interviews.

Knowledge claims and their impact on the regimes and rationalities of actors is perhaps even more important in relation to the conceptual and normative implications of the commitment to embeddedness, explored in the second and third case studies. Central to understanding the backdrop against which these implications are discussed is the post-positivistic transition that saw a so-called cultural, semiotic, or linguistic turn. This refocused sociologists' attention on "critical analyses of meaning in people's everyday life".<sup>399</sup> In other words, the hermeneutic pole gained ground, against its positivistic opposite, recognising the complex web of communication that can never be taken for granted, along with its interpretation and application. The later "Mode 2" knowledge production therefore takes place in the context of application, being transdisciplinary and directly accountable on the grounds of its practical usefulness.<sup>400</sup> Accordingly, we are interested not just in what actors do (their macro-regimes) and how they think about what they do (their meta-rationalities), but in how these regimes and rationalities are re-co-constituted throughout and within interactions, and how these manifest in the micro- and meso-level interactions daily.

Also relevant here are some notions from performativity, which is explored methodologically in more detail below. This enables an appreciation of the language used, and how this contributes to the actors' perceptions and conceptions. It also explores how these are realised, and how they re-co-constitute actors' regimes and rationalities. More importantly, in an empirical research setting such as the first case study, the varying regimes and rationalities of groups of actors (government actors, foreign investors, and community stakeholders) can then be compared. This allows for an appreciation of pinch points, points of difference, and where policy

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<sup>399</sup> Sulkunen (n 391) 74.

<sup>400</sup> *ibid* 75.

can be better designed to hear the various voices and interests impacted. So far, the discussion has address regimes and mental models. But crucially, we are only able to challenge existing regimes and rationalities if we have adequate linguistic tools to talk about these. The current conceptual commitment to embeddedness is one of these that has become a static, ubiquitous descriptor and metaphor. It is a tool that both reveals and masks in equal measure. But its ubiquity and its role as an unthought rationality now means we are unable to see what it is currently masking.

*Reflectiveness, Reflexivity, Awareness*

As noted, there are requirements for reflectiveness on the part of the researcher about which questions they are posing, the social mores, biases and assumptions shaping their social surroundings, and their own regimes and rationalities. This is in addition to an awareness of their own conceptual and normative biases. In the light of Foucault's point about the power-knowledge couplet, "it is evident that no neutral observer position exists", and that instead, "forms of knowledge imply and produce forms and relations of power".<sup>401</sup> As Karen Armstrong remarks, the data are collected from a variety of people who themselves have a variety of interests, while a variety of readers bring their own interests to understanding the text.<sup>402</sup> In other words, the regimes and rationalities of the researcher are also joined by the regimes and rationalities of the data subjects and the end reader in contributing to the dissemination and understanding of the research. As Alasuutari et al remark, "the work produced will be read for its relevance by readers who assign meaning to it according to their own evaluations".<sup>403</sup>

By the same token, some of the more general sociological theories include theories of reflexivity.<sup>404</sup> Giddens, drawing on the work of Goffman, notes that "[t]he

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<sup>401</sup> See Foucault, *Discipline and Punish: The Birth of the Prison* (1977), London, Penguin Books; *The History of Sexuality, Vol.1, An Introduction*, (1980a), New York, Vintage Books; *Power/Knowledge: Selected Interviews and Other Writings*, (1980b), Brighton, Sussex, Harvester Press, cited in Alasuutari, Bickman and Brannen (n 333) 10.

<sup>402</sup> Karen Armstrong, 'Ethnography and Audience', *The SAGE Handbook of Social Research Methods* (Sage Publications 2009).

<sup>403</sup> Alasuutari, Bickman and Brannen (n 333) 10.

<sup>404</sup> Reflectiveness and reflexivity appear to be used interchangeably in some literature, although reflexivity, as used by Giddens, implies a deeper experience on the part of the researcher that

reflexive monitoring of actors in situations of co-presence is the main anchoring feature of social integration”, implying that not only must the researcher be aware of her own reflexive monitoring and the impact of her presence on other actors, but she must also be mindful that they are also likely to be exercising some form of reflection or reflexivity over their own actions, interactions, regimes and rationalities, whether these are capable of expression by words, or whether they constitute the “unthought known”.<sup>405</sup>

### *The Political Life of ESL*

If we accept that it is not possible to be a neutral observer, can the application of an ESL lens to research into the econolegal ever be apolitical? Can an ESL respond to the neoliberal project? Is it necessarily compelled to respond, given the previous discussions of the development of social science methodologies, knowledge production, and the political developments that have occurred at the same time?

The shift from “Mode 1” to “Mode 2” forms of knowledge production set out above is part of the change in the “role of social science knowledge in society” consequent upon the regime change from Keynesian liberalism to neoliberalism.<sup>406</sup> This has seen a shift from “resource steering” to “market steering” within public administration, along with the general drive to privatize, in turn echoing the impact of economics imperialism on World Bank development policy.<sup>407</sup> There have been ramifications for the role of social science research in this more generally. Holistic theories of society like structural functionalism, which served the interests of the Keynesian-planned economy, have been challenged by constructionist approaches which focus on questions of identity and subjectivity.<sup>408</sup> There is therefore more demand for expertise on subjectivity and the choices that people make as citizens and consumers respectively given the potential fruits this could bear in terms of

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actively shapes future actions and interactions. See generally Giddens, *The Constitution of Society* (n 23).

<sup>405</sup> *ibid* 191; Bernstein and others (n 5) 7.

<sup>406</sup> Alasuutari, Bickman and Brannen (n 333) 10.

<sup>407</sup> *ibid*.

<sup>408</sup> *ibid* 11.

increased profits due to better targeting and understanding of consumer behaviour.<sup>409</sup>

Given the suggestion by analysis of Eurobarometer survey results that we express different preferences depending on whether we are identified as a citizen or consumer, performativity has an interesting point to add here.<sup>410</sup> The way we speak about something appears to have the potential to shape our actions, our perceptions of our choices, and our expectations. Accordingly, to take the point further, what we expect from economic aspects of interactions may depend on the way in which we talk about “the economy” and our role in it as economic actors, for example. The approach taken here therefore continues a trend that looks at subjective experience. At the same time, it marks a shift in the sense that this seeks to challenge rather than justify or reinforce the neoliberal theoretical foundations of economic and legal aspects of interactions within a social context. However, this is in the light of the observation by Platt that “much writing about the history of sociology [...] starts from the moving frontier of contemporary, and works forward to it from ancestors chosen for their perceived contemporary relevance”.<sup>411</sup> Given this, and the acceptance that it is impossible not only to be an objective bystander in social research, but to objectively read Polanyi’s writings as they were written and intended in 1944, the present climate – in terms of theory, politics, and the fashion for research methodologies – is acknowledged. We cannot know what Weber or Polanyi might have meant, and even if we were to be able to quiz them today about their published works, these answers are still to be interpreted through

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<sup>409</sup> See Nikolas Rose (1996) “Inventing Our Selves: Psychology, Power, and Personhood”, Cambridge: England: New York: Cambridge University Press, cited in *ibid*.

<sup>410</sup> ‘Summary: Attitudes of Europeans to Animal Welfare’ (European Commission 2016) Special Eurobarometer 442, WaveEB84.4-TNS Opinion & Social <<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/71349>> accessed 24 July 2018; ‘Public Opinion - European Commission and the Eurobarometer Surveys’ (*Eurobarometer*) <<http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm>> accessed 24 July 2018; ‘Eurobarometer Special EB on “Attitudes of European Towards Animal Welfare” (Ref 442)’ (March 2016) <<http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2096>> accessed 24 July 2018; Law (n 25). This is discussed further in chapter 7.

<sup>411</sup> Platt (1996) “A History of Social Research Methods in America 1920-1960”, Cambridge University Press, 3, in Alastalo (n 63) 27.

the fog of the intervening decades and centuries in which fashions for research have come and gone, and theories of social science and political economy have been shaped and reshaped.<sup>412</sup>

Moreover, given the current trends for epistemological interpretivism and ontological constructivism in social science research generally, an econosociolegal project that seeks to challenge the dominance of orthodox frames necessarily sits at a disciplinary fringe. It must be aware of the fact that current research trends tend to be favoured precisely because they support the dominant discourses, conceptually and normatively. As noted, the preference for individualism and subjectivism reflects the need to understand consumer choice, given the political preferences for privatization and deregulation. A project like ESL is therefore trying to establish itself in a methodological research environment that inherently favours the theories and discourses that it is seeking to challenge.

Nevertheless, while an ESL lens can claim to be apolitical in the sense that it does not specify any normative or analytical content, it seems implausible to argue that there are no political implications. In seeking to reintegrate social science research sociologically, an ESL lens necessarily challenges existing dominant orthodox approaches. These in turn are based on neoclassical economics frames that have come to underpin, shape and structure much neoliberal political and institutional doctrine and discourse. An ESL lens stands in opposition to the mainstream regimes and rationalities, and offers the researcher a series of categories to structure and frame empirical research that challenges these sociologically. At the same time, reflectiveness on the part of the researcher requires the acknowledgement of

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<sup>412</sup> Interestingly, while much of the methodological analysis here is based on Anglo-American social science research methods, the principal historical references are Max Weber (German) and Karl Polanyi (Hungarian, although international). Polanyi is noted to have been struck by the difference in political and class awareness in Britain in comparison to that of continental Europe, and his research into English industrial history informed his work enormously. Weber was keenly aware of research methods and published some methodological texts, however these remained in German until their first translation into English in 1949, meaning that they did not have an immediate influence on Anglo-American social science research methods. See *ibid* 28.

interests and preferences, challenging supposed neutrality, but also potentially making any implementation of the ESL lens a political act.

The surrounding political, social and cultural conditions not only shape the research and the need for it in the first place, but the potential findings, conclusions and interpretations of that research. Noro's *general theory*, (an interpretive synthesis), and *research theory*, (proposition testing), are joined by a third genre of research which he terms *Zeitdiagnose*.<sup>413</sup> This seeks to diagnose and understand the times we live in, encouraging "us" to think about our situation, perhaps see it in a different light, and challenge or change it accordingly.<sup>414</sup> This is a central tenet of an ESL lens, and of the present thesis which aims to reshape one of the tools we have for talking about how we do and think about the econolegal. Sociology of the 1980s and 90s features heavily in this third category, including the work of Beck and Giddens amongst others, and tends to be openly normative and political.<sup>415</sup> But as Armstrong notes, while these texts might be initially seductive by telling us who "we" are, they cannot be used in the interpretation of empirical evidence, because "we would find in the material what the diagnoses have already named".<sup>416</sup> As Bernstein et al say of their empirical data, "you find what you look for, when you look in places you might expect it".<sup>417</sup> This indicates that a *Zeitdiagnose* theory should be used sparingly in ethnographic research. But there are aspirations of ESL that resonate, notably how the conceptual and normative implications of moving

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<sup>413</sup> Arto Noro (2001) "Zeitdiagnose as the Third Genre of Sociological Theory?" Paper presented at European Sociological Association Conference, Helsinki, August 28<sup>th</sup>; (2004) "Sociologian Kolmio: teorian, käytön, ja yleisöt" (A Sociological Triangle: Theory, Use and Audience), unpublished, cited in Armstrong (n 402) 55.

<sup>414</sup> Arto Noro (2001) "Zeitdiagnose as the Third Genre of Sociological Theory?" Paper presented at European Sociological Association Conference, Helsinki, August 28<sup>th</sup>; (2004) "Sociologian Kolmio: teorian, käytön, ja yleisöt" (A Sociological Triangle: Theory, Use and Audience), unpublished, cited in *ibid* 55–6.

<sup>415</sup> Arto Noro (2001) "Zeitdiagnose as the Third Genre of Sociological Theory?" Paper presented at European Sociological Association Conference, Helsinki, August 28<sup>th</sup>; (2004) "Sociologian Kolmio: teorian, käytön, ja yleisöt" (A Sociological Triangle: Theory, Use and Audience), unpublished, cited in *ibid* 56.

<sup>416</sup> *ibid*.

<sup>417</sup> Bernstein and others (n 5) 9.

beyond embeddedness seek to change the way we talk about, think about, and perform the econolegal.<sup>418</sup>

### 3.5 Defining Terms

#### *Inter-/Cross-/Trans-/Multi-disciplinarity*

Given that an ESL represents a frame of mind but generally involves a sociological lens on economic and legal phenomena, the approach could be described as MIT (multi-, inter-, trans-disciplinary).<sup>419</sup> It also potentially meets the criteria for beyond disciplinary or “integrated” research, if not in direct approach then at least in aspiration.<sup>420</sup> In taking a sociological lens on legal and economic phenomena, an ESL is not seeking to combine economic, legal and social methodologies, but to reconceptualise some of the core assumptions of each. As such, an ESL is both setting out to confirm the relevance of sociology as a discipline while attempting to call for a more holistic approach within the social sciences. In other words, it is seeking to re-integrate both law and economics within the social sciences and refocus their goals on the understanding of human behaviour. This is not to deny the value of the disciplines within the social sciences, which have provided “frames of reference, methodological approaches, topics of study, theoretical canons, and technologies”.<sup>421</sup> They have additionally provided “shared concepts and language” as well as epistemological and ontological security within the field necessary for its progression.<sup>422</sup>

Nevertheless, the continental drift that occurred in the social sciences in the twentieth century has seen the differentiation, distinction and departmentalisation of disciplines both within the university and in real life. This has been compounded

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<sup>418</sup> Hirsch, Michaels and Friedman (n 1) 53.

<sup>419</sup> Paul Stock and Rob JF Burton, ‘Defining Terms for Integrated (Multi-Inter-Trans-Disciplinary) Sustainability Research’ (2011) 3 Sustainability 1090, 1090.

<sup>420</sup> Ibid.

<sup>421</sup> Stock and Burton (n 419) 1090–1.

<sup>422</sup> Ibid.

by the “physics envy” of economics, its reinvention as a pseudo-natural science, and its colonial ambitions across the board of other social sciences.<sup>423</sup> As chapter 2 explored, these have either meekly deferred to the clarity and neatness of neoclassical economics (as in the case of sociology), or have sought to emulate its success through adopting similar empirical, analytical and normative technologies (as in the case of law).<sup>424</sup> The resulting social science “silos” of law, economics and sociology have seen some significant attempts at inter-disciplinary (economic sociology) and trans-disciplinary (Law and Economics) efforts.<sup>425</sup>

Sociolegal approaches, while still being a rather “woolly” concept not given to clear definitions or methodological boundaries, marks a continuum of interdisciplinarity within legal scholarship that has been ongoing for some time.<sup>426</sup> Whether by reference to Teubner’s “legal pluralism” and competing rule-systems in the world, or to competing rationalities in modern scholarship, there have been many movements over the years within legal scholarship to extend the conceptual and normative boundaries of research. Legal realism, law and society, critical legal studies, feminist jurisprudence, critical race theory and economic theories of law all comprise “alternative” or “pluralist” approaches to the study of legal phenomena, recognising the potential to be gained from crossing doctrinal boundaries.<sup>427</sup> Moreover, there is recognition of the need to reach out further to political science, development studies, anthropology, geography, and increasingly arts-based and visual methodologies to fully explore and understand the broader impacts of legal phenomena.<sup>428</sup>

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<sup>423</sup> Barber (n 38).

<sup>424</sup> Hirsch, Michaels and Friedman (n 1).

<sup>425</sup> I define economic sociology as inter-disciplinary as it generally seeks to take sociological methodologies and apply these to economic phenomena, although the main charge here is that the market is generally unavailable to sociological analysis. Similarly, I describe Law and Economics as trans-disciplinary as economic approaches are taken to the analysis of law, almost to the exclusion of traditional legal research methods. However, these are both broad generalizations and while some of the literature pertaining to each approach might be described thus, this will not be universally applicable.

<sup>426</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 4.

<sup>427</sup> *ibid* 4–5.

<sup>428</sup> *ibid* 5.

The pre-disciplinarity of the social sciences enjoyed by Max Weber, Karl Marx, Emile Durkheim and others that allowed for holistic approaches to be taken is not something that can be revisited given the differentiation that has occurred in the intervening century.<sup>429</sup> We can therefore only attempt to read Weber's analysis of legal rationality, or his economic theories, in the light of the conditions under which they were written, despite the fact that both the way we now think about and do economic and legal phenomena has been shaped and altered by this academic differentiation. Similarly, Polanyi's "always embedded economy" should be read in the light of the fact that the social sciences were at the time of writing more integrated and inter-referential, and that "economic history, economic theory, and economic sociology" had not fully differentiated.<sup>430</sup>

There have been many attempts to (re-)unite social science inquiry under one banner, with the grand theories of sociology leading the way.<sup>431</sup> From a legal perspective, the works of Niklas Luhmann and Gunther Teubner on systems theories sought to recreate law as a complete, self-referential system, while Cotterrell's community lens and debates with David Nelken have explored the benefits and limits of sociolegal theory.<sup>432</sup> Wider-ranging theories have included Immanuel Wallerstein's World Systems Analysis.<sup>433</sup> In one sense, these projects share a common goal with an ESL in the sense of wanting to refocus social science endeavours on understanding human behaviour through careful empirical studies

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<sup>429</sup> Frerichs, 'Studying Law, Economy, and Society' (n 4); Perry-Kessaris, 'What Does It Mean to Take a Socio-Legal Approach to International Economic Law?' (n 4) 10.

<sup>430</sup> Frerichs, 'Studying Law, Economy, and Society' (n 4) 9.

<sup>431</sup> See the works of Giddens, Foucault, Derrida, Bourdieu, Latour, and so on.

<sup>432</sup> See in particular Niklas Luhmann, *Law as a Social System* (Fatima Kastner and others eds, Klaus A Ziegert tr, Oxford University Press 2004); Teubner (n 37); and in the context of development, see also David M Trubeck, 'Toward a Social Theory of Law: An Essay on the Study of Law and Development' (1972) 82 *The Yale Law Journal* 1; in relation to understanding the social life of economic phenomena, see Michel Foucault, *The Birth of Biopolitics; Lectures at the College de France 1978-79* (Michel Senellart ed, Graham Burchell tr, Palgrave Macmillan 2008) <[https://1000littlehammers.files.wordpress.com/2010/02/birth\\_of\\_biopolitics.pdf](https://1000littlehammers.files.wordpress.com/2010/02/birth_of_biopolitics.pdf)>; More fundamentally, the dialogue between Roger Cotterrell and David Nelken has been central in shaping sociolegal theory and the field's own perception of what it can offer. See inter alia Cotterrell, 'Legal Concept of Community, A' (n 8); Roger Cotterrell, 'Why Must Legal Ideas Be Interpreted Sociologically?' (1998) 25 *Journal of Law and Society* 171; David Nelken, *Beyond Law in Context: Developing a Sociological Understanding of Law* (Ashgate 2009).

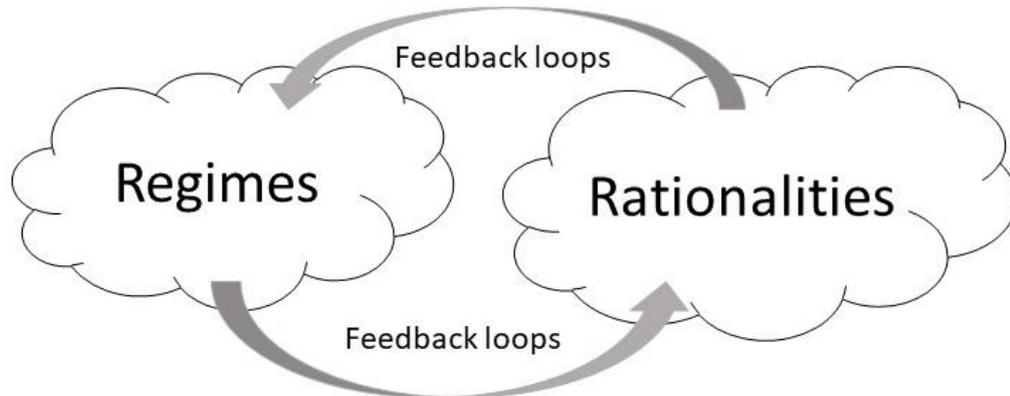
<sup>433</sup> Immanuel Wallerstein, *World-Systems Analysis: An Introduction* (Duke University Press 2004).

of real-world interactions, interpreted and understood sociologically. At the same time, ESL shares the goal of seeking a broad reintegration of social science dialogue and research. However, the core commitment to the concept of embeddedness, and the implications of this for the way we do and think about the econolegal, requires a different set of linguistic tools to be available.

### Discourse analysis

While textual analysis was relevant for the thesis, the key contribution is an analysis of the implications of a conceptual commitment to embeddedness. This one word, and the way it shapes our mental models and interactions, forms the main basis of the argument. Chapters 4 and 5 chart the career of embeddedness through economic sociology, economic history and economic sociology of law, as well as sociolegal scholarship, and have therefore analysed the use of the term in different contexts. There are therefore elements of discourse analysis that are helpful in realizing that discourse is not just the written, but the spoken and unspoken communications. The deep conceptual commitment to embeddedness means that when it is used without precision, it has the potential to shape our mental models both explicitly and implicitly, as an *unthought rationality*. The term both enhances and constricts our linguistic tools, and reveals and conceals information about the econolegal.

Figure 6 - Feedback loops operate between regimes and rationalities, enabling their mutual re-co-constitution through interactions as expressed in discourse



Furthermore, a significant aspect of analysing the feedback loops that operate within interactions to re-co-constitute the regimes and rationalities of the actor occur through discourse. These are shown in **Error! Reference source not found.6**, above. As the discussion on performativity (and constructivism) and the linguistic turn demonstrates, the language used to convey meaning can have far reaching effects on the self-perception (self-conceptualisation) of the actor and their behaviour. This occurs even unnoticed by them, as captured in the phrase the “unthought known”.<sup>434</sup> The implications of research into the Eurobarometer survey results explores this in more detail.<sup>435</sup>

“‘Discourse’ means what people say or write” and is a “social action made visible by language”.<sup>436</sup> Macdonell also notes that while the primary condition of discourse is dialogue, discourses “differ with the kinds of institutions and social practices in which they take shape, and with the positions of those who speak and those whom

<sup>434</sup> Bernstein and others (n 5) 7.

<sup>435</sup> See section 7.3.3.

<sup>436</sup> Charles Antaki, ‘Discourse Analysis and Conversation Analysis’, *The SAGE Handbook of Social Research Methods* (Alasuutari, Bickman, Brannen, eds) (Sage Publications 2009) 431.

they address”.<sup>437</sup> Given the social nature of discourse, there is a hierarchy of discourses. One of the principal endeavours in the field has become “accounting for ‘the positions and viewpoints’ from which people speak and ‘the institutions which prompt people to speak ... and which store and distribute the things that are said’”.<sup>438</sup> Given the use of texts, books and online documents, summative context analysis as a form of discourse analysis (counting how many times the word “embeddedness” is used, in what context and with what intentions) has also formed a key method of the current research.<sup>439</sup>

There are a multitude of methods available for discourse analysis, but the core features include the requirements that the text is to be naturally found, rather than created or invented). Further, the words are to be understood in their direct and broader context, and the analyst should be sensitive to the non-literal meaning of the words. Finally, analysis should also reveal the social actions and consequences achieved by using those words.<sup>440</sup> This is more directly relevant for the first case study, exploring the empirical implications of a commitment to the concept of embeddedness through interviews in Beragama. The requirement that the text be naturally found tends to discount to some degree published texts like Polanyi’s *The Great Transformation*. Nevertheless, even bearing in mind that this text was carefully sculpted, there are some commonalities and it is helpful to be aware of what can be conveyed in, and through language.

At the same time, as with all texts, dialogues and interlocutions, it is important to be aware not just of what is said, but *how* it is said,<sup>441</sup> while being mindful of what is

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<sup>437</sup> Diane Macdonell, *Theories of Discourse: An Introduction* (Basil Blackwell 1991) 1.

<sup>438</sup> Foucault (1976, trans. 1979) *The History of Sexuality*, 11, cited in *ibid* 2.

<sup>439</sup> Hsiu-Fang Hsieh and Sarah E Shannon, ‘Three Approaches to Qualitative Content Analysis’ (2005) 15 *Qualitative Health Research* 1277, 1286.

<sup>440</sup> Antaki (n 436) 432. Available methods for discourse analysis include narrative analysis, interpretative phenomenological analysis, interactional sociolinguistics, ethnography of speaking, conversation analysis, discursive psychology, generic discourse analysis, and critical discourse analysis, among others.

<sup>441</sup> For a discussion of ethnomethodological approaches to conversation analysis as well as socio-linguistic approaches to narrative analysis, see Michal Krzyzanowski, ‘Analysing Focus Group Discussions’, *Qualitative Discourse Analysis in the Social Sciences* (Ruth Wodak and Michal Krzyzanowski, eds) (Palgrave Macmillan 2008) 7.

*not* said. As Ewick and Silbey note, “[c]onsciousness is produced and revealed in what people *do* as well as what they *say*”, in addition to what they do *not* do or say.<sup>442</sup> The conceptual commitment to embeddedness, used explicitly and implicitly, are both relevant here. These both shape mental models, and therefore available ways of doing and thinking about the econolegal. The context, as well as how the term is used, is therefore relevant for understanding the term’s meaning and impact, as well as what the user is trying to convey.

### *Social Constructionism or Social Constructivism?*

The core argument is that ESL’s conceptual commitment to embeddedness is incompatible with the starting assumptions of social constructivism which provides the supporting context for ESL. As a matter of pure terminology and linguistic convenience, many authors, including Schwartz and Crotty use “constructivist” as the adjective to refer to both constructionism and constructivism.<sup>443</sup> Other authors use the terms interchangeably without apology.<sup>444</sup> Additionally, while the proposed lens set out in Part III draws on terminology and ideas from performativity, it is essentially constructivist in nature reflecting the third generation of scholarship in sociology.<sup>445</sup> This indicates that the econolegal is conceived as aspects of social interactions, performed and constructed within and through each interaction. It is therefore useful to set out where an ESL sits in constructivist literature, which way it faces, and the extent to which this thesis engages with the debate in the following chapters.

The distinction between social constructionism and social constructivism seems small, but significant. When referring to social *constructionism*, the focus is on the

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<sup>442</sup> Dave Cowan, Helen Carr and Alison Wallace, ‘Ownership, Narrative, Things (Chapter 1)’ (Palgrave, Socio-Legal Studies 2018) 22.

<sup>443</sup> Schwartz (2001) *Dictionary of Qualitative Inquiry* (Vol.2), Thousand Oaks, Sage Publications; Michael Crotty, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (Sage Publications 1998).

<sup>444</sup> See M Lynch, ‘Towards a Constructivist Genealogy of Social Constructivism’, *The Politics of Constructionism*, (I Velody, R Williams, eds.) (Sage Publications 1998).

<sup>445</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4).

artefacts or “knowing” created through shared production. Social constructivism puts the individual at the centre of meaning-making within a social context, with the focus on the individual’s learning that occurs through their interactions. Distinguishing the approaches, Crotty has suggested reserving the term “constructivism for epistemological considerations focusing exclusively on the ‘meaning-making activity of the individual mind’”.<sup>446</sup> He recommends the use of “constructionism where the focus includes ‘the collective generation [and transmission] of meaning’”.<sup>447</sup> To put it simply, social constructivism focuses on the actors, whereas social constructionism focuses on the interaction. Accordingly, while constructivism acknowledges the unique experience of each actor, constructionism points to the way in which our experiences are shaped by culture. This has led Crotty to remark that “constructivism tends to resist the critical spirit [because all accounts are of equal value], while constructionism tends to foster it [as individuals can disagree as to the version of reality they accept]”.<sup>448</sup>

The importance of this is difficult to overstate. As Crotty notes, it has become somewhat of a “shibboleth” for researchers engaged in qualitative research to claim to be a constructionist, a constructivist, or both.<sup>449</sup> As such, the claim should prompt reflection on what it actually means, and how it impacts on the shape of the research being undertaken. For the present thesis, constructivist theories form the backdrop against which the conceptual commitment to embeddedness becomes problematic, and is therefore central to the way we approach ESL, embeddedness, and the implications of both. Thus the background comprises sociological approaches that tend to assume some degree of constructivism, and an ESL that is seeking the reintegration of social science methodologies through interdisciplinarity and a sociological re-conception of the econolegal. It therefore becomes difficult to reconcile this with the implications of a commitment to a term that entrenches separation and differentiation at the core of the lens.

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<sup>446</sup> Crotty (n 443) 58.

<sup>447</sup> *ibid.*

<sup>448</sup> *ibid.*

<sup>449</sup> *ibid* 64–5.

Nilsen defines a “constructionist position” as one which “highlights the social constructed nature of reality and rejects any independent qualities of it”.<sup>450</sup> Despite the fact that there is no one coherent approach that defines social constructionism, Vivien Burr has identified four main assumptions that tend to unite approaches. These include firstly a “critical stance towards taken-for-granted knowledge”, “[h]istorical and cultural specificity”, acceptance that “[k]nowledge is sustained by processes”, and finally agreement that “[k]nowledge and social action go together”.<sup>451</sup>

In referring to approaches the question the objective nature of reality, Mabry uses the term “constructivist understanding” to reference approaches like interpretivist methods, noting that these notions might actually raise more questions than they answer.<sup>452</sup> Within this approach, there have been debates about the relative merits, exemplified by the exchange between Sismondo and Knorr-Cetina. Despite titling the paper “Some Social Constructions”, Sismondo explores the field of “social constructivism”, noting that far from being a unified approach within the social sciences, “processes of construction differ with the types of objects that can be constructed”.<sup>453</sup> Dismissing “neo-Kantian” or “idealist” constructivism as the weakest, he identifies four “prominent interpretations” which he argues should be separated out.<sup>454</sup> Originators of this approach include Bruno Latour and Steve Woolgar, Berger and Luckmann, along with the narrower approach (of *constructivism* rather than *social constructivism*) of Karin Knorr-Cetina.<sup>455</sup> This contrasts with other authors who claim all knowledge (and therefore all social

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<sup>450</sup> Nilsen (n 335) 84.

<sup>451</sup> Vivien Burr, *Social Constructionism* (New York: Routledge 2003).

<sup>452</sup> Mabry (n 361) 218.

<sup>453</sup> Sergio Sismondo, ‘Some Social Constructions’ (1993) 23 *Social Studies of Science* 515, 515.

<sup>454</sup> *ibid.*

<sup>455</sup> *ibid* 515–6. See Latour and Woolgar, (1986) *Laboratory Life: The Construction of Scientific Facts* Princeton University Press. See also Peter L Berger and Thomas Luckmann, *The Social Construction of Reality* (Penguin Books 1991)., which set out the sociology of scientific knowledge as the object of enquiry. Schutz, Husserl and Piaget all follow a construction metaphor in varying contexts.

research) to be socially constructed.<sup>456</sup> Sismondo identifies four interpretations of the construction metaphor;

- A. The construction, through the interplay of actors, of institutions, including knowledge, methodologies, fields, habits, and regulative ideals;
- B. The construction by scientists of theories and accounts, in the sense that these are structures that rest upon bases of data and observations;
- C. The construction, through material intervention, of artefacts in the laboratory; and
- D. The construction, in the neo-Kantian sense, of the objects of thought and representation.<sup>457</sup>

While there is some consensus that the world is not created when scientists agree on something, Sismondo finds social constructivism consistent with empiricism and realism.<sup>458</sup> Nevertheless the ubiquity of the term now means that “social construction” often means nothing more than “of social origin”.<sup>459</sup>

While there are differences, most approaches pay attention to the microsociological “in order to explain the macrosociological”, as observed through the “mundane transactions of participants”.<sup>460</sup> By embracing the full range of social interaction from the micro to the macro and analysing the production or construction of the macro through the micro, an ESL shares a similar approach. The lens proposed in Part III is specifically compatible with constructivist approaches (understood as a dual-purpose adjective). While the thesis acknowledges that constructionism might emphasise the interaction more and reflect more closely the aims of the proposed lens in Part III, the term here is used as a contextual description of the purpose of ESL. It is not the purpose of the present discussion to set up the proposed lens as specifically constructionist or constructivist. The aim is to propose a lens that is conceptually compatible with a broad range of other approaches in sociological research. Given the breadth and applicability of the term constructivism, the discussion throughout remains consistent with this. It sees the econolegal socially, as regimes and rationalities, continually re-co-constituted through feedback loops

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<sup>456</sup> Sismondo (n 453) 515–516.

<sup>457</sup> *ibid* 516.

<sup>458</sup> *ibid* 515.

<sup>459</sup> *ibid* 521. Notions such as emotions, power, and especially gender studies have embraced the idea that these are socially constructed concepts.

<sup>460</sup> *ibid* 527.

within interactions. This is dependent on the actor's perception, conception, understanding and reproduction of their regimes and rationalities which in turn depends on the linguistic tools they have available to describe and challenge these.

"Qualitative or interpretivist study implies the *constructivist* theory that all knowledge is personally constructed".<sup>461</sup> Moreover, personal experience – even vicarious experience promoted in interpretivist case studies – "provides the building blocks for the knowledge base constructed by each individual".<sup>462</sup> Moreover, an interpretivist methodology "encourages the case study researcher to be alert to patterns of activities and the variety of meanings participants ascribed to their experiences".<sup>463</sup> In addition to the text and subtext, context is important here in its historical, social, political, ideological, organizational, cultural, linguistic, philosophical, and other impacts on perception and conception.<sup>464</sup> While ESL claims no normativity or conceptual content but merely offers categories, these in turn shape perceptions (both of the researcher and her subjects), creating the categories through which she sees, categorizes and understands the world as well as her interactions. Macro-regimes and meta-rationalities therefore are to be understood in an interpretivist and constructivist setting.

Finally, the lens does not set out to challenge the economic and legal *as knowledge claims* or constructs within a specific setting. Instead, it seeks to reconceptualise these as regimes ("doing the econolegal"; the "economy", the "law") and rationalities ("thinking about the econolegal"; economics, law). At the same time, it illuminates the analytical and normative assumptions shaping the approach. Thus, the economic and legal aspects of interactions necessarily become truth claims in this approach, although the veracity, or verisimilitude of these is not the focus here.

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<sup>461</sup> See Piaget (1955) "The language and thought of the child", New York: World; Glassman (2001) "Dewey and Vygotsky: Society, experience, and inquiry in educational practice", *Educational Researcher*, 30(4), 3-14; Phillips (1995) "The good, the bad and the ugly: the many faces of constructivism", *Educational Researcher*, 24(7), 5-12, cited in Mabry (n 361) 216.

<sup>462</sup> Ibid.

<sup>463</sup> Mabry (n 361) 217.

<sup>464</sup> Text, subtext and context are categories borrowed from Frerichs, 'Studying Law, Economy, and Society' (n 4).

As such, ESL has not tended to engage on a broader level with the sociology of scientific knowledge or the knowledge claims that orient some of the constructivist discourse.

### Performativity

The lens proposed in Part III draws on some of the terminology and ideas of performativity. Despite the references to the construction of markets by economists, performativity remains a more fashionable term within economics and the sociology of markets.<sup>465</sup> Callon proposes performativity as a “convincing and general answer” to the question of how a “discourse [can] be outside the reality that it describes and simultaneously participate in the construction of that reality as an object by acting on it?”<sup>466</sup> He argues that performativity can provide the interplay between discourse and the social reality it describes and shapes. Thus economics, with its many models and theories, comes to be “performed” by actors who believe these models to be accurate, making them more reflective of reality in a process that can resemble a self-fulfilling prophecy.<sup>467</sup>

Butler, who has extended performativity in gender studies takes Goffman’s notion of the social “performance” further, noting that “[p]eople’s identities do not precede their performances but are constructed in and through them”.<sup>468</sup> This draws out the re-co-constitution of reality with *our experience of it*. It is this interplay between our perception of reality, our reconstruction (or challenge) of it, and the social reality itself as consisting of feedback loops that constantly reaffirm

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<sup>465</sup> Callon, ‘What Does It Mean to Say That Economics Is Performative?’ (n 104).

<sup>466</sup> *ibid* 316.

<sup>467</sup> MacKenzie, Muniesa and Siu (n 62) 3. Robert K Merton’s notion of the self-fulfilling prophecy is cautioned against by MacKenzie who shows that the actual studies are too complex to claim such a straightforward outcome, however the term is a useful metaphorical descriptor for the type of response.

<sup>468</sup> Use of the term “constructed” does make for uncomfortable reading at this point but epitomizes the lack of consistency through the field. See Butler (unreferenced), cited in Callon, ‘What Does It Mean to Say That Economics Is Performative?’ (n 104) 329.

or challenge our understanding of our (institutional, economic and legal) environment and shape our actions, reactions and interactions.

Once again, the centrality of language in describing, conveying, challenging and constructing or performing a social reality, is acknowledged, relating this to the discussion of discourse analysis. When this is combined with performative notions, it becomes clear that by describing the market as embedded in society (or vice versa) implies its separation conceptually, and shapes our mental models accordingly. We are unable to think about the econolegal as an aspect of the social while we are still using linguistic tools that entrench their separation and difference.

Moreover, the linguistic tools, in reinforcing the dominance of market rationalities, cause us to perform as *homo economicus* in social interactions.<sup>469</sup> The implications of the Eurobarometer survey indicate that when we are identified as a consumer, we display interests and preferences that more closely resemble those of a typical *homo economicus*, a trend reversed on being re-labelled a citizen.<sup>470</sup> If, as the Eurobarometer analysis and performativity experiments suggest, linguistic tools do indeed shape our regimes and rationalities, the conceptual commitment to embeddedness in ESL and more broadly has the potential to shape the way we do and think about the econolegal. Further, the explicit and implicit use of the term, and the way it operates as an unthought rationality, not only re-entrenches the disciplinarity between the economic, the legal and the social, but reinforces the current ways of thinking and doing. It serves to re-entrench the neoclassical, the doctrinal, and the neoliberal. And the evidence from performativity literature indicates that we behave more like *homo economicus* as a result – without even realising. Moreover, the implications of the implicit impact of the unthought rationality of embeddedness on discourse indicate that the assumptions are inaccessible to sociological challenge and critical analysis. If we cannot identify the terms used, how can we challenge them? This discussion of the centrality of

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<sup>469</sup> This is explored further in Part III.

<sup>470</sup> See generally, Law (n 25).

linguistic tools to the thesis leads on to an analysis of the linguistic turn and our use of ontological metaphors more broadly.

### 3.6 Language and the linguistic turn

Hermeneutics have come to define the differentiation of the natural sciences and humanities in terms of methodology. Husserl's theory of phenomenology was seminal in shaping Heidegger's hermeneutics. It "has also been influential in its own right in the social sciences, not least through Garfinkel's ethnomethodology which was developed in the intersection between Parsonian thought and A Schultz's expanding of Husserl's work (Heritage 1984)".<sup>471</sup> Initially set out as a method to examine texts, hermeneutics gained ground in methods debates, a shift that was aided by developments in linguistics.

As the structural linguistics of Lévi-Strauss was criticised by Foucault and Derrida, post-structural approaches began to take shape in language theory and social theory, the results of which constructivist approaches (including an ESL here) are still coming to terms with.<sup>472</sup> However as Bonnell and Hunt note, "structuralism and post-structuralism both contributed to the general displacement of the social in favour of culture viewed as linguistic and representational. Social categories were to be imagined not as preceding consciousness or culture or language, but as depending on them", only coming into being through their expressions or representations.<sup>473</sup> Given this move, "the semiotics of Roland Barthes, Foucault's critique of power and Lyotard's critique of 'grand narratives' were all influential" in guiding the direction and form of social science research in the 1980s.<sup>474</sup> This saw debates about methodology replaced by debates about epistemology and whether

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<sup>471</sup> Nilsen (n 335) 88.

<sup>472</sup> *ibid.*

<sup>473</sup> Bonnell and Hunt, "Introduction", in Bonnell and Hunt (eds) *Beyond the Cultural Turn*, Berkeley, University of California Press (1999: 9), cited in *ibid* 89.

<sup>474</sup> *ibid.* Some of the later grand theories choose not to engage with epistemology from the outset. See Giddens, *The Constitution of Society* (n 23).

was indeed any reality beyond language. Moreover, the focus shifted from the object being described, to the way in which the story was told, and there was a shift in epistemological focus towards a more constructionist standpoint “which implies a line of questioning that is premised on *knowledge about reality as reality*”.<sup>475</sup>

Nilsen advises caution at this juncture, however, as a “belief that reality is a human construction alone can lead to extreme relativism” in the approach to any research material.<sup>476</sup> Moreover, any researcher taking this approach must be aware of the dangers of blurring the boundaries between truth and non-truth, fact and fiction. While there has been much discussion and methodological debate about whether the self can exist beyond language, identity has in many instances come to replace the notion of the self as “selves”, “constructed in discursive fields rather than developed in social relationships”.<sup>477</sup> More importantly, the “ontological and epistemological foundations of the ‘cultural turn’ make it difficult to envisage a social science that can produce convincing evidence of, for instance, social disparities between groups of people”.<sup>478</sup> Nilsen notes the shift towards culture replacing structure, and narratives *about* lives given more prominence than documentation of *lived experiences*. If this is taken to an extreme, she asks “the question of whether there is a place for social science research that highlights power and systematic differences and inequalities between people”.<sup>479</sup> This also raises the question of whether there will be room for the “potential of social science to provide critical analyses of trends and development at different levels of society”.<sup>480</sup>

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<sup>475</sup> J David Lewis and Richard L Smith, *American Sociology and Pragmatism: Mead, Chicago Sociology and Symbolic Interaction* (University of Chicago Press 1980). cited in Nilsen (n 335) 89.

<sup>476</sup> Nilsen (n 335) 89.

<sup>477</sup> Victoria E Bonnell and Hunt Lynn, ‘Introduction’, *Beyond the Cultural Turn* (University of California Press 1999). Cited in Nilsen (n 335) 90.

<sup>478</sup> Ann Nilsen, ‘Life Stories in Context: A Discussion of the Linguistic Turn in Contemporary Sociological Life Story Research’ (1994) 2 *Sociologisk Tidsskrift* 139; Bonnell and Hunt Lynn (n 477). Cited in Nilsen (n 335) 90. Cited in *ibid* 91.

<sup>479</sup> Nilsen (n 335) 91.

<sup>480</sup> *ibid*.

*Ontological metaphors and the self-fulfilling prophecy*

“Ontological metaphors”, named by Lakoff and Johnson, are also central to the main arguments of this thesis.<sup>481</sup> Their theory of metaphor sits half way between objectivism and subjectivism and therefore goes some way towards responding to some of the dualities discussed.<sup>482</sup> By their view, ontological metaphors such as “the economy”, “the law”, “inflation”, and so on are used in a way that can “create realities for us, especially social realities” which, by shaping future action have the potential to become “self-fulfilling prophecies”.<sup>483</sup> These categories of “mental phenomena” are generally so submerged in everyday discourse that they have become invisible and taken for granted, however such ontological metaphors are essential if we are to perceive and respond to our experiences.<sup>484</sup>

Terms such as “the economy” and “the law” can be appreciated as ontological metaphors. While they conveniently describe a collection of phenomena, practices, interactions and behaviours, it is impossible to point to “the economy”, “the market”, or “the law”. Beyond the bounds of social interaction, there is no such thing. This adds another layer of complexity when we then use a concept like embeddedness to describe the relationship between two entities, both of which are metaphors for collections of social practices. Indeed, the econolegal, taken as aspects of the social in accordance with constructivist understandings, cannot therefore be embedded in the social, or vice versa. By proposing a sociological lens, ESL specifically understands the economic and legal as aspects of the social.

As Lakoff and Johnson note with no small reference to some of the performative notions here, our “conceptual system [...] plays a central role in defining our everyday realities”.<sup>485</sup> Political and economic metaphors “constrain our lives” due to their pervasiveness and their construction of social reality.<sup>486</sup> Thus any discussion of

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<sup>481</sup> Lakoff and Johnson (n 57).

<sup>482</sup> *ibid.*

<sup>483</sup> *ibid* 156.

<sup>484</sup> *ibid* 28.

<sup>485</sup> *ibid* 3.

<sup>486</sup> *ibid* 236.

the conceptual commitment to embeddedness becomes subject to the relativism contained in all the terms.

Moreover, the relativism of language applies equally to the concepts and structures that we perceive and communicate through language. Given this, an Economic Sociology of Law-inspired lens is also therefore an exercise in metaphor – although one that is more coherent and consistent. This is not to deny the fact that, given regimes and rationalities will necessarily vary from one actor to the next, interpretation, perception and understanding will also vary. This might explain the variance in commitment to the term “embeddedness”, as the discussion in Part II explores. It is recognized that any proposed lens, as a potential rationality and future regime, is vulnerable to many of the same criticisms and charges that are set out above regarding the use of metaphor.

### **3.7 The case study**

The present study is grounded in real-world interactions through three empirical analyses introduced as vignettes that are developed into mini case studies. These case studies draw out the empirical, conceptual and normative implications deriving from a commitment to the concept of embeddedness, and explore what this looks like in reality. Part III of the thesis then suggests a way of moving beyond embeddedness and breaking the conceptual commitment or unthought rationality, in a way that is more consistent with the core goals of a constructivist ESL lens. The three case studies have been set out in chapter 1 and contextualized in chapter 2.

Case studies, generally, refer to the “the empirical investigation of a specified or *bounded* phenomenon”.<sup>487</sup> This approach can address instances of greater complexity, “such as a community’s approach to addressing a prevailing societal

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<sup>487</sup> Louis M Smith, ‘An Evolving Logic of Participant Observation, Educational Ethnography and Other Case Studies’, *Review of Research in Education* (L Shulman, ed) (1978) <[https://www.jstor.org/stable/1167249?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/1167249?seq=1#page_scan_tab_contents)> accessed 13 July 2019. Cited in Mabry (n 361) 214.

issue”, and can allow a “deep understanding of particular instances of phenomena”.<sup>488</sup> “[S]ocial reality is created by people and because it is complex, dynamic, and context-dependent”, highly nuanced approaches to researching it were developed.<sup>489</sup>

The case studies used here offer a way of bringing the theory back into the real world, while at the same time using empirical examples to drive the theoretical and conceptual discussion forward. The main argument relates to ESL’s commitment to the concept of embeddedness, but the third case study broadens the horizons of this debate, finding that the implicit unthought rationality of embeddedness is shaping our mental models in ways of which we are unaware. Thus, in a similar manner to the feedback loops that re-co-constitute the actor and her regimes and rationalities, case studies and conceptual discussion are used throughout the thesis to inform, question, and compliment.

### **3.8 Conclusions**

The first three chapters (Part I) have set out the context, limitations of current approaches and potential alternatives. The discussion so far has identified the three limitations of orthodox, econo-centric approaches and proposed an ESL as one solution. Chapters 2 and 3 have offered more context both to the mainstream, and to ESL, while identifying a limitation with the core concept of ESL; embeddedness. The discussion has also highlighted the limitations inherent in the way we currently talk about the econolegal that are hampering our ability to respond to mainstream regimes and rationalities. It highlighted the problems with the linguistic tools available. This chapter then explored the approaches to the current research, both in terms of how it was conducted, and how it was approached mentally. The chapter added further context to the need for an ESL, but also explored the

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<sup>488</sup> Mabry (n 361) 214.

<sup>489</sup> *ibid* 215.

relations between linguistic tools and mental models, and how these both then manifest as actions.

Part II moves on to focus more closely on ESL and its commitment to the core concept of embeddedness. The discussion traces the heritage of embeddedness within the traditions of economic sociology and ESL, unpacking the various uses, meanings, contexts and phenomena to which it has been applied. The problems with the commitment to the concept are twofold. Firstly, internal conceptual inconsistencies result from an inability to determine what we are talking about; what is embedded, and in what is it embedded? Secondly, and more fundamentally as this chapter has brought out, is the conceptual incompatibility of a commitment to the concept of embeddedness with supporting constructivist assumptions. Either the econolegal is an aspect of the social, or they are indeed separate – albeit metaphorical – phenomena.

The centrality of our linguistic tools, in shaping not only our mental models but the ways we are able to respond to and challenge these, is discussed. Then Chapter 6 turns to the three case studies to explore the implications of the conceptual commitment to embeddedness in real life, and the inability of the term to cope with the dynamic, flexible, complex social interactions that comprise society.

## **PART II: THE CHALLENGE**

The issue identified and addressed in this part of the thesis is ESL's conceptual commitment to embeddedness and its central role in shaping discourse, as well as our potential responses to it. The discussion looks at embeddedness both within ESL and more broadly, explicitly and implicitly, in its role both revealing and concealing information and responses. The commitment to the concept is perpetual, but so deeply ubiquitous within the debate that it is often unavailable to challenge, despite its role in shaping our linguistic tools and mental models. The discussion introduces and explores ESL as a scholarly response to econo-centrism, both within academic research, and also more broadly in the shape of the Investment Climate campaign that informs the first two case studies. Chapter 5 then explores the career of the concept of embeddedness, unpacking its guises, applications and interpretations. The discussion explores the inability of the economic sociology and ESL communities to unite on one interpretation of the concept of embeddedness. Thus, it continues to perform the role of a central coat hook on which all responses to econo-centrism can be hung, regardless of a lack of consistency. The empirical analyses of this commitment to the concept of embeddedness, and the conceptual, empirical and normative implications, are explored in chapter 6.

### **4. Exploring and defining ESL**

This chapter sets out sociological responses to the continental drift and economics imperialism explored in the previous two chapters. This includes economic sociology, sociolegal scholarship, and ESL. The discussion looks back to the early social sciences in respect of law, economics and the nascent field of sociology, referencing the seminal work of Weber, Durkheim, Marx and then Polanyi. The chapter then moves on to offer definitions of ESL, and offers typologies used by ESL scholars. These include the text, context, subtext categories, the empirical, conceptual, normative categories, the micro, meso, macro, and meta rankings of social interaction, and finally the econosociolegal distinction. These offer a "how to"

of ESL, suggesting categories to prompt empirically grounded, theoretically informed in the social sciences.

Even within the relatively small ESL community, there is frustratingly little consensus on what an economic sociology of law approach entails.<sup>490</sup> Additionally, there is also some disagreement about exactly where the approach sits, and which way it faces. Some writers see an economic sociology of law as a sociolegal project, sitting neatly within sociolegal approaches, doctrines and boundaries and borrowing the methodological categories that have already been established therein.<sup>491</sup> Others have set economic sociology of law on a separate footing, spanning (both borrowing from and adding to) economic sociology and socio-legal literature.<sup>492</sup> There is a general consensus that an ESL is more a “frame of mind” than a “fixed methodology”, and this involves taking a “sociological lens” to examine legal and economic aspects of interactions, in particular, their social interface.<sup>493</sup> An economic sociology of law, moreover, “accommodates a wide range of methodologies and substantive fields”, and is therefore available as an approach to “legal historians, sociologists and lawyers trained in more than one discipline”.<sup>494</sup> There is also a general agreement that as a “social phenomenon”, law (and economics) “must be understood empirically (through detailed examination of variation and continuity in actual historical patterns of social co-existence, rather than in relation to idealised or abstractly imagined social conditions)”.<sup>495</sup> However the lack of agreement on where an ESL sits within the social sciences and which way it faces reflects further confusion over the boundaries, definitions, methodologies

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<sup>490</sup> Perry-Kessaris, ‘Approaching the Econo-Socio-Legal’ (n 2); Ashiagbor, Kotiswaran and Perry-Kessaris, ‘Continuing towards an Economic Sociology of Law’ (n 28).

<sup>491</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4).

<sup>492</sup> *ibid*; Frerichs, ‘Studying Law, Economy, and Society’ (n 4).

<sup>493</sup> See generally Ashiagbor, Kotiswaran and Perry-Kessaris, ‘Introduction: Moving towards an Economic Sociology of Law’ (n 28); Ashiagbor, Kotiswaran and Perry-Kessaris, ‘Continuing towards an Economic Sociology of Law’ (n 28).

<sup>494</sup> Ashiagbor, Kotiswaran and Perry-Kessaris, ‘Continuing towards an Economic Sociology of Law’ (n 28) 263.

<sup>495</sup> Roger Cotterrell, ‘Why Must Legal Ideas Be Interpreted Sociologically?’ (1998) 25 *Journal of Law and Society* 171, 183; cited in Ashiagbor, Kotiswaran and Perry-Kessaris (n 2) 263.

and terminology involved. This is not peculiar to ESL but echoes the discussion in chapter 2 about the grey areas around the boundaries between “market and non-market”.<sup>496</sup> The following discussion identifies some of the sociolegal and economic sociology heritage of ESL, before some of the main typologies and pillars of the approach are set out.

## **4.1 Sociological ways of doing, thinking, and talking**

### **4.1.1 Sociolegal responses**

Given that much of the early literature currently forming the bedrock of economic sociology and ESL were “pre-disciplinary”, the works of Weber, Durkheim, Marx and to a certain extent Polanyi were written before the fields fully separated.<sup>497</sup> In fact, their close connection was a factor in the over-arching pronouncements of all these writers, who took the legal and economic to be aspects of the social, recognizing the need to analyse these as such.<sup>498</sup>

However, the middle of the twentieth century saw the differentiation of the social sciences, described as a period of “disciplinarity” that saw the departmentalization of the disciplines within the academe.<sup>499</sup> Moreover, sociolegal approaches were legitimate and even dominant modes of thinking before legal realism developed, and have only recently come to be seen once again as ‘alternative’ rather than ‘other’.<sup>500</sup> Frerichs distinguishes between positivist, naturalist and historicist approaches to law, siting the origins of sociolegal scholarship within the third approach and responding to the shortcomings of positivism and naturalism.<sup>501</sup> The emergence of a distinct sociolegal account emerged from the joint efforts of

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<sup>496</sup> See section 2.2.3 discussing New Institutional Economics

<sup>497</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 10.

<sup>498</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4).

<sup>499</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 10.

<sup>500</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 9.

<sup>501</sup> *ibid* 9–10.

sociologists examining the law and a historical jurisprudence that took the law as a social phenomenon.<sup>502</sup> This came to reflect the constructivist notions shaping post-realist accounts of society, and moving the field on from historicist and later realist accounts.<sup>503</sup>

The supposedly ‘natural’ evolution of the self-regulating market, while challenged overtly by Polanyi in the 1940s, has remained largely unchallenged by mainstream economics for decades. Instead, the tendency of economics to portray itself as a quasi-natural science, able to provide short, clean, numerical solutions to complex, multi-layered, social problems, is perhaps its greatest selling point.<sup>504</sup> This attractiveness, in particular to policy makers, has enabled economics imperialism that has challenged endemic conceptual and normative structures which are then replaced with those of neoliberal economic theory.<sup>505</sup>

Similarly, there is a general recognition that the interdisciplinarity enjoyed across the social sciences by thinkers like Weber, Durkheim and Marx has been swept away by a colossal continental drift. This has left the social science disciplines stranded as silo-islands, with those taking historical and/or inter- (and cross-) disciplinarians left to wade between them.<sup>506</sup>

Sociolegal studies can be interdisciplinary in nature, drawing (analytically) on the concepts and relationships, and (empirically) on the facts and methods of the social

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<sup>502</sup> *ibid* 9–13.

<sup>503</sup> *ibid*. The impact of constructivism (and its distinction from constructionism and performativity) was explored in the discussion in Chapter 3 on methodology.

<sup>504</sup> Hirsch, Michaels and Friedman (n 1).

<sup>505</sup> “Neoliberal” is defined by Waquant as “an elusive and contested notion, a hybrid term awkwardly suspended between the lay idiom of political debate and the technical terminology of social science, which moreover is often invoked without clear referent. For some, it designates a hard-wired reality... while others view it as a doctrine ... It is alternately depicted as a tight, fixed, and monolithic set of principles and programs that tend to homogenize societies, or as a loose, mobile, and plastic constellation of concepts and institutions adaptable to variegated strands of capitalism”. Loic Waquant, *The Neoliberal Government of Social Insecurity* (Durham NC, Duke University Press 2009) 306, cited in Alfredo Saad Filho and Ben Fine, ‘Thirteen Things You Need to Know about Neoliberalism’ (2016) 43 *Critical Sociology* 685, 43.

<sup>506</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4).

sciences and (occasionally) the humanities.<sup>507</sup> In contrast to the grand theories that characterize sociology, sociolegal approaches are more accurately characterized as a “mid-level” theoretical approach, straddling the larger theories and the empirical detail.<sup>508</sup> All legal approaches have their own empirical, conceptual and normative tendencies, and doubt has been cast on efforts to identify *the* “overarching independent variable that would operate in all social processes”.<sup>509</sup> In other words, while overarching theories may be useful in relating hypotheses or sets of theories, grand narratives are otherwise less than helpful.<sup>510</sup> Sociolegal approaches can sit between the micro empirical observations and the overarching theories, linking (or challenging) these. As such, a sociolegal research methodology might allow us to establish what we already know, consolidate this, and use this to move forward, carefully and strategically without covering old ground.<sup>511</sup>

However, the sociolegal can tend to be imprecise, “woolly”, and lacking clear definitions and strict methodologies.<sup>512</sup> All approaches that sit under the sociolegal heading have empirical, analytical and normative aspects, although in some approaches prominence tends to be given to one or two of these aspects at the expense of others. The approach considers “not only legal texts, but also the contexts in which they are created, destroyed, used, abused, avoided, and so on”.<sup>513</sup> Some of the literature also includes an examination of the subtexts of the substantive.<sup>514</sup> There have been many movements within legal scholarship that have sought to bring law more closely back to its roots as a social science and study of human interaction. Amongst these we can count legal realism,<sup>515</sup> the law and

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<sup>507</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 10.

<sup>508</sup> *ibid* 3.

<sup>509</sup> Raymond Boudon, *Theories of Social Change* (Polity Press 1991) 519. Cited in Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 3.

<sup>510</sup> Hirsch, Michaels and Friedman (n 1).

<sup>511</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 3.

<sup>512</sup> *ibid* 4.

<sup>513</sup> *ibid* 6.

<sup>514</sup> *Ibid*.

<sup>515</sup> This is generally cited as a response to legal formalism. Proponents include Oliver Wendell Holmes and Karl Llewellyn.

society movement,<sup>516</sup> critical legal studies,<sup>517</sup> feminist jurisprudence,<sup>518</sup> critical race theory,<sup>519</sup> and economic theories of law among many others.<sup>520</sup> These have sought to include, more or less directly, other aspects of interactions that the authors see as important in shaping the social interactions at the heart of the study. The more recent shifts in sociological theorizing about the law and sociology's "rediscovery of the law in social theory" include the works of Parsons, Luhmann and Habermas. These each bring the law back within a social sphere by assuming that "modern society is differentiated into a number of functional spheres [... each] with distinctive ways of communication and forms of power".<sup>521</sup>

#### 4.1.2 Economic sociology responses

Economic sociology as a field has been "slow in acquiring its own identity" as a distinct field of enquiry, but has strong theoretical traditions, with some of these and their neoclassical economic comparators set out in Table 5, below.<sup>522</sup> Economic sociologists are united in the belief that economics is too important to be left to economists alone, and that the economy constitutes an important area of society that should be approached sociologically, historically, and empirically.<sup>523</sup> In addition to Weber, Schumpeter, Durkheim and Marx, economic sociologists look to Simmel,

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<sup>516</sup> This sees law and legal institutions as socially constructed phenomena. See *inter alia* Friedman (n 266).

<sup>517</sup> This derives from legal realism. See the works of *inter alia* Duncan Kennedy and Martti Koskenniemi.

<sup>518</sup> See works by *inter alia* Catherine MacKinnon, Andrea Dworkin, Nicola Lacey.

<sup>519</sup> The application of critical theory to notions of race.

<sup>520</sup> Perry-Kessaris, 'What Does It Mean to Take a Socio-Legal Approach to International Economic Law?' (n 4) 4.

<sup>521</sup> Werner Gephart, 'Gesellschaftstheorie und Recht: Das Recht im soziologischen' *Diskurs der Moderne* (Frankfurt a.M.: Suhrkamp, 1993) 6. Cited in Frerichs, 'Studying Law, Economy, and Society' (n 4) 12.

<sup>522</sup> Richard Swedberg, Ulf Himmelstrand and Göran Brulin, 'The Paradigm of Economic Sociology: Premises and Promises' (1987) 16 *Theory and Society* 169, 169. Economic sociology is differentiated from "social economics" here and detached from both economic theory and economic history. It has also been referred to as a "sociology of economics", Milan Zafirovski, 'Sociology of Economics or Sociology of Economy? Theoretical-Methodological Arguments for Sociological Economics' (2001) 31 *Forum for Social Economics* 27. For further differentiation and mapping of the development of the field, see Frerichs, 'Studying Law, Economy, and Society' (n 4); Teubner (n 1).

<sup>523</sup> Swedberg, Himmelstrand and Brulin (n 522).

Parsons and Smelser as the founding fathers of the discipline. While it is important to note that economic sociology was a recognized approach prior to 1985, Mark Granovetter's revival of embeddedness and networks in that year marked a renaissance and the birth of the "New Economic Sociology".<sup>524</sup> This has been referred to as the third generation in economic sociology, distinguishing it from the holistic and historical approaches that had distinguished the first generation and the scientific approaches within the sociological tradition that had characterized the second.<sup>525</sup>

Economic sociology makes three assumptions about the actors it analyses which differentiate it from classical economic theory. Firstly, "the actor is always connected to other actors and the social environment".<sup>526</sup> Secondly, "a broad spectrum of actors and actions must be taken into account".<sup>527</sup> Thirdly, that "contradictions in the behaviour of actors is to be expected".<sup>528</sup> More importantly, the movement seeks to contextualise the economic within the social, borrowing from economic history along with other fields to broaden inquiry.<sup>529</sup> The main comparisons with neoclassical (micro)economics are set out in Table 5, below. This shows clearly the importance of empirical observation and scientific method in economic sociology, as well as sociological interpretations of the economy and economic aspects of interactions.

*Table 5 - "The paradigms of neoclassical economics theory and economic sociology: a comparison"<sup>530</sup>*

	<b>Neoclassical theory</b>	<b>Economic Sociology</b>
<b>Concept of the author</b>	Individuals, households and firms ( <i>separate utility maximiser</i> )	Individuals, groups, classes, institutions ( <i>social actor</i> )

<sup>524</sup> Granovetter (n 48); Krippner and others (n 45); Frerichs, 'Studying Law, Economy, and Society' (n 4) 6–7.

<sup>525</sup> Frerichs, 'Studying Law, Economy, and Society' (n 4) 7–8.

<sup>526</sup> Swedberg, Himmelstrand and Brulin (n 522) 175.

<sup>527</sup> *ibid.*

<sup>528</sup> *ibid* 175.

<sup>529</sup> *ibid* 174.

<sup>530</sup> *ibid.*

<b>Arena of action</b>	Any situation where choice and scarcity of resources are present; by preference the market ( <i>separate economy</i> )	The economic system as part of society ( <i>social economy</i> )
<b>Types of economic action</b>	Exclusively rational actions with emphasis on choice and maximization ( <i>formal rationality</i> )	Rational actions as well as other forms of economic action ( <i>social rationality and social economic actions in general</i> )
<b>Result of economic actions</b>	Tendency to equilibrium ( <i>equilibrated harmony</i> )	Tendency to more or less institutionalized yet tension-filled interest struggles ( <i>tension-filled interest struggles</i> )
<b>View of the analyst</b>	Producer of scientific results ( <i>objective outsider</i> )	Producer of scientific results and member of society ( <i>objective insider</i> )
<b>Concept of time</b>	Stylized and stationary time concept; identical to action that is analysed ( <i>stationary and adaptive time concept</i> )	Extended and variable time concept: goes beyond the action that is the focus of the analysis ( <i>socio-historical time concept</i> )
<b>General scientific method</b>	<i>Predictions and explanations based on radical abstractions</i>	<i>Descriptions and explanations based on empirically adjusted abstractions</i>

Economic sociology also displays a perpetual commitment to the concept of embeddedness, looking back as it does to the work of both Polanyi and Granovetter.<sup>531</sup> The problems with this are discussed in greater detail in the next

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<sup>531</sup> Richard Swedberg, 'The Case for an Economic Sociology of Law' (2003) 32 *Theory and Society* 1; Richard Swedberg, 'The Toolkit of Economic Sociology' (2004) Paper No.22 CSES Working Paper Series <[http://www.economyandsociety.org/wp-content/uploads/2013/08/wp22\\_swedberg\\_toolkit04.pdf](http://www.economyandsociety.org/wp-content/uploads/2013/08/wp22_swedberg_toolkit04.pdf)> accessed 2 October 2018.

chapter, but the term's ubiquity, inconsistency, and imprecision have not prevented an ongoing commitment to the concept. This is a problem shared with ESL.

## 4.2 Defining ESL

There is a general consensus that ESL represents “shared understandings of how and why one might use sociologically-inspired approaches (analytical, empirical and normative) to investigate relationships between legal and economic phenomena”.<sup>532</sup> In asking why we need an ESL, Swedberg has noted that the focus of an ESL should be on the role that “law and regulations play in the economic sphere”.<sup>533</sup> More concretely, Frerichs notes that “[t]he proper subject of studies in the economic sociology of law [...] consists in the economic constitutions that make up market society”.<sup>534</sup> It therefore sits between legal sociology and economic sociology, facing both aspects of its heritage.<sup>535</sup> At the same time, though, it is important to bear in mind the centrality of a particularly sociological starting point, or lens, through which the interrelations between these spheres can be studied. Additionally, the premise that both the “‘legal’ and the ‘economic’ [...are] social phenomena occurring on all, interconnected, levels of social life” is central.<sup>536</sup>

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<sup>532</sup> Ashiagbor, Kotiswaran and Perry-Kessarar, ‘Introduction: Moving towards an Economic Sociology of Law’ (n 28) 2.

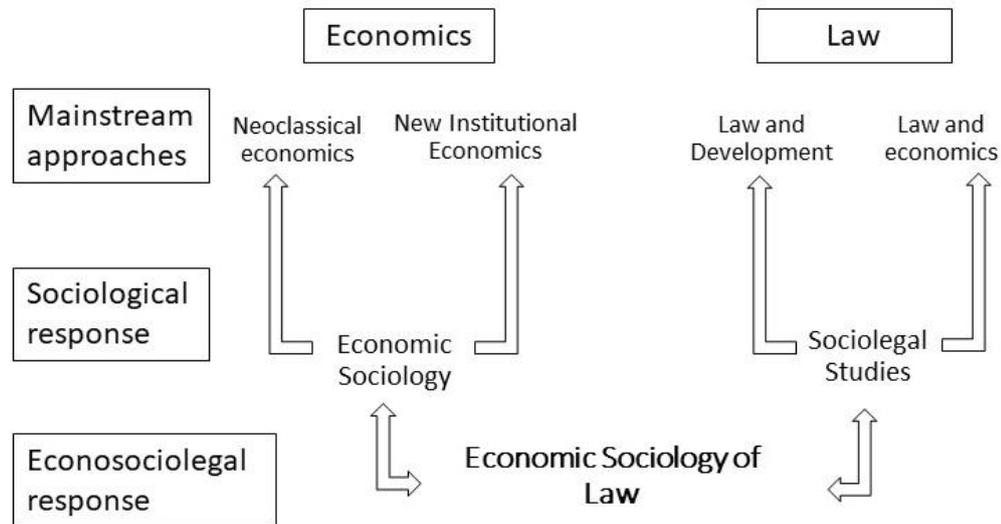
<sup>533</sup> Swedberg, ‘The Case for an Economic Sociology of Law’ (n 531) 2.

<sup>534</sup> Frerichs, ‘The Legal Constitution of Market Society: Probing the Economic Sociology of Law’ (n 4) 24.

<sup>535</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 5.

<sup>536</sup> Perry-Kessarar (n 43) 69.

Figure 7 - Reiterating the joint heritage of ESL, deriving both from sociolegal and economic sociology traditions, both of which respond to econo-centrism



Consequently, we then have an extensive array of sociological lenses or tools to choose from, ranging from the sociolegal communal networks lens (Cotterrell, Perry-Kessaris)<sup>537</sup> to relational work (Zelizer, Block),<sup>538</sup> via sociological levels of analysis based on embeddedness (Frerichs, Perry-Kessaris)<sup>539</sup> to the more constructivist theories of the 'third generation' of sociologists (Luhmann, Habermas, Bourdieu, Foucault, Wallerstein).<sup>540</sup> Each of these offers a different point of departure and focus. Some deal directly with the dualisms that have developed in modern sociology (agency/structure, ontology/epistemology, realism/constructivism, macro/micro, embeddedness/relatedness, and so on), while

<sup>537</sup> See, in particular, Cotterrell, 'Rethinking Embeddedness; Law, Economy, Community' (n 22); Perry-Kessaris (n 43); Ashiagbor, Kotiswaran and Perry-Kessaris, 'Introduction: Moving towards an Economic Sociology of Law' (n 28).

<sup>538</sup> Viviana Zelizer, 'How I Became a Relational Economic Sociologist and What Does This Mean?' (Centre for the Study of Social Organization, Working Paper No5 2011) <[www.princeton.edu/csso/working-papers/WP5.pdf](http://www.princeton.edu/csso/working-papers/WP5.pdf)> accessed 18 November 2018; Fred Block, 'Relational Work and the Law: Recapturing the Legal Realist Critique of Market Fundamentalism' (2013) 40 *Journal of Law and Society* 27.

<sup>539</sup> Frerichs, 'The Legal Constitution of Market Society: Probing the Economic Sociology of Law' (n 4); Frerichs, 'Studying Law, Economy, and Society' (n 4); Perry-Kessaris (n 43).

<sup>540</sup> For more on third generation sociological thinking, see Frerichs, 'Studying Law, Economy, and Society' (n 4).

others instead have a more particular locus of interest. Central to any ESL lens however is the commitment to the core concept of embeddedness, and this shapes every ESL lens, whether in its deployment, redefinition, or outright avoidance.

We have already noted Weber's influence on the World Bank's reform efforts in justice and governance systems.<sup>541</sup> ESL tends to look back to Weber's work not only in the multi-disciplinary sense of providing a sociological account of legal and economic phenomena, but also offering a series of categories for understanding society and the econolegal.<sup>542</sup> Building on the work of the father of sociology, Comte, Weber had more time for the theoretical, non-empirical models that both Comte and Durkheim argued against. Despite identifying as an economist, Weber's position reflected the holistic approach to economics at the time as a *social* science. It also reflected his belief in the dual value of theoretical economics and empirical studies that were reliant on a sociological understanding and frames of reference for accuracy. In many ways, Weber's conversion from an orthodox economist to a socio-economist, or economic sociologist, echoes one of the primary arguments set out in this thesis for the empirical refocusing of econolegal enquiry. This is discussed in more detail in relation to the second and third case studies, exploring the conceptual and normative implications of the commitment to the concept of embeddedness.

While vulnerable to its own "black box" problems, "ESL" (and terms like "econsociolegal") is intended to remind the researcher of the interconnectedness "that characterizes the intersections between economic and legal aspects of social life" and the way that we think about those intersections.<sup>543</sup> Thus, the movement comprises an aspect of a wider approach to reintegrate the social sciences, but in particular to reconnect law, economy and society. This is "both as spheres of reality

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<sup>541</sup> These refer mainly to legal rationality and notions of bureaucracy discussed in its role informing the Investment Climate campaign in chapter 2. See Barron (n 8).

<sup>542</sup> Perry-Kessaris, 'Approaching the Econo-Socio-Legal' (n 2). The phrase "econo-socio-legal" is designed to be uncomfortable in the hopes that, like grit in an oyster, it will lead to more musical alternatives.

<sup>543</sup> *ibid* 16.2.

and as fields of scholarly interest”.<sup>544</sup> But while drawing primarily on sociological, sociolegal and economic sociology-based approaches, the movement also takes inspiration from political economy, development studies, feminist and critical approaches – “whatever it takes to improve analytical, empirical, and normative clarity in the field”.<sup>545</sup>

### 4.3 How to do ESL

The ESL literature provides the researcher with a number of useful categories to structure and inform her research. These prompt the researcher of the range and depth of voices and interests that might be relevant or affected, making the research comprehensive, rigorous and scientific. These are set out in Table 6, and discussed further below with regards to the different typologies.

*Table 6 - ESL categories (ensuring that an ESL approach is comprehensive, scientific, and structurally coherent)*

	<b>Econo-</b>	<b>Socio-</b>	<b>Legal-</b>
	<b>Empirical- Conceptual- Normative</b>	<b>Empirical- Conceptual- Normative</b>	<b>Empirical- Conceptual- Normative</b>
<b>Text</b>	Economic text?	Social/sociological text?	Legal text?
<b>Empirical- Conceptual- -Normative</b>	Empirical/conceptua l/ normative implications?	Empirical/conceptua l/ normative implications?	Empirical/conceptua l/ normative implications?
<b>Context</b>	Economic text’s context?	Social/sociological text’s context?	Legal text’s context?
<b>Empirical- Conceptual- -Normative</b>	Empirical/conceptua l/ normative implications?	Empirical/conceptua l/ normative implications?	Empirical/conceptua l/ normative implications?

<sup>544</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 5.

<sup>545</sup> Diamond Ashiagbor, Prabha Kotiswaran and Amanda Perry-Kessaris, ‘Introduction: Moving towards an Economic Sociology of Law’, *Journal of Law and Society*, vol 40 (2013); Ashiagbor, Kotiswaran and Perry-Kessaris (n 2); cited in Perry-Kessaris, ‘Approaching the Econo-Socio-Legal’ (n 32) 16.2.

<b>Subtext</b>	Economic text's subtext?	Social/sociological text's subtext?	Legal text's subtext?
<b>Empirical-Conceptual-Normative</b>	Empirical/conceptual/normative implications?	Empirical/conceptual/normative implications?	Empirical/conceptual/normative implications?

This can be expanded over four levels of, or rankings of, social interaction that are discussed further below; namely micro, meso, macro, and meta.<sup>546</sup> However, as Perry-Kessarlis notes, while “[e]cono-socio-legal levels are mutually constitutive”, in that “[e]ach makes and is made by the other”, “few commentators attempt an integrated approach to all four social levels”, with most working “partially”.<sup>547</sup> Most authors tend to take either a “bottom up” approach (starting from the micro and meso levels of interaction), or a “top down” approach that looks at the regimes and rationalities shaping and being shaped by interactions and how institutions and thought processes coalesce.<sup>548</sup> This mirrors the divide in notions of embeddedness between Granovettarian and Polanyian approaches, the one focusing on interactions and networks at the micro level; the other looking at the market and society more broadly.

### **4.3.1 Text, Subtext, Context**<sup>549</sup>

As a starting taxonomy, this is most helpful in reminding the researcher to look beyond the written rules, the immediately obvious, and the easily accessible, while at the same time asking whether the reality matches up to the theory. The rules of engagement might appear clear, but as the above discussion on the Investment Climate campaign showed, the reality can and does diverge from the way in which rules and expectations are set out in laws and policy documents.

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<sup>546</sup> Frerichs, ‘Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law’ (n 51).

<sup>547</sup> Perry-Kessarlis, ‘Approaching the Econo-Socio-Legal’ (n 2) 16.13.

<sup>548</sup> *ibid.*

<sup>549</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 9.

The three categories of text, subtext and context are set out and defined by Frerichs in her history of socio-legal thinking.<sup>550</sup> By “text”, she refers to “the legal text, that is, the written rules and doctrines, or what can be considered black-letter law”.<sup>551</sup> In defining further what we mean by “text” in the context of the legal aspects of interactions, we can look to the text of the law itself and what this sets out in terms of rights, responsibilities and mediation or restitution. When speaking about empirical research, we can also look to the text of interviews, questionnaires and other empirical data. In economic terms, we can look to the data, the quantified comparison of figures, as well as the theories and rationales informing the collection, processing and interpretation of that data.

Similarly, “subtext” is defined as “the moral subtext of a legal text, that is, its implied or deeper meaning”, which “includes notions of justice underlying a legal argument, which also make it necessary to read between the lines”.<sup>552</sup> In terms of the subtext, while sociology may not be a “good source of principled reflectiveness on the evaluation of values” per se, Celine Tan notes that “sociolegal approaches allow a normative advance” in the literature.<sup>553</sup> In particular “the location of sites of domination and, conversely, of resistance which for the moral subtext of international economic law”.<sup>554</sup>

Finally, “context” is given to be “the social context of a legal text, that is, its forceful link with reality”, by which perspective “law is not a self-contained discourse but an entrenched social institution”.<sup>555</sup> In terms of the “context”, we are looking at the actors, actions and interactions. As Perry-Kessaris points out, actors “(producers,

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<sup>550</sup> *ibid* 9.

<sup>551</sup> *ibid*.

<sup>552</sup> *ibid*.

<sup>553</sup> Martin Krygier, ‘Missing All That Matters’ (2012) 10 *Issues in Legal Scholarship* <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2184110](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2184110)> accessed 13 July 2017; Celine Tan, ‘Navigating New Landscapes: Socio-Legal Mapping of Plurality and Power in International Economic Law’, *SocioLegal Approaches to International Economic Law: Text, Context, Subtext* (Perry-Kessaris, ed) (Routledge 2013) <<https://www.taylorfrancis.com/books/e/9780203075753>> accessed 13 July 2019. Cited in Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 10.

<sup>554</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 10.

<sup>555</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 9.

distributors, exchangers, consumers, regulators, debtors, etc), actions and interactions are always embedded in wider social life”.<sup>556</sup>

These categories are derived from a careful review of the development of the social sciences and particularly sociolegal approaches to the study of law, economy and society. Each of the dominant approaches – positivist, naturalist and historicist – has prioritised one of these over the others. The positivist legal tradition looked at the text almost exclusively with a keen focus on the rules. The naturalist legal tradition focused instead more closely on moral principles, while the historical school emphasised social practices, usually at the expense of the other aspects.<sup>557</sup> Given this, an economic sociology of law is not to be seen as “an overspecialized approach which dissects legal, economic and social aspects and focuses on the smallest possible subset only”.<sup>558</sup> By contrast, the movement represents an effort to reintegrate and reconnect law, economy and society, “both as spheres of reality and fields of scholarly interest”.<sup>559</sup> The approach therefore “mediates between the perspectives of legal sociology, on the one hand, and economic sociology, on the other”, and this is partially achieved by a balanced focus on the text, the subtext and the context of the interactions.<sup>560</sup>

The three categories have also been used to structure sociolegal approaches to International Economic Law by Amanda Perry-Kessaris.<sup>561</sup> By combining this with the empirical, conceptual, and normative categories discussed below, she points out that sociolegal scholarship often goes beyond the “text” to enquire into the subtext and context.<sup>562</sup> She implies that this should be carried out systematically

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<sup>556</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 7. The term “embedded” here is uncontroversial as Perry-Kessaris is describing the relationship between two phenomena that are conceptually distinct; interactions and wider social life.

<sup>557</sup> Frerichs, ‘Studying Law, Economy, and Society’ (n 4) 9.

<sup>558</sup> *ibid* 5.

<sup>559</sup> *ibid*.

<sup>560</sup> *ibid*.

<sup>561</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4).

<sup>562</sup> Cotterrell, *Living Law* (n 309) 62; Cotterrell, ‘Why Must Legal Ideas Be Interpreted Sociologically?’ (n 7).

and openly if sociolegal research is to have the scientific rigour that writers like Roger Cotterrell have called for.<sup>563</sup>

### **4.3.2 Empirical, Conceptual (Analytical), Normative**<sup>564</sup>

These categories essentially are the *what*, *how* and *why* of sociolegal and ESL-based investigation and research, and have been used throughout the thesis to structure the discussion. They have also offered a useful set of categories for analysing the full implications of ESL's conceptual commitment to embeddedness and what it might mean to move beyond this. As the discussion above showed, all sociolegal approaches have empirical, conceptual, and normative elements, although some approaches place more emphasis on one of these at the expense of the others. By specifying all three categories we are forced to consider their relevance and impact, as well as further implications brought about by the other sets of categories discussed here.

By "empirical", we are talking about the "facts and methods" informing the substantive inquiry. The "analytical" or the conceptual, are the "concepts and relationships" that also inform the substantive, while the "normative" includes the "values and interests" that sit behind, or underpin, the research.<sup>565</sup> With legal approaches, the *what*, *how* and *why* of any research is necessarily legal; there is no call to look outside of the discipline, especially with approaches that tend towards the positivist or doctrinal. However, there has been a realisation that legal approaches (strictly positivistic, doctrinal, or autopoietic) are limited in their approach to the breadth and depth of social experience. This suggests that a pluralistic or interdisciplinary approach could better capture the social reality, in particular the legal aspects (and more) of interactions of social actors. Thus, an ESL

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<sup>563</sup> Perry-Kessarar, 'What Does It Mean to Take a Socio-Legal Approach to International Economic Law?' (n 4).

<sup>564</sup> Analytical and conceptual are used interchangeably here. The three terms originally referred to the "analytical", but more recent literature seems to prefer the term "conceptual".

<sup>565</sup> Perry-Kessarar, 'What Does It Mean to Take a Socio-Legal Approach to International Economic Law?' (n 4) 4–5.

specifically sets out to take “sociological approaches (empirical, normative and analytical) [...] to investigate relationships between law and economy”.<sup>566</sup>

While there are three categories that enhance the comprehensive and scientific nature of the enquiry, these do not map onto the text, subtext, and context taxonomy, and instead are complementary and multi-dimensional, as set out in Table 7, above. In addressing the importance of these categories in structuring a scientific sociolegal methodology, the conceptual and empirical approaches have been paraphrased as the “what” and the “how” of econosociolegal research.<sup>567</sup> This leaves the question of “why” (why bother and who really cares) outstanding, in addition to the normative aspects that additionally then include the “question of what should we do and think”.<sup>568</sup> There are implications of both the ongoing conceptual commitment to embeddedness, and of moving beyond this, at all three levels. These are explored in turn below.

### **4.3.3 Econo-socio-legal**

Given that this echoes the name of the preferred approach set out here, this threefold category seems axiomatic. But it is important in nudging the researcher to consistently consider both economic and legal aspects of interactions sociologically as two sides of the same coin. We are reminded that “[r]eal life is “an econo-socio-legal” tangle.<sup>569</sup> Academics, policy makers and commentators use the “legal”, “economic” and “social” categories that have become so entrenched as disciplinary silos in the academic world. These have come to shape the way we talk about, think about, and perform the econolegal, but this does not capture the essence of reality.

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<sup>566</sup> *ibid* 5.

<sup>567</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4).

<sup>568</sup> *ibid*.

<sup>569</sup> Amanda J Perry-Kessaris, ‘Three to One: Approaching the Econo-Socio-Legal’ (LSE Research Festival 2013: Exploring Research Stories Through Visual Images, London School of Economics and Political Science, London, UK, 1 March 2013) <<http://eprints.lse.ac.uk/49206/>> accessed 5 August 2018.

In fact, by using these linguistic tools, we are only able to perceive of mental models that take these to be separate phenomena, preventing us from challenging the current mainstream approaches sociologically.

Perry-Kessaris has called for a pooling of “facts, concepts and values” that characterise these three spheres of inquiry in an attempt to recognise that we are not, usually, dealing with a “legal” or an “economic” problem.<sup>570</sup> Instead, we are dealing with one that is social in nature with legal and economic aspects, facets, or “flavours”.<sup>571</sup> “We can then think, for example, of production and consumption not as ‘the economy’, but as social activities with econo-legal dimensions; of laws and institutions not as ‘the legal’ but as econo-social constructs; and of actions and interactions not as ‘the social’ but as econo-legally significant aspects of social life”.<sup>572</sup> But whereas economic life revolves around goods and services, and legal life revolves around rules, “[b]oth economic and legal life are part of social life, in the sense that they are created and performed by interacting human beings”.<sup>573</sup>

The social, and specifically sociological, approaches to legal and economic phenomena, are not pinned down to one approach. The key point is the acceptance of the economic and the legal as specifically sociological phenomena. One approach set out by Frerichs and explored in more detail in chapter 7 is the micro-meso-macro-meta categories that separate out and rank social interactions.<sup>574</sup> These offer a simple but effective means of approaching the way in which legal and economic phenomena are recognized, understood, perceived, processed and performed or challenged sociologically. This has been combined with Cotterrell’s community lens by Perry-Kessaris and applied to analyses of interactions between groups of actors in a way that demonstrates “an” economic sociology of law approach.<sup>575</sup> However

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<sup>570</sup> *ibid.*

<sup>571</sup> *ibid.*; Patricia Ewick and Susan Silbey, ‘Narrating Social Structure: Stories of Resistance to Legal Authority’ (2003) 108 *American Journal of Sociology* 1328, 217.

<sup>572</sup> Perry-Kessaris, ‘Three to One’ (n 569).

<sup>573</sup> Perry-Kessaris, ‘Approaching the Econo-Socio-Legal’ (n 2) 16.2.

<sup>574</sup> See generally Frerichs, ‘Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law’ (n 51).

<sup>575</sup> Perry-Kessaris (n 43); Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4).

other theories like Giddens' Structuration, Latour's ANT, Foucault's *épistemes*, Bourdieu's *habitus*, amongst others, are relevant here and subject to the preference of the researcher.

In an ESL-informed approach, the legal sits in contrast to the traditional doctrinal approach. This might involve the identification of law as it appears in books and on statutes, in judgments handed down in courts, and in international treaties, agreements, and documents that give rise to rules. A sociological approach is necessarily broader, seeing the legal as an aspect of the social, and that looks to the text, subtext and context. Edelman and Stryker note that the context of a sociolegal interpretation of the law can also include "law-related ideas, ideals, principles and rituals that permeate society", whether these be written or otherwise, or state-based or not.<sup>576</sup> There is also a general agreement that the law "must be understood empirically (through detailed examination of variation and continuity in actual historical patterns of social co-existence, rather than in relation to idealised or abstractly imagined social conditions)".<sup>577</sup>

In relation to defining the economic, Fine and Milonakis note that, as mainstream theory deftly ignores, "economic and legal life are mutually constitutive".<sup>578</sup> The neoclassical approach takes a similarly narrow interpretation of the economic. The focus is usually on production, distribution, trade and consumption, and modelling the individual actor on a fictitious man who is endlessly rational, seeks to maximise his utility and has perfect information while so doing. The "market", understood as the accumulation of all the exchanges counted by mainstream economics, is typically seen to be constrained by the state. The assumption here is that the free market is perfectly self-regulating and needs to be left alone in order to function well. Despite being a fiction, it is one that has become deeply ingrained in political

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<sup>576</sup> Lauren Edelman and Robin Stryker, 'A Sociological Approach to Law and the Economy', *The Handbook of Economic Sociology*, NJ Smelser and R Swedberg (eds) (Princeton University Press 2005) 529–30; Perry-Kessaris, 'Approaching the Econo-Socio-Legal' (n 2) 16.5.

<sup>577</sup> Cotterrell, 'Why Must Legal Ideas Be Interpreted Sociologically?' (n 7) 183; Ashiagbor, Kotiswaran and Perry-Kessaris, 'Continuing towards an Economic Sociology of Law' (n 28) 263.

<sup>578</sup> Fine and Milonakis (n 37); Perry-Kessaris, 'Approaching the Econo-Socio-Legal' (n 2) 16.6.

and economic discourse, shaping linguistic tools, mental models, and our ability to conceive of any alternative, let alone put it into practice.

While orthodox economics takes each actor to be more or less atomistic, a sociologically-informed approach emphasizes the importance of the ties between actors, whether this be in the language of social capital,<sup>579</sup> or networks,<sup>580</sup> or the importance of mutual interpersonal trust between actors.<sup>581</sup> A sociologically-inspired approach can also expand the reasons for economic aspects of interactions in a way that is denied by orthodox economics frames, which sees the only reason for engaging in economic behaviour as utility maximisation, or instrumental. In the proposed lens set out in Part III, Weber's ideal-type categories are again useful here as they remind us to look for affective, belief-based or traditional interactions, shifting the focus from rationality as understood by neoclassical economics to the "differently rational" that encompasses other interests and values.<sup>582</sup>

#### **4.3.4 Micro-Meso-Macro-Meta**

The four principles or rankings of social interaction are set out by Sabine Frerichs as a way of understanding the impact and implications across the space and time of interactions.<sup>583</sup> They offer a means of reconciling the different interpretations of embeddedness, offering a "multi-level approach".<sup>584</sup> A "neo-Polanyian research agenda would thus be characterized by an emphasis on macro- and meta-levels of (normative and cognitive) embeddedness" which Frerichs terms "regimes and

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<sup>579</sup> See *inter alia* Pierre Bourdieu and Loic JD Wacquant, *An Invitation to Reflexive Sociology* (University of Chicago Press 1992); Robert Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster Ltd 2001).

<sup>580</sup> Granovetter (n 48); Brian Uzzi, 'Social Structure and Competition in Interfirm Networks: The Paradox of Embeddedness' (1997) 42 *Administrative Science Quarterly* 35.

<sup>581</sup> John Harriss, *Depoliticizing Development: The World Bank and Social Capital* (Anthem Press 2002); Granovetter (n 48); Uzzi (n 580); Fukuyama (n 200); Cotterrell, 'Why Must Legal Ideas Be Interpreted Sociologically?' (n 7); Cotterrell, *Law, Culture and Society* (n 385).

<sup>582</sup> Cotterrell, *Law, Culture and Society* (n 385) 2.

<sup>583</sup> Frerichs, 'Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law' (n 51); Perry-Kessaris (n 43).

<sup>584</sup> Frerichs, 'Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law' (n 51) 1.

rationalities”.<sup>585</sup> Conversely, Granovetter’s account of embeddedness sits at the micro- and meso-levels. The approach is discussed in more detail in the following chapters that use these levels in the proposed ESL lens. Nevertheless, while these levels offer a way of reviewing the conceptual commitment to embeddedness holistically and are presented as an attempt to reintegrate ESL-based approaches, the rankings do not address the conceptual incompatibility of the term. While the four levels or ranks of social interaction offer a map to navigate between the macro and micro, and can therefore accommodate both Granovetter and Polanyi on the same scale, they rely on the concept of embeddedness. This remains at odds with social constructivism, and is discussed further in chapter 7 which applies the rankings of social interaction to an ESL that has moved beyond embeddedness. The rankings are useful in offering a key to the level of interaction we are looking at, while at the same time providing us with a set of terms for talking about *what we do* (regimes) and *how we think about what we do* (rationalities).

#### **4.4 Conclusions**

The chapter has set out ESL as a scholarly response to econo-centrism, that traces its intellectual heritage from both economic sociology and sociolegal approaches. In so doing, the works of Weber, Durkheim, Marx and Polanyi provide a rich historical vantage point that references pre-disciplinarity in social science research. More recently, Granovetter, Swedberg and others have revived sociological approaches to understanding the econolegal, although this has brought with it conceptual limitations, notably in relation to the commitment to the concept of embeddedness. Despite the rich array of typologies, research categories and structures to guide, shape and direct reflective, rigorous, scientific research, the core concept remains a limitation on the ability of the lens to cope with the requirements of empirical research that is compatible with supporting assumptions.

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<sup>585</sup> *ibid.* The cognitive and normative embeddedness of regimes and rationalities is explored further with reference to performativity in chapter 7.

The following chapter examines the career of embeddedness more closely, exploring in detail the various applications and interpretations of the concept.

## **5. The limitations of embeddedness**

The previous chapter explored why and how an ESL can provide a lens for structuring and orienting empirical research into the econolegal in a way that responds sociologically to the shortcomings of orthodox approaches. This chapter turns to the core concept of ESL and examines the perpetual commitment to that concept; embeddedness. This central concept has two main flaws; internal conceptual inconsistencies, and conceptual incompatibility. Before addressing these though, the discussion sets out the origins of the concept, and traces its lineage through economic sociology and ESL. Even within this narrow field, there is conflict about how, where and when the term should be used, to what it refers, and the implications of using it. While Mark Granovetter is often hailed as reviving a Polanyian idea of the notion of the always-embedded economy, the discussion makes clear that both Granovetterian and Polanyian embeddedness are very different conceptual entities and should not be confused. This thesis then explores other uses of embeddedness, notably by Ruggie (“embedded liberalism”) and Evans (“embedded autonomy”), concluding that when the term is used lightly and illustratively and where it refers to two conceptually different phenomena, the term can be useful, appropriate and helpful. Moreover, it might even have been more appropriate when Polanyi was writing, given the pre-disciplinary nature of the social sciences in 1944 and the fact that economic and legal phenomena could more readily be conceived of as aspects of the social.

While sociology has long recognized Polanyi’s contribution, mainly in terms of embeddedness, there has been a surge in popularity more recently. The extreme laissez-faire policies adopted in the 1970s and 80s responded to a crisis of Keynesianism. This movement justified the policies of deregulation, privatization and financialization both politically and economically, but produced social consequences that were “ripe for counter-analysis”.<sup>586</sup> Moreover, the emergence of international capital markets resonates with Polanyi’s analysis of the collapse of the Gold

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<sup>586</sup> Sally Randles, ‘Issues for a Neo-Polanyian Research Agenda in Economic Sociology’ (2003) 13 *International Review of Sociology* 409, 417.

Standard, and, along with a recognition that the current financial system has the tendency to tip whole regions into financial crises, has re-engaged critical scholarship with Polanyi's main theses. This is developed further in the third case study.

Furthermore, Polanyi's work lends itself neatly to those critics of free markets who emphasise the social consequences of 'disembedded' economies, while Polanyi's opposition to "planetary interdependence" has been taken up by anti-globalization, anti-market and anti-capitalist movements.<sup>587</sup> However, Randles echoes Polanyi-Levitt's scepticism of some appropriations of Polanyi's name as a fashionable "label" or "convenient point of entry into an argument which thenceforth bears little resemblance" to the totality of Polanyi's writing.<sup>588</sup>

The second fundamental problem with ESL's conceptual commitment to embeddedness is its conceptual incompatibility with supporting constructivist and integrative assumptions. Using the concept of embeddedness to describe the dynamic and complex relationship between economic and legal phenomena sociologically serves to re-entrench the separation of the disciplines. This prevents any comprehensive sociological reimagining of the econolegal consistent with a social constructivist approach. As the third case study unpicks in chapter 6, the conceptual commitment to embeddedness has shaped our linguistic tools and the way we are able to talk about the econolegal. Used both explicitly and implicitly, embeddedness – as an unthought rationality – both reveals and conceals information about the dynamic relationship between economic and legal phenomena. Its sheer ubiquity in our linguistic tools shapes the mental models we conceive and perceive the world with, actively shaping and constraining our ability to respond to and reimagine the econolegal sociologically. As the third case study illustrates, this has serious ramifications for our ability to respond to the dominance

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<sup>587</sup> *ibid.*

<sup>588</sup> *ibid* 418.

of neoclassical economics models, to neoliberal policies, and to the current status quo more generally.

### Talking about embeddedness?

Before reviewing embeddedness, and ESL's commitment to the concept, it is worth noting that terminology has proved a stumbling block. Is embeddedness a "concept", a "paradigm", a "term" (of art), a "metaphor", a "theory", or all of these simultaneously? It has been referred to as a concept in some of the ESL literature, although there is much to commend its description as a paradigm.<sup>589</sup> Much like the emergence of network studies in the 1970s, where "no one was quite sure whether networks were a metaphor, a method or a theory", the use of embeddedness has come to embody a similar question.<sup>590</sup> The "receding utility" of the "concept" of embeddedness, with its "oxymoronic and ill-defined qualities" are set out in

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<sup>589</sup> Embeddedness is referred to as a "concept" in Ashiagbor, Kotiswaran and Perry-Kessaris, 'Continuing towards an Economic Sociology of Law' (n 28) 262. See Trubek and Galanter (n 14) 1069. Trubek and Gallanter note that "the paradigm need not be articulated as theory". Additionally, a paradigm is "a world view, a way of ordering and simplifying the perceptual world's stunning complexity by making certain fundamental assumptions about the nature of the universe, of the individual, and of society. Paradigms are normative; they determine what the practitioner views as important and unimportant, reasonable and unreasonable, legitimate and illegitimate, possible and impossible, and what to attend to and what to ignore. In learning a paradigm, theory, method, and standards are acquired together, typically in an inextricable mixture. Moreover, through the theories they embody, paradigms prove to be constitutive of all normal scientific activity, including underlying assumptions made, problem definition, areas of investigation, questions posed and, particularly, data interpretation, conclusions drawn and policy recommendations made at the end of the research process (Kuhn, 1970). Thus all theories as well as the methods generated by them are, ultimately, paradigm based". See JW Ratcliffe, 'Notions of Validity in Qualitative Research Methodology' (1983) 5 Science Communication 147.

The term was introduced and set out by Thomas Kuhn. However he specifically precludes the social sciences from drawing on the word "paradigm" as he did not think the social sciences were cohesive enough to meet the requirements of the term. See TS Kuhn, *The Structure of Scientific Revolutions* (2nd edn, University of Chicago Press 1970). Nevertheless, Handa (1986) introduced the idea of the social paradigm, and the terms "dominant paradigm" and "paradigm shift" have been widely used in the social sciences. See ML Handa, 'Peace Paradigm: Transcending Liberal and Marxian Paradigms' (Mimeographed at OISE, University of Toronto, Canada (1986) 1986).

<sup>590</sup> Laurel Smith-Doerr and Walter W Powell, 'Networks and Economic Life', *The Handbook of Economic Sociology*, Niel Smelser and Richard Swedberg (eds) (2003) 1  
<[http://www.urbanlab.org/articles/SmitDoerr&Powell\\_2003\\_NetworksandEconomicLife.pdf](http://www.urbanlab.org/articles/SmitDoerr&Powell_2003_NetworksandEconomicLife.pdf)>  
accessed 24 July 2018. citing JA Barnes, 'Network Analysis: Orienting Notion, Rigorous Technique, or Substantive Field of Study?', *Perspectives on Social Network Analysis* (PW Holland, S Leinhardt, eds) (New York: Academic 1979).

Ashiagbor et al.<sup>591</sup> This stands apart from “theory”, which has been defined as a “system of concepts and statements, models, or principles, which, in concert, make the empirical world more intelligible”.<sup>592</sup>

Used precisely and carefully, embeddedness is a concept that describes the temporal and spatial relationship between two phenomena. However, part of my argument is that while the term was originally used as a dynamic visual metaphor, it has become so deeply entrenched in the discourse and so ubiquitous, that we can speak of a general conceptual commitment to embeddedness.<sup>593</sup> This is the case within ESL, and the problematic implications of this are explored empirically. But this is also the case more broadly in wider social discourse about the econolegal. The conceptual commitment to embeddedness is an integral aspect of informed debate, and functions both explicitly and implicitly to shape the linguistic tools and mental models we have available.

Moreover, when it is used imprecisely, vaguely or even implicitly, the concept of embeddedness functions as a rationality. In other words, it becomes a mental model that is used without thought, even without awareness of the full implications of the term. It shapes, constricts and channels what we are able to perceive, and orients and directs our potential responses. It therefore conceals as much as it reveals, and while it acts as a useful counterweight to mainstream, econo-centric frames, it works to re-entrench disciplinarity and economics imperialism. There are implications of this for other regimes and rationalities; how we *do* and *think about* the econolegal. Part III of this thesis proposes more flexible and dynamic linguistic tools that enable alternative mental models as a response.

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<sup>591</sup> Ashiagbor, Kotiswaran and Perry-Kessarar, ‘Continuing towards an Economic Sociology of Law’ (n 28) 262. Emphasis added.

<sup>592</sup> Sheldon Krinsky and Dominic Golding (eds), *Social Theories of Risk* (Praeger 1992) 6.

<sup>593</sup> “Lang refers to the ‘shared commitment to the political ideology of embedded liberalism’ in the post-war era, which shaped, for instance, the General Agreement on Tariffs and Trade (GATT) regime”. This was in effect “the dominant philosophy forming the backdrop to trade liberalisation and, eventually, to regional integration between industrialised nations”. See Andrew Lang, *World Trade Law after Neoliberalism: Reimagining the Global Economic Order* (OUP Oxford 2013) 5. Cited in Ashiagbor (n 40) 269.

*Using, abusing and avoiding embeddedness in ESL*<sup>594</sup>

Even within the field of ESL itself there is disagreement on both the use and meaning of embeddedness, as well as its role in defining, delineating and demarcating the terms at issue. Block, Cotterrell, Kotiswaran and Veitch all challenge the use of the concept, while Rittich takes the term to task for its “diminishing utility and traction”.<sup>595</sup> While Block, Zelizer and Cotterrell have put forward alternatives to embeddedness even within the ESL tradition (relational work and the community lens respectively), Block, along with other scholars, has argued for continuing use of embeddedness once it has been refined and strengthened.

There have also been more “concrete, empirical, [and] institutionally specific interpretations or manifestations of the term” which tend to centre around John Ruggie’s notion of “embedded liberalism”.<sup>596</sup> Diamond Ashiagbor takes this approach to an analysis of the idea that in the European Union, “market liberalization has been embedded within labour market institutions and institutions of social citizenship at the local level”.<sup>597</sup> In wanting to retain embeddedness, Ashiagbor argues that it “may retain a utility, provided we do not assume it predetermines or encodes the specific characteristics of modern capitalist economies, or the specificity of market organisation”.<sup>598</sup> Instead, she argues that embeddedness can capture an understanding of “the *interdependence* of market and society, to conceive of *varieties* of institutional regulation, with different market societies embedded in diverse configurations of ideas, rules and institutional structures”.<sup>599</sup> This does not resolve the second problem of conceptual incompatibility resulting in the re-entrenchment of separation deriving from

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<sup>594</sup> The trilogy of “use, abuse, and avoidance” is borrowed from Amanda J Perry, ‘Use, Abuse and Avoidance: Foreign Investors and the Legal System in Bangalore’ (2004) 12 *Asia Pacific Law Review* 161.

<sup>595</sup> Rittich (n 53) 323–4; see generally Ashiagbor, Kotiswaran and Perry-Kessarlis (n 2) 262.

<sup>596</sup> Ashiagbor, Kotiswaran and Perry-Kessarlis, ‘Continuing towards an Economic Sociology of Law’ (n 28) 262.

<sup>597</sup> Ashiagbor (n 40) 265.

<sup>598</sup> *ibid* 269.

<sup>599</sup> Ashiagbor (n 40).

terminology. Nevertheless, it does tacitly indicate that there are feedback loops operating between the phenomena in a mutually re-constitutive manner, and this is developed further in a proposed alternative framework.

## 5.1 Consistency: what are we talking about?

### 5.1.1 Embeddedness in economic sociology

Despite the self-proclaimed “internal coherence” and “theoretical cohesiveness” of economic sociology, Krippner has singled out the “notion of embeddedness” as enjoying “a privileged – and as of yet, largely unchallenged – position as the central organizing principle” of the field.<sup>600</sup> But how did the concept of embeddedness come about and in what context did economic sociology develop a commitment to its use? In the social sciences, Marx spoke of the “group consciousness based on connected individuals experiencing common environmental realities”, which has been taken as the roots of the concept of social embeddedness.<sup>601</sup> In the 1920s, Park set out his theories of communal subgroups within societies that exist through interaction and communication between connected individuals.<sup>602</sup> The “condition of affective belonging” that sits at the heart of embeddedness has been expressed in terms of “structural and moral congruence” by Park.<sup>603</sup> Weber has described “shared understandings of mutuality and insidership”, while Simmel has noted “group identities”.<sup>604</sup> Homans also wrote about group rights and responsibilities, discussing “adherence to protocols of behaviour and reciprocity”.<sup>605</sup> Furthermore,

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<sup>600</sup> Krippner (n 27) 775.

<sup>601</sup> Edward Mckeever, Alistair Anderson and Sarah Jack, ‘Social Embeddedness in Entrepreneurship Research: The Importance of Context and Community’ (2014) 223.

<sup>602</sup> RE Park, ‘The Concept of Social Distance’ (1924) 8 *Journal of Applied Sociology* 339; RE Park, ‘The Concept of Position in Sociology’, *Papers and proceedings of the American Sociological Society* (1926).

<sup>603</sup> Park, ‘The Concept of Social Distance’ (n 602).

<sup>604</sup> Max Weber, ‘Class Status and Party’, *From Max Weber: Essays in Sociology* (HH Gerth and CW Mills, eds) (Oxford University Press 1946). Simmel, *The Sociology of Georg Simmel* (K Wolff tr, Glencoe Free Press 1950).

<sup>605</sup> GC Homans, *Social Behaviour: Its Elementary Forms* (New York Harcourt, Brace 1961), cited in Mckeever, Anderson and Jack (n 601) 223.

while Simmel explored the interactions that he argued produce society, writing historically, Giddens also includes the influence of social relations on the behaviour of the actor or agent.<sup>606</sup> Other scholars like Frazer, Malinowski, and Lévi-Strauss have focused instead on the social nature of exchange and the interface between social and economic spheres of life.<sup>607</sup>

Writing in 1944 in his most notable work, *The Great Transformation*, Polanyi used the term “embedded” to describe the reliance of exchange arrangements on social structure, stating ambiguously that “man’s economy, as a rule, is submerged in his social relationships”.<sup>608</sup> He used the terms embedded, enmeshed, submerged and absorbed interchangeably to describe the position of all observable economies in institutions, both economic and non-economic.<sup>609</sup> He emphasised that the duty of the researcher was to capture the reality of society as it occurs in the form of a connected body of people. Block posits that Polanyi may have borrowed the term “embeddedness” from English industrial history, in particular that of coal mining, on whose techniques he was widely read, although the precise inspiration for the coinage is not known.<sup>610</sup> Dale points to the use of the term by the American Institutionalists Walton Hamilton, along with its use by Richard Thurnwald, credited

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<sup>606</sup> Simmel (n 604); Anthony Giddens, *Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis* (University of California Press 1979). In his later work setting out structuration theory Giddens uses the terms “agent” and “actor” interchangeably.

<sup>607</sup> JG Frazer, *Folklore in the Old Testament* (Vol 2, London, Macmillan 1919); B Malinowski, *Argonauts of the Western Pacific* (New York, Dutton 1922); C Lévi-Strauss, *The Savage Mind* (Chicago, University of Chicago Press 1969), all cited in Mckeever, Anderson and Jack (n 601) 223.

<sup>608</sup> Polanyi (n 47) 48. The term “embedded” in relation to the economy appears twice on page 60, then on pages 64, 73 and 135.

<sup>609</sup> Polanyi (n 47). Notably, although some scholars describe Polanyi’s thesis as “the assertion that all economies are enmeshed in non-economic institutions”, the term “enmeshed” only appears once in his notes on sources, reprinted in 2001 on page 272. This therefore may not be an accurate description of this thesis, although the broad sweep remains consistent. The challenge for the researcher to capture the reality of lived social experience has been repeated by many in the field of economic sociology and socio-legal studies, notably repeatedly by Roger Cotterrell who calls for careful empirical studies, see Cotterrell, *Living Law* (n 309).

<sup>610</sup> In his Introduction to the 2001 edition of *The Great Transformation*, Block notes that while the inspiration behind the term is unknown, it seems “plausible that Polanyi drew the metaphor from coal mining”, given that he “had read extensively on the history and technologies of the English mining industry that faced the task of extracting coal that was embedded in the rock walls of the mine”. Block, ‘Introduction’ (n 53) xxiv. Other authors have pointed to previous usages of the term in sociology from which Polanyi might have borrowed.

by many as the originator of the term, although the use is different to Polanyi's.<sup>611</sup> Working from Polanyi's own archives and handwritten notes and referring to his earlier published works, Dale notes that Polanyi's use of the term is Marxian-Tönniesian.<sup>612</sup> However, by the time of the publication of *The Great Transformation*, the term had come to rely on the Weberian notion "that economic behaviour in capitalism is driven by particular types of psychological motivation, hunger and gain".<sup>613</sup> Polanyi's later works draw on the term again, although in the light of anthropological advances and given the "cross-cutting intellectual and political currents" on which it draws, Dale finds it unsurprising that Polanyi's use of the term "can appear indistinct, or even beset by contradiction".<sup>614</sup>

Nevertheless, Polanyi's notion of "the economy" itself tends to be much broader than most other writers, as he expands the concept to a societal (or macro) level, reminding us that his always embedded economy is a proposition or thesis that sits at the macro level of analysis. This not only provides a stark contrast to the individualistic atomisation of actors practiced by neoclassical economic theories but also contrasts sharply with later incarnations of embeddedness which sit at a micro-meso level of sociological analysis.<sup>615</sup>

Block notes that Polanyi's contribution is much more original and theoretically richer than much commentary acknowledges.<sup>616</sup> This is based on Polanyi's assertion that the goal pursued and promoted by classical economics, of a disembodied, self-regulating market *could not* succeed because of the fictitious commodities and the fact that this represented nothing more than a utopia.<sup>617</sup> While commentators recognize that the "*forms and depth* of this social embedding may differ", and that

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<sup>611</sup> Gareth Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (2011) 70 *The American Journal of Economics and Sociology* 306, 320. If correct, Thurnwald may have dodged the bullet of responsibility for coining such an ambiguous term.

<sup>612</sup> *ibid* 321. This is discussed further in section Dale's Polanyian embeddedness, 6.1.2.

<sup>613</sup> *ibid*.

<sup>614</sup> *ibid* 322. Polanyi is said to have been captivated by Malinowski's Trobriand study which had a notable impact on his work.

<sup>615</sup> Mckeever, Anderson and Jack (n 601) 224.

<sup>616</sup> Block, 'Introduction' (n 53).

<sup>617</sup> See generally Fred Block, 'Karl Polanyi and the Writing of *The Great Transformation*' (2003) 32 *Theory and Society*, Springer 275; Block, 'Introduction' (n 53); Krippner and others (n 45).

Polanyi may have been right in 1944 when writing *The Great Transformation*, the sands on which his assertions sit have since shifted. This leads to the second major limitation with any commitment to the concept of embeddedness. While rich, Polanyi's thesis can only offer us so much in present day academic debates, given the segregation and silos that have come to dominate research in the social sciences and the "impermeable divisions" that have developed between them as boundaries have hardened.<sup>618</sup> Thus, it is an important starting point as the recent origins of the conceptual commitment to embeddedness that have come to shape economic sociology, ESL, and other research fields. But it should be taken in context and assessed in the light of what has come since, and what this has meant for social science research. This has multifarious implications which are explored in the second and third case studies. With respect to the conceptual and relational implications, the continental drift that has occurred in the intervening decades has altered the backdrop against which we are able to interpret and understand Polanyi's thesis.

There is a further point, relating to the normative implications of the commitment to the concept of embeddedness, that is explored in the third case study. Polanyi used embeddedness as a throw-away visual descriptor of a dynamic and complex relationship (between the economy and society). But the shifting economic, legal, political and cultural phenomena and discourse in the intervening decades has cemented embeddedness into the popular discourse and consciousness. We can now talk about a conceptual commitment to embeddedness that functions as an unthought rationality, shaping and constricting linguistic tools and mental models. It is now less descriptive and more prescriptive, and we frequently hear the lament that "if only the economy were (re-)embedded in society".<sup>619</sup>

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<sup>618</sup> Krippner and others (n 45) 111.

<sup>619</sup> See *inter alia* Annett (n 94); Antara Haldar, 'Thought the 2008 Financial Crash Was Bad? At This Rate, There's Worse to Come' *The Independent* (24 August 2018) <[https://www.independent.co.uk/news/long\\_reads/financial-crash-2008-economic-crisis-industrial-revolution-big-tech-globalisation-a8504231.html](https://www.independent.co.uk/news/long_reads/financial-crash-2008-economic-crisis-industrial-revolution-big-tech-globalisation-a8504231.html)> accessed 13 July 2019.

While the concept of embeddedness provides a superficial way of challenging the dominance of econo-centrism, offering a communal coat hook on which numerous objections and challenges can be hung, it has implications for the way we are able to perceive and respond to the problem. As a torch, illuminating the topographical landscape of econolegal aspects of interactions, it both reveals and conceals. We can appreciate aspects of the problem, but others remain hidden. But we cannot appreciate the full extent of econo-centrism if both the market and actors are unavailable for sociological analysis. Furthermore, our ability to conceptualize sociological responses to econo-centrism is limited by the ongoing commitment to the concept of embeddedness. This re-entrenches disciplinarity and reinforces the conditions in which disciplinarity and economics imperialism can thrive. The implications of research into performativity suggest that accepting the conceptual commitment to embeddedness shapes our behaviour to that of *homo economicus*, even unknowingly. Thus, the implications for how we are able to *talk about* the econolegal are not only relevant for how we *do* and *think about* economic and legal phenomena, but for our own conceptions of self, and our regimes and rationalities.

#### *Embeddedness more recently*

Despite Granovetter's pessimistic assertion that embeddedness has come to mean "all things to all people so that it is meaningless", and Kerry Rittich's later echo that over-use has rendered the term "devoid of all meaning", it has received a great deal of attention more recently.<sup>620</sup> Krippner has pointed out that "embeddedness" has become central to economic sociology discourse throughout its lifetime, and it would be virtually impossible to discard the term at this point, even if we wanted to.<sup>621</sup> Barber goes further, noting that "the idea of embeddedness itself is embedded in a context or system of cultural and social structures", although the term is a useful tool for tackling "the absolutization of the market".<sup>622</sup> Attempting to define embeddedness in terms of its identity, McKeever et al highlight the

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<sup>620</sup> Krippner and others (n 45) 113; Rittich, 'Making Natural Markets: Flexibility as Labour Market Truth' (n 595) 323–4.

<sup>621</sup> Krippner and others (n 45) 110, 125.

<sup>622</sup> Barber (n 38) 388.

importance of “the nature, depth and extent of an individual’s ties into an environment, community or society” which can “be understood as a configuring element of general economic processes”.<sup>623</sup> Similarly, Block notes that the “term ‘embeddedness’ expresses the idea that the economy is not autonomous, as it must be in economic theory, but subordinated to politics, religion, and social relations”.<sup>624</sup>

It has also been summed up as “a metaphor denoting a state of dependence upon or subordination to, refer[ing] to the relationship between ‘economy’ and ‘society’, that defining question of a discipline the founders of which approached it in diverse and inevitably clashing ways”.<sup>625</sup> Uzzi describes it as a theoretical puzzle that lets us make sense of a whole range of complex social and economic situations,<sup>626</sup> while Gemici notes that Polanyi’s “embeddedness” can be understood as either a methodological axiom or a theoretical proposition.<sup>627</sup> Indeed, the various interpretations and iterations of embeddedness have been catalogued by Gemici who uses the variety of offerings to illustrate the inherent confusion in the term.<sup>628</sup> While not irreconcilable, Dale does note that “confusion would have been avoided had Polanyi highlighted the semantic difference”, although Krippner and Alvarez take a less optimistic view of the potential for bridging the divide.<sup>629</sup>

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<sup>623</sup> Mckeever, Anderson and Jack (n 601) 222.

<sup>624</sup> Block, ‘Introduction’ (n 53) xxiv.

<sup>625</sup> Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 307–8.

<sup>626</sup> Uzzi (n 580) 22.

<sup>627</sup> Kurtuluş Gemici, ‘Karl Polanyi and the Antinomies of Embeddedness’ (2008) 6 *Socio-Economic Review* 5., cited in Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 323. Embeddedness is used “either as a methodological axiom that holds that *all* economic behaviour is enmeshed in non-economic institutions, or as a theoretical proposition that refers to differences in the degree of that “enmeshment”.

<sup>628</sup> Gemici (n 627).

<sup>629</sup> Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 323; Greta Krippner and Anthony S Alvarez, ‘Embeddedness and the Intellectual Projects of Economic Sociology’ 33 *Annual Review of Sociology* 2007.

### 5.1.2 Embeddedness elsewhere

While the term is most commonly associated with the disciplines of sociology, anthropology and social psychology, “supporting contributions” have also come from the disciplines of history, political science, geography and mathematics.<sup>630</sup> Nevertheless, as Lie remarks, “[m]ost contemporary American economic sociologists work under the banner of the embeddedness approach”.<sup>631</sup> This indicates not only the central role of network analysis to manifestations of embeddedness scholarship, but also the term’s general ubiquity, if not its cohesiveness. The term has also gained ground in economic geography, although it has more recently been subject to similar criticism. Jones has written that the “conceptual lexicon of embeddedness conflates economic action and outcomes, insufficiently captures power and agency and produces a limited understanding of the spatialized development of economic activity”.<sup>632</sup>

At the same time, embeddedness, along with much of its conceptual baggage, has been transposed onto such problematic areas as immigration,<sup>633</sup> the analysis of networks and social movements,<sup>634</sup> and the emergence of civil society in recent

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<sup>630</sup> EP Thompson, ‘The Moral Economy of the English Crowd in the 18th Century’ (1971) 50 *Past and Present* 76; James C Scott, *The Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia* (Yale University Press 1977) <<https://yalebooks.yale.edu/book/9780300021905/moral-economy-peasant>> accessed 3 October 2018; David Harvey, *The Limits to Capital* (University of Chicago Press 1982); F Harary, ‘Graph Theory and Group Structure’, *Readings in Mathematical Psychology* (R. Luce, R. Bush and E. Galanter, eds) (Wiley 1965).

<sup>631</sup> John Lie, ‘Sociology of Markets’ (1997) 23 *Annual Review of Sociology* 341, 350. Lie names Harrison White and Ronald Burt as, along with Mark Granovetter, exemplifying the embeddedness approach. It is worth noting that network theory in this field preceded Granovetter’s article by a number of years, and that he merely “codified an approach that was already implicit in the broad intellectual field comprising the development of network theory”, see Krippner (n 27) 792. See the work in particular of Wayne Baker (organizational theory) and Ronald Burt (“structural autonomy” formation and positional-type network analysis).

<sup>632</sup> Andrew Jones, ‘Beyond Embeddedness: Economic Practices and the Invisible Dimensions of Transnational Business Activity’ (2008) 32 *Progress in Human Geography* 71, 71.

<sup>633</sup> On immigration see Alejandro Portes and Julia Sensenbrenner, ‘Embeddedness and Immigration: Notes on the Social Determinants of Economic Action’ (1993) 98 *American Journal of Sociology* 1320. See also Portes and Stepic, *A City on the Edge: The Transformation of Miami* (University of California Press 1993).

<sup>634</sup> See inter alia McAdam and Paulsen, ‘Specifying the Relationship Between Social Ties and Activism’ (1993) 99 *American Journal of Sociology* 640.

Spanish history.<sup>635</sup> Brian Uzzi in particular has applied embeddedness to corporate relationships and social structures in the workplace. He has concluded that “embeddedness is a logic of exchange” that can also be employed in the goal of improving Pareto allocative efficiency along with other formalist, orthodox economics goals.<sup>636</sup>

In social psychology, the notion of embeddedness grew out of a focus on the “experiences and perceptions of group belonging”.<sup>637</sup> While Lewin found that common perceptions of the surrounding world develop among group members, Festinger focused on “social comparison and cognitive dissonance” to examine attractions and repulsions between individuals and groups.<sup>638</sup> Katz and Kahn have used this to explore patterned acts of productive organising in organisations and institutions, showing how groups encourage, enforce or discourage certain behaviours.<sup>639</sup> Table 7, below, sets out the historical foundations of social embeddedness research, and includes a summary of embeddedness across the social sciences.

*Table 7 - Historical foundations of social embeddedness research<sup>640</sup>*

School of Thought	Key theorists	Key emphasis/focus
<b>Sociology</b>	Marx (1894/1947) Simmel (1908/1950) Park (1924) Weber (1922/1978)	- Group consciousness - Group dynamics - Societies based on interactive communication - Substantive rationality - The dynamics of the human group

<sup>635</sup> See Perez-Diaz *The Return of Civil Society: The Emergence of Democratic Spain* (Harvard University Press 1993), cited in Barber (n 38) 388.

<sup>636</sup> Uzzi (n 580). Uzzi seems one of those most in the firing line for what Kari Polanyi-Levitt has termed an inversion of her father’s original thesis.

<sup>637</sup> Mckeever, Anderson and Jack (n 601) 224.

<sup>638</sup> K Lewin, *Field Theory in Social Science* (New York, Harper-Row 1951); Festinger, ‘A Theory of Social Comparison Processes’ (1954) *Human Relations* 7, 117-40, cited in *ibid.*

<sup>639</sup> D Katz and R Kahn, *The Social Psychology of Organisations* (New York, Wiley 1966), cited in *ibid.*

<sup>640</sup> *ibid* 225.

	Homans (1961) Giddens (1979)	<ul style="list-style-type: none"> <li>- The contradictions of individual actions</li> </ul>
<b>Anthropology</b>	Malinowski (1922) Polanyi (1944) Polanyi, Arensburg and Pearson (1957) Kapferer (1969) Sahlins (1972)	<ul style="list-style-type: none"> <li>- Economy submerged in social relationships</li> <li>- The evolution of ongoing exchange relationships</li> <li>- The relationships between groups and environments</li> <li>- The significance of groups in complex societies</li> <li>- Multiplexity – the multiple contents of a relationship</li> <li>- A critique of economically rational man</li> </ul>
<b>Social psychology</b>	Lewin (1951) Precker (1952) Festinger (1954) Heider (1958) Milgram (1967) Berscheid and Walster (1969)	<ul style="list-style-type: none"> <li>- Group members develop common perceptions</li> <li>- The selection of peers and near authority figures</li> <li>- Social comparison and cognitive dissonance</li> <li>- The psychology of interpersonal relationships</li> <li>- The small world problem</li> <li>- Explores the nature of interpersonal attraction</li> </ul>

### 5.1.2 Polanyi's "always embedded economy"

While the discussion so far as explored the origins of ESL's conceptual commitment to embeddedness, the following sections unpack in more detail the original intentions and use of the term, and trace its lineage through economic sociology more closely. As noted, Polanyi used the word in his main thesis on pages 60 and 64, and it is safe to assume that he never gave the term itself much thought.<sup>641</sup>

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<sup>641</sup> Dale alone has argued otherwise, addressing the point that Polanyi's use of the term increased in his later published works, and was even more frequent in his unpublished work and notes. It is unclear whether we can draw conclusions from the appearance of a term of art in unpublished works, though it might suggest an early unease with the term. See Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611) 320.

Accordingly, the word disappeared for the next 30 years until its accidental resurrection by Mark Granovetter in 1985. This has been hailed as the “birthdate” of Economic Sociology, although Granovetter later admitted that he had been entirely unaware of Polanyi’s use of the term.<sup>642</sup> Nevertheless, the term was adopted and maintained as a key concept, or now “lowest common denominator” of economic sociology.<sup>643</sup> While Krippner and Alvarez suggest that the concept “references two distinct intellectual projects” – one deriving from Granovetter’s work and one from Polanyi’s – this is not commonly acknowledged in most of the literature.<sup>644</sup> Indeed, the term is generally assumed to have had one “career” within economic sociology as a metaphor, a theoretical lens and a methodological tool.<sup>645</sup> Given its unpromising start, it is unsurprising that the term has been “a source of enormous confusion”.<sup>646</sup> Roger Cotterrell’s basic questions of “what is embedded, and in what is it embedded” are good points of reference to keep in mind throughout the discussion.<sup>647</sup> While it “has come a long way since Polanyi coined the term”, it does seem to hold a general appeal for those dissatisfied with the narrow focus of orthodox economics, providing a neat entry point for writers to broaden the focus of their economic analysis.<sup>648</sup> It also seems to function occasionally as a popular “shoehorn” for joining together society and the surrounding landscape in which “the economy” is seen to function.<sup>649</sup> It is this latter

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<sup>642</sup> Granovetter (n 48). Swedberg has referred to 1985 as the “birthdate” of economic sociology; see Krippner (n 27) 775; Krippner and others (n 45).

<sup>643</sup> Krippner and others (n 45).

<sup>644</sup> Krippner and Alvarez (n 629) 219.

<sup>645</sup> See *inter alia* Barber (n 38); Jens Beckert, ‘The Great Transformation of Embeddedness: Karl Polanyi and the New Economic Sociology’, *Market and Society: The Great Transformation Today* (Chris Hann and Keith Hart (eds) (New York: Cambridge University Press 2009) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2465810](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2465810)> accessed 14 August 2018; Gillian Hart, ‘The Career of the Concept of Embeddedness’, *Polanyi Symposium: A Conversation on Embeddedness* (Krippner et al, eds) (Socio-Economic Review 2(1) 2004). See Portes and Sensenbrenner (n 525); cited in Mckeever, Anderson and Jack (n 499) 222.

<sup>646</sup> Block, ‘Introduction’ (n 53) xxiii.

<sup>647</sup> Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (n 22).

<sup>648</sup> Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 325.

<sup>649</sup> *ibid.* It also provides a starting point for considering matters that don’t fit neatly into orthodox economics frames, like trust and malfeasance.

that has led to the term's ubiquity, entrenchment, and now commitment to the concept by ESL.

Despite its fleeting appearance in *The Great Transformation*, a great deal of debate has surrounded the subject, "generating some light and not a little heat".<sup>650</sup> Ashiagbor notes that there are at least two meanings of Polanyian "embeddedness" that can be drawn from *The Great Transformation*, with a third, Granovetterian, interpretation added later.<sup>651</sup> The first is that "all economies and economic behaviour are embedded to the extent that markets are constructed rather than being natural".<sup>652</sup> This echoes Polanyi's assertion that "[t]he road to the free market was opened and kept open by an enormous increase in continuous, centrally organized and controlled interventionism".<sup>653</sup> The second interpretation concerns its underlying flexibility, and the "idea that embeddedness differs from one economic system to another", leading to variations in the "degree of enmeshment".<sup>654</sup> In arguing that these interpretations are reconcilable, Ashiagbor notes that if we reject the utopian notion of the self-regulating market as recounted in orthodox economics, we therefore cannot conceive of markets as entirely disembodied and therefore must accept the embeddedness thesis.<sup>655</sup>

Countering accusations that Polanyi only used the term in passing, Dale admits its relatively sparse usage in *The Great Transformation*. However, he notes that the term "does crop up repeatedly in [Polanyi's] published books and articles from the post-war period, and even more frequently in his unpublished notes and manuscripts".<sup>656</sup> Again, though, Polanyi's tendencies for "epistemological breaks" means that it is not necessarily easy to "read back" into *The Great Transformation*

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<sup>650</sup> *ibid* 306.

<sup>651</sup> Ashiagbor (n 40) 267.

<sup>652</sup> *ibid* 267.

<sup>653</sup> *ibid* 267. Polanyi (n 47) 146.

<sup>654</sup> Ashiagbor (n 40) 267.

<sup>655</sup> *ibid*.

<sup>656</sup> Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611) 320.

what we would like to find therein.<sup>657</sup> Should we infer that his use of the term in unpublished rather than published works indicates that he was also unhappy with the term? And how can we begin to (re-)interpret a term employed in 1944 without seeing it through the lens of the intervening 70 years?

The term appears to have been used as a shorthand for “the method of analysis developed throughout his body of work” which can be more clearly seen in the later “The Economy as Instituted Process”.<sup>658</sup> Distinguishing between the “substantive economic” and “formal economic”, Polanyi states in his later work that the “economy, then, is an instituted process”.<sup>659</sup> This is relevant as it is this work that brought Polanyi closer to fully exploring the ramifications of the “always embedded economy”, even though he was never able to fully explain his position. His discussion of processes and institutions brought Polanyi to the conclusion that the human economy “is embedded and enmeshed in institutions, economic and non-economic”, the inclusion of the latter being “vital”.<sup>660</sup> Moreover, Polanyi sets out that “[t]he study of the shifting place occupied by the economy in society is therefore no other than the study of the manner in which the economic process is instituted at different times and places”, which he concludes “requires a special tool box”.<sup>661</sup>

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<sup>657</sup> For a discussion of this and Polanyi’s shift away from Marxism, see Block, ‘Karl Polanyi and the Writing of The Great Transformation’ (n 617).

<sup>658</sup> Polanyi (n 47); Karl Polanyi, ‘The Economy as Instituted Process’, *Trade and Market in the Early Empires*, Karl Polanyi, CM Arensberg and MW Pearson (eds) (The Free Press 1957) <<http://irows.ucr.edu/cd/courses/281/readings/polanyi.pdf>> accessed 25 June 2018; Krippner (n 27) 779.

<sup>659</sup> Jerome Maucourant and Sebastien Plociniczak, ‘The Institution, the Economy and the Market: Karl Polanyi’s Institutional Thought for Economists’ (2013) 25 *Review of Political Economy* 512, 248; Maucourant and Plociniczak. They construct a theory of institutions drawn from Polanyi’s published works that enriches what we understand about the economy as an instituted process and what the self-regulating market could possibly be. This has also been a springboard for many institutionalists (who see Polanyi as one of their own) and who see individual preferences as shaped endogenously by institutions. See João Rodrigues, ‘Endogenous Preferences and Embeddedness: A Reappraisal of Karl Polanyi’ (2004) 38 *Journal of Economic Issues* 189.

<sup>660</sup> Polanyi (n 658) 250.

<sup>661</sup> *ibid.* The “epistemological break” that occurred throughout Polanyi’s work, owing to World War II and the Cold War, meant much of his published materials were rushed and he did not have time to revisit and rewrite in order to iron out some of the theoretical inconsistencies. Thus, while we can use *The Economy as Instituted Process* to read in to what Polanyi might have meant in *The Great Transformation*, this should be done sparingly. For an examination of Polanyi’s publication deadlines

Polanyi wanted to convey “the fluid mixing of social objects in a way that defied disciplinary boundaries”. In particular, Marx’s sociology and Tönnies’ notion of a “great transformation” from *Gemeinschaft* and *Gesellschaft* and known to have influenced Polanyi.<sup>662</sup> Additionally, Weber’s work on economic behaviour as deeply “grounded in the cultural realm of customs, language and the collective ethos” is acknowledged as having had a profound influence on Polanyi’s thought.<sup>663</sup> Indeed, he has described his own approach to economic history as having a “broadly similar focus” to Weber’s, and Polanyi’s *The Great Transformation* was, despite its rush to publication, intended to add to the great theories of society.<sup>664</sup> The advent of economic anthropology, in particular Malinowski’s descriptions of the Trobriand Islanders is said to have “thrilled” Polanyi, who saw in this a “window onto new ways of constructing ‘the economy’ that were radically different to the contemporary capitalist norm” as found in Western Europe.<sup>665</sup> In these primitive societies, “purely economic” institutions did not exist, nor did “the economy”, but “economic systems of ‘primitive’ societies were [...] submerged in the totality of social relationships”.<sup>666</sup> In short, these accounts resulted in the “scotching of the legend of *homo economicus*”.<sup>667</sup> They urged a rethinking of the assumptions on which the capitalist, self-regulating market sat in society, along with the relationship between society and economy.<sup>668</sup>

Yet even within Polanyi’s account of the market and social relations, there is ambiguity, as he appears to treat the market itself as disembodied, stating that

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and his other commitments, see Block, ‘Karl Polanyi and the Writing of The Great Transformation’ (n 617); Krippner (n 27) 781. Krippner similarly gives Polanyi some degree of leeway, stating that “Polanyi’s work operated at several different levels simultaneously”.

<sup>662</sup> Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 310.

<sup>663</sup> *ibid* 313.

<sup>664</sup> *ibid* 314.

<sup>665</sup> *ibid* 318. He is known to have read the works of Bronislaw Malinowski, Richard Thurnwald, Raymond Firth, and Marcel Mauss. Mann claims Polanyi to be the principal developer of Malinowski’s redistributive state, in Michael Mann, *The Sources of Social Power: Volume 1, A History of Power from the Beginning to AD 1760* (Cambridge University Press 1986) 60.

<sup>666</sup> Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 319.

<sup>667</sup> *ibid*.

<sup>668</sup> *ibid*.

“[i]nstead of economy being embedded in social relations, social relations are embedded in the economic system”.<sup>669</sup> This is despite stating that the self-regulating market is a fiction. On the contrary, as Krippner states of Polanyi, “[m]arkets, even in ideal form, are not the expression of primal, timeless instinct; they are rather fully social institutions, reflecting a complex alchemy of politics, culture, and ideology”.<sup>670</sup> Moreover, “for Polanyi, these are the elements that form the very ground of the economy”.<sup>671</sup>

Dale sums up the dual readings of Polanyi’s “embedded” economy, stating that for some, “he is held up as the originator of a line of sociological analysis that treats ‘the economy’ as a subsystem ‘embedded in’ a social system”.<sup>672</sup> This reading places emphasis “upon the moral underpinnings of market behaviour, in contrast to the naturalism of Ricardo, Malthus and their heirs”.<sup>673</sup> However, for others, “his ‘disembedding’ thesis contains a more radical tale of the market economy coming to dominate ‘society’, bringing forth a sorcerer’s apprentice world of untrammelled market forces that, although human creations, lie beyond conscious human control”.<sup>674</sup> It is this dichotomy that characterises all interpretations of Polanyi, and given his central role in economic sociology and ESL, that therefore comes to define the cleavage at the centre of economic sociology.

This can be summarized and simplified visually as shown below in Figure 8, below, illustrating the two competing interpretations of Polanyian embeddedness; is economy embedded in society, or is society embedded in economy?

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<sup>669</sup> Polanyi, cited in Krippner (n 27) 780.

<sup>670</sup> *ibid* 782.

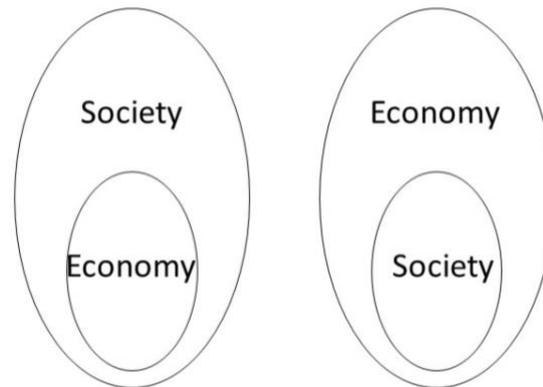
<sup>671</sup> *ibid*.

<sup>672</sup> Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 306.

<sup>673</sup> *ibid*.

<sup>674</sup> *ibid*.

Figure 8 - A simplified visual depiction of competing interpretations of Polanyian embeddedness



Roger Cotterrell has suggested a third way of reading Polanyi's embeddedness thesis, suggesting that he might have meant that the economy could become disembedded, but that the historical trajectory "does not yield a *general* 'theoretical proposition' about this".<sup>675</sup> In other words, "a politico-social reaction (called by Polanyi a 'double movement'), exposing and cancelling the 'dangerous fantasy' of the self-regulating economy, is *not bound to occur* – at least not without disaster overtaking social and political life first".<sup>676</sup> This shifts Polanyi's work from general social theory to more interpretive history, but still does not solve the second problem of conceptual incompatibility that is discussed below. Nor does it provide any neat answers to what the economy, or market, is embedded *in*, as once again we are reminded to keep in mind Cotterrell's main questions of *what* is embedded, and *in what* is it embedded. "[P]olitical institutions, legal controls, state policy or social conditions" have been suggested as answers to the second question, as well as "institutional regulation", "social relations" and "ongoing networks of social relations", although there is little consensus here.<sup>677</sup> Indeed, this may be one of the attractions of a particularly Polanyian reading of embeddedness; that it can support flexible interpretation and application, and properly defined can convey the broad outline of a concept. The problem occurs when there have been so many and

<sup>675</sup> Cotterrell, 'Rethinking Embeddedness; Law, Economy, Community' (n 22) 53.

<sup>676</sup> *ibid.*

<sup>677</sup> *ibid* 53; Ashiagbor (n 40) 267; Randles (n 586); Krippner and others (n 45).

varied definitions of the term that its use without clear reference has come to leave it as virtually meaningless.

### Criticism of Polanyi

Criticisms of Polanyi's work tend to centre around its internal lack of cohesion, and Polanyi's own "Great Contradiction" is the foremost of these.<sup>678</sup> The ontology or otherwise of self-regulating markets, which appears to be set out in *The Great Transformation*, is contradicted 13 years later when Polanyi contends that all markets are instituted in some way or another such that an unregulated market "never finds ontological reality".<sup>679</sup> Indeed, Swedberg and Granovetter point out that this contradiction can be found in *The Great Transformation*, leaving us with the question of whether the self-regulating market can exist or not.<sup>680</sup> This runs to the heart of the existing conceptual commitment to embeddedness and any project seeking to reconceptualize the econolegal sociologically.

Randles sets out the basic dilemma as proposed by Polanyi that "man's economy is, as a rule, embedded in his social relations".<sup>681</sup> Further, that "as market exchange came to represent the dominant institution of economic integration, this had the effect of 'disembedding' economy from its social roots".<sup>682</sup> Contradicting Dale, Randles notes that Polanyi had a narrow notion of what he meant by the economy at the time, notably "modes of societal provisioning for material objects and services".<sup>683</sup> This, though, has been considerably widened by intervening scholarship. Now, "societal survival", with its "systems of meanings and mechanisms which underpin and enable society reproduction" has all become bound up in this notion.<sup>684</sup> While this stretching of the original notion is part of the

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<sup>678</sup> Other problems listed with Polanyi's work include the arrow of causality in the double movement and the problem of institutional reductionism. See Randles (n 586) 420–422.

<sup>679</sup> *ibid* 420.

<sup>680</sup> Richard Swedberg and Mark Granovetter, 'Introduction', *The Sociology of Economic Life* (Mark Granovetter and Richard Swedberg, eds) (Westview Press 1992) 22. Cited in Randles (n 586) 420.

<sup>681</sup> Randles (n 586) 422. (emphasis in original)

<sup>682</sup> *ibid*.

<sup>683</sup> *ibid*.

<sup>684</sup> Randles cites Bourdieu as one of the main protagonists here in the broadening out of notions of economy in the discussion of embeddedness. *ibid*.

problem, Sayer also notes that the term itself is far too cosy, “hinting at a benign humanist phenomenology” leading invariably towards “sociological determinism”.<sup>685</sup>

Block also cites two examples of tension between a “deterministic argument and Polanyi’s theoretical argument” in *The Great Transformation* which remain largely unresolved.<sup>686</sup> Randles describes the situation thus: “It further suggests one domain ‘the social’ encircling and materially ‘producing’ the other: the ‘economic’ whilst its more recent derivative, the notion of ‘double embeddedness’ suggests an ontologically impossible situation whereby the ‘social’ embeds (surrounds) the economic whilst at the same time the economic embeds (surrounds) the social”.<sup>687</sup> This seems to be a rather roundabout way of echoing Krippner et al’s (more precise) summary of the problem that the market is left unavailable for sociological analysis through recourse to embeddedness.<sup>688</sup> Accordingly, the problem is more one of terminology giving rise to a misleading concept than vice versa. As Randles concludes, “[w]e can’t have it both ways”.<sup>689</sup> She suggests that a “richly *interdependent* mixture of social and economic inter-play exists”, echoing Krippner’s assertion that “every transaction [...] is *social* in the broader sense of the term”.<sup>690</sup>

These (re-)interpretations of what we, and Polanyi, really mean, hint at a shared understanding of the re-co-constitution of economic and legal aspects of social interactions. However, these debates do not explore the full incompatibility of the commitment to embeddedness with supporting constructivist assumptions about

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<sup>685</sup> Andrew Sayer, ‘Markets, Embeddedness and Trust: Problems of Polysemy and Idealism’, *Market Relations and the Competitive Process : New Dynamics of Innovation & Competition*, Stan Metcalfe and Alan Warde (eds) (Manchester University Press 2005) <<http://resolver.ebscohost.com/openurl?genre=book&isbn=9781847790293&sid=jstor%3ajstor&title=Market+relations+and+the+competitive+process&isbn=9780719064685&site=ftf-live&ldpld=>>>, cited in Randles (n 126) 423.

<sup>686</sup> Block, ‘Karl Polanyi and the Writing of *The Great Transformation*’ (n 617) 285. The story is taken up again at 289 in relation to a deterministic reading of Polanyi’s interpretation of the Speenhamland problem and his account of the final crisis of market society.

<sup>687</sup> Randles (n 586).

<sup>688</sup> Krippner and others (n 45).

<sup>689</sup> Randles (n 586) 423.

<sup>690</sup> *ibid* 423; Krippner and others (n 45) 112.

the nature of the econolegal. Nor do they explore the potential of the concept of embeddedness to shape linguistic tools and mental models, allowing us to glimpse the dynamism of the relationship between the econolegal and the social. At the same time though, the concept conceals any means of challenging the current mainstream regimes and rationalities because it re-entrenches the disciplinarity and silos of endeavour that an ESL is specifically attempting to address.

### *Glimpsing the idea*

Block suggests that “Polanyi glimpsed the idea of the always embedded market economy, but he was not able to give that idea a name or develop it theoretically because it represented too great a divergence from his initial theoretical starting point”.<sup>691</sup> Nevertheless, despite the “deep ambiguities in [Polanyi’s] discussion of embeddedness”, Block maintains that this concept is “the most powerful and enduring way to make sense of Polanyi’s core arguments”, a position that Krippner and other commentators have supported.<sup>692</sup> As Polanyi’s point on the “embedded economy [...] has often been misunderstood”, Block sets out a careful rendition of Polanyi’s argument.<sup>693</sup> Some have advanced an interpretation of the reversal of embeddedness with the rise of market societies.<sup>694</sup> In contrast, Block writes that Polanyi “argues that market liberals wanted to embed society in the autonomous economy, but their project *could not* succeed”.<sup>695</sup> Polanyi’s logic, according to Block, is that “because land, labor, and money are fictitious commodities, completely subordinating them to the market mechanism would destroy society”.<sup>696</sup> Block concludes that even within market societies, “ways have to be found to embed labor, land, and money in social relations”.<sup>697</sup> Thus, the challenge is both to market liberals and Marxists, both of which are built on the notion that there is an

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<sup>691</sup> Block, ‘Karl Polanyi and the Writing of The Great Transformation’ (n 617) 276.

<sup>692</sup> *ibid* 294, 276; Krippner and others (n 45) 125.

<sup>693</sup> Block, ‘Karl Polanyi and the Writing of The Great Transformation’ (n 617) 282.

<sup>694</sup> Dale’s interpretation is explored below.

<sup>695</sup> Block, ‘Karl Polanyi and the Writing of The Great Transformation’ (n 617) 282. Emphasis in original.

<sup>696</sup> *ibid*.

<sup>697</sup> *ibid* 282.

“analytically autonomous economy that is subject to its own internal logic”.<sup>698</sup>

Polanyi holds up a mirror to those traditions assuming a self-regulating market by firstly posing the economy as embedded in social relations, by showing the dependency of the market on the state, and finally by showing the “irrational and socially dangerous” practice of referencing land, labour and money as true commodities.<sup>699</sup>

The problem, Block identifies, comes from Polanyi’s introduction of embeddedness in *The Great Transformation*. He “demonstrates persuasively that through the whole history of market society, the strength of protection effectively embeds the economy”.<sup>700</sup> This means that “functioning market societies must maintain some threshold level of embeddedness or else risk social and economic disaster”.<sup>701</sup>

Maintaining the notion of fictitious commodities requires the establishment of new institutional structures, overseen and implemented by the state. As Block summarises, “the economy has to be embedded in law, politics, and morality”.<sup>702</sup>

Yet once again, the contradiction at the heart of the argument is brought out here. As “there can never be a self-regulating market system” according to Polanyi, “so the idea of impairing its functioning is an absurdity”.<sup>703</sup> As Block notes, this “is the equivalent of complaining that one’s perpetual motion machine was damaged when it was inspected by sceptical scientists”.<sup>704</sup> Block concludes that the concept of the always embedded economy “begins with the premise that any favorable [sic] economic dynamic has to be understood as flowing from the interactions among self-interested agents, the actions of the state, and forms of social regulation”.<sup>705</sup> But it is important to take from Polanyi, as brought out in Block’s interpretations of his work, that the “always embedded concept has a critical cultural or ideational

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<sup>698</sup> *ibid.*

<sup>699</sup> *ibid* 282–3.

<sup>700</sup> *ibid* 295.

<sup>701</sup> *ibid.*

<sup>702</sup> *ibid* 297.

<sup>703</sup> *ibid.*

<sup>704</sup> *ibid.*

<sup>705</sup> *ibid* 299–300.

element".<sup>706</sup> Additionally, "different market societies are embedded in different complexes of ideas".<sup>707</sup> Part of Polanyi's project was to show the deep roots of market liberalism in England by rehearsing the country's economic history to explore how the one had given rise to the other. "The same can also be said for the building of market societies in East Asia" in a more contemporary setting as Peter Evans has analysed, reminding us that the market, the society and culture exist in complex and dynamic combinations.<sup>708</sup>

Block notes that "Polanyi advances complex and sometimes contradictory arguments from which readers can easily derive sharply contradictory interpretations".<sup>709</sup> The fact that many of the issues with Polanyi's scholarship have not yet been settled indicates their likely insolvability. Nevertheless, the institutional and disciplinary shifts that have occurred, and the move towards social constructivism, makes the current conceptual commitment to embeddedness problematic.

### Alternative criticisms

Other criticisms have also been made. Gemici notes that "Polanyi offers a trenchant criticism of market society by employing the notion of the self-regulating market", relying "heavily on the neoclassical economies of his time in his understanding" of this.<sup>710</sup> Other commentators have questioned Polanyi's reliance on the concept of the self-regulating market, noting a "great contradiction" and "systematic weakness" in the notion.<sup>711</sup> Mann also notes that Polanyi's contribution does not "liberate us from the modern market mentality", echoing Hall's observation that Polanyi's thought is "too economic".<sup>712</sup> Gemici argues that the puzzle at the

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<sup>706</sup> *ibid* 300.

<sup>707</sup> *ibid*.

<sup>708</sup> *ibid*.

<sup>709</sup> *ibid* 275.

<sup>710</sup> Kurtuluş Gemici, 'The Neo-Classical Origins of Polanyi's Self-Regulating Market' (2015) 33 *Sociological Theory* 125, 126.

<sup>711</sup> Randles (n 126); John A Hall (2011) "Society Against the Market, Gareth Dale, Polanyi: The Limits of the Market" *Archives Européennes de Sociologie*, 52(3): 542-45, at 545, cited in Gemici (n 161) 126.

<sup>712</sup> Michael Mann, *The Sources of Social Power, Volume I: A History of Power from the Beginning to AD 1760* (New York, Cambridge University Press 1986) 61; John A Hall, 'Society Against the Market,

heart of Polanyi's conceptualizations of the self-regulating market "derives from his reliance on marginalist theory of value and neoclassical equilibrium analysis".<sup>713</sup> As a result, the reduction of the market to an "automaton" leads to two shortcomings. Firstly, Polanyi's viewpoint is silent on "how social factors structure and shape the price-making market".<sup>714</sup> At the same time however, he "falls back on the self-regulating nature of the market's contradictory price-supply-demand mechanism" in his discussions on the market's contradictory place in society.<sup>715</sup> This dichotomy parallels later efforts to understand the market "as a social object".<sup>716</sup> It also encapsulates the difficulties faced by economic sociology in the context of Granovetter's concept of embeddedness. As Gemici remarks, "this difficulty stems from espousing a one-dimensional view of the market and drawing neat boundaries between the economic and the social".<sup>717</sup> Moreover, "contemporary sociology demonstrates that the market's contradictions arise from how its symbols, values, rationalities, and organizational patterns affect the coherence, stability, and reproduction of other institutions in society".<sup>718</sup> He concludes that Polanyi's theories on the self-regulating market are simply incompatible with this.

*Interpretations of Polanyi ("pathways out" of Polanyi)*

Some authors have taken Polanyi's notion of embeddedness and applied it to their own perspectives. This section discusses, amongst others, Ruggie's "embedded liberalism" and Evans' "embedded autonomy" and tries to identify why these uses of embeddedness have been subject to less criticism than Polanyi's original thesis. There are two conclusions here. Firstly, both Ruggie and Evans use the term lightly and descriptively, attributing it to the core idea they propose. Secondly, and more importantly, when referring to conceptually distinct, ontologically separate

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Gareth Dale, Polanyi: The Limits of the Market', *Archives Européennes de Sociologie*, (2011) 52(3): 542-45, at 545, cited in Gemici (n 710) 126.

<sup>713</sup> *ibid* 126.

<sup>714</sup> *ibid*.

<sup>715</sup> *ibid*.

<sup>716</sup> Krippner (n 27) 799–802.

<sup>717</sup> Gemici (n 710) 126.

<sup>718</sup> *ibid*.

phenomena, embeddedness can be both a useful descriptor and an invaluable methodological tool. This highlights the fact that the limitations stemming from ESL's conceptual commitment to embeddedness relate to the fact that we are trying to describe the relationship between two phenomena that, if we accept a social constructivist approach, are the same (or aspects of the same) phenomenon.

Randles sets out and categorizes the diverse positions and projects currently within Polanyian scholarship, dividing these into "Polanyian-given" frame analysts who work with the texts as they find them, and "Polanyian-inspired" writers who engage with the theories as contextualized in their historical time and place.<sup>719</sup> Within the second of these, she identifies two sub-groups. These take an empirical focus, inspired by Polanyi's insights as applied to today's problems. They then take key notions from Polanyi's work and uses these either as a "taken-for-granted entry point", or as a "deeper and more considered entry point in developing a particular line of theoretical and conceptual thought".<sup>720</sup>

Similarly, referring in particular to the work of Peter Evans, Gillian Hart has identified three "pathways out of Polanyi".<sup>721</sup> The first of these is the argument that the "developmental state" was the decisive factor in the East Asian "miracles", challenging the neo-liberal market narrative of the economic growth.<sup>722</sup> The second sees embeddedness as a "neo-Weberian" perspective that requires a "kinder, gentler" capitalism, in particular associated with the World Bank, and echoes Ruggie's "embedded liberalism".<sup>723</sup> The third sees the term taken up by Granovetter in 1985 and translated into the core concept of economic sociology and ESL, developing into a conceptual commitment to the term.<sup>724</sup> Despite accounts

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<sup>719</sup> Randles (n 586) 409–410.

<sup>720</sup> *ibid* 410.

<sup>721</sup> Gillian Hart, 'The Career of the Concept of Embeddedness', *Polanyi Symposium: A Conversation on Embeddedness* (Krippner et al, eds) (Socio-Economic Review 2(1) 2004), cited in Gareth Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (2011) 70 *The American Journal of Economics and Sociology* 306, 325–6.

<sup>722</sup> *Ibid*.

<sup>723</sup> Hart (n 645). Cited in Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611) 326.

<sup>724</sup> This echoes Ashiagbor's identification of Granovetter's embeddedness as a "third" interpretation. See Ashiagbor (n 40) 268–9.

disproving their similarity, Granovetter's account of embeddedness still commonly features on the timeline of the career of embeddedness, traced from Polanyi's coinage in 1944 to the present day.<sup>725</sup>

### *Embedded autonomy*

Peter Evans has also used embeddedness to examine the rise of newly industrialized countries (principally Brazil, India and Korea) and to challenge the story that their successes were due to the operation of free markets.<sup>726</sup> Noting that the internal organization of the archetypal developmental state approximates to the Weberian ideal of bureaucracy, Evans described the development of a "corporate coherence" leading to an "autonomy".<sup>727</sup> He argues that these should not be insulated from society as Weber recommended. "On the contrary, they are embedded in a concrete set of social ties that binds the state to society and provides institutionalized channels for the continual negotiation and re-negotiation of goals and policies".<sup>728</sup>

Thus, in Evans' "embedded autonomy", the "apparently contradictory combination of corporate coherence and connectedness" itself "provides the underlying structural basis for successful state involvement in industrial transformation".<sup>729</sup>

Evans cites Polanyi's keen sense of the extent to which markets are dependent on state action, writing that "the life of the market has been intertwined not just with other kinds of social ties, but with the forms and policies of the state".<sup>730</sup> Moreover, "[a]n effective state was not simply an adjunct to the market, it was an essential prerequisite of the formation of market relations".<sup>731</sup> Combining this with Weber's insights into the role of bureaucracy, Evans writes that the question is not "how much" state involvement is necessary for growth and industrialization to take place,

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<sup>725</sup> *ibid.*

<sup>726</sup> Evans (n 67) 11.

<sup>727</sup> *ibid* 11.

<sup>728</sup> *ibid* 12.

<sup>729</sup> *ibid.*

<sup>730</sup> *ibid* 22, 29.

<sup>731</sup> *ibid* 29.

but “what kind”.<sup>732</sup> This reflects the fact that the involvement of the state is essential, but very much dependent on the particular setting.

Evans’ use of embeddedness has been praised for avoiding some of the pitfalls discussed above, raising the importance of the “context in which certain ideas are deployed and developed”.<sup>733</sup> Nevertheless, while agreeing with this, Granovetter questions Evans’ static use of the term, noting that he “lacked a dynamic argument” as to how and why bureaucracies became autonomous.<sup>734</sup> There is also little on how they become embedded with the business world, and how this changes over time.

### *Embedded liberalism*

In 1982, John Ruggie published his study of the postwar international trade and monetary regimes.<sup>735</sup> This challenged the assumption that the international economic order was “orthodox liberal”, instead proposing that “it was characterized by a political commitment to what he called ‘embedded liberalism’”.<sup>736</sup> Ruggie has stated that he “adapted this term from Polanyi [1944]” in an initial bid to “reconcile the efficiency of the markets with the broader values of social community – ‘embedding’ markets, in short”.<sup>737</sup> His choice of term recalled Polanyi’s thesis of the “disembedding of economic from social life”.<sup>738</sup> It also reflected the fact that “in the postwar GATT, the liberalism of freer trade was embedded in a deeper commitment to an interventionist programme of governmental social action”.<sup>739</sup>

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<sup>732</sup> *ibid* 11.

<sup>733</sup> Greta Krippner, in Krippner and others (n 45) 131–2.

<sup>734</sup> Mark Granovetter in *ibid* 124.

<sup>735</sup> Ruggie, ‘International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order’ (n 67).

<sup>736</sup> Andrew Lang, ‘Reconstructing Embedded Liberalism: John Gerard Ruggie and Constructivist Approaches to the Study of the International Trade Regime’ (2006) 9 *Journal of International Economic Law* 81, 81–2.

<sup>737</sup> John Gerard Ruggie, *Embedding Global Markets: An Enduring Challenge* (Routledge 2016) 2. The term is first introduced in Ruggie, ‘International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order’ (n 67) 394.

<sup>738</sup> Lang (n 736) 87–88.

<sup>739</sup> *ibid* 87–88.

The essence of embedded liberalism is set out by Ruggie as “devis[ing] a form of multilateralism that is compatible with the requirements of domestic stability”.<sup>740</sup>

The common tendency “to view the post-war international economic regimes as essentially liberal regimes, premised on the need for (market) exchanges to be *free*, obscures the more complex reality” of the “compromise of ‘embedded liberalism’”.<sup>741</sup> This states “that institutions were constructed to ensure that these exchanges should also be *stable*”.<sup>742</sup>

Moreover, the notion of embedded liberalism has been invoked to “destabilise common assumptions about the objectives and normative underpinnings of the [international] trade regime” and can be used to guide discussions about what a liberal trade regime could look like.<sup>743</sup> Notably though, the concept has come to explain the effects of trade liberalisation and global economic integration on social protection in developed economies.<sup>744</sup>

While “the concept[s] of embedded liberalism and the analytical perspective of social constructivism soon gained currency among international relations scholars”, they were slow to be taken up by policy makers.<sup>745</sup> However, “embedded liberalism” as an idea was also taken up by more mainstream economists and others interested in the impact of economic globalization on domestic social protection, and the concept has travelled far beyond the confines of economic sociology and ESL. This is, perhaps, the vessel in which Polanyi’s notion of embeddedness has travelled the furthest.<sup>746</sup>

However, as with other careers of embeddedness beyond the confines of economic sociology, there is little space devoted to an unpacking of the term itself or a recognition that the concept contains a paradox. It could be argued that in fact the

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<sup>740</sup> Ruggie, ‘International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order’ (n 67) 399.

<sup>741</sup> Ashiagbor (n 40) 270.

<sup>742</sup> *ibid* 270.

<sup>743</sup> Lang (n 736) 81.

<sup>744</sup> *ibid* 82.

<sup>745</sup> Ruggie, *Embedding Global Markets* (n 737) 3.

<sup>746</sup> *ibid*.

term is more successfully used by Ruggie (and following literature) and Evans because they use the term lightly, sparingly, and do not devote pages to any attempt to decode what Polanyi might have meant. Ruggie uses the term to refer to a variety of entities; institutions, programmes of action, social interventions, the efficiency of markets and the broader values of social community.<sup>747</sup>

By contrast, the debate about what Polanyi might have meant tends to focus exclusively on “the market” and “society”. So, implying the separation of the concepts and their intrinsic differentiation through use of the term “embedded” becomes problematic. This is then incompatible with a conceptual separation between market and society in any way that leaves the market available to sociological analysis (a necessary pre-condition if this definition is to succeed). By contrast, use of the term “embedded” or “embeddedness” or “embedded liberalism” or “embedded autonomy”, when referring to concepts that are justifiably separate and can be conceived independently of each other, is not only possible but instructive.

Use of embeddedness, in a suitable context and when referring to two distinct, ontologically separate entities, can therefore work. This should be differentiated from a conceptual commitment to embeddedness which we can identify within ESL and in wider discourse surrounding the relationship between the social and the econolegal. In economic sociology and ESL, the commitment to embeddedness continues despite the inconsistencies and incompatibility at the heart of the concept. This is owing to its ubiquity, its accessibility, and its readiness to act as a convenient point of rally against neoclassical, econo-centric mainstream frames. Nevertheless, in broader debates about the relationship between the econolegal, where the commitment to embeddedness operates as an unthought rationality, there is less awareness of the problematic nature of the term.

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<sup>747</sup> John Gerard Ruggie, ‘What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge’ (1998) 52 *International Organization* 855, 871. Ruggie states “It is universally acknowledged that the economy is embedded in broader social, political, and legal institutional frameworks that make it possible to conduct economic relations - which are constitutive of economic relations”.

### 5.1.2 Granovetter's embeddedness

While Granovetter's revival of "embeddedness" as a concept, along with its baggage, might have been accidental, his emphasis on the ways in which practices are generated among people sharing a common context brought Polanyi's work back to the fore.<sup>748</sup> Despite this, it is important to keep in mind that, as many commentators have noted, Granovetter's version of embeddedness differs significantly from Polanyi's. While Polanyi was interested in the embeddedness of the market in society (at the macro level), Granovetter's main thesis concerned the embeddedness of actors in networks (at the micro level). Unfortunately, by using the same term of art and writing within a similar field of enquiry, it has generally been assumed that there is some lineage between the theories.

Mark Granovetter was "attempting to chart a course" between the under- and over-socialization of actors in economic sociology, and considered the "embeddedness" of economic actions in "ongoing structures of social relations".<sup>749</sup> As such, his course between Parsonian and Smelserian sociology on the one hand, and neoclassical economics on the other, was a network analysis of micro-social and micro-economic interactions.<sup>750</sup> This was directly in contrast to Polanyi's macro-level analysis of the interface of the economic and social.<sup>751</sup> Granovetter's ultimate proposal stated that all economic behaviour was "embedded in networks and communities of interpersonal relationships".<sup>752</sup> He stated that "economic action is affected by actor's dyadic relationships and by the structure of the overall network of relations".<sup>753</sup> Unlike Polanyi, he was not seeking to make any larger claims about the relationship between market and society.

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<sup>748</sup> Mckeever, Anderson and Jack (n 601) 225.

<sup>749</sup> Granovetter (n 48) 481.

<sup>750</sup> Krippner and others (n 45) 111.

<sup>751</sup> Ibid.

<sup>752</sup> Mckeever, Anderson and Jack (n 601) 225.

<sup>753</sup> M Granovetter, *Problems and Explanation in Economic Sociology, Networks and Organisations* (Harvard Business School 1992) 33, cited in *ibid.*

Granovetter's use of the concept "envelope[d] and submerge[d] the asocial market construct in social relations, all the while preserving intact the notion that somewhere there was a hard core of market behaviour existing outside of social life (and hence that needed to be 'embedded')".<sup>754</sup> This dichotomy, Krippner argues, has led to "a neglect of the concept of the market" with the results that "*the market has tended to elude researchers as a sociological object*".<sup>755</sup> Moreover, Granovetter's approach, described by Dale as what "one may charitably assume to have been a slip of the pen" contains its own contradictions, describing both the Polanyian "extreme" and his own middle course as "*the embeddedness approach*".<sup>756</sup> Krippner and Alvarez have suggested that Granovetter is not engaging with Polanyi but "advancing a wholly different concept" that leaves Polanyi's critique of the "analytically autonomous economy" intact.<sup>757</sup> This is echoed by Beckert, who notes the "cumulative interpretative misunderstandings" pitching embeddedness at the heart of economic sociology, and by Maucourant and Cangiani, who point out the difference in focus of both writers, Granovetter of economic agents; Polanyi of the institutional arrangements of the economic system as a whole.<sup>758</sup> Lie, by contrast, has described Polanyi's concept of market exchange as "disembedded".<sup>759</sup> Instead, he accuses Polanyi of a "moral critique of the sociologically empty market concept of neoclassical economics without probing its weakness by way of investigating 'the concrete social relations of those who buy and sell'".<sup>760</sup>

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<sup>754</sup> Krippner (n 27) 778.

<sup>755</sup> *ibid.* Emphasis in original. Ironically, this echoes criticisms by Coase and other New Institutional Economists who realised that analysis of the market itself was lacking in their approaches too. See above, section 2.2.2 Transaction Cost Economics and why institutions matter.

<sup>756</sup> Granovetter (n 48) 481, 487. Cited in Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611) 326. (Emphasis in Dale).

<sup>757</sup> Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611) 327.

<sup>758</sup> See *inter alia* Beckert (n 645) 43. M Cangiani and J Maucourant, 'Introduction', in Cangiani and Maucourant (eds) *Essais de Karl Polanyi*, (Seuil 2008), cited in Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611) 327.

<sup>759</sup> Lie (n 631). Cited in Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611) 328.

<sup>760</sup> *ibid.*

Nevertheless, Granovetter's work on the nature of social ties and the implications of embeddedness "created a paradigmatic shift and bridged the structural hole which previously existed between economic sociology and [other disciplines]".<sup>761</sup> Granovetter's focus on strong, weak, and non-existent ties was derived through what he called "a rough intuitive basis", and he later used his theory of embeddedness as a method for analysing the use of weak ties that allowed individuals to use and manipulate their position within networks to access distant ideas, influences and information.<sup>762</sup> Using the language of rationality, Granovetter later noted that "[w]hat looks to the analyst like non rational behaviour may be quite sensible when situational constraints, especially those of embeddedness, are fully appreciated".<sup>763</sup>

Instead, through his use of the term, Granovetter endorses "the analysis of institutions in terms of a single aspect, the configuration of network ties" in a way that almost inverts Polanyi's initial meaning and echoes Parsons's strategy for establishing sociology some fifty years earlier.<sup>764</sup> Frustratingly though at this point, Parsons's "introduction of an analytical schema marking off discrete economic and social domains of knowledge" tends to "shade into an ontological proposition".<sup>765</sup> This is regardless of the fact that Parsons himself never realised this in so many words, and this distinction still haunts and shapes economic sociology to this day.<sup>766</sup>

### Problems with Granovetter

Uzzi has been critical of Granovetter's work. While he welcomes its "potential [...] for joining economic and sociological approaches to organisation theory", he criticises its "theoretical indefiniteness".<sup>767</sup> There is a recognition that "embeddedness in different types of social networks and contexts provides access

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<sup>761</sup> Mckeever, Anderson and Jack (n 601) 224.

<sup>762</sup> E Chell and S Baines, 'Networking, entrepreneurship and micro-business behaviour', *Entrepreneurship and Regional Development* (2000) 12, 195-215, cited in *ibid* 225.

<sup>763</sup> Granovetter (n 48) 506.

<sup>764</sup> Krippner (n 27) 777.

<sup>765</sup> *ibid*.

<sup>766</sup> *ibid*.

<sup>767</sup> Uzzi (n 580) 35.

to different types of resources and possibilities”.<sup>768</sup> According to Uzzi, not all “weakly acquainted ties will become embedded”, however such “loose-coupling provides an opportunity to begin offering and accepting symbolic acts of trust and mutuality development”.<sup>769</sup> By contrast, Fukuyama explains this in terms of “the development of social, cultural and cognitive commonalities”.<sup>770</sup> Thus, “[f]rom a behavioural and cognitive perspective, embeddedness then is a process of becoming part of the structure”, or in the language of Bourdieu, “genetic structuralism”.<sup>771</sup> For Bourdieu, “[i]t is not that modernization leads to disembedding in the sense of making networks and social institutions irrelevant, but structural changes devalue specific forms of embeddedness and force actors into new modes of social organization”.<sup>772</sup>

However, this belies the complexity of the process of embedding though, which Jack and Anderson argue consists of the three aspects of “(1) ‘understanding’ the nature of the structure, (2) ‘enacting’ the structure, and (3) ‘maintaining’ both the link and the structure”.<sup>773</sup> Thus in the field of business and entrepreneurialism there has been a “growing appreciation of embeddedness as an affective condition between entrepreneurs and their networked environments” with both positive and negative effects.<sup>774</sup>

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<sup>768</sup> Mckeever, Anderson and Jack (n 601) 227.

<sup>769</sup> Brian Uzzi, ‘Embeddedness in the Making of Financial Capital: How Social Relations and Networks Benefit Firms Seeking Financing’ (1999) 64 *American Sociological Review* 481. Cited in Mckeever, Anderson and Jack (n 601) 227.

<sup>770</sup> Fukuyama (n 200). Cited in Mckeever, Anderson and Jack (n 601) 227.

<sup>771</sup> Mckeever, Anderson and Jack (n 601) 227. P Bourdieu, *Outline of a Theory of Practice* (Cambridge University Press 1977), cited in *ibid*.

<sup>772</sup> Bourdieu, *Travail et Travailleur en Algérie. Étude sociologique* (Paris, Mouton, 1963), cited in Beckert (n 645) 53.

<sup>773</sup> SL Jack and SL Anderson, ‘The effects of embeddedness on the entrepreneurial process’ (2002) *Journal of Business Venturing* 17(5), 476-87, cited in Mckeever, Anderson and Jack (n 601) 227–8.

<sup>774</sup> *ibid* 228.

### 5.1.2 Alternative interpretations of embeddedness

Other authors have chosen to reformulate and strengthen embeddedness. Zukin and DiMaggio, noting that organizational and political economy perspectives (roughly corresponding to the Granovetterian and Polanyian approaches) in economic sociology have yet to be integrated, attempt to do so by identifying four forms of embeddedness: structural, cognitive, political and cultural.<sup>775</sup> The last three of these primarily “reflect social constructionist perspectives on embeddedness”, while structural embeddedness is concerned with “how the quality and network architecture of material exchange relationships influence economic activity”.<sup>776</sup> The notion of cognitive embeddedness is taken up again in relation to Perry-Kessaris’ reading of Frerichs’ layers of social interaction, and whether we can argue that the economy is cognitively or normatively embedded.

By contrast, Brian Uzzi has taken embeddedness into the workplace, applying it to empirical research in manufacturing. In particular, he links embeddedness to orthodox economics theories in a way that tends to subvert Polanyi’s original meaning and which again highlights the flexibility and ubiquity of the term. Despite his wariness of the concept, Uzzi uses an embeddedness continuum, noting that “embedded exchanges have several distinctive features”, notably the prevalence of “trust and personal ties” as observed in Japanese auto and Italian knitwear industries.<sup>777</sup> There is also a tendency for “thick” information exchange that “promote[s] knowledge transfer and learning”, while the focus of the relationships shifts from narrow economic goals to “cultivating long-term, cooperative ties”.<sup>778</sup> Uzzi concludes that “embeddedness creates economic opportunities that are

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<sup>775</sup> Sharon Zukin and Paul DiMaggio (eds), *Structures of Capital: The Social Organization of the Economy* (Cambridge University Press 1990). Cited in Uzzi (n 580) 35. See the discussion of this in Krippner and Alvarez (n 629) 231. They note that these two approaches do not combine easily, hence the ongoing rift in economic sociology. Krippner’s response is discussed in more detail in section 5.2, below. There also seems some confusion between structural embeddedness and social embeddedness.

<sup>776</sup> Uzzi (n 580) 35–6. Uzzi does not explain how these three types of embeddedness reflect social constructionist perspectives.

<sup>777</sup> *ibid* 36–7.

<sup>778</sup> *ibid* 37.

difficult to replicate via markets, contracts, or vertical integration”.<sup>779</sup> His research found that “embedded relationships have three main components that regulate the expectations and behaviours of exchange partners: trust, fine-grained information transfer, and joint problem-solving arrangements”.<sup>780</sup>

Embeddedness has also carved out a niche in New Institutional Economics approaches. In this field, it has become a shorthand “for the ways in which the choices of individuals are conditioned by the institutional context in which they find themselves”.<sup>781</sup> This once again reflects the use of the term that seeks to expand the horizons of orthodox approaches without devoting too much attention to the institutional and social backdrop informing those economic aspects of interactions. Reddy has also used the term to describe the shift in France from a market society to a market culture, “when the language of the mirage insinuated its assumptions into the everyday practice”.<sup>782</sup> Fligstein employs the concept combining the insights of the embeddedness approach with that of the cultural frame approach, and has used this to analyse problems within the European Union.<sup>783</sup>

By contrast, Viviana Zelizer’s cultural approach to the study of markets looks at “institutional circuits through which the most reified emanation of the market – money – travels, acquiring distinct social meanings.”<sup>784</sup> Taking a “multiple markets” approach, she sees the market as “the interaction of cultural, structural, and economic factors”.<sup>785</sup> She proposes that social relations personalize money rather than the opposite, infusing cultural content into the very core of the economy, although once again these are treated as separate entities. On the other hand,

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<sup>779</sup> *ibid.*

<sup>780</sup> *ibid.* 42.

<sup>781</sup> Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 325. Dale refers to C Menard and M Shirley, ‘Introduction’, in Menard and Shirley (eds) *Handbook of New Institutional Economics* (Cheltenham; Edward Elgar 2005).

<sup>782</sup> WM Reddy, *The Rise of Market Culture* (Cambridge University Press 1984) 1-2, cited in Lie (n 631) 348. Cf. John Gray, *False Dawn: The Delusions of Global Capitalism* (London, Granta Books 1998); John Gray, *Heresies: Against Progress and Other Illusions* (Granta 2004).

<sup>783</sup> Neil Fligstein, ‘Markets as Politics: A Political-Cultural Approach to Market Institutions’ (1996) 61 *American Sociological Review* 656. Cited in Lie (n 631) 350.

<sup>784</sup> Zelizer, *The Social Meaning of Money* (n 38); cited in Krippner (n 148) 801.

<sup>785</sup> V Zelizer (1988) ‘Beyond the Polemics on the markets: establishing a theoretical and empirical agenda’ (1988) *Sociol. Forum* 3, 614-34, 618, cited in Lie (n 631) 349.

Burawoy locates politics *inside* of production, arguing that processes of production involve (simultaneously) “the production of things, the production of social relations, and the production of consciousness of those relations”.<sup>786</sup>

Barber also tackles embeddedness, explaining that economic exchange is “only *one* type of the general process of social interaction”, which is determined “in part, but only in part, by norms and values”.<sup>787</sup> He proceeds that “each type of social interaction is also and always interdependent with a whole variety of partly independent social-structural, cultural structural, and personality-structural variables of the social system”.<sup>788</sup> While this interdependence can be positive and negative, each interaction is influenced by other social and cultural variables as “kinship institutions, ‘knowledge’ institutions, religious institutions (as Weber only most notably argued), and governmental institutions”.<sup>789</sup> Barber highlights the work of Terrance Hopkins and Immanuel Wallerstein who developed world systems theory which criticised the absolutization of the market.<sup>790</sup> Although “sociologists are not receptive to social system analysis”,<sup>791</sup> these ideas have not travelled far in sociology or economic sociology.

Wayne Baker and Ronald Burt were some of the earliest theorists to take up the idea of embeddedness and use it to inform empirical research, although more recently Baker’s work has discussed *double embeddedness* and the interactions between structural and cultural embeddedness.<sup>792</sup> They “theorize various properties of markets by mapping out the complex patterns formed by network ties” and emphasize the “structural dimension of market relations”.<sup>793</sup> However such an “austere style of theorizing” makes their work, despite sitting under the

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<sup>786</sup> Michael Burawoy, *The Politics of Production* (London, Verso Press 1985); cited in Krippner (n 148) 801.

<sup>787</sup> Barber (n 38) 395.

<sup>788</sup> *ibid.*

<sup>789</sup> *ibid.*

<sup>790</sup> *ibid* 403.

<sup>791</sup> *ibid* 406.

<sup>792</sup> Wayne Baker and Robert R Faulkner, ‘Social Capital, Double Embeddedness and Mechanisms of Stability and Change’ (2009) 52 *American Behavioural Scientist* 1531.

<sup>793</sup> Krippner and others (n 45) 112.

banner of embeddedness, “hardly less abstract than that of neoclassical economics”.<sup>794</sup> Powell and Smith-Doerr have emphasized the need to reintroduce the *content* of the network ties to the study, rather than just their structure.<sup>795</sup> Nevertheless, the application of embeddedness here seems more like a token acknowledgement of sociology rather than any deep exploration of the social variables that the concept could be brought to contain. By the same token, Hollingsworth and Boyer set out an institutional approach, seeing “hierarchies, networks, associations, communities, and states as institutions of economic governance”.<sup>796</sup> Jones also seeks to reformulate embeddedness in the context of economic geography, proposing “a relational and associational approach” that traces the practices that produce the economic outcomes in the “contemporary global space economy”.<sup>797</sup> While maintaining the absolute need for sociologists to study markets, Lie suggests seeking “an integration of the embeddedness approach with the new political economy (‘politics and markets’) approach”.<sup>798</sup>

A common thread to most of these approaches appears to be their vulnerability to the criticism that use of embeddedness excludes aspects of the social from sociological analysis (the so-called “black box” problem). Used sociologically, the commitment to the concept of embeddedness can result in sociological atomism, offering the opposite end to a continuum with neoclassical economics approaches. Alternatively, it can be applied as an adjunct to existing sociological approaches that aspires to expand horizons without the need to engage in discussions of ontology and epistemology. Ruggie’s “embedded liberalism” and Evans’ “embedded autonomy” appear to avoid either of these limitations because the term is applied lightly and descriptively. It is not used as a methodological point of reference that invites deeper analysis.

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<sup>794</sup> *ibid.*

<sup>795</sup> Powell and Smith-Doerr, *Networks and Economic Life* (Princeton University Press 1994) 371, cited in *ibid.*

<sup>796</sup> Bruce G Carruthers, ‘Reviewed Works: Contemporary Capitalism: The Embeddedness of Institutions by JR Hollingsworth and R Boyer’ (1998) 27 *Contemporary Sociology* 256, 256.

<sup>797</sup> Jones (n 632) 71.

<sup>798</sup> Lie (n 631) 354.

## 5.2 Compatibility: a “Black Box”

This section moves on to the second, more fundamental problem with ESL’s commitment to the concept of embeddedness; its incompatibility with social constructivist understandings of the econolegal. There are two points to note here. The first relates to the “black box” problem, identified by several scholars and touched on briefly in the preceding discussion. This refers to the fact that embeddedness as a relational descriptor leaves the market unavailable for sociological analysis.<sup>799</sup> Cotterrell takes this point the furthest, noting that the term re-entrenches the separation of the phenomena it describes.<sup>800</sup> He concludes that this approach fails to get inside the idea of law sociologically.<sup>801</sup>

This thesis considers the “black box” issue, but then takes a step back to consider the sociological and epistemological context as well as the overarching goals of ESL.<sup>802</sup> These are identified as social constructivist, and re-integrative in the sense that ESL seeks to overcome the disciplinary silos that currently differentiate the social sciences. If these are accepted, the re-entrenchment of the separation and disciplinarity that occurs when we describe relationships as embedded becomes not only incompatible with the surrounding context, but entirely irreconcilable. The continental drift that has differentiated the social sciences since Polanyi’s original description means that the “relational and ontological metaphor” is being asked to work significantly harder than it might have done in 1944 when the social sciences were more amenable to holism.<sup>803</sup>

As a series of ontological metaphors, “the economy”, “the market”, “the law”, “society”, and “embeddedness” work as shared concepts that structure and

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<sup>799</sup> Krippner and others (n 45).

<sup>800</sup> Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (n 22).

<sup>801</sup> *ibid* 52.

<sup>802</sup> Krippner and others (n 45); Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (n 22).

<sup>803</sup> Lakoff and Johnson (n 57).

facilitate our perception and understanding of the world and are necessary for attempting to deal rationally with our experiences.<sup>804</sup> However they can also create realities for us, and in shaping our actions and interactions, can become “self-fulfilling prophecies” that have the potential to “constrain our lives” in a manner similar to the argument put forward by constructivists.<sup>805</sup>

As a descriptive, ontological metaphor, or even methodological tool, embeddedness can be useful and accessible when the concepts or objects being referred to are widely accepted to be conceptually different from each other. However, an ESL responds to the separation of the social sciences, to economics imperialism and doctrinal approaches, and sets out to bring the econolegal back into the social sciences. Indeed, ESL encourages the sociological reconsideration of the econolegal in a way that recognizes that economic and legal aspects of interactions are at the same time both universal, but not the totality of aspects of interactions.

By taking a specifically sociological approach to legal and economic phenomena, ESL (explicitly or implicitly) suggests that, consistent with constructivist approaches, the legal and economic *are aspects of the social* and should be analyzed as such. Given this, the *a priori* acceptance of the conceptual separation of “the market” from “society” that occurs as a result of arguing that “the economy is embedded in society” works to re-entrench the separation and distinctions that an ESL exists primarily to address. We simply cannot argue that “the law (for example) is embedded in society” without admitting that these two phenomena are conceptually separate, a conclusion that runs counter to the initial assumptions of ESL. And even an acceptance of this then leaves the law as a sphere of interaction that is not subject to sociological analysis; the so-called “black box” issue identified by Krippner et al.<sup>806</sup>

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<sup>804</sup> *ibid* 26.

<sup>805</sup> *ibid* 156, 236.

<sup>806</sup> Krippner and others (n 45). Here the discussion focused on the enclosure of the market in a black box, leaving it unavailable to sociological analysis by economic sociology.

Addressing the relationship between the market and society, Krippner has suggested that the “relative neglect of the concept of the market in economic sociology is a result of the way in which the notion of embeddedness has been formulated”.<sup>807</sup> Thus, “the basic intuition that markets are socially embedded [...] has led economic sociologists to take the market itself for granted”.<sup>808</sup> It should be noted that this is not a criticism confined to Economic Sociology or ESL. Douglass North and Ronald Coase are both quoted as lamenting the fact that neoclassical economics “contains so little discussion of the central institution that underlies neoclassical economics – the market” and that “discussion of the marketplace itself has entirely disappeared”.<sup>809</sup> Nevertheless, a sociological perspective needs to be able to analyse *all* aspects of social interaction sociologically, including the aspects that economists refer to as “the market”.<sup>810</sup>

Krippner denies the possibility of reconciling Granovetter’s and Polanyi’s versions of embeddedness as Zukin and DiMaggio have tried to do, given their ubiquity in the literature in economic sociology and economic sociology of law.<sup>811</sup> Granovetter’s roots in Parsonian sociology means that his approach also sees actors atomistically in much the same way as neo-classical economics. This results in both extremes sharing a vision of the world that is “sharply demarcated into neatly bounded and essentially separate realms”.<sup>812</sup> The approaches that have come to characterise economic sociology, even the “New Economic Sociology”, have not escaped the sharp separation of the economic from the social, resulting in “an impoverished analysis of both poles”.<sup>813</sup> This has more fundamental consequences though, given

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<sup>807</sup> Krippner (n 27) 776.

<sup>808</sup> *ibid.* Randles has also made this point, see Randles (n 586).

<sup>809</sup> Douglass North, ‘Markets and Other Allocation Systems in History: The Challenge of Karl Polanyi’ (1977) 6 *Journal of European Economic History* 703. See also Coase (n 209). Cited in Callon, ‘Introduction: The Embeddedness of Economic Markets in Economics’ (n 214) 1, 54.

<sup>810</sup> Callon seems to suggest that his performative approach to economy and economics effectively bridges the gap between the theoretical and practical, solving the black box problem that economic sociology highlights by means of a linguistic reconceptualization. See Callon, ‘Introduction: The Embeddedness of Economic Markets in Economics’ (n 214).

<sup>811</sup> Krippner and Alvarez (n 629).

<sup>812</sup> Krippner (n 27) 777.

<sup>813</sup> *ibid.*

that Polanyian and Granovetterian versions of embeddedness are both subject to the same criticisms but are setting out to achieve different goals. Krippner and Alvarez point out that, by focusing on one particular aspects of the neoclassical paradigm as its primary targets, each approach “tends to exacerbate the problem resolved by the other”, making the reconciliation of the two broad embeddedness interpretations at the heart of an economic sociology and ESL actually counter-productive.<sup>814</sup> Moreover, “embeddedness references a very different relationship between the economic and the social for each of these traditions”, making the field incoherent almost beyond repair.<sup>815</sup>

Krippner’s critique is echoed and expanded on by Cotterrell.<sup>816</sup> He addresses the fundamental and intractable problem with the terminology, the ultimate separation of the concepts being discussed, and the consequent semantic re-entrenchment of the silos that have come to define law, economics and sociology within the social sciences.<sup>817</sup> Cotterrell suggests that Granovetter “has run the ship aground on a conception [...] that insists on the separate nature of economy and society”.<sup>818</sup> Ironically, “the effort to embed economy in society has ended with an entrenchment of *their separation*”.<sup>819</sup> He continues that “[w]hile the social contexts of market relations and institutions are put at the centre of study, the market itself is left as a kind of ‘black box’, beyond sociological analysis”.<sup>820</sup> While acknowledging that this argument is open to challenge, Cotterrell states that it is important not only as a potential flaw in embeddedness, but also as an argument that parallels a serious challenge to sociology of law and socio-legal enquiries. This states that much sociology of law literature can be criticized for “failing to analyse *the idea of law itself* sociologically; for failing to ‘get inside’ legal ideas and doctrines and reinterpret them sociologically, so as to understand how and why they have taken

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<sup>814</sup> Krippner and Alvarez (n 629) 231.

<sup>815</sup> *ibid* 232.

<sup>816</sup> Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (n 22).

<sup>817</sup> *ibid*.

<sup>818</sup> *ibid* 51–52.

<sup>819</sup> Krippner and others (n 2) 112–113; cited in Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (n 42) 51–2. Emphasis in original.

<sup>820</sup> Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (n 22) 52.

particular forms and developed in certain directions rather than others and how they embody particular understandings of the nature of social life and exclude others".<sup>821</sup>

Cotterrell also addresses the need to understand the phenomena empirically as well as sociologically. Embeddedness focuses our attention so much on what is embedded, in what, and how the disciplines interface, that we ignore (at our peril) "how the phenomena themselves are structured (as social entities)".<sup>822</sup> This is crucial for developing work that enquires into the formulations of social interactions that are currently described as "the law" or "the market". Cotterrell insists that "*what* is embedded (law and economy) must be explained by sociological enquiry".<sup>823</sup> Given the imprecision and inadequacy of embeddedness as a conceptual tool, Cotterrell reminds us that any "sociology of law and economy [...] must address intellectual and moral-political concerns that its use reflects".<sup>824</sup>

Ashiagbor has argued that the concept of embeddedness can convey the "*interdependence* of market and society", reflecting the "*varieties* of institutional regulation", ideas, rules and structures.<sup>825</sup> According to this argument, the term's ubiquity can incorporate a flexibility, providing that "specific characteristics of modern capitalist economies" or "market organisation" are not inferred or implied.<sup>826</sup> While this approach straddles the accumulated "baggage" of embeddedness and reflects the re-co-constitution of market and society, it also reflects the feedback loops between the two spheres. This is important in recognising that the feedback channels work in both directions, and as is the case also with law and legal aspects of interactions, each is relevant in shaping the other(s). While a focus on interdependence can enhance embeddedness as a relational descriptor and visual metaphor, it does not remove the term. Thus, the

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<sup>821</sup> *ibid.*

<sup>822</sup> *ibid.*

<sup>823</sup> *ibid.*

<sup>824</sup> *ibid.* 49.

<sup>825</sup> Ashiagbor (n 40) 269.

<sup>826</sup> *ibid.*

black box issue remains, as do the fundamental incompatibilities between the implications of embeddedness and the core reintegrative goals and constructivist assumptions underpinning ESL.

Even the name “An Economic Sociology of Law” has its own “black box” problem in the simple labelling of its constituent parts. This indicates the assumption and acceptance *a priori* that these three aspects of social interaction are (empirically and conceptually) – and *should be* (normatively) – studied and observed separately, with different approaches, literature, methods and terminology. This is, though, an assumption that is contradicted by a preliminary reading of the aims of the movement.<sup>827</sup>

### **5.3 Conclusions**

The discussion has explored the two main flaws that make ESL’s conceptual commitment to embeddedness problematic. The term is inconsistent in both its meaning and application. Secondly, it serves to tacitly re-entrench the disciplinary separation that contradicts the reintegrative goals of ESL. This makes it incompatible with any constructivist understanding of the econolegal that sees this as re-co-constituted through and within interactions.

The conceptual commitment to embeddedness reaches further. The term acts as a convenient coat hook on which economic sociologists and ESL can jointly challenge mainstream, econo-centric frames. It is both ubiquitous and accessible, having been derived from a visual metaphor, but translated into relational descriptor. Over time, the metaphor has solidified, meaning that whereas the description captured the flexibility and dynamism of the ever-changing relationship between the social and econolegal, it now represents a static dualism. Whereas it initially enabled a challenge to free-market, neoclassical economics by emphasising the role of the

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<sup>827</sup> Ashiagbor, Kotiswaran and Perry-Kessaris, ‘Introduction: Moving towards an Economic Sociology of Law’ (n 28); Ashiagbor, Kotiswaran and Perry-Kessaris, ‘Continuing towards an Economic Sociology of Law’ (n 28).

state and society, it now serves to re-entrench their dominance. As Ewick and Silbey say, a concept is like a tool, and “once you have a hammer, everything is a nail”.<sup>828</sup> This captures the full impact of the conceptual commitment to embeddedness, both within ESL and more broadly.

When used with precision, the term illuminates, describes and highlights the flaws of mainstream approaches. But the term has become so ubiquitous – in ESL literature and beyond – that it functions now not as a concept to which we are committed, but as an unthought rationality. The term is used to invoke opposition to neoclassical economic frames, without any awareness that the differentiation at its core reinforces the disciplinarity to which the social sciences have succumbed. Those disciplinary silos and the walls separating them enable a competition between disciplines. And when social science disciplines compete for funding and attention, neoclassical economics has proven that it can provide clean, precise, compelling answers to society’s most complex problems.

While a conceptual commitment to embeddedness within ESL reveals the flaws in mainstream approaches, it simultaneously conceals or masks its own shortcomings. As a concept, it cannot show us a constructivist understanding of the econolegal, as this is antithetical to its central meaning. A conceptual commitment to embeddedness within ESL, then, is a linguistic tool that shapes the way we are able to talk about the econolegal. By shaping our linguistic tools and our mental models, a conceptual commitment to embeddedness therefore actively constrains our ability to respond sociologically to mainstream ways of doing, thinking about, and talking about, the econolegal. Indeed, it actively reinforces them. While this is a mainly academic concern for ESL-based conceptual discussions, the implications for real-world interactions cannot be overstated. The following chapter takes up some of these questions in their application to real-life examples in the three cases studies.

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<sup>828</sup> Ewick and Silbey (n 63) 226.



## **6. Exploring embeddedness empirically in three case studies**

ESL's perpetual commitment to the concept of embeddedness raises issues and inconsistencies that are not only fundamental to the field itself, but which raise larger questions of our wider ability to respond to dominant regimes and rationalities. The previous chapter explored the ongoing conceptual commitment to embeddedness on our linguistic tools and mental models. Regardless of the limitations the concept of embeddedness continues to illustrate, inspire and exercise authors within ESL. This chapter takes an empirical approach to assess the implications of the conceptual commitment. Firstly, it compares two interpretations of specifically Polanyian embeddedness. Fred Block and Gareth Dale have both published widely on the life and work of Karl Polanyi, yet their interpretations of Polanyian embeddedness sit in opposition. Regardless of this, both authors still choose to use the term but strengthen or broaden it.

The second part of this chapter then turns to the three empirical case studies to explore the implications of the concept in real-world settings. Each case study explores a different aspect, looking at the empirical, conceptual and normative implications. The third case study compares two popular economics books that were published in the wake of the 2008 financial crisis. Each invokes the fashion for the concept of embeddedness, but each applies the term differently. The discussion mirrors closely that of Block's and Dale's interpretation of Polanyian embeddedness, but in a wider forum than ESL, and with correspondingly larger ramifications. If the linguistic tools and mental models we have available to us actively re-entrench the disciplinarity and economics imperialism that the previous chapter has discussed, how is it possible to conceive of alternative regimes and rationalities?

## 6.1 Inconsistencies of interpretation: A Comparison

Despite its limitations, the concept of embeddedness remains at the heart of challenges to neoclassical economics, with many authors calling for a ‘re-embedding’ of the economy in society, and for more attention to be paid to structural and historic contexts as well as to how these shift over time.<sup>829</sup> In choosing not only to commit to embeddedness, but also to seek strengthen or enhance it, these authors are favouring a substantive (“oversocialized”) view over the formalist (classical economics, “undersocialized”) approach.<sup>830</sup> The following discussion illustrates the empirical implications of a conceptual commitment to embeddedness.<sup>831</sup>

### 6.1.1 Block’s Polanyian embeddedness

Block’s work on Polanyi extends across several volumes and papers, notably taking an overview of Polanyi’s historical analyses with particular emphasis on the Speenhamland system.<sup>832</sup> Block’s approach to embeddedness is to think of the market as a variable; as something that is more or less present and operates along a sliding scale of *marketness*.<sup>833</sup> This mental shift would allow researchers to assess the marketness of any given society, historically or currently. This sliding scale is said to operate between the extremes of “high marketness” where a competitive

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<sup>829</sup> J Ron Stanfield, ‘Karl Polanyi and Contemporary Economic Thought’ (1989) 47 *Review of Social Economy* 266, 277. Cf. John Lie, who notes that with regard to economic anthropology and culture, the formalist-substantivist debate “no longer offers a compelling starting point”, see Lie (n 631) 347, 351.

<sup>830</sup> The terms “oversocialized” and “undersocialized” are borrowed from Granovetter (n 48).

<sup>831</sup> Stanfield, ‘Karl Polanyi and Contemporary Economic Thought’ (n 829) 277; Krippner and others (n 45).

<sup>832</sup> See also Fred Block and Margaret R Somers, *The Power of Market Fundamentalism: Karl Polanyi’s Critique* (Harvard University Press 2014); Fred Block and Margaret Somers, ‘In the Shadow of Speenhamland: Social Policy and the Old Poor Law’ (2003) 31 *Politics & Society* 283; Fred Block and Margaret R Somers, ‘Beyond the Economistic Fallacy: The Holistic Social Science of Karl Polanyi’, *Vision and Method in Historical Sociology*, Theda Skocpol (ed) (Cambridge University Press 1984).

<sup>833</sup> See Fred Block, *Postindustrial Possibilities: A Critique of Economic Discourse* (University of California Press 1990) <<http://www.jstor.org/stable/10.1525/j.ctt1pp619>> accessed 14 April 2017; Krippner and others (n 45) 111.

market of economic theory is in operation, to “low marketness” corresponding to organizational hierarchies.<sup>834</sup> Therefore, at the high marketness end of the scale, there is nothing to interfere with the price mechanism, set out in orthodox economic theory. However, as one moves down the scale, “nonprice considerations take on greater importance”.<sup>835</sup>

With regard to how “social” market relationships are, Block adds that “[t]he term ‘market’ should be reserved for situations in which relatively independent actors come together to make economic transactions of limited duration”.<sup>836</sup> This removes from consideration the social aspects of all economic transactions however.

Krippner states that “[t]he strategy of economic sociology – exemplified here by Block’s construction of ‘marketness’ – has been to whittle away at the market construct, revealing that an ever-greater share of transactions are enacted through social relationships”, ignoring their intrinsic co-existence.<sup>837</sup>

Block then expands his reading of embeddedness to encompass “thick” and “thin” interpretations of the term. Block’s understanding for reading Polanyian embeddedness in this light is what he terms an “epistemological break” in Polanyi’s thought across the twenty or so years that he was working on the book. Polanyi “discovered the lost continent” of the always-embedded economy” but didn’t know quite what to call it, hence why we are left with the term “embeddedness” which fails to do the concept justice.<sup>838</sup> Given this, Block’s proposal is to take the concept of the “always embedded market economy” and reinvigorate it with a “thick” reading of embeddedness that takes for granted that the market is always politically embedded.<sup>839</sup> This can be taken as read because of the reliance of the market on legal rules, politically-designed and created institutions, and so on. But Block also goes on to state that markets must also be seen as morally embedded, although in

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<sup>834</sup> Krippner and others (n 45) 111.

<sup>835</sup> Block, *Postindustrial Possibilities* (n 833) 53.

<sup>836</sup> Krippner and others (n 45) 111.

<sup>837</sup> *ibid* 112.

<sup>838</sup> *ibid* 117.

<sup>839</sup> Block, in *ibid* 118.

a better or worse way, and that it is the “market society’s guilty secret that it is fundamentally dependent on a moral order”.<sup>840</sup> Block’s rationale is that the market must be morally based, but this dependency has been eclipsed over the past couple of centuries by the story that the market is a rational expression of natural evolution, and that choices made by actors are not morally based but the mere expression of rationality. Block’s contention here is that without moral embeddedness, the market would simply not function, as seen in post-Soviet Russia, and at any point where trust has evaporated and the market grinds to a halt.

So, we are left with thick and thin notions of embeddedness, and high and low marketness where market rationality is more or less present, as set out in **Error! Reference source not found.9**, below. This plots both Block’s and Dale’s positions within a Blockian framework. Block’s understanding is that the market must be “always embedded” because it relies on the State to function and is therefore always embedded in institutions and society (expressed through state action). The idea of the self-regulating market is nothing more than a utopian fiction. But in addition to being politically embedded, the market is also morally embedded because it relies on trust and a knowledge of basic human interaction to function. As Dale comments, “given that a moral and institutional framework is invariably present, this approach directs attention towards the different degrees and characteristics of ‘marketness’ and of ‘embeddedness’ in different economic structures”.<sup>841</sup>

Block has continued to explore this in his later work, including questions such as “in what ways are transactions and contracts embedded in social relations such as family ties, friendships or long-term supplier-contractor relations? To what extent do non-economic goals such as moral or spiritual commitments shape economic

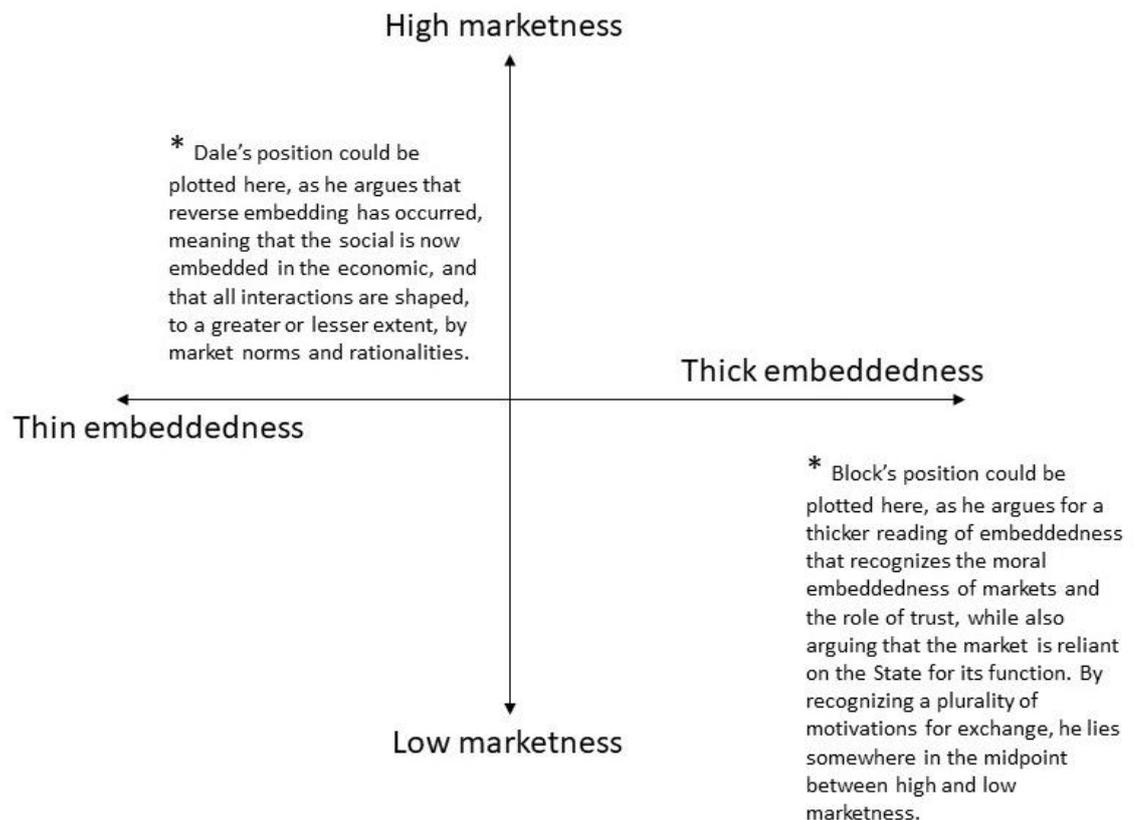
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<sup>840</sup> *ibid.*

<sup>841</sup> Gareth Dale, *Karl Polanyi: The Limits of the Market* (1 edition, Polity 2010) 200; Fred Block, ‘Contradictions of Self-Regulating Markets’, *The Legacy of Karl Polanyi: Market, State and Society at the End of the Twentieth Century*, Marguerite Mendell and Daniel Salée (eds.) (Macmillan 1991).

behaviour?”<sup>842</sup> These questions inform the first case study, below, in the setting of the Beragama riots in southern Sri Lanka.

Figure 9 - Plotting the interpretations of Polanyian embeddedness of both Block and Dale



**Error! Reference source not found.**9, above, visually compares Block's and Dale's interpretations of Polanyian embeddedness. High marketness is a situation in which rational utility maximisation and the competitive market of economic theory is the primary determinant of exchange, minimising other social, traditional, religious or other motivations. Low marketness, by contrast, is when these latter take centre

<sup>842</sup> Dale, *Karl Polanyi* (n 841) 200. For further exploration of these issues, see Fred Block, 'Swimming Against the Current: The Rise of a Hidden Developmental State in the United States' (2008) 36 *Politics & Society* 169.

stage. Thick embeddedness represents a recognition of the political and moral embeddedness of the market necessary in order for it to function. Thin embeddedness denies this, recognising only the market function within society.

*Criticisms of Block's interpretation*

Krippner has called Fred Block's "effort to invoke Polanyi in outlining a program for economic sociology" as "generally more successful", yet one which also "falters on the market concept".<sup>843</sup> Block's main contribution in this regard is a "stripped down version of the market", in which he suggests "that economic sociologists ought to begin to think of the market not as a fixed entity, but as a variable, something *more or less present*", that would allow researchers to assess the "marketness" of given societies or historical periods.<sup>844</sup> Block's continuum from "high marketness" (corresponding to the competitive market of classical economic theory) to "low marketness" (organizational hierarchies) sees "nonprice considerations" taking on greater importance as one moves down the continuum.<sup>845</sup> This is problematic as "social" factors "enter into the analysis only as one moves away from the market end of the continuum, preserving intact the asocial market construct".<sup>846</sup> Indeed, as Block himself notes, "[a]s the marketness of transactions diminishes, economic behaviour tends to become embedded in a more complex web of social relations", denying the possibility that markets themselves can represent "complex social relations".<sup>847</sup> Krippner is forced to pose the question of whether markets "however closely they conform to the stipulations of economic theory – ever exist outside of the context of political contestation?"<sup>848</sup> She concludes that Block's difficulties here "are symptomatic of a broader tendency in economic sociology to conflate the duration of a market relationship with the degree to which it is 'social'".<sup>849</sup> And yet, as so often in sociology and socio-legal analysis, the length of the relationship is

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<sup>843</sup> Krippner (n 27) 784.

<sup>844</sup> *ibid* 799, 784. Emphasis in original.

<sup>845</sup> Block, cited in *ibid* 784.

<sup>846</sup> *ibid*.

<sup>847</sup> Block, cited in *ibid*.

<sup>848</sup> *ibid*.

<sup>849</sup> *ibid* 785.

crucial to understanding its stability and the strength of its relations. For Cotterrell, networks of community can develop over time, given the right set of conditions and mutual interpersonal trust.<sup>850</sup>

Krippner's assertion that this whittles away at the construct of the market is not necessarily the case if we accept that even at the extreme end of high marketness, Block's approach does not deny the existence of social norms and rationalities that influence behaviour. Instead, it denies their importance in determining the outcome. As we move back down the scale to lower marketness, these matters do not suddenly appear for the first time, but simply gain greater weight in the decision-making process. Thus, the market is not cut off from sociological analysis as Krippner argues, if those other factors are recognised as present in a state of high marketness but having less weight than they might in an area of low marketness. Admittedly, this is an awkward reading of Block's position, considering his request to consider the market as "more or less present".<sup>851</sup>

Krippner acknowledges that market relations can be social in a very literal sense, often involving ties of friendship or family and "enacted through social engagements that extend beyond the spatial and temporal confines of the business day, [... eliciting] intense feelings of loyalty".<sup>852</sup> However, this "leaves the hard core of instantaneous market transacting outside the realm of economic sociology", ignoring the point that "every transaction, no matter how instantaneous, is *social* in the broader sense of the term".<sup>853</sup> Krippner states unequivocally that "congealed into every market exchange is a history of struggle and contestation that has produced actors with certain understandings of themselves and the world that predispose them to exchange under a certain set of social rules and not another".<sup>854</sup>

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<sup>850</sup> Cotterrell, *Law's Community* (n 103).

<sup>851</sup> Krippner and others (n 45) 111.

<sup>852</sup> Krippner (n 27) 785.

<sup>853</sup> *ibid.*

<sup>854</sup> *ibid.*

She concludes that “[i]n this sense, the state, culture, and politics are *contained* in every market act”.<sup>855</sup>

She finds it “deeply troubling” that, given the way economic sociology has evolved, “sociologists have only been able to study markets by stripping them of the features that most make them social”.<sup>856</sup> She concludes that “we will be unable to grasp markets fully as constitutive of and constituted by social relations until the concept of embeddedness is liberated from intellectual antecedents that presuppose the separation of economy from broader realms of social life”.<sup>857</sup> This goes to the heart of the key contention in this thesis, that until we move beyond the metaphors that present “economy” (and “law”) as distinct entities, separate from the social, the “black box” comes into play and we are unable to subject either the economy or the law to sociological analysis.

Dale has described Block’s interpretation of Polanyi as “influential”, yet not without its critics.<sup>858</sup> Dale cites Krippner’s critique of Block’s work, that his framework simply reinforces the asocial market construct “that has long blighted economic sociology”.<sup>859</sup> Ron Stanfield also notes that the economy is “always instituted by a socialization process”, although as Dale points out, at this level of abstraction, “it is difficult to dispute the institutional and normative embeddedness of free market capitalism”.<sup>860</sup> McCloskey has also weighed in, “knocking for six the notion that the ‘always embedded’ thesis is original to Polanyi”, although critics have noted that Polanyi was in fact making a fresher point than merely reinventing an 18<sup>th</sup> century wheel.<sup>861</sup> “The novelty of the market economy is that its institutional embedding

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<sup>855</sup> *ibid.*

<sup>856</sup> *ibid* 797–798.

<sup>857</sup> *ibid* 798.

<sup>858</sup> Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 330.

<sup>859</sup> *ibid.*

<sup>860</sup> J Ron Stanfield, *The Economic Thought of Karl Polanyi: Lives and Livelihood* (Palgrave Macmillan 1986) 107 <<https://www.palgrave.com/gb/book/9780333396292>> accessed 18 June 2018. Cited in Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 331.

<sup>861</sup> Deirdre N McCloskey, *Bourgeois Towns: How Capitalism Became Virtuous, 1300-1776* (2009) <[deirdremccloskey.org/docs/towns2.2009](http://deirdremccloskey.org/docs/towns2.2009)> accessed 19 November 2018; Dale, ‘Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept’ (n 611) 331.

involves its diremption from non-economic institutions in manner [sic] that negates both social control over economic institutions and moral behaviour within them".<sup>862</sup> By stepping into Polanyi's "mental universe", Dale argues that saying that "the liberal market is 'embedded' in the sense of 'instituted' then, does not negate its 'disembeddedness' at other levels".<sup>863</sup> He continues that the "term does not denote the economy's separation from society but from non-economic institutions, a separation that produces a rift between individual and society and a resulting moral degeneration".<sup>864</sup> Thus, what Block's critics point out is the uniqueness of modern market society, and as Stanfield describes, the self-regulating market has its own "logic [...], process of control [...], and teleological momentum [...]", meaning that it is "necessarily superordinate to society".<sup>865</sup> As Dale concludes, this is why "it does make sense to speak of a disembedded economy, and even to conceive of it as one in which society is embedded".<sup>866</sup>

### **6.1.2 Dale's Polanyian embeddedness**

By contrast, Gareth Dale, also a prolific scholar on Polanyi's life and work, has interpreted Polanyian embeddedness differently. While Block sees the market as "always embedded", Dale argues that the economy has disembedded and that society is now embedded within the economy.<sup>867</sup> For Dale, the free markets of the twentieth century have hollowed out a section of interactions which serve the imperatives of the free market. Accordingly, all normative systems fall in line with

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<sup>862</sup> Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611) 331.

<sup>863</sup> *ibid* 332.

<sup>864</sup> *ibid*.

<sup>865</sup> J Ron Stanfield, *Economics, Power and Culture: Essays in the Development of Radical Institutionalism* (Macmillan 1995) 116; Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611) 332.

<sup>866</sup> Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611) 332.

<sup>867</sup> See in particular Dale, *Karl Polanyi* (n 841); Gareth Dale, *Karl Polanyi: A Life on the Left* (1 edition, Columbia University Press 2016); Gareth Dale, 'Social Democracy, Embeddedness and Decommodification: On the Conceptual Innovations and Intellectual Affiliations of Karl Polanyi' (2010) 15 *New Political Economy* 369. However cf. Beckert (n 645).

free market mentality and rationalities, resulting in the reverse embedding of society in the economy.<sup>868</sup>

Dale bases his reading of Polanyi's use of the term by taking a historical perspective of embeddedness. He claims that Polanyi was influenced in this by Marx, Weber and Tönnies, and that over time, the term has become central to sociology.<sup>869</sup> Dale contends that Polanyi drew on the Weberian *Gemeinschaft-Gesellschaft* distinction in formulating his ideas, with *Gemeinschaft* corresponding most closely to the embedded economy, while *Gesellschaft* represented the atomisation of society and the disembedding of the economy.<sup>870</sup> Hence, while Polanyi's earlier usages of embeddedness referred to a Marxian-Tönniesian incarnation of the term, by the time Polanyi was writing *The Great Transformation*, his thinking had grown closer to that of Weber, and this is reflected in his formation of embeddedness.<sup>871</sup>

Yet we are still no closer to understanding exactly what the disembedding entails, and whether a counter movement can re-embed the economy. Nevertheless, the concept has provided a neat way to capture "those social and psycho-social features of human behaviour that are ignored or marginalized in orthodox economic analysis".<sup>872</sup> Jens Beckert has added that it offers "a categorical instrument for describing those ordering processes that lead to a reduction of the uncertainty of the action situation and the social structuring of decisions in market contexts".<sup>873</sup>

While acknowledging the lack of internal coherence or meaning of the concept in economic sociology, Dale has considered and critiqued other approaches to it. This

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<sup>868</sup> This is echoed in Perry-Kessaris' interpretation of Frerichs' reading of embeddedness, through the categories of cognitive and normative embedding of regimes and rationalities, explored in more depth in chapter 7.

<sup>869</sup> There is evidence that Thurnwald was one of the first to coin the phrase in 1932, and that Polanyi was familiar with Thurnwald's work. See Beckert (n 645) 40.

<sup>870</sup> Dale, *Karl Polanyi* (n 841) 191.

<sup>871</sup> *ibid* 191–192. Polanyi's first use of the term 'embeddedness' is in a 1934 essay which explains that no system of labour ('Arbeitsverfassung') can be understood without first making sense of "the social system in which it is embedded ('eingebettet').

<sup>872</sup> *ibid* 195.

<sup>873</sup> Beckert (n 645); Dale, *Karl Polanyi* (n 841) 196.

includes Greta Krippner's assertion about the paradox of the term, and "desociologiz[ing]" it, as well as John Lie's description of Polanyi's concept of market exchange as "disembedded".<sup>874</sup> Lie's point is that the concept equates market exchange with commodification, which renders invisible the underlying social relations through which commodity exchange is organized.<sup>875</sup> Dale also considers Kurtulus Gemici's analysis, firstly seeing embeddedness as a "gradational concept", and secondly as a holistic principle that "all economies are embedded".<sup>876</sup> Accordingly, this approach "reifies the market economy" by assuming that life consists of separate spheres, and means ultimately that the market becomes a social sphere "devoid of all social content".<sup>877</sup>

Dale's contention is that none of these critiques hold much water. The charge that the concept reifies society into spheres is, according to Dale, misleading. Polanyi, Dale argues, uses the term not only analytically, but also to allude to "the political goal of ensuing a stable democratic society through the regulation of markets in land, labour and money".<sup>878</sup> In other words, Polanyi was not focused on the economy so much as the larger social systems in which the economies are located.<sup>879</sup> Therefore, any sociological theory of the economy that looks to Polanyi "cannot limit itself to examining the preconditions for designing economic institutions adapted to 'efficiency' but must also attend to the effects of the organization of the economic system on society at large".<sup>880</sup>

While recognising Block's interpretation as "probably the most influential" position, Dale places Block's analysis firmly between Polanyi's and Granovetter's, almost as if Block was trying to bridge the two positions and thereby unify economic sociology.<sup>881</sup> However, as Block's critics point out, his reading obscures the

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<sup>874</sup> Krippner and others (n 45); Dale, *Karl Polanyi* (n 841) 198; John Lie, 'Embedding Polanyi's Market Society' (1991) 34 *Sociological Perspectives* 219, 219.

<sup>875</sup> Lie (n 874).

<sup>876</sup> Gemici (n 627) 25–28; Dale, *Karl Polanyi* (n 841) 198.

<sup>877</sup> Gemici (n 627) 26.

<sup>878</sup> Dale, *Karl Polanyi* (n 841) 198.

<sup>879</sup> Beckert (n 645) 50.

<sup>880</sup> Dale, *Karl Polanyi* (n 841) 199.

<sup>881</sup> *ibid.*

freshness and theoretical richness of Polanyi's case. "The novelty of the market economy is that its institutional embedding entails a diremption from non-economic institutions in a manner that negates both social control over economic institutions and moral behaviour within them".<sup>882</sup> In other words, a link can be drawn between embeddedness and the social obligation to act in a morally dutiful manner, which gradually dissolves in proportion to the purely functional character traits imposed by the market.<sup>883</sup> Thus, "to say that the liberal market is 'embedded' in the sense of 'instituted', then, does not negate its 'disembeddedness' at other levels. The term does not denote the economy's separation from *society* but from non-economic institutions [...]".<sup>884</sup>

Ultimately, Dale's reading of Polanyi gives us an alternative to Block's, especially concerning the subplot of "the 'disembedding' consequences that arise when 'economy' comes to dominate 'society'".<sup>885</sup> If Block's approach can be summarised as attempting to bridge Polanyian and Granovettarian readings of embeddedness, Dale's can be taken as a Polanyian concept in a Marxist context. This makes it vulnerable to the same criticisms as neoclassical economic approaches in the way that both see the economic sphere as separate from the social. In turn, this also entails the black boxing of the market, leaving it unavailable to sociological analysis or reconceptualization. Both are thus incompatible with a social constructivist understanding of the economic.

In simple terms, Block's and Dale's interpretations can be condensed down to antithetical propositions. They represent opposite ends of the spectrum within the general commitment to the concept of embeddedness. Block argues for an interpretation of Polanyi that sees the economy as embedded in society, while Dale sees the reverse embedding of society in the economy. To return to the illustration set out earlier in Figure 8, above, Figure 10, below, reimagines these as two

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<sup>882</sup> *ibid* 201.

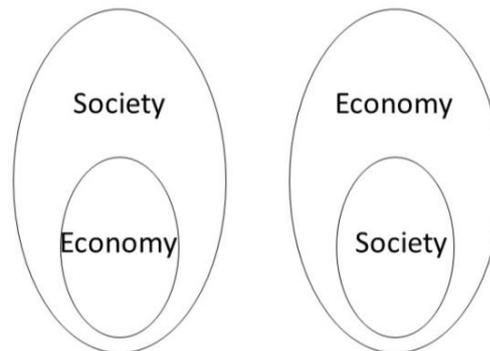
<sup>883</sup> *ibid*.

<sup>884</sup> *ibid* 202.

<sup>885</sup> *ibid* 249.

simplified interpretations of Polanyian embeddedness. Block's interpretation is summarized on the left, with Dale's on the right.

*Figure 10 - A simplified depiction of Block's (left) and Dale's (right) interpretation of Polanyian embeddedness*



This dual interpretation provides the starting point for an empirical exploration of the implications of the conceptual commitment to embeddedness. The first takes a proposed data collection project in Beragama as the setting to explore the differences that result from applications of different interpretations of Polanyian embeddedness. This case study has been developed from the first vignette and explores the implications of embeddedness within academic research. The second and third case studies focus more on the implications of the conceptual incompatibility of a commitment to embeddedness with social constructivist understandings of interaction.

## **6.2 Case study 1: Riots in Beragama**

The first case study, developed from the vignette of academic research, empirically explores the implications of mainstream approaches and an embeddedness-based ESL lens as a response. The discussion has compared two ESL approaches – those of Fred Block and Gareth Dale – and applies these here to the setting in Beragama. In

particular, the application of two alternative interpretations of Polanyian embeddedness illustrates the differences resulting in the form of actors, relations, voices and interests identified as relevant. It explores the differences in perception of the econolegal stemming from inconsistent linguistic tools, and how these shape our regimes and rationalities. The discussion unpacks the situation in Beragama in more depth including the background to the research. It then moves on to compare frames and concludes that the inconsistencies arising from the concept of embeddedness limit the ability of ESL currently to explain the full range of real world interactions.

### **6.2.1 Background**

The village of Beragama in southern Sri Lanka sits roughly 14km (8.5 miles) inland, to the North West of Hambantota, and some 250km (155 miles) from the capital, Colombo. The village is “not far from the main road in Hambantota”, and comprises “lush paddy fields, small houses and a village temple”.<sup>886</sup> The village itself was “born out of another government development plan, one launched nearly 80 years ago, when people were moved in to settle an area that was little more than jungle”.<sup>887</sup> This was at the “tail end of British rule” when the focus was on agriculture and farming, although the village received a population boost after Sri Lanka’s 1948 declaration of independence.<sup>888</sup> The village now finds itself at the centre of further plans for the development of a 15,000 acre investment zone, built and operated by the World Bank blacklisted Chinese Communications Construction Company (CCCC).<sup>889</sup> Beragama’s stable water supply and easy access to the area’s main infrastructure has left it not only on the front line of foreign investment in Sri Lanka,

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<sup>886</sup> Perera, ‘Sri Lankan Rice Farmers Vow to Fight Chinese Investors’ (n 18).

<sup>887</sup> *ibid.*

<sup>888</sup> *ibid.*

<sup>889</sup> World Bank, ‘World Bank Applies 2009 Debarment to China Communications Construction Company Limited for Fraud in Philippines Road Project’ (World Bank 2011) Press Release <<http://www.worldbank.org/en/news/press-release/2011/07/29/world-bank-applies-2009-debarment-to-china-communications-construction-company-limited-for-fraud-in-philippines-roads-project>> accessed 24 September 2018.

but at the centre of larger geopolitical land grabs.<sup>890</sup> But Beragama's residents are not taking the threat to their land lightly. "These are our ancestral lands, they are fertile. [...] We don't want to go and live 70km from here. Our lives are here, we cannot be uprooted like that".<sup>891</sup> Moreover, "[w]e are not against investments, but we don't want to lose our land and homes".<sup>892</sup> "Now we wait for the government to tell us what is being taken. [...] When the next step comes [...] they will only take our land over our dead bodies".<sup>893</sup>

### 6.2.2 The Research Project

Investigating the econolegal in Beragama using orthodox, neoclassical economics and doctrinal models highlights the "economic" voices such as those of foreign investors, but silences the other, non-economic aspects that are clearly important to civil society actors in Beragama. An ESL approach reminds us to focus on the interactions, but we need to first identify relevant actors. The interpretation by the researcher of the core concept of embeddedness becomes central, and the questions posed by Block provide a useful starting point to illustrate the differences that can result.<sup>894</sup> These ask who the relevant actors are, which research questions should be asked, and in what ways transactions or contracts are embedded in social relations such as family ties, friendships or longer-term supplier-contractor relations? The final question asks to what extent non-economic goals shape economic behaviour. Some suggested answers to these questions, and matters to

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<sup>890</sup> China has also taken a lease over the Colombo Port City development and is acquiring ownership rights to land and infrastructure throughout Sri Lanka and South and East Asia. Wade Shepard, 'Sri Lanka's Colombo Port City: The Front Line of China and India's Geopolitical Showdown' *Forbes* (12 August 2016) <<https://www.forbes.com/sites/wadeshepard/2016/08/12/a-look-at-colombo-port-city-the-frontline-of-china-and-indias-geopolitical-showdown/#7c59c2e92675>> accessed 13 June 2018; Wade Shepard, 'China Requests 15,000 Acres Of Land In Sri Lanka To Create A Million Jobs' (*Forbes*, 27 July 2016) <<https://www.forbes.com/sites/wadeshepard/2016/07/27/china-just-asked-for-15000-acres-of-land-in-sri-lanka-for-a-million-worker-sez/#116d212d8448>> accessed 5 July 2018.

<sup>891</sup> Perera, 'China's Billion-Dollar Re-Entry in Sri Lanka Met with Public Protests' (n 18).

<sup>892</sup> *ibid.*

<sup>893</sup> Perera, 'Sri Lankan Rice Farmers Vow to Fight Chinese Investors' (n 18).

<sup>894</sup> Questions are taken from Fred Block, 'Swimming Against the Current: The Rise of a Hidden Developmental State in the United States' (2008) 36 *Politics & Society* 169, 200; as cited in Gareth Dale, *Karl Polanyi: The Limits of the Market* (1 edition, Polity 2010).

be aware of in Beragama, are set out in the table below, where alternatives are proposed depending on the interpretation of embeddedness applied.

### Identifying actors

The different interpretations of embeddedness result in different actors identified as relevant. If we take Block's interpretation of the Polanyian notion of embeddedness, we must read the free market as a fiction because it relies on the State. It is therefore always embedded in institutions and, by extension, society. The economic is therefore always embedded in all social relations, morally and politically; those of the villagers with the government, those of the government with the investors, and those of the villagers with, eventually, the investors. Given this, the researcher will need to identify and speak to a much broader pool of actors if she is to understand the extent and depth of econosociolegal interactions in and around Beragama. In addition to villagers in Beragama, monks, community leaders, local government representatives, central government actors, Board of Investment representatives and CCCC representatives can all illuminate social interactions. Further, this can highlight where trust exists as a lubricant to market relations, and where it has broken down. A narrower pool of interviewees may not provide the depth of analysis needed to understand the function of the market within its political, moral and social settings.

By contrast, if we take Dale's interpretation of a Polanyian notion of embeddedness, the pool of actors identified as relevant is smaller. Beragama's villagers are still central to the research, but the rationale is different. Their cries of "over our dead bodies" resound with the implicit statement that the land is worth more to them than could ever be realised in monetary terms by the CCCC. Moreover, the invocation of moral rhetoric by the villagers indicates that they are aware that they are unable to compete with the CCCC on a purely economic basis if the debate is framed in purely economic terms. If the central question is "to whom is the land worth more", and monetary value alone is the sole arbiter of this, the villagers have already lost the argument. But if the frame and discourse used is entirely phrased economically, how can we put a price on the traditional and

affective value of ancestral lands? The problem then becomes an exercise in shoehorning traditional, affective and belief-based values and interests into a framework that cannot – and was never designed to – cope. The language of neoclassical economics cannot capture the totality of the villagers' social experience.

This echoes powerfully Dale's assertion that the economy has hollowed out a sphere of society and named it the market. Here, a separate set of imperatives and norms sanction and regulate activity, and that over time, the rest of society has come to be regulated by these very norms. Thus, in identifying relevant actors here to be interviewed, one focus would be on the language used to speak about relationships, and the extent to which economic or market norms were tacitly informing the social relations. There is not therefore a focus on the breadth of the pool of actors, but on the depth of the analysis applied to their interactions, with the focus on the linguistic tools used, and the norms these express.

#### Identifying questions

The research questions might also vary according to the interpretation of embeddedness applied. Block's reading invites a focus on trust, although given that it suggests a larger pool of actors, it is unlikely that a deep analysis of content and norms is possible. Questions should probe levels of trust between community figures, governmental agencies, and potential investors. Suggested questions might enquire into the length of the relationship, the perceived levels of trust and corruption, and community perceptions, while encouraging the interviewee to elaborate. This may allow some insight into the degree of embeddedness of the market both politically and morally, and both in Beragama and more broadly across southern Sri Lanka.

Dale's interpretation of Polanyian embeddedness suggests a requirement for deeper analysis into the way the debate is framed, and the linguistic tools used. This applies both to the way actors speak, but also how the debate is framed in local and national press discussions, and online. The research can look for tacit references to economic frames and norms, and to whether economic and financial benefits are

used to justify outcomes. The interview questions are then more likely to focus on the linguistic tools used, and the extent to which actors feel the need to represent their interests in economic terms in order to have the greatest effect.

*In what ways are transactions embedded in social relations?*

Using Block's interpretation here, the focus might be on local business relations, market trade relations, and the role of friendships in supporting these relations. Answers can then inform an analysis of trust more broadly between civil society and both government officials and foreign investors, illuminating in turn the econosociolegal in Beragama.

Dale's interpretation might turn questions to an understanding of the trust involved in facilitating market interactions. However, relevant here is the extent to which the embeddedness of transactions or contracts in social relations has "leaked" economic or market norms into other areas of social life, as Dale's interpretation of embeddedness suggests. For example, the concreting over of Beragama's fields and farms is not only an economic and subsistence disaster for the local community, but is also detrimental to the local environment. When expressed as a cost-benefit analysis, this exemplifies the leaking of economic frames of reference into other aspects of social interaction, shaping values, interests and voices in the process.

*To what extent do non-economic goals shape economic behaviour?*

Using Block's interpretation of Polanyian embeddedness, questions here relate to a wide range of interactions, motives and interests. Questions might therefore seek to highlight specific actions that local villagers might take in order to satisfy non-economic goals. For example, would they choose to work in a Chinese-run factory that had been built locally on ancestral lands in order to pay for a relative's health or social care for example, or a dependant's education?

Dale's interpretation might suggest that non-economic goals have already been 'contaminated' with market norms through the reverse embedding of society in the economy. The question is how these feed back into shaping economic (and non-economic) behaviour, and the extent to which this becomes a feedback loop that

reaffirms the regulation and sanction of all activity by market norms. The discussion on performativity in Part III picks this up. Table 8, below, summarizes the main points of difference between the two approaches deriving from the interpretation of Polanyian embeddedness used.

*Table 8 - An exploration of the application of Block's and Dale's interpretations of Polanyian embeddedness to a proposed empirical research project*

<b>Research question</b>	<b>Suggested answer using Block's interpretation of Polanyian embeddedness</b>	<b>Suggested answer using Dale's interpretation of Polanyian embeddedness</b>
<b>Who are the relevant actors?</b>	Beragama's villagers, central and local government, and the CCCC (the investor). Additionally, monks, community leaders, NGOs, Sri Lankan Board of Investment representatives and CCCC representatives and employees.	Beragama's villagers
<b>What are the relevant research questions?</b>	What is the length of the relationship? Can you trust the other party? Is there corruption? What is the general perception of the level of trust?	How do you frame your arguments? If the economic argument is unavailable, how do you convey the value of something?

<b>In what ways are transactions/contracts embedded in social relations such as family ties, friendships, or long-term supplier-contractor relations?</b>	Do you socialise with business partners? Do you consider business associates to be friends? Is it easier or better to trade with friends or strangers?	How do you transact with business partners? Is it easier or better to do business with friends or strangers? [Note that the focus is on the language used as well as the content of the answer]
<b>To what extent do non-economic goals such as moral or spiritual commitments shape economic behaviour?</b>	Do you have people who dependent on you economically? What steps do you take to meet these needs?	Would you work in the Chinese industrial zone? [Note the focus on linguistic tools and whether these shape rationalities and regimes]

### 6.2.3 Conclusions

By using an ESL approach, we can appreciate that the regimes and rationalities of the groups of actors, observable through their interactions, are inconsistent. This might be the cause of the unrest, highlighting the discontent within social relations that law and regulatory systems need to respond to. However, the interpretations of Polanyi's notion of embeddedness by Block and Dale identify different actors, voice and interests as relevant. Further, Block's and Dale's interpretations represent points on a continuum, and as the previous chapter has shown, there are a wealth of positions between these, as well as many other interpretations that do not claim to be Polanyian. Thus, the conceptual inconsistencies and resulting shift in empirical focus explored in case study 1 is indicative of much wider uncertainty that could result from the empirical application of a lens based on a conceptual commitment to embeddedness. In short, there is no simple, unified answer to the question of "what do we mean by embeddedness?"

Additionally, the case study brought out the importance of looking for the impact of linguistic tools on shaping mental models or rationalities. It also highlights the importance of awareness of different ways of performing the econolegal, or econolegal regimes. This can be seen here in the way that the debate is carried on in economic terms, despite the fact that one of the sources of value of the land to the local community is non-economic. The lands are ancestral, and carry more than monetary value. The references to “over our dead bodies” indicates that this inability to conceptualise affective, traditional, and belief-based value within the linguistic tools offered by econo-centric frames leaves the local residents with little choice but to resort to extreme actions.

### **6.3 Case Study 2: Disciplinarity and the World Bank’s Investment Climate campaign**

The World Bank’s Investment Climate campaign embodies and epitomizes the apogee of economics imperialism. This has occurred in the context of entrenched disciplinarity within the social sciences. Our inability to rethink the econolegal sociologically is preventing any sustained challenge to the dominance of econo-centrism, and this thesis argues that this inability stems in part from an ongoing commitment to the concept of embeddedness. Case study 2 is an empirical example of how an analytical framework based on the concept of embeddedness cannot cope with real world econosociolegal rationalities, specifically the World Bank’s struggles to reconceptualise disciplinary silos. The study sets out the Bank’s ongoing commitment to embeddedness which can be seen explicitly in the World Development Reports that were discussed in chapter 2. The implicit impact of a conceptual commitment to embeddedness can be seen in the ongoing entrenchment of econo-centric frames, which continue to shape World Bank policy and campaigns like the Investment Climate. This in turn shapes dominant paradigms, and the behaviour of governments, as the previous discussions of Sri Lanka and the Investment Climate have explored. The discussion then turns to how an inability to sociologically

reconceptualize the econolegal is preventing integrated social science research mounting a sustained challenge to the dominance of econo-centrism.

### **6.3.1 Background**

As the discussion in section 2.1 set out, the Investment Climate campaign has three main limitations that reflect the shifts in the social sciences since Polanyi published *The Great Transformation*. In the context of development policy, the effects of economics imperialism can be seen in the three limitations of the World Bank's Investment Climate campaign; namely a reliance on correlated indicators, a partiality of voices that highlights the economic, and a normative silence that refuses to acknowledge underlying biases and assumptions.

In looking at explicit examples of the commitment to embeddedness, the 2017 World Development Report on *Governance and the Law* is one of the best resources. The Report notes that customary legal systems are “embedded” in “values and power structures” of society, while the question of colonial law's embeddedness is contrasted with its superficiality in the context of legal transplants.<sup>895</sup> Similarly, “institutions of accountability” are held to be “politically embedded”, while “social movements [...] are embedded in broader institutional and socioeconomic environments that shape the strategies and choices available to political actors”.<sup>896</sup> In seeking ways to reduce transaction costs, the Report also focuses on information asymmetries, which are “embedded in existing power asymmetries”, while human rights have become increasingly “embedded in international treaties, institutions and organizations”.<sup>897</sup> The Report also refers to “governing arrangements embedded in the domestic context”.<sup>898</sup>

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<sup>895</sup> World Bank (n 12) 85, 88.

<sup>896</sup> *ibid* 149, 234.

<sup>897</sup> *ibid* 247, 264.

<sup>898</sup> *ibid* 270.

Introducing behavioural economics and citing both Simmel and Granovetter, the 2015 World Development Report states that “[a]ll of us are embedded in networks of social relations that shape our preferences, beliefs, resources and choices”.<sup>899</sup> In discussing value, the Report also notes the importance of mental models, noting that the intrinsic value of owning cattle in Lesotho “was embedded within a very different set of rules” that did not correspond to the frames used by economists.<sup>900</sup> Nevertheless, the role of neoclassical economics in providing a mainframe for the Bank’s thinking can be seen throughout the World Development Reports. In the 2016 Report on *Digital Dividends* and the use of technology, the discussion centres around whether this embeds “externalities”, indicating that the primary goals here are economic.<sup>901</sup> More recently, in turning to the world of work in the 2019 Report, the Bank’s calls for greater deregulation of the business environment have garnered criticism from labour organizations for the neoliberal direction of the proposals.<sup>902</sup>

As earlier chapters have noted, these Reports are clues as to the Bank’s approach more broadly. Further, the discourse builds its own “echo chamber” in which frames become entrenched and unavailable to challenge.<sup>903</sup> Additionally, these econo-centric frames and approaches perpetuate their own elite status within the discourse, while acting as a technology of governance to inform broader social discourse and debates.<sup>904</sup> The impact on government action has been recorded in Sri Lanka’s declaration of ambition to climb rankings and indicators, which results in

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<sup>899</sup> World Bank (n 58) 49.

<sup>900</sup> *ibid* 187.

<sup>901</sup> World Bank (n 168) 65.

<sup>902</sup> World Bank, ‘World Development Report 2019: The Changing Nature of Work’ (2019) <<https://www.worldbank.org/en/publication/wdr2019>> accessed 14 July 2019; ILO Director-General, ‘International Labour Office Expresses Concern about World Bank Report on Future of Work’ (*International Labour Organization*, October 2018) <[https://www.ilo.org/global/about-the-ilo/newsroom/statements-and-speeches/WCMS\\_646884/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/statements-and-speeches/WCMS_646884/lang--en/index.htm)> accessed 27 November 2018; International Trade Union Confederation, ‘World Bank’s Unhelpful Contribution to Debate on the Future of Work’ (International Trade Union Confederation 2018) <[https://www.ituc-csi.org/IMG/pdf/wdr2019.\\_ituc-response.1018.pdf](https://www.ituc-csi.org/IMG/pdf/wdr2019._ituc-response.1018.pdf)> accessed 27 November 2018.

<sup>903</sup> Kapur (n 172) 12.

<sup>904</sup> Glucksberg (n 307); Davis, Kingsbury and Merry (n 35).

legal reforms that are implemented in the target country to better “fit” the “ideal” legal system quantified in the indicators.<sup>905</sup>

### **6.3.2 ESL’s embeddedness-based response**

Simply through its use of a sociological lens, ESL responds to the three central limitations by insisting on careful empirical studies that can begin to address causation. This occurs through a search for a plurality of voices and interests, and by an insistence on reflectiveness and the acknowledgement of biases. The concept of embeddedness allows for a linguistic exploration of the econosociolegal relationship in the context of current mainstream econo-centrism. In other words, embeddedness allows us to identify the limitations of mainstream approaches by arguing that economic institutions should be more embedded in the social, for example. But the concept also conceals alternative aspects, voices, and ways of talking, thinking and doing by maintaining the fiction of distinction between the economic and social.

In a broader context, an ESL responds to the entrenched disciplinarity that has occurred within the academe over the past half century, and therefore aspires to reintegrate research methodologies and practices. The competition between disciplines has provided the context for economics imperialism, given the neoclassical frames that can provide “clean” answers for policy makers.<sup>906</sup> By offering a way of bridging the silos of endeavour within social science research, and setting out a way for disciplines to engage through shared linguistic tools, new models, frames and approaches might emerge to challenge econo-centrism. The reintegration of economics and law into the social sciences, and their sociological reconceptualization, is therefore central to any future challenge to economics imperialism.

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<sup>905</sup> Mendis (n 72).

<sup>906</sup> Hirsch, Michaels and Friedman (n 1).

This also serves as a general example of the impact of a commitment to the concept of embeddedness in wider social discourse as this is driven by, and informed by, World Bank expertise. The World Bank repeatedly refers to law as “embedded” in society, and even sociolegal scholarship assumes law to be “socially constructed” and yet at the same time “embedded” in “social fabric”.<sup>907</sup> The confused and inconsistent reasoning exemplifies the imprecise use of the term, resulting in the concept (and unthought rationality) of embeddedness tacitly entrenching econo-centrism.

### **6.3.3 Conclusions**

By shaping the grammar and vocabulary available to identify and describe problems, the concept of embeddedness provides a neat handle for superficially challenging the dominance of the economic frames of reference. At the same time, it tacitly re-entrenches the status quo to the exclusion of sociological alternatives that might be more compatible with the integrative notions of social constructivism. While we are talking about the relative embeddedness of the law or the economy in society, we are perpetuating the linguistic tools and mental models that assure their dominance. For the Investment Climate campaign, this means an inability to reconceptualize the econolegal sociologically, maintaining the discourse of development along narrow, neoclassical economic lines, despite attempts to broaden these with behavioural economics and experimentalism.<sup>908</sup> This in turn contributes to the separation between development theory and reality. The results of such separation can be seen, for example, in the countries that leapfrog the indicators by performing well on paper and according to the indicators, while practices on the ground remain unchanged. Such a separation also manifests as the inability of governments as well as policy makers in countries like Sri Lanka to hear

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<sup>907</sup> World Bank (n 12) 85; Kurkchian (n 63) 367.

<sup>908</sup> World Bank (n 58).

the range of voices and interests impacted by development and foreign investment.<sup>909</sup>

## 6.4 Case Study 3: Doughnut Economics vs The Econocracy

The third case study refers back to the initial comparison of two popular publications that were released in the wake of the 2008 financial crisis, targeting a lay audience. Of all the case studies, this third exemplifies the inability of the concept of embeddedness to cope with the dynamic complexity and flexibility of real world interactions, or with society's efforts to explore, understand, and communicate the econolegal. More interestingly, following the financial crisis, embeddedness-based discourse has allowed the identification of problem, without being able to provide a truly innovative solution. We can see that the "the economy needs to be re-embedded", but how, and why? What the discourse shuts off, however, is any way of going about this that enables a reintegrative approach.

### 6.4.1 Background

Since the financial crash of 2008, and the Queen's prescient question to economists at the LSE of "why did nobody notice it?", there has been a renewed interest in the role, position and purpose of both the economy as an institution and economics as a discipline.<sup>910</sup> In the decade since, some steps have been taken to stabilise the global financial system, but the overriding assumptions and models remain largely

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<sup>909</sup> Mendis (n 72); Perry-Kessaris, 'The Re-Co-Construction of Legitimacy of/through the Doing Business Indicators' (n 115).

<sup>910</sup> Andrew Pierce, 'The Queen Asks Why No One Saw the Credit Crunch Coming' (*The Telegraph*, 5 November 2008) <<https://www.telegraph.co.uk/news/uknews/theroyalfamily/3386353/The-Queen-asks-why-no-one-saw-the-credit-crunch-coming.html>> accessed 1 July 2018; Rupert Neate, 'Queen Finally Finds out Why No One Saw the Financial Crisis Coming' *The Guardian* (13 December 2012) <<https://www.theguardian.com/uk/2012/dec/13/queen-financial-crisis-question>> accessed 8 October 2018.

untouched.<sup>911</sup> There has been a wave of literature challenging the way we currently do and think about economics and the economy, with many books proposing alternative approaches and urging reform of the discipline. The non-specialist, non-academic literature is a welcome challenge to the exclusivity of microeconomics.<sup>912</sup> But there is a common thread through many of the books that links directly to the present discussion: is the economy embedded in society, or is society embedded in the economy? And perhaps more importantly, why should we care?

#### 6.4.2 The problem

Two of the most popular recent publications which illustrate this debate are *Doughnut Economics* by Kate Raworth, and *The Econocracy*, which was written by a group of dissatisfied economics students at the University of Manchester.<sup>913</sup>

Raworth repeatedly describes the economy as “embedded” in society, which is in turn “so evidently embedded in the biosphere” and “within nature”.<sup>914</sup> Raworth urges us, in no uncertain terms, to “forget the free market: think embedded market”.<sup>915</sup> She continues that “strange though it sounds, [...] there is no such thing as deregulation, only *reregulation* that embeds the market in a different set of political, legal and cultural rules”.<sup>916</sup>

Raworth’s innovation is in her diagrams, and her ability to boil down complex points to a simple visual comprising no more than a couple of concentric lines. In this way, she makes the point that economics as a discipline is in need of a rethink. Her “Circular Flow Diagram” and “Embedded Economy [...] ends the myth of the self-

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<sup>911</sup> Susan Lund and others, ‘A Decade after the Global Financial Crisis: What Has (and Hasn’t) Changed?’ (*McKinsey & Company Financial Services*, August 2018) <<https://www.mckinsey.com/industries/financial-services/our-insights/a-decade-after-the-global-financial-crisis-what-has-and-hasnt-changed>> accessed 13 July 2019.

<sup>912</sup> Perry-Kessaris, ‘The Re-Co-Construction of Legitimacy of/through the Doing Business Indicators’ (n 115).

<sup>913</sup> Raworth (n 39); Earle, Moran and Ward-Perkins (n 94).

<sup>914</sup> Raworth (n 39) Loc.420, 1052.

<sup>915</sup> *ibid* Loc.1219.

<sup>916</sup> *ibid*.

contained, self-sustaining market, replacing it with provisioning by the household, market, commons and state – *all embedded within and dependent upon society*, which in turn is embedded within the living world”.<sup>917</sup> Raworth proposes the idea of “nested systems” as an alternative way of talking about the interface and interdependency of the economy with society, but ultimately this receives little attention.<sup>918</sup> What she does note is the importance of the language we use to describe ourselves, our society and our institutions, noting that “[f]inding the words to say it may turn out to be more important than we can imagine in determining whether or not we as a species can learn to thrive with others”.<sup>919</sup> This references the notion that our language not only describes but gives rise to our mental models, our multiple “logics” and “unthought knowns”.<sup>920</sup> The importance of the language used has the potential to shape the reality it describes, becoming a “self-fulfilling prophecy”.<sup>921</sup>

By contrast, another popular work, *The Econocracy*, sets out to critique the way economics is taught across the UK higher education sector, highlighting the multiple choice exams and lack of normative analysis.<sup>922</sup> The book was written by students attracted to study economics in the wake of the crisis but concerned by the narrowness of the teaching and “frustrated by the failings of the same profession to make sense of this very crisis”.<sup>923</sup> Angered at the “methodological monoculture” within economics, the authors set up a network of economics students around first the UK and then internationally to “widen and deepen the curriculum”.<sup>924</sup> They sought to broaden viewpoints and approaches explored and taught from a

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<sup>917</sup> *ibid* Loc.1387. (Emphasis added).

<sup>918</sup> *ibid* Loc.2423.

<sup>919</sup> *ibid* Loc.1730.

<sup>920</sup> Kerry Rittich, ‘Making Natural Markets: Flexibility as Labour Market Truth’ (2014) 65 *Northern Ireland Legal Quarterly* (Symposium: Economic Sociology of Law) 323; Koch (n 353); Bernstein and others (n 5).

<sup>921</sup> MacKenzie, Muniesa and Siu (n 62). The Black-Scholes example is commonly cited here as a “theory” of market behaviour that then influenced market traders who altered their behaviour to “perform” the theory. This is also cited by Raworth (n 39) Loc.1519.

<sup>922</sup> Earle, Moran and Ward-Perkins (n 94).

<sup>923</sup> *ibid* x.

<sup>924</sup> Andy Haldane, ‘Foreword’ in *ibid* xi, 10.

“technological discipline to a public dialogue”.<sup>925</sup> However, having established the premise of the book, the authors go on to claim, without explanation or definition, that “[w]e are all embedded in the economy”.<sup>926</sup>

These two recent bestsellers exemplify the problem neatly.<sup>927</sup> We talk about the economy being embedded in society, echoing a simplified version of Fred Block’s reading of Polanyi (as in *Doughnut Economics*), or of society being embedded in the economy, echoing Gareth Dale’s interpretation of Polanyi (as in *The Econocracy*). Which is right? Could the economy be embedded in institutions, structures, or a whole range of possibilities mentioned earlier that serve to further complicate the discussion? Is this imprecise use of terminology having an impact on our conceptions of society, the economy and the law? And why does this matter?

### **6.4.3 A more general commitment to the concept of embeddedness**

Before attempting to answer these questions, it is noteworthy that these two books are not alone in their use of embeddedness as a central concept. There are myriad examples of a broader commitment to the concept of embeddedness that echoes beyond the confines of the debate within ESL. These use the term explicitly, although without definition and generally without precision.

Orrell’s “Introducing Economics” is a graphic exploration of modern economics. Orrell states that a “new kind of economics” is beginning to emerge that “considers the behaviour of real people [... to be] embedded in non-linear dynamic networks”.<sup>928</sup> Robert Skidelsky references Polanyi’s work briefly in his most recent book, citing Polanyi’s “sociological economics” and his “stress on the

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<sup>925</sup> Ibid.

<sup>926</sup> Earle, Moran and Ward-Perkins (n 94) 8.

<sup>927</sup> *Doughnut Economics* topped the Sunday Times bestsellers list and has won numerous prizes.

<sup>928</sup> David Orrell, *Introducing Economics: A Graphic Guide* (Icon Books Ltd 2014).

‘embeddedness’ of individual behaviour”.<sup>929</sup> Haskel and Westlake cite research by Corrado et al which talks of “knowledge embedded in firm-specific human and structural resources”, while Taleb refers to the employed person as “embedded in an industry”.<sup>930</sup> Tapscott and Tapscott, discussing cryptocurrency and technology, state that their story becomes “even more interesting when you consider that billions of agents will be embedded in the physical world” while in discussions of poverty, Desmond notes that some Milwaukee renters are “embedded in networks of below average disadvantage”.<sup>931</sup>

As noted, embeddedness can be a useful relational descriptor when referring lightly to conceptually separate phenomena that share a time and space. As such, it may be the case that Raworth and the authors of *The Econocracy* are not seeking to explore the possibility that “the economy” and “society” are in fact one and the same thing. If they are forever to be conceptually separate phenomena, then embeddedness is a perfectly adequate metaphor. In this, it offers us a convenient way of identifying and communicating the problem of the separation between economy and society, and the potential for one to dominate the other. We can explain that “the economy has become disembedded from society”, or suggest that “the economy should be re-embedded in society” to indicate the reintegration of the two spheres.

However, this approach requires an acknowledgement of the tacit reinforcing of the disciplinarity and econo-centrism that both books appear to set out to challenge.

The concept of embeddedness maintains the metaphorical distinction between the

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<sup>929</sup> Robert Skidelsky, *Money and Government: A Challenge to Mainstream Economics* (Allen Lane, Penguin 2018) <<https://www.penguin.co.uk/books/309493/money-and-government/>> accessed 9 September 2018. The lack of elaboration gives this the feeling of “fashionable Polanyi”. See Randles (n 586) 418.

<sup>930</sup> Jonathan Haskel and Stian Westlake, *Capitalism without Capital: The Rise of the Intangible Economy* (Princeton University Press 2017); Carol Corrado, Charles Hulten and Daniel Sichel, ‘Measuring Capital and Technology: An Expanded Framework’, *Measuring Capital in the New Economy*, Corrado, Haltiwanger and Sichel (eds) (University of Chicago Press 2005) 23 <<http://www.nber.org/chapters/c0202>> accessed 9 July 2018; Nassim Nicholas Taleb, *Skin in the Game: Hidden Asymmetries in Daily Life* (Penguin UK 2018).

<sup>931</sup> Don Tapscott and Alex Tapscott, *Blockchain Revolution: How the Technology Behind Bitcoin and Other Cryptocurrencies Is Changing the World* (Penguin UK 2016); Matthew Desmond, *Evicted: Poverty and Profit in the American City* (Penguin UK 2016).

disciplines, enforcing their separation. This separation insists on maintaining the conditions of competition between the disciplinary silos that has given rise to economics imperialism and econo-centrism throughout the social sciences.

Furthermore, even when not stated directly, the concept of embeddedness continues to both highlight the problems of existing regimes and rationalities while masking alternatives. A general commitment to the concept of embeddedness functions as an unthought rationality, restricting our range of responses to the current dominant frames that allowed the 2008 financial crisis. By maintaining a commitment to the concept of embeddedness, we miss out on the opportunity to reconceptualize the economic, the social and the legal in a way that includes the non-economic (non-rational, or “differently rational”).<sup>932</sup> These might include aspects of interactions such as equity, equality, sustainability, fairness and justice. At the same time, we also miss out on an opportunity to ask as a society what we require from economics and from law, and what role we want them to play – as knowledge constructs and sites of contestation, debate and dialogue – in a modern society. While the moral superiority of capitalism may have been tacitly relinquished in favour of a discourse that presents neoliberal capitalist policies as “just the way of the world”, any discourse that seeks to re-embed the economy within society promises to perpetuate the moral and political status quo.<sup>933</sup>

Finally, re-entrenched disciplinarity and the dominance of neoclassical economic frames and discourse can shape our preferences and interactions to resemble those of *homo economicus*, whether we are aware of this or not. This is discussed in more detail in chapter 7. Imprecise use of language deriving from a conceptual commitment to embeddedness tangibly shapes our regimes and rationalities; what we are able to perceive, conceive and imagine. This, in turn, shapes our expectations of the economy, the market, of the state to intervene, and of society to tolerate the full ramifications of the free market. If we are accustomed to talking about society being embedded in the market, are we more likely to think like

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<sup>932</sup> Cotterrell, ‘Community as a Legal Concept?’ (n 69) 9–10.

<sup>933</sup> Lanchester (n 10).

consumers rather than citizens, and tolerate greater levels of job insecurity, inequality and poverty than we would if we agree that the market was (analytically) or should be (normatively) embedded in society?<sup>934</sup> If we think more like citizens than consumers, and decide that the economy should be (re-)embedded in society, what could we decide to prioritise and which interests could be highlighted? While the term undoubtedly works to frustrate the more radical, constructivist efforts to re-conceptualise the re-co-constitution of the econolegal sociologically, its impact in shaping regimes and rationalities is difficult to quantify. Nevertheless, the questions that might derive from a sociological reconceptualization of econosociolegal relations, including what an alternative society might look like, are equally significant.

#### **6.4.4 Conclusions**

The 2008 financial crisis has prompted a review of the place and role of economics and its regulation in society. This debate mirrors the academic debate aiming to reintegrate social science research methods, methodologies and frames in a manner similar to ESL in the wake of the differentiation and disciplinarity that has occurred over recent decades and which was explored in the first two case studies. By comparing two of the most popular books challenging the current way we do, and think about, economics, we can see the impact of an ongoing commitment to the concept of embeddedness. While it provides a way of identifying and communicating the problem, and while it offers a simplistic solution of re-embedding, the concept masks innovative and integrative alternatives. It conceals imaginative grammar and vocabulary that could offer sociological, reintegrative approaches. It hides interdisciplinary solutions that reconceptualise the econolegal, shutting these options out of the debate altogether. In so doing, it maintains the

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<sup>934</sup> For a discussion of consumer-citizens and their definitions see John Clarke and others, *Creating Citizen-Consumers* (Sage Publications 2007) <<https://uk.sagepub.com/en-gb/eur/creating-citizen-consumers/book229035#preview>> accessed 3 July 2018.

regimes and rationalities currently in operation, the limitations of which were highlighted in the 2008 crash.

## **6.5 Conclusions**

This chapter concludes an analysis of the origins, interpretations and implications of the conceptual commitment to embeddedness. It has established ESL as a scholarly response to the dominance of neoclassical economics frames and the imperialism of these throughout the social sciences. It has then identified the core concept of ESL as embeddedness, and explored the development of this from Polanyi, via Granovetter, to Block and Dale. The discussion has identified the many and varied interpretations and applications of the term, and explored the lack of conceptual consistency. It then also turned to the incompatibility of ESL's conceptual commitment to embeddedness with the reintegrative goals and social constructivist understandings of the lens, setting these out as mutually incompatible and even antithetical.

It has identified the conceptual commitment to embeddedness as manifesting both explicitly, where it shapes mental models through linguistic tools, and implicitly, where it functions as an unthought rationality. While the concept of embeddedness offers us a way of challenging current mainstream, orthodox approaches, it simultaneously conceals from us a full sociological reconceptualization of the econolegal in a manner consistent with constructivist understandings. As such, it actively prevents and precludes any truly sociological responses to the status quo.

The chapter then explored the implications of this empirically. In each of the mini case studies, the limitations of the commitment to the concept – both in ESL and more broadly – were shown. Empirically, the lack of conceptual consistency altered the focus and direction in a proposed data collection project in Beragama.

Conceptually, the impact of embeddedness on our linguistic tools and mental models, and the relationships between them, is preventing the World Bank from reconceptualising the econolegal sociologically. The result of this is the re-

entrenchment of existing disciplinarity and economics imperialism. And normatively, in wider debates responding to the 2008 financial crisis, we are shaped as *homo economicus* through the linguistic tools and mental models available to us based on the concept of embeddedness. While this might offer a convenient challenge to econo-centrism, this is superficial only, and contains a deep ambiguity that works to re-entrench dominant models and frames.

Part III of the thesis suggests that for conceptual consistency and compatibility, an ESL might need to break its current commitment and move beyond the concept of embeddedness. The remaining three chapters offer one way of doing this, and explore what this means for its empirical application by returning to the three case studies.

## **PART III: ONE PROPOSED SOLUTION**

Chapter 7 offers one way of moving ESL beyond embeddedness in a manner that is more internally consistent and conceptually compatible with reintegrative, constructivist understandings of the econolegal. This builds on the work of Roger Cotterrell, Sabine Frerichs, and Amanda Perry-Kessaris amongst others. However, the key contribution in this section is the proposal that two shifts in focus are needed if ESL is to move beyond its commitment to the concept of embeddedness. These are:

- A focus on interactions rather than actors
- A focus on feedback loops rather than embeddedness

These two shifts then offer an alternative vocabulary and grammar for talking about the econolegal. This then opens up the possibility of alternative mental models and ways of thinking about the econolegal. It then becomes possible to imagine alternative econolegal regimes and rationalities in a way that challenges the econo-centric mainstream. Chapter 8 returns to the three case studies to explore the implications of moving beyond embeddedness empirically, conceptually, and normatively. The final chapter reflects on the discussion and asks whether the removal of ESL's core concept has implications for the integrity of the approach.

### **7. Moving beyond embeddedness with two shifts in focus**

Given ESL's perpetual commitment to the concept of embeddedness as a key concept and unifying approach, any suggestion to break this commitment might appear to undermine the lens. This section sets out a way of moving beyond embeddedness that retains the core goals, aspirations and methodological approaches that are central to ESL. It therefore retains its distinctive identity and integrity, while moving towards constructivist understandings of interaction.

This section proposes an alternative ESL lens that might cope better with the range of real-world situations and demands such as those explored in the case studies. It does this through two shifts in perspective. Firstly, from actor to interaction, as can be achieved through use of Cotterrell's community lens which is expanded across Frerichs' four rankings of social interaction. Secondly, from embeddedness to feedback loops operating within and throughout all social interactions as these reinforce and challenge the regimes and rationalities of each actor. A perception and cognitive element is added to reinforce the feedback loops and emphasize the mutual re-co-constitution of regimes and rationalities as they are confirmed or challenged through each interaction with notions borrowed from performativity. The approach therefore responds to (re-)integrative efforts within the social sciences while also setting out a comprehensive, scientific and theoretically-informed framework for empirical research into the econolegal. It also offers alternative linguistic tools that open the possibility of sociologically reconceptualizing the econolegal in broader discourse, in a manner consistent with social constructivism.

## **7.1 SHIFT 1: From actor to interaction**

A socio-legal approach like Roger Cotterrell's community lens can respond to the limitations of both the mainstream orthodox approaches as well as to the problems with ESL's commitment to the concept of embeddedness. It encourages us to look beyond the immediate impact of legal reform and assess the broader effects as they diffuse throughout society.<sup>935</sup> As a sociology of law and economy, the community lens can build "beyond the idea of embeddedness", allowing us to understand interactions and relations without relying on the concept of embeddedness.<sup>936</sup> More precisely, it shifts our focus from actors to their interactions, offering a first step to moving beyond the commitment to the concept of embeddedness. By

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<sup>935</sup> Perry-Kessaris, *Global Business, Local Law* (n 11).

<sup>936</sup> Cotterrell, 'Rethinking Embeddedness; Law, Economy, Community' (n 22) 51.

focusing on interactions, the lens avoids the actor/structure duality that has been a sustained cause of disagreement in sociology.<sup>937</sup> By sidelining the actor, it is also easier to avoid charges of atomization, “oversocialization” or “undersocialization”, while encouraging a focus on the content and substance of the interactions.<sup>938</sup>

Community (and its four Weberian interaction ideal types) “is an aid towards understanding, for regulatory purposes, contemporary patterns of social relations in all their fluidity and variety”.<sup>939</sup> However, “[...] the idea of “a community” as a distinct social phenomenon should be abandoned. Instead the focus should be on *social relations of community* of various contrasting types. Community refers to a *quality* of social relationships. It suggests a *degree* of stability and permanence in them, but not necessarily very much”.<sup>940</sup> The language of Cotterrell’s communal networks is subtler than that of neo-Polanyian embeddedness, and by focusing not on the spheres of interaction, but on the social relations themselves, we shift the focus to one in which “the economic appears as an aspect of the social”.<sup>941</sup> Indeed, Cotterrell specifically seeks to “shift focus [...] away from the idea of law as rooted in the governmental activity, agreements, or relations of *nation states*” and “towards a recognition that law is also rooted in the projects and aspirations of actors operating in networks of community”.<sup>942</sup> While interdependent, this approach is immediately more consistent with social constructivist understandings of law while focusing our attention on social relations and the substance of interactions.

Similarly, the economic has “regulatory conditions and requirements that reflect not only the particular characteristics of economic relations but also their situation

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<sup>937</sup> Giddens, *Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis* (n 606); Giddens, *The Constitution of Society* (n 23); Giddens, *The Consequences of Modernity* (n 68). Giddens’ Structuration theory was initially proposed as a way to overcome this duality.

<sup>938</sup> Granovetter (n 48).

<sup>939</sup> Roger Cotterrell, ‘Seeking Similarity Appreciating Difference: Comparative Law and Communities’ in A Harding and E Özücü (eds), *Comparative Law in the Twenty-First Century* (Kluwer Law International 2002) 54.

<sup>940</sup> Cotterrell, ‘Rethinking Embeddedness; Law, Economy, Community’ (n 22) 55. Emphasis in original.

<sup>941</sup> *ibid* 51.

<sup>942</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 7.

as part of networks of community that may be held together by a variety of bonds (for example, shared values, allegiances or customary practices, as well as by a convergence of economic interests)".<sup>943</sup> However, the community lens not only highlights the economic, but all other aspects of interactions within a four-fold typology, which is "necessary to distinguish carefully different components of law's social environment".<sup>944</sup> It is notable here that "[p]eople have allegiances, with varying degrees of transience or permanence, at different times and in different ways, and often simultaneously, to different groups and social relations, involving intricate overlapping of the different types of community life – instrumental, traditional, belief-based and affective".<sup>945</sup> Moreover, "if the law serves one community at the expense of "protecting and promoting the well-being of other kinds of social bonds, other types of community, it fails to meet some important demands".<sup>946</sup>

### **7.1.1 Talking about interactions**

In shifting our focus from actors to their interactions, the community lens offers a more flexible, dynamic, constructivist understanding of the law as it is performed and constructed in, and through, social interaction. It draws on Max Weber's ideal types to identify four elements or aspects of interactions to be aware of.<sup>947</sup> These broaden the scope of the lens from the economic (and non-economic) and legal (and non-legal) to include a range of other interests, motivations, expectations and desires that commonly shape social interaction, but which tend to be absent from mainstream frames. Some of these other motivations were explored in the first case study above, where the residents of Beragama were unable to convey their

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<sup>943</sup> Cotterrell, 'Rethinking Embeddedness; Law, Economy, Community' (n 22) 51.

<sup>944</sup> Cotterrell, 'Seeking Similarity Appreciating Difference: Comparative Law and Communities' (n 939) 53.

<sup>945</sup> *ibid* 49.

<sup>946</sup> *ibid* 47.

<sup>947</sup> Cotterrell, *Law's Community* (n 103).

attachment to their ancestral lands in anything other than monetary value, excluding their affective, traditional and belief-based ties to the land.

Weber's notion of the ideal type of social action rests on the generalized concept of rational social action.<sup>948</sup> They are not to be understood as tools for the causal analysis of reality, but as indicators against which actions can be measured and compared.<sup>949</sup> Cotterrell uses the ideal types to differentiate types of community, or the "different types of bonding that can exist between individuals and can draw them together in relations of trust".<sup>950</sup> Thus, *instrumental community* refers to "the kind of social relationships that are based on common or convergent purposes – especially, but not necessarily, economic purposes".<sup>951</sup> It is therefore important to recognize the role of the law in "protecting and promoting" all forms of community, not just the economic (instrumental) as this tends to be the most powerful. The lens therefore nudges us to look beyond the economic and the legal, both of which are instrumental, to examine the other types of social relations, as Perry-Kessaris demonstrated in her study of foreign investor interactions with the state legal system in Bangalore.<sup>952</sup>

The four ideal types exist in complex combinations, and it is unlikely that any social interaction will comprise only one ideal type. Instrumental aspects of interactions are essentially goal-oriented, and encompasses the econolegal, as well as describing the relations at the heart of the Investment Climate. Law serves these groups by providing rights to operate, by bringing people together in transient relationships or facilitating shared objectives.<sup>953</sup> "The law of instrumental community (most obviously, for example, contract, commercial, financial, corporate, and much other recently burgeoning regulation) is *powerful* because it can be tailored to serve

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<sup>948</sup> Werner Cahnman, 'Ideal Type Theory: Max Weber's Concept and Some of Its Derivations' (1965) 6 *The Sociological Quarterly* 268, 268.

<sup>949</sup> *ibid* 269–70.

<sup>950</sup> Cotterrell, 'Seeking Similarity Appreciating Difference: Comparative Law and Communities' (n 939) 47.

<sup>951</sup> *ibid*.

<sup>952</sup> Perry-Kessaris, *Global Business, Local Law* (n 11).

<sup>953</sup> Cotterrell, 'Seeking Similarity Appreciating Difference: Comparative Law and Communities' (n 939) 47.

precise instrumental objectives”.<sup>954</sup> But the patterns of community themselves are weak because the “social groups (especially commercial enterprises, trade networks and economic interest groups) [...] mutate rapidly as national and international markets alter”.<sup>955</sup>

Belief-based community life is, in contrast to instrumental life, usually strong. People cling to beliefs and values often as a source of individual agency, and it can be difficult to change these or watch them altered. But because values can be ambiguous in their implications when translated into specific regulatory demands, the law is often seen as weak and problematic when it expresses fundamental values or beliefs.<sup>956</sup> Consequently, these are capable of being subordinated to the regulatory requirements of instrumental community which have clearer, more specific, regulatory goals, resulting in the current bias of international development policy towards to the instrumental (specific) at the cost of value or belief-based imperatives (general). However, a focus on law’s relation to community, rather than political society treated as a single entity, requires that full account be taken of the complex interrelations of different kinds of community life within the territory of state legal systems”.<sup>957</sup>

For Weber, affective action was clearly irrational - i.e., not governed by any consciously recognized principles, and affective based community life is particularly hard to interpret in legal terms or regulate.<sup>958</sup> “[A]ffective bonds have an unpredictability and analytical impenetrability that makes it hard to frame or recognize them with any real precision in law. But these bonds are often strong: people may be prepared to die for family, friends or nation when love ties them to these groups or relationships”.<sup>959</sup> People may have a sense of sentimental attachment which gives a powerful sense of security, identity and meaningful

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<sup>954</sup> *ibid.*

<sup>955</sup> *ibid.*

<sup>956</sup> *ibid* 48.

<sup>957</sup> *ibid* 49.

<sup>958</sup> *ibid* 51.

<sup>959</sup> *ibid* 52.

existence, even if these cannot be meaningfully analysed or understood through the usual channels.<sup>960</sup>

Finally, relationships founded on traditional community are usually weak - being based on shared territory, language, or historical experiences.<sup>961</sup> They are also getting weaker in an era of globalization because people are less tempted to stay in their town but to "follow the job prospects" and in this way, instrumental community undermines traditional community.<sup>962</sup> In contrast to the clear instrumental regulations that law set out, "[l]aw's relations with traditional community are focused on providing basic conditions for co-existence (rather than facilitating the pursuit of projects or expressing shared ultimate values and beliefs)".<sup>963</sup>

### 7.1.2 Trust

In shifting the focus from actors to interactions, the four ideal types offer us a way to talk about the substance of those interactions. Mutual interpersonal trust is essential here for the maintenance of social interactions. Each of the four ideal types of collective involvement "imply different kinds of trusting relationships and different regulatory needs".<sup>964</sup> More precisely, such networks of "community [can be] best thought of as a web of understandings about social relations [which in turn] is built on (in a sense codifies) relations of mutual interpersonal trust".<sup>965</sup> Thus it is necessary to stress that networks of community do not spring up overnight, but rather evolve gradually, consolidated and built slowly and steadily over time which is imperative for the development of a "high degree of *trust*" developed on accumulated experiences of past interactions".<sup>966</sup> "Trust encourages future

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<sup>960</sup> *ibid.*

<sup>961</sup> *ibid* 50.

<sup>962</sup> *ibid.*

<sup>963</sup> *ibid.*

<sup>964</sup> Cotterrell, 'A Legal Concept of Community' (n 43) 75.

<sup>965</sup> *ibid* 87.

<sup>966</sup> *ibid* 86.

interaction and provides the motivation to engage in relatively free, uncalculated relations with others".<sup>967</sup>

"Actual social relations of interpersonal trust are, by the nature of their intimacy and individuality, removed from external control and depend entirely on subjective understandings between those involved. Hence, law's main support and encouragement of trusting relationships is indirect. It is provided by *approving and protecting empirical conditions that facilitate trusting relationships*".<sup>968</sup> Thus law supports the foundations on which networks of community can continue to develop and evolve by "sustaining and encouraging patterns of trust embodied in ideal typical forms of collective involvement or interaction".<sup>969</sup>

Each ideal-type of collective involvement has its "ideal regulatory requirements", or in other words, the regulation has a differing role in supporting and expressing the kind of trusting relationships that are necessary in order for the community to continue.<sup>970</sup> Social relations that depend on mutual interpersonal trust within these communities "depend entirely on the subjective understandings between those involved".<sup>971</sup> In this sense, the law's role in supporting and encouraging trusting relationships is indirect, and is provided by "*approving and protecting empirical conditions that facilitate trusting relationships*".<sup>972</sup>

To illustrate this by returning to Beragama, southern Sri Lanka, we can note that the government's legal reform in pursuit of a suitable investment climate to climb the World Bank's rankings will impact domestic businesses and other actors. In addition to the targeted foreign investors themselves, other actors that may be affected include Sri Lankan state and government actors (law makers and enforcers, regulatory bodies, trade delegations and diplomatic undertakings), and local

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<sup>967</sup> *ibid.*

<sup>968</sup> *ibid* 88.

<sup>969</sup> *ibid.*

<sup>970</sup> *ibid.*

<sup>971</sup> *ibid.*

<sup>972</sup> *ibid.*

businesses (owners, employers, employees, shareholders, trading partners).<sup>973</sup> Also relevant are banks and finance institutions (local, foreign and international banks, trading houses), insurers, and last but not least, local communities (community leaders, interested parties, civil society groups and actors).<sup>974</sup> Local communities are likely to have local trade-based interactions or be employers or employees (instrumental). But they are also likely to have a deep empathetic attachment to their locale (affective) and may (or may not) believe that economic development is best carried on by local enterprises (belief), leading them to embrace (or resist) increasing development. The lens not only prompts us to look beyond the immediate and targeted set of actors, but into the full range of interests, voices and motivations that are brought into play by legal or policy reform.

The lens also prompts us to question the role of law in supporting, protecting and promoting trusting relations of community despite the various complex combinations of ideal types. For a community to exist, both objective and subjective elements have to be present. Objectively, some degree of “stable, sustained interaction” must be present, and “relations of collective involvement must be continuing and reliable”.<sup>975</sup> Subjectively, however, it requires a “sense of attachment or belonging to others or something beyond the individual”.<sup>976</sup> A community also defines itself through the sense of insiders and outsiders, with a definition of “the other” as necessary for the identification of the group identity.<sup>977</sup> Moreover, as Cotterrell states, “[i]t is time to escape the empty rhetoric of ‘law and society’ or ‘law in society’, ‘a rhetoric that obscures the sheer complexity and

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<sup>973</sup> These are businesses and businessmen and women local to the sites of major foreign investment. This includes the major cities across Sri Lanka, but also the Special Economic Zones and Investment Parks around the country.

<sup>974</sup> Asian Development Bank, ‘Civil Society Briefs’ (Asian Development Bank 2013) <<http://www.adb.org/sites/default/files/pub/2013/csb-sri-lanka.pdf>> accessed 22 November 2018. Sri Lanka has a thriving civil society “industry”. There are an estimated 20,000 to 50,000 civil society organisations operating within the country.

<sup>975</sup> Cotterrell, ‘A Legal Concept of Community’ (n 43) 82.

<sup>976</sup> *ibid.*

<sup>977</sup> *ibid.* 83.

frequent indeterminacy of what society means today as the environment of legal regulation".<sup>978</sup>

While central to the development of stable relations and eventually networks of community, trust plays a broader role in structuring social relations and, as Cotterrell reminds us, "trusting relationships can be (and usually are) also power relationships".<sup>979</sup> It is important not to think of community as "fluffy" or "always friendly" as it "in no way implies an absence of power or domination", and mutual trust "can exist between individuals very unequal in power".<sup>980</sup> These trusting relations "may co-exist with and stabilize power relations" however.<sup>981</sup> Trust can also be used as an alternative to embeddedness in a way that explores instrumental social relations, and is therefore relevant not just in relation to its role in the community lens.<sup>982</sup>

Fukuyama identifies a "community based on mutual trust" as central to economic wellbeing.<sup>983</sup> He states that "economic activity represents a crucial part of social life and is knit together by a wide variety of norms, rules, moral obligations, and other habits that together shape the society".<sup>984</sup> He writes that "a nation's well-being, as well as its ability to compete, is conditioned by a single, pervasive cultural characteristic: the level of trust inherent in society".<sup>985</sup> Furthermore, "ethical habits and reciprocal moral obligations internalized by each [... give ...] members of the community grounds for trusting one another".<sup>986</sup> However, "[l]aw, contract, and economic rationality provide a necessary but not sufficient basis for both the stability and prosperity of postindustrial societies; they must as well be leavened

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<sup>978</sup> Cotterrell, 'Seeking Similarity Appreciating Difference: Comparative Law and Communities' (n 939) 54.

<sup>979</sup> Cotterrell, 'Rethinking Embeddedness; Law, Economy, Community' (n 22) 55.

<sup>980</sup> *ibid.*

<sup>981</sup> *ibid.*

<sup>982</sup> Uzzi (n 580) 43 onwards; Harriss (n 581) 65–66.

<sup>983</sup> Fukuyama (n 200) 8.

<sup>984</sup> *ibid.* 7.

<sup>985</sup> *ibid.* 7.

<sup>986</sup> *ibid.* 9.

with reciprocity, moral obligation, duty toward community, and trust, which are based in habit rather than rational calculation”.<sup>987</sup>

As the “basic building block” or “essence” of community, interpersonal trust not only “involves judgment” on the part of the actor towards her fellow actor, but is a relatively “open-ended commitment”.<sup>988</sup> Cotterrell disagrees with Luhmann, insisting that trust necessarily involves a slight risk on the part of the trusting actor, however he notes that trust is characteristic of, and tends to promote, the “affective (emotional) element in social relations”.<sup>989</sup> Geographical separation is not a problem for levels of interpersonal trust, however “substantial *moral distance*” can make interpersonal trust “hard to maintain”.<sup>990</sup> In this situation, “[a]ctive interpersonal trust is largely replaced in many situations by a more passive confidence in impersonal systems”, many of which are “defined, stabilized and guaranteed by the law of the centralized state”.<sup>991</sup> This tends to see a shift towards stronger reliance on the “politically guaranteed authority” of the state as a result.<sup>992</sup>

Cotterrell also notes that the increasingly global operations of businesses performing orthodox economics tends “to promote moral distance in the social relationships controlled or shaped by them”, leading to the domination of remote systems described by Luhmann.<sup>993</sup> This tendency is, Cotterrell explains, “inimical to the extension of relations of community”, meaning that the “search for community seems to run counter to some important tendencies of contemporary capitalist development”.<sup>994</sup> This once again echoes why the approach is so useful for challenging orthodox approaches as embodied in World Bank development policy.

In reality though, it is unclear to what extent mutual interpersonal trust can be “scaled up” to generalized trust within society. Satish Saberwal has shown that

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<sup>987</sup> *ibid* 11.

<sup>988</sup> Cotterrell, *Law's Community* (n 103) 329–330.

<sup>989</sup> *ibid* 330.

<sup>990</sup> *ibid*.

<sup>991</sup> *ibid* 331.

<sup>992</sup> *ibid*.

<sup>993</sup> *ibid* 331–2.

<sup>994</sup> *ibid* 332.

while intra-caste trust, for example, in India might be strong, inter-caste trust is virtually non-existent.<sup>995</sup> Moreover, trust through reciprocity can develop through the exclusion of “the other”, which has been described as “the dark side of social capital”.<sup>996</sup> Drawing on the work of Putnam’s social capital, Harriss suggests that “it is possible that a shared identity provides a basis for trusting a stranger, or shared beliefs”.<sup>997</sup> Further, “[t]rust may be based on common religious allegiance, or on a shared political ideology”.<sup>998</sup> However Harriss asserts that even when interpersonal trust is not strong, the confidence of actors in “institutional sanctions and incentives that are backed by government” will encourage interactions and transactions.<sup>999</sup>

Thus, “[p]art of the function of institutions is [...] to replace personal knowledge” as these work as a backdrop against which reasonably unencumbered interactions can take place.<sup>1000</sup> While there is “evidence that state institutions can lay the basis of generalized trust”, there is disagreement on the role of morality and trust in enabling effective economic aspects of interactions.<sup>1001</sup> Platteau has argued that a “generalized morality” is necessary for an effective and efficient market economy, mirroring Weber’s notion of the Protestant ethic as a driver of economic development.<sup>1002</sup> Conversely, Moore has suggested that it is possible to produce trust through institutional innovation on the part of the state.<sup>1003</sup> Sirianni and Friedland refer to the possibility of mutually supportive relationships, or a synergy, between state and civic action.<sup>1004</sup> Francis Fukuyama has also addressed the role of trust in development, and sees societies with high levels of trust as those able to

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<sup>995</sup> Saberwal, cited in Harriss (n 581) 38.

<sup>996</sup> *ibid.*

<sup>997</sup> *ibid.* 39.

<sup>998</sup> *ibid.*

<sup>999</sup> *ibid.*

<sup>1000</sup> *ibid.*

<sup>1001</sup> *ibid.*

<sup>1002</sup> J-P Platteau, ‘Behind the Market Stage Where Real Societies Exist’ (1994) *Journal of Development Studies* 30(3), 533-77 (Part I) and 30(4), 753-817 (Part II), cited in *ibid.*

<sup>1003</sup> M Moore, ‘How difficult is it to construct market relations? A commentary on Platteau’ (1994) *Journal of Development Studies*, 30(4), 818-30, cited in *ibid.*

<sup>1004</sup> CJ Sirianni and L Friedland, ‘Social Capital and Civic Innovation: Learning and Capacity Building from the 1960s to the 1990s’ (1995) paper presented at American Sociological Association, Aug 1995, cited in *ibid.*

develop higher levels of social capital which acts as a “glue against the centrifugal structures of the market”.<sup>1005</sup>

Defining trust as “a governance structure that resides in the social relationship between and among individuals” that is “cognitively [...] based on heuristic rather than calculative processing”, Uzzi has explored its importance in industry.<sup>1006</sup> He has found trust to be “an explicit and primary feature of [...] embedded ties”, expressed as a belief that “an exchange partner would not act in self-interest at another’s expense”.<sup>1007</sup> This resulted in “a predilection to assume the best when interpreting another’s motives”.<sup>1008</sup> Uzzi notes that this speeds up the decision-making process and “conserves cognitive resources”.<sup>1009</sup> Drawing parallels with the psychology of heuristics, he notes that the “primary outcome of governance by trust was that it promoted access to privileged and difficult-to-price resources that enhance competitiveness but that are difficult to exchange in arm’s-length ties”.<sup>1010</sup>

Even breaking the conceptual commitment to embeddedness, trust between actors remains important. Not only does it create the conditions in which networks of community can arise, but it can act as the other side of the embeddedness coin, making its identification central to any empirical research project into the econolegal. Like the concept of embeddedness, trust is relational, and along with “networks”, comprise “perhaps [one of] the most distinctive terms in the new economic sociology” addressing dimensions of economic organization that most economists choose to ignore.<sup>1011</sup> It can similarly operate explicitly, when stated

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<sup>1005</sup> Fukuyama (n 11); cited in Carmen Sirianni and Lewis Friedland, ‘Online Dictionary: Social Capital’ (Civic Practices Network 2009) <<http://www.cpn.org/tools/dictionary/capital.html>>.

<sup>1006</sup> Uzzi (n 580) 45.

<sup>1007</sup> *ibid* 43.

<sup>1008</sup> *ibid*.

<sup>1009</sup> *ibid*.

<sup>1010</sup> *ibid* 43–44. Heuristics is defined as the decision-making processes that economize on cognitive resources, time, and attention processes but do not necessarily jeopardize the quality of decisions.

<sup>1011</sup> Sayer (n 685) 49. Thus trust is differentiated from confidence or expectation. It also sits between and straddling the embedded networks set out by Granovetter, and Habermas’s “systems”. For more, see *ibid* 50.

through linguistic tools, or implicitly acting as an unthought rationality that shapes both linguistic tools and mental models.

### **7.1.3 Potential problems**

To someone used to dealing with the certainties provided by orthodox, neoclassical economics approaches, the idea of community can seem nebulous, even vague.<sup>1012</sup> It is important to remember that community is not a fluffy, cosy theory, but can capture the unpleasant side of interactions too. Actors can use the law, but they can also abuse and avoid it, each of which is an interaction with the legal system of a different type.<sup>1013</sup> Secondly, both sides of the econolegal coin are included as instrumental relations, which some may feel blurs the line between them. Ultimately, this may also have the positive effect of allowing their sociological reconceptualization in a manner consistent with social constructivism, understood alongside a host of other interests, voices and values. Thirdly, the approach could be described as purposive in nature in the sense that the goals and aspirations of the actors determine the ideal-type. This is the case for instrumental aspects of interactions (is the actor attempting to transact or contract, for example?) but less so with the other ideal types. Finally, the question of the degree, strength and sustainability of mutual interpersonal trust is nebulous, relative, and subjective. It is also subject to inconsistencies in interpretation and definition in a manner similar to the conceptual commitment to embeddedness that we are attempting to move beyond.

For the present purposes, these reservations are worth setting to one side as the core approach of examining the interaction can be undertaken through the community lens, identifying a range of interaction ideal types that challenge the mainstream privilege of the economic. Frerichs' rankings of social interaction build

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<sup>1012</sup> Perry-Kessaris, 'Approaching the Econo-Socio-Legal' (n 2).

<sup>1013</sup> Perry-Kessaris, 'Recycle, Reduce and Reflect' (n 6) 18–19.

on this, offering another dimension to the analysis of complex, dynamic patterns of social interaction.

## 7.2 Ranking of social interactions

The addition of Frerichs' notions of regimes and rationalities (what we do, and how we think about what we do) in the following discussion adds a way of understanding the actor's mental models as well as her conception and perception of her surroundings. This gives us a way of talking about the institutions and practices metaphorically called "the economy" and "the law" as regimes. It also gives us linguistic tools for speaking about the way we mentally conceptualize, rationalize and justify these regimes through the mental models of economics and law rationalities. It reminds us that, consistent with constructivist approaches, regimes and rationalities are continually re-co-constituted through and within each and every social interaction. This mirrors the so-called cognitive turn in some sociological theories without getting too caught up in epistemology. However, a discussion of Frerichs' and Perry-Kessaris' analyses of the cognitive and normative embeddedness of actors is useful in order to move forwards.

Sabine Frerichs sets out the four levels, or rankings of interaction as a way of placing Granovettarian and Polanyian embeddedness on the same page. This includes Granovetter's theory of *actors* and their *interactions* at a micro- and meso-level, with Polanyi's theory of *regimes* and *rationalities* at the macro- and meta-levels. Essentially though, all four levels interact in a way that seeks to combine the multifarious approaches that have developed within economic sociology and ESL. Frerichs refers to these as the "four analytical levels of the embeddedness paradigm" as these can be mapped in contemporary sociology.<sup>1014</sup> While these are

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<sup>1014</sup> Frerichs, 'Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law' (n 51) 6–8.

set out here, the thesis suggests that these levels, or rankings or social interaction work equally well when the concept of embeddedness is removed.

### 7.2.1 Micro-, meso-

In an embeddedness-based context, the *micro*-analytical level focuses on actors and theories of action. According to the sociological context, these tend to focus on dyadic interactive and intersubjective entities with shared understandings. This sits in contrast to the atomistic, self-centred, utility-maximizing, monad – *homo economicus* – that features so prominently in micro-economic theories.<sup>1015</sup> The notion of meaning and the intersubjective understanding of the actor here is also much greater than might be the case in a neoclassical economic frame.<sup>1016</sup> At the *meso*-analytical level, the focus shifts from inter-related actors to focus on the relations in their own right, as is common with network or field theoretical approaches.<sup>1017</sup> These tie in with ‘structuralist’ notions of relational networks or ‘culturalist’ notions of institutional fields, in common with New Institutional Economics approaches, and very much reminiscent of Granovetter’s approach.<sup>1018</sup>

### 7.2.2 Macro-, Meta-

By contrast, Polanyian-inspired approaches would instead focus at the *macro*-levels of analysis, specifically on social *regimes* which are “complex and complementary institutional constellations that connect and integrate relatively autonomous spheres of action”.<sup>1019</sup> Socio-economic “regime analysis draws both on macro-sociological theory and comparative political economy” and the contingency of

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<sup>1015</sup> Frerichs, ‘Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law’ (n 51).

<sup>1016</sup> *ibid.*

<sup>1017</sup> *ibid* 68.

<sup>1018</sup> *ibid.*

<sup>1019</sup> *ibid.*

regimes and their convergence and divergence can be drawn out.<sup>1020</sup> Finally, at the *meta*-level, the focus shifts to the *rationalities* behind any given regime, which comprise the “basic principles” contained in the “deep [...] structure/culture of society”.<sup>1021</sup> These are then the “epistemic categories that organise our perceptions and evaluations of reality”, and which structure the way in which we perceive, interpret, process, understand and act.<sup>1022</sup> The rationalities underlying the regimes, therefore, are the product of our culture, our traditions, our shared beliefs, education and interests, all of which come into play in each and every interaction through which we create, recreate or reject established modes of action, or institutions. Polanyi, then, “can be said to have focused on how our meta-level thinking and our macro-level policies in respect of economy were first disembedded from wider social life in the course of the Industrial Revolution and then re-embedded in wider social life through regulatory counter-movements”.<sup>1023</sup>

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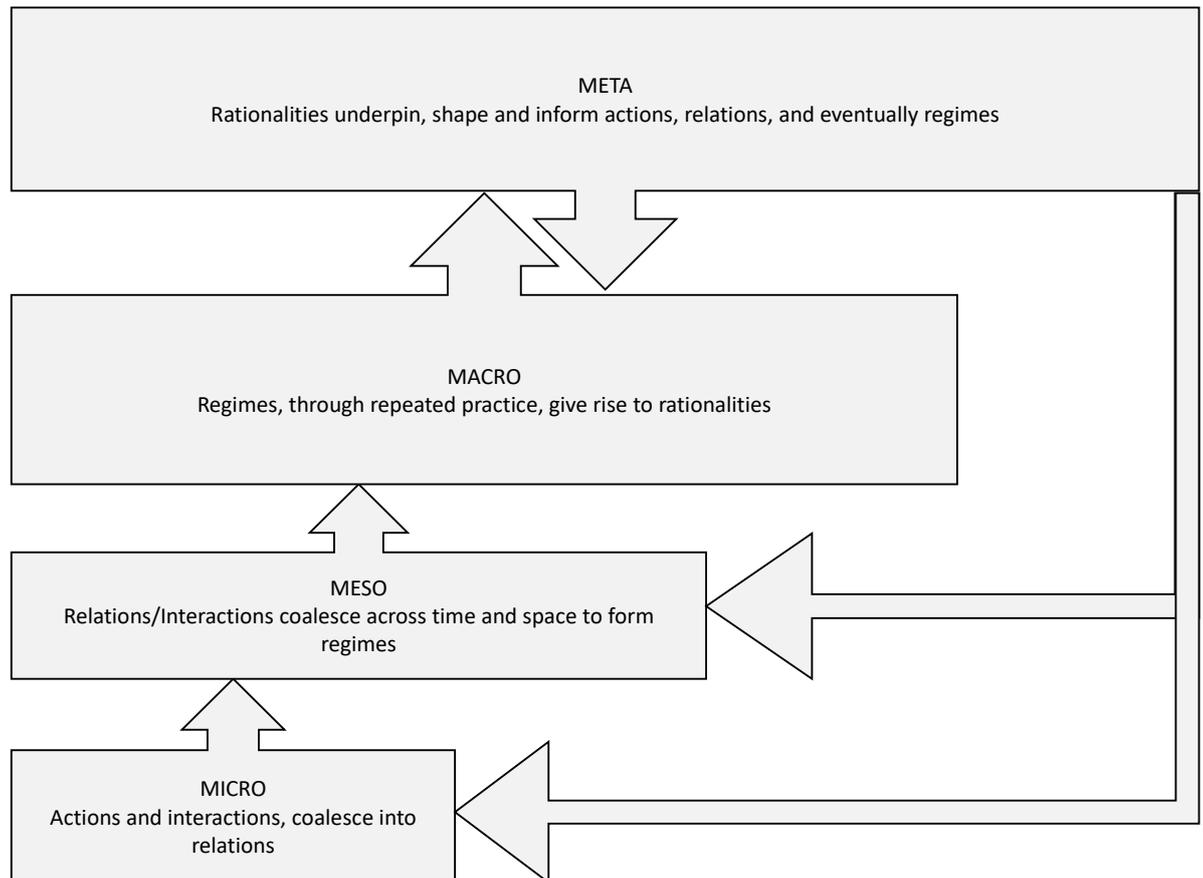
<sup>1020</sup> Frerichs, ‘Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law’ (n 51).

<sup>1021</sup> *ibid.*

<sup>1022</sup> *ibid* 68.

<sup>1023</sup> Perry-Kessarais, ‘Reading the Story of Law and Embeddedness Through a Community Lens’ (n 40) 402.

Figure 11 - Rankings of social interaction, showing regimes and rationalities, and the re-constitutive feedback loops



### 7.2.3 Cognitive and normative dimensions

The way that our linguistic tools shape our mental models and ways of doing – our rationalities and regimes – requires an understanding of the feedback loops that operate within and throughout social interactions. Using Frerichs' rankings of social interaction in addition to the community lens explored above, we can appreciate that our econolegal regimes and rationalities are mutually constitutive. Through each interaction our ways of doing and ways of thinking are either reaffirmed or

challenged.<sup>1024</sup> Frerichs has distinguished two further dimensions of embeddedness which are relevant here to understanding her notions of regimes and rationalities. These are the cognitive and normative dimensions of embeddedness. While the purpose of this discussion is to move an ESL beyond its current commitment to the concept of embeddedness, it can be helpful to unpick the cognitive and normative elements further here.

To do this, it is helpful to look back to Polanyi's original embeddedness thesis, one reading of which understands the social embeddedness of the market as not only ubiquitous, but taken-as-read, in the sense that the market cannot be anything but. Market relations have to be, by their very nature, social at some level – they are about people – and thus Polanyi's core argument is proven beyond doubt. On the other hand, Polanyi's thesis can be read as a statement of the degree to which the market is embedded in society, with economies becoming either more disembedded or re-embedded, and “highlighting the continuities and discontinuities over time”.<sup>1025</sup> While some readings might see these as irreconcilable, Frerichs once again seeks to construct a frame that puts both readings on the same page. She does this by suggesting a distinction between the cognitive and normative embeddedness of the economy, which then offers a reading of these two interpretations that avoids conflict.<sup>1026</sup>

Cognitive embeddedness, she argues, focuses on the meta-level of rationalities and its epistemic effects on actors, relations and regimes.<sup>1027</sup> Conversely, normative embeddedness is found primarily at the macro-level of regimes and their normative impact on micro- and meso-level phenomena.<sup>1028</sup> While cognitive embeddedness can be described as *ubiquitous*, by contrast, normative embeddedness is

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<sup>1024</sup> See generally Giddens, *The Constitution of Society* (n 5); Erving Goffman, *The Presentation of Self in Everyday Life* (Doubleday 1959); Erving Goffman, *Interaction Ritual: Essays in Face-to-Face Behavior* (Routledge 1967).

<sup>1025</sup> Frerichs, 'Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law' (n 51) 7.

<sup>1026</sup> Frerichs, 'Re-Embedding Neoliberal Constitutionalism: A Polanyian Case for the Economic Sociology of Law' (n 51).

<sup>1027</sup> *ibid* 70.

<sup>1028</sup> *ibid*.

*contingent*. Hence while cognitively, we look at how economy and society are defined and understood, normatively we look at the institutions and procedures that interconnect and integrate these concepts into daily life. While cognitive embeddedness is, therefore, a “fundamental condition of all economies”, normative embeddedness “provides a contingent value standard for certain economies”.<sup>1029</sup> These are therefore “always embedded” in the sense that they are “moral, scientific or cultural constructions” or meta-rationalities.<sup>1030</sup> But they can also be “more or less embedded” when “measured by the moral, scientific or cultural standards that are institutionalized in a given society”, or macro-regimes.<sup>1031</sup> In other words, “cognitive embeddedness” is how economy and society are defined and counterposed.<sup>1032</sup> Equally, “normative embeddedness” describes the institutional relations that (inter-)connect and integrate these (conceptually separate) entities.<sup>1033</sup> The cognitive embeddedness of both economy and society are therefore responsible for the shape of this analysis. Indeed, this is central to how Frerichs describes these as social entities. Cognitive embeddedness is also seminal for the potential of all actors to conceive, perceive and conceptualise the meta-rationality constructions and macro-regime institutions by which and through which their actions are shaped and given meaning. While cognitive and normative embeddedness may or may not contradict each other in interactions, both are capable of changing over time, which Frerichs terms a “state of crisis”.<sup>1034</sup>

In this sense, a specifically Polanyian disembedding, or in Dale’s terminology a reverse embedding, or “society’s embeddedness in the economy”, can be understood as an epistemological, rather than an ontological proposition.<sup>1035</sup> This is in the sense that we are not describing the material relation between society and economy, which Frerichs admits would “anyway go against the sociological

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<sup>1029</sup> *ibid* 8.

<sup>1030</sup> *ibid*.

<sup>1031</sup> *ibid*.

<sup>1032</sup> *ibid*.

<sup>1033</sup> *ibid*.

<sup>1034</sup> *ibid* 71.

<sup>1035</sup> *ibid* 14.

common sense”, but between different “principles of social organization”.<sup>1036</sup> These “pre-analytic visions” work as “powerful social constructions, equipped with scientific authority” in the real world and essentially means that market society is not only dependent on the economy, but has “adopted the logic of the markets”, meaning society is run “*as if* [it were an] adjunct to the markets”.<sup>1037</sup> In other words, while the macro-regime institutions may be more or less embedded, the meta-rationalities (how we think about what we do) have been transformed to echo the models and notions of neoclassical and neoliberal economics. In the light of the discussion about performativity and the importance of language in re-constituting the self and the reality, this becomes a powerful and compelling argument suggesting that through the domination of meta-rationalities by neoclassical economics, we are all transformed, to a greater or lesser degree into *homo economicus*.

This can be taken further by seeing both the conceptual and normative approaches to econosociolegal interactions as forming “the intersection between the meta and the macro levels: analytical approaches are manifestations of rationalities, normative approaches are implemented in the form of regimes”.<sup>1038</sup> Therefore, by correlating conceptual approaches with manifestations of rationalities, and normative approaches with regimes, a Polanyian “disembedding” can be reinterpreted as the straightforward dominance of rationalities and regimes that prioritise liberal, economic approaches above all others. Thus, “an analytically disembedded approach is one that thinks of *society as economy*” and which applies these regimes and rationalities not only to economic areas of interest, but to all others throughout society as well, including affective, belief-based and traditional actions (or aspects of interactions).<sup>1039</sup> Similarly, “a normatively disembedded approach is one that puts *economy before society* and *takes economy for society*”,

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<sup>1036</sup> *ibid.*

<sup>1037</sup> *ibid.*

<sup>1038</sup> Perry-Kessaris, ‘Reading the Story of Law and Embeddedness Through a Community Lens’ (n 40) 405.

<sup>1039</sup> *ibid.*

meaning that economic values and interests are privileged.<sup>1040</sup> The justification usually given is that this is good for the rest of society, despite a subordination of other types of instrumental, affective, belief-based and traditional action. Perry-Kessaris concludes therefore that Polanyi's outrage was at the "floating free" of analytical and normative modes of action from their original home in the social sciences.<sup>1041</sup> She argues that the narrower, liberal economic approach came to dominate thinking and practice even though social (including economic) action had remained embedded in wider social life.<sup>1042</sup>

Both approaches essentially conclude with a similar reading of Polanyian embeddedness. This states that while people's thinking (the conceptual or meta-rationalities) floated free and became obsessed with neoclassical economic frames, their deciding (normative or macro-regimes) remained more or less sociologically-oriented as common sense would dictate. Nevertheless, varying degrees of embedding and disembedding occur on both conceptual and normative axes as political regimes wax and wane. This is a helpful and useful way of separating out how people think and how they act socially. It also offers an interesting way of reconciling Polanyian and Granovetterian readings of embeddedness while reflecting Dale's interpretation more closely than Block's. The approach also highlights the potential performative impact of rationalities and regimes through feedback loops that re-co-constitute the actor. In short, we are generally agreed that current econo-centric frames promote patterns of thought and behaviour inimical to *homo economicus*. These can be seen in the linguistic tools used, which in turn shape the mental models available to the actor, as well as the ways of doing the econolegal.

However, in reviving the commitment to the concept of embeddedness, we also revive the limitations contingent on this concept. At the heart of the discussion is an attempt to understand the linguistic tools contingent on a conceptual commitment

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<sup>1040</sup> *ibid.*

<sup>1041</sup> *ibid.*

<sup>1042</sup> *ibid.*

to embeddedness, and how these shape our rationalities and regimes. We can appreciate the ways in which rationalities and regimes may be trammelled into economic frames through linguistic tools based on neoclassical economics. But we are still talking about economy, law and society *as if* they were separate phenomena, despite the fact that “[n]either law nor economy can exist without society”.<sup>1043</sup> By reframing the linguistic tools to talk about economic and legal aspects of interactions, we can reframe the rationalities and regimes that are then available. By shifting the focus to aspects of interactions and their ideal-types, we have available linguistic tools for focusing on the econolegal as a social phenomenon. The rankings of social interaction are still useful here as they offer the linguistic tools of regimes and rationalities, as well as those that allow discussion of the level of interaction at issue.

Given this, we are therefore no longer talking about the extent to which society is embedded in the economy at the level of meta-rationalities. Instead, we are asking about the extent to which economic and legal aspects of interactions are performed at the micro and meso levels. We are similarly reminded of the importance of the meta-rationalities (conceptual resources) and macro-regimes (normative resources) in shaping how these manifest. It is noteworthy that there are two differences here in the way in which Frerichs’ rankings of social interaction are applied in the proposed lens. Firstly, embeddedness is removed as a relational descriptor and core concept. Secondly, the proposed lens is intended, in the context of ESL, to guide and frame empirical research into complex, multi-actor social situations where the researcher is taking a snapshot in time of social interactions, their attributes and characteristics. This differs from Polanyi’s original goal of understanding the development of the relationship between the econolegal and social over time at the macro and meta level. Thus, we have a series of social interactions, each comprising complex combinations of ideal-types and supported by mutual interpersonal trust, enabling the development of networks of community. Then, social organization can

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<sup>1043</sup> *ibid* 404.

be ranked, from micro and meso-level interactions, extending out across society to macro-regime institutions and meta-rationalities.

This accomplishes the first shift in focus to move ESL beyond embeddedness by focusing on the interactions instead of actors. It also includes a simple version of the cognitive turn but without too great an emphasis on setting out an epistemology.<sup>1044</sup> The central role of the linguistic tools in both revealing and concealing rationalities and regimes, and their alternatives, can be explored further through notions from performativity.

### **7.3 Performativity**

The use of linguistic tools to both convey information and shape our mental models and ways of interacting socially is central to analysis of ESL's commitment to the concept of embeddedness. Performativity has explored the impact of language in shaping behaviour, and some of the implications from research into the performativity of language is illuminating. The term has also become more "fashionable" recently, much in the same way as Polanyi's work, by authors in the best seller lists.<sup>1045</sup>

Language, and the tools it provides us to communicate information and share ideas about ourselves and the world, has the potential to both reveal alternative ways of thinking and doing, and to conceal or mask alternatives. The current commitment to the concept of embeddedness presents and entrenches a set of regimes and rationalities that are antithetical to an understanding of the econolegal that is consistent with social constructivism. But the way we describe the world, and ourselves, is mutually re-co-constitutive. The conceptual commitment to

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<sup>1044</sup> Frerichs looks at Polanyian epistemology in reinterpreting his work. However, as I am borrowing the frame in a similar manner to Perry-Kessaris for the purposes of structuring empirical work, this is not necessary in order for the four layers to remind the researcher to be aware of actors' regimes and rationalities.

<sup>1045</sup> Mariana Mazzucato, *The Value of Everything: Making and Taking in the Global Economy* (Kindle Edition, Penguin Books 2018). Performativity is dropped in to the discussion with no context, definition or references.

embeddedness therefore has implications both for what we think and do, but also for who we perceive ourselves to be. Do we act as *homo economicus*, or *homo sociologicus*?<sup>1046</sup> The following discussion elaborates performativity and the findings of some of the core research in the field.

### 7.3.1 Defining performativity<sup>1047</sup>

It is hard to find a “clear unambiguous definition of performativity in the literature”, however there is a general consensus that performativity involves “changing rather than describing behaviour”.<sup>1048</sup> With particular regard to the current discussion, Mckeever et al state that by “[b]uilding on the development and use of insider perspectives, embeddedness researchers are able to better interpret what ‘performance’ means within a particular context”.<sup>1049</sup> While Callon talks about discourse “act[ing] on its subject”, MacKeever refers to the “practical consequences” of the theory.<sup>1050</sup> Performativity tends to claim that economics and economists are “inside rather than outside the economy”, intrinsic or endogenous to economy.<sup>1051</sup> As Mäki notes, the true meaning of performativity that looks to the work of Austin and the role of speech acts has tended to be “obscured by the literature on how economic theory can have consequences for economic reality”.<sup>1052</sup> Austin originally noted that “a performative utterance was a specific

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<sup>1046</sup> MacKenzie and Millo (n 26) 141.

<sup>1047</sup> The term “performativity” was probably first coined by JL Austin in 1962, drawing on a line of pragmatist tradition. JL Austin, *How To Do Things With Words* (Oxford, Clarendon 1962), cited in MacKenzie, Muniesa and Siu (n 62) 2.

<sup>1048</sup> Uskali Mäki, ‘Economics Making Markets Is Not Performativity’ 2 <<https://www.hse.ru/data/2011/04/05/1211693735/PerformativityMoscow2011.pdf>> accessed 29 June 2018.

<sup>1049</sup> Mckeever, Anderson and Jack (n 601) 231.

<sup>1050</sup> Michel Callon, ‘What Does It Mean to Say That Economics Is Performative?’, *Do Economists Make Markets: On the Performativity of Economics* (MacKenzie et al, eds) (Princeton University Press) 307; Donald MacKenzie, Fabian Muniesa and Lucia Siu, *Do Economists Make Markets? On the Performativity of Economics* (Princeton University Press 2008) 6; cited in Mäki (n 457) 2.

<sup>1051</sup> Mäki (n 1048) 2–3. However, according to MacKeever’s three types of performativity, only strictly *Barnesian* performativity has a truly re-creative role in shaping economic processes, meaning that these definitions of performativity are, as with most subjects, subject to a great deal of debate and controversy, as cited in *ibid* 3.

<sup>1052</sup> Mäki (n 1048) 4.

kind of statement or expression that establishes its referent through the very act of uttering".<sup>1053</sup> Bourdieu has added that "the 'conditions of felicity' that make an utterance successfully performative are social as well as linguistic and bodily".<sup>1054</sup> Judith Butler has taken performativity to the heart of feminist theory, while Robert K Merton's work on the "self-fulfilling prophecy", in which "the release and social circulation of a description or prediction enhances its validity" investigates one aspect of this, the validity of which has been probed by other writers.<sup>1055</sup> Thus there are many "varieties of performativity", some of which are more developed than others but all of which are "still under construction".<sup>1056</sup>

Perhaps the best known proponent of the performativity of economics is Michel Callon, who proposed "considering economics not as a form of knowledge that depicts an already existing state of affairs but as a set of instruments and practices that contribute to the construction of economic settings, actors, and institutions".<sup>1057</sup> For Callon, economics refers to the full range of disciplines, specialities, technologies and forms of knowledge with which economic actors and their markets are equipped. He states that it "performs, shapes and formats the economy, rather than observing how it functions".<sup>1058</sup> Callon has set out his preference for the term "co-performance" as opposed to "performativity", capturing the collective aspect and the activity behind the term rather than "just a property of statements".<sup>1059</sup>

Callon's approach has divided critics, with MacKenzie describing the approach as "a compelling tool for analysing the social impact of economics", while others have

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<sup>1053</sup> JL Austin, *How To Do Things With Words* (Oxford, Clarendon 1962), cited in MacKenzie, Muniesa and Siu (n 62) 2.

<sup>1054</sup> Bourdieu, *Language and Symbolic Power* (Cambridge, Polity 1991), cited in *ibid*.

<sup>1055</sup> See Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York, Routledge 1990), and Judith Butler, *Excitable Speech: A Politics of the Performative* (London, Routledge 1997); Robert K Merton (1949), cited in *ibid* 3. For questioning the notion of the self-fulfilling prophecy, see MacKenzie, Muniesa and Siu (n 62).

<sup>1056</sup> MacKenzie, Muniesa and Siu (n 62) 7.

<sup>1057</sup> Michel Callon (ed), *The Laws of the Markets* (Wiley-Blackwell 1998) <<https://www.wiley.com/eng/Laws+of+the+Markets-p-9780631206088>> accessed 6 August 2018; MacKenzie, Muniesa and Siu (n 62) 3–4.

<sup>1058</sup> MacKenzie, Muniesa and Siu (n 62) 4.

<sup>1059</sup> Callon's chapter in MacKenzie et al, cited in *ibid* 15.

called it “a dangerous threat to the sociological critique of economics”.<sup>1060</sup> Callon’s best known assertion is that the economy “is embedded not in society but in economics”.<sup>1061</sup> By this, he means that economics does not describe “the economy” but “brings that economy into being: economics *performs* the economy, creating the phenomena it describes”.<sup>1062</sup> As such, he challenges the notion that sociology can rebuild or reclaim a socialised version of the atomistic actor in neoclassical economics. He suggests instead that sociology’s goal should be to understand the role of economics in producing the agent.<sup>1063</sup>

Consequently, some sociologists (economic sociologists and anthropologists) have attacked this approach as amounting to a defence of neoclassical economics (contrary to Callon’s own stance) in the sense that it accepts the model of the framed and abstracted market.<sup>1064</sup> However, Callon acknowledges Granovetterian embedding,<sup>1065</sup> and developed many of his ideas working on actor network theory (ANT) with Bruno Latour.<sup>1066</sup> MacKenzie and Millo note that there is “no great barrier to integrating performativity and embedding in ‘networks of interpersonal relations’”.<sup>1067</sup> This thesis suggests that, with the community lens and rankings of social interaction, performativity can offer an alternative set of linguistic tools and

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<sup>1060</sup> See *inter alia*, MacKenzie, Muniesa and Siu (n 62); MacKenzie and Millo (n 26); but cf. Ben Fine, ‘Callonistics: A Disentanglement’ (2003) 32 *Economy and Society* 478; Daniel Miller, ‘Turning Callon the Right Way Up’ (2002) 31 *Economy and Society* 218; cited in MacKenzie, Muniesa and Siu (n 62) 4.

<sup>1061</sup> Callon, *The Laws of the Markets* (n 1057) 30; MacKenzie and Millo (n 26) 108.

<sup>1062</sup> MacKenzie and Millo (n 26) 108.

<sup>1063</sup> *ibid.*

<sup>1064</sup> See Miller (n 1060) 175; cited in MacKenzie and Millo (n 26) 108 (ref incorrect in original).

<sup>1065</sup> Callon, *The Laws of the Markets* (n 1057) 8–12; MacKenzie and Millo (n 26) 139. Callon unfortunately appears to conflate Polanyian and Granovetterian embeddedness, leaving us none the wiser as to what he intends.

<sup>1066</sup> This looks at “the relationship between the paradigmatic experimental site - the laboratory - and what is ‘outside’ it in the case of science, nature ‘in the wild’, or in the case of economic experiments, the ‘real economy’”. MacKenzie, Muniesa and Siu (n 62) 11. ANT, “laboratories” achieve their results by tightly controlling both material entities and human beings, and the answer is usually to transform the world outside the laboratory so that it more closely resembles the laboratory. See Bruno Latour, ‘Give Me a Laboratory and I Will Raise the World’, *Science Observed: New Perspectives on the Social Studies of Science* (KD Knorr-Cetina and M Mulkay eds) (Sage 1983); cited in MacKenzie, Muniesa and Siu (n 62).

<sup>1067</sup> Granovetter (n 48) 504; MacKenzie and Millo (n 26) 139.

mental models that break the current commitment to the concept of embeddedness.

Krippner and Alvarez discuss Callon's response to the embeddedness problem, as one of "entanglement and disentanglement", although simply switching the term used but keeping the same approach does not make the problems disappear.<sup>1068</sup> They note that "Callon aligns his use of the embeddedness concept more closely to Granovetter than to Polanyi" and uses ANT in a similar but distinct way to Granovetter's network theory.<sup>1069</sup> Barry and Slater note that Callon's use of the terms "entanglement and disentanglement" allow him to refer "to the way in which objects are simultaneously inserted into and abstracted from social relations to make them available for exchange".<sup>1070</sup> At issue though, especially in the two shifts in focus to interactions and feedback loops, is the mutual re-co-constitution of the actor and her regimes and rationalities by means of her linguistic tools expressed and performed in social interaction.

### Creating Markets

As MacKenzie notes, there is a paucity of empirical evidence testing performativity theses, and the main studies informing the field can be counted on one hand.<sup>1071</sup> Of these, the most famous is the computerized strawberry market in the Loire examined by Garcia in 1986, who "demonstrates how a reasonable approximation to a 'perfect market' was consciously constructed".<sup>1072</sup> The study asks how economic sociology and anthropology should analyse markets, focusing on an example where the computerized marketplace was designed and built to fit the notion of the 'ideal' market. The creation of the computerized strawberry market at

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<sup>1068</sup> Krippner and Alvarez (n 629) 230.

<sup>1069</sup> *ibid* 230.

<sup>1070</sup> A Barry and D Slater, 'Interview with Michel Callon' (2002) 31 *Economic Sociology* 285, 291; Smith-Doerr and Powell (n 590); cited in Krippner and Alvarez (n 629) 230.

<sup>1071</sup> Read in the light of Giddens' *double hermeneutic*, the ability of social science concepts to leak back into the reality they are trying to study, altering them in the process, is an observed phenomenon but one that means that there is a constant dialogue between the researcher and the universe of research. Giddens, *The Constitution of Society* (n 23).

<sup>1072</sup> Marie-France Garcia, 'La Construction Sociale d'un Marché Parfait: Le Marché Au Cadran de Fontaines-En-Sologne' (1986) 65 *Actes de la Recherche en Sciences Sociales* 2; cited in MacKenzie and Millo (n 26) 108.

Fontaines-en-Solonge was “a deliberate, planned creation, among the designers of which was an adviser well-versed in economics”.<sup>1073</sup> MacKenzie notes that in this example, “the desire for a market in which supply and demand would find a competitive equilibrium was inscribed into the computerized auction system and even into the very architecture of the building constructed to house the market, which had separate rooms of buyer and sellers, both visible to the auctioneer but not to each other”.<sup>1074</sup> However, in a follow-up to her work, Garcia-Parpet found a further evolution of the market at Fontaines-en-Solonge towards a “more solidarity-oriented attitude”, prompting Callon to remark that the economists’ “ideal market” appears to be becoming more like the markets posited by economic sociology.<sup>1075</sup>

### Creating actors

Callon’s notion that all utterances are entirely economics, and “as economics they perform the economy” is demonstrated in Madeleine Akrich’s research on the construction of electricity markets.<sup>1076</sup> As Callon remarks, “conceiving of electricity meters and uttering them (putting them into circulation) means creating consumers, citizens, and a market for electricity”.<sup>1077</sup> The importance of “designing markets” can also be appreciated in contexts such as that of the UK government auctions of the communications spectrum for example, where the design of the auction determines the success of the markets that follow.<sup>1078</sup> However, MacKenzie argues that this is not true performativity, which only occurs when economics directly affects individual behaviour, instead of (or as well as) shaping that behaviour by influencing the design of the environment in which it takes place.<sup>1079</sup>

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<sup>1073</sup> MacKenzie, Muniesa and Siu (n 62) 8.

<sup>1074</sup> *ibid.*

<sup>1075</sup> *ibid.* Miller remains unconvinced of any performativity at the heart of this study however. Miller (n 1060) 232.

<sup>1076</sup> Callon, ‘What Does It Mean to Say That Economics Is Performative?’ (n 104) 334.

<sup>1077</sup> M Akrich and J Law, ‘On Customers and Costs: A Story from Public Sector Science’, *Accounting and Science Power (M Power ed)* (Cambridge University Press 1996); cited in Callon, ‘What Does It Mean to Say That Economics Is Performative?’ (n 104) 334.

<sup>1078</sup> UK Department for Culture, Media and Sport, ‘The UK Spectrum Strategy; Delivering the Best Value from Spectrum for the UK’

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/287994/UK\\_Spectrum\\_Strategy\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287994/UK_Spectrum_Strategy_FINAL.pdf)> accessed 24 July 2018.

<sup>1079</sup> MacKenzie, Muniesa and Siu (n 62) 10.

Eurobarometer

One of the more interesting recent developments indicating a performative impact came about accidentally as a result of analyses of Eurobarometer survey results.<sup>1080</sup> The qualitative studies investigate in depth the “motivations, feelings and reactions of selected social groups towards a given subject or concept, by listening to and analysing their way of expressing themselves in discussion groups or with non-directive interviews”.<sup>1081</sup> In 2015, a special Eurobarometer was carried out by TNS Opinion & Social Network in the 28 Member States of the European Union to investigate the attitudes of Europeans to animal welfare, repeating a similar survey carried out a couple of years previously.<sup>1082</sup> The results noted a trend in favour of higher animal welfare standards and protection. However, there was an interesting by-product of some of the results of the survey.

Question QB6 asks whether the regulation of animal welfare should be a matter for consumers at the point of purchase, or a matter for all citizens that should be regulated by public authorities.<sup>1083</sup> It would appear that most people believe it to be a matter of general public interest that should not be left to consumers alone. The interviews were not intended to test the difference in attitudes of the same group of people depending on whether they were identified as “European citizens” or “consumers”. But from subsequent analysis of the data, commentators have noted that those respondents identifying as “citizens” appeared to have a higher regard for animal welfare than consumers *even when all other parameters remained the same*.<sup>1084</sup> It should be noted that the Eurobarometer surveys appear not to deliberately distinguish between “citizen” and “consumer”, making definitive claims difficult.<sup>1085</sup> However, Law notes that there appears to be a difference in the

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<sup>1080</sup> Starting in 1974, the biannual Eurobarometer surveys are carried out to test public opinion on a range of matters and usually involve 1000 face to face interviews per country. See ‘Public Opinion - European Commission and the Eurobarometer Surveys’ (n 410).

<sup>1081</sup> *ibid.*

<sup>1082</sup> ‘Eurobarometer Special EB on “Attitudes of European Towards Animal Welfare” (Ref 442)’ (n 410); ‘Summary: Attitudes of Europeans to Animal Welfare’ (n 410) 3; Law (n 25).

<sup>1083</sup> ‘Summary: Attitudes of Europeans to Animal Welfare’ (n 410) 14.

<sup>1084</sup> See *inter alia* Law (n 25).

<sup>1085</sup> See the results of a survey in Ireland about attitudes to the EU, where citizens are claimed to have an increasingly optimistic outlook on the EU based on an increase in “consumer sentiment” and

attitudes expressed between a citizen with rights and responsibilities, and a consumer with rights.<sup>1086</sup>

Law suggests that “Eurobarometer is simultaneously enacting consumers who would like more information, and citizens with rights to that information”, meaning that “[i]t is enacting a hybrid European consumer-citizen”.<sup>1087</sup> This in turn might require a European state to match, which, he remarks, is “a creative piece of social and political engineering”.<sup>1088</sup> The Eurobarometer surveys appear to suggest that the self-identification of the respondent to the survey could shape their attitudes, expectations and expression of these. The implications for the present thesis point to the potential for unthought rationalities or mental models that are shaped by linguistic tools to shape regimes. It raises questions for the implications of linguistic tools and frames that have a conceptual commitment to embeddedness. Are we more likely to act as *homo economicus* if we accept that society is embedded in the economy? Conversely, are we more likely to behave like *homo sociologicus* if we argue that the economy is embedded in society?<sup>1089</sup> And is a broader, more realistic, perhaps even more compassionate and socially-aware form of *homo sociologicus* available to us if we are able to challenge the current status quo by sociologically reconceptualizing the econolegal?<sup>1090</sup>

### The Self-fulfilling Prophecy

Black and Scholes’s work on the Chicago Board of Options Exchange in 1973 is often cited as the archetypal example of the self-fulfilling prophecy.<sup>1091</sup> The authors, along with Merton in the same year, developed and introduced into the (albeit nascent) market, a theory of option pricing which “allowed reformulation of a host of issues

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positive feelings about the economy. ‘Eurobarometer Survey Reveals European Citizens Have Increasingly Positive Image of EU’ (*European Consumer Centre (ECC) Ireland*, 14 May 2014) <<https://www.eccireland.ie/eurobarometer-survey-reveals-european-citizens-have-increasingly-positive-image-of-eu/>> accessed 24 July 2018.

<sup>1086</sup> Law (n 25).

<sup>1087</sup> *ibid* 9.

<sup>1088</sup> *ibid*.

<sup>1089</sup> MacKenzie and Millo (n 26) 141.

<sup>1090</sup> *ibid*.

<sup>1091</sup> Fisher Black and Myron Scholes, ‘The Effects of Dividend Yield and Dividend Policy on Common Stock Prices and Returns’ (1974) 1 *Journal of Financial Economics* 1.

such as business decisions and the valuation of corporate debt”.<sup>1092</sup> Indeed, the theory has become so central to modern finance that Taleb has remarked that virtually everything developed in finance since 1973 “is but a footnote on the BSM [Black-Scholes-Merton] equation”, while Ross has described the theory as the most successful in all of economics in its ability to explain the empirical data.<sup>1093</sup>

Yet in reality when the model was initially introduced, it was noted to be only an “approximate” fit to the options pricing and MacKenzie and Millo remark that the self-fulfilling prophecy label that has been attached to the BSM model belies a process that was “slower, more complex, and more interesting” than this label suggests.<sup>1094</sup> It’s transformation into “an excellent fit” came about as markets “gradually altered so that many of the model’s assumptions, wildly unrealistic when published in 1973, became more accurate”.<sup>1095</sup> Added to this increasing verisimilitude (and later veracity), the model came to be seen as a “guide to trading”.<sup>1096</sup> While “[i]nterlocked economic and cultural processes gradually reduced the various barriers to the use of models” overcoming macho resistance to their use, “the CBOE market makers began to develop a distinct self-identify” of careful pricing and hedging in which the equation played a central role.<sup>1097</sup>

The study is not therefore an example of a social science theory that became a self-fulfilling prophecy. Instead, it exemplifies the co-evolution of an economic and cultural realm alongside research into its form and function, with each affecting and shaping the other. In this instance, the BSM gradually worked to performatively

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<sup>1092</sup> MacKenzie and Millo emphasize the importance of the fact that we are looking at *options* here, “which have a special place in modern economics”, and which necessarily limit the conclusions that can be drawn from the study. See MacKenzie and Millo (n 26) 109.

<sup>1093</sup> Taleb, ‘How the Ought Became the Is’ [1998] *Futures and the OTC World Black-Scholes-Merton Supplement* 35; Stephen A Ross, ‘Finance’, *The New Palgrave Dictionary of Economics, Vol.2 (John Eatwell, Murray Milgate and Peter Newman eds)* (Macmillan 1987) 332; cited in MacKenzie and Millo (n 26) 109.

<sup>1094</sup> MacKenzie and Millo (n 26) 121–2.

<sup>1095</sup> *ibid* 122.

<sup>1096</sup> *ibid* 123.

<sup>1097</sup> *ibid* 124–5. MacKenzie and Millo discuss how use of the BSM model was actually “helped to pass its central econometric test by the market activities of those who used it”, despite the fact that with the advent of the NASDAQ the model was being asked to do far more than it was ever intended to calculate, at 126-127.

reshape “‘reality’ (in this case, empirical prices) [...] in conformance with the theory”.<sup>1098</sup> This also highlights the importance of both a historical perspective, and also of the social and cultural aspects not only of getting a market up and running, but of keeping it that way.<sup>1099</sup>

### 7.3.2 *Homo economicus*

The BSM model has been recognized as the application of neoclassical economics to the “morally dubious instruments of gambling” that served to mathematize and thereby legitimate their trade and open regulation.<sup>1100</sup> This has been described as the “general performative role of economics”, onto which the more specifically performative nature of option pricing theory through the BSM method was added, leading CBOE participants to begin to price options *as homo economicus* should.<sup>1101</sup> The normative biases of orthodox economics were therefore bound up within a neat mathematical model that came to be performed by traders who were unaware that they were altering their behaviours to resemble rational economic man. This echoes the respondents to the Eurobarometer survey who were unaware that their responses to questions of animal welfare shifted depending on whether they identified as citizens or consumers.<sup>1102</sup>

MacKenzie suggests that the study affirms both Callon’s and Granovetter’s positions, bridging the divide between economic sociology and performativity. On the one hand, while the CBOE case appears to confirm the performativity thesis, it “demonstrates [...] limits to the argument that *homo œconomicus*, though ‘not to be found in a natural state’, nevertheless ‘really does exist’”.<sup>1103</sup> The agents that performed the BSM equation were not, and could not have been, atomistic, amoral (or non-moral) economic men, or they would not have been able to construct their

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<sup>1098</sup> *ibid* 127.

<sup>1099</sup> *ibid* 136.

<sup>1100</sup> *ibid*.

<sup>1101</sup> *ibid*.

<sup>1102</sup> *ibid*; Law (n 483).

<sup>1103</sup> Callon (n 458) 51; cited in MacKenzie and Millo (n 462) 109.

market. MacKenzie and Millo see this as evidence that the classic themes of economic sociology remain relevant, in particular with reference to Granovetter's notion of embeddedness and "the views of markets as cultures, moral communities, and places of political action".<sup>1104</sup>

Thus, Callon's assertion that "*homo oeconomicus* does exist" can be read in the light of a historical perspective.<sup>1105</sup> Callon emphasizes that rational, economic man does exist but not as a rule or an ahistorical reality, but rather as "the process of configuration" that pulls together the forces of "material and metrological investments, property rights and money".<sup>1106</sup> In other words, *homo economicus* has been shaped by society, culture, and as Callon forcefully points out, economics. MacKenzie and Millo summarize that "'[p]erformativity' is a helpful addition to economic sociology's conceptual tool kit", and that Callon's work shows the insights of reversing the field's traditional approach. "Instead of showing how market participants are more complex and more embedded than economics assumes, show how economics and its associated practices simplify and disembed them to the extent that economics becomes applicable".<sup>1107</sup>

However, there is the further complication of the concept of a moral community with its occasionally overly-narrow semiotic view of "culture".<sup>1108</sup> While the actors engaged in pricing according to the BSM method might have behaved like "*homines oeconomici*", "they never became morally atomistic", as their reputation and the demands of mutual interpersonal trust modified and sanctioned behaviour within the exchanges.<sup>1109</sup> Moreover, the CBOE example demonstrates that the monetary economy cannot be separated from what Offner has described as the "economy of regard".<sup>1110</sup> Even in the most economic of settings, where actors "perform" *homo*

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<sup>1104</sup> MacKenzie and Millo (n 26) 109.

<sup>1105</sup> Callon, *The Laws of the Markets* (n 1057) 22–3; cited in MacKenzie and Millo (n 26) 137.

<sup>1106</sup> Callon, *The Laws of the Markets* (n 1057) 22–3; cited in MacKenzie and Millo (n 26) 137.

<sup>1107</sup> MacKenzie and Millo (n 26) 138.

<sup>1108</sup> This is taken mainly from actor-network theory, as explored in *ibid* 139.

<sup>1109</sup> *ibid* 139–40.

<sup>1110</sup> Avner Offner, 'Between the Gift and the Market: The Economy of Regard' (1997) 50 *Economic History Review* 450; cited in MacKenzie and Millo (n 26) 140.

*economicus*, “reputation and respect” matter, and while a passable version of rational economic man has been “configured cognitively”, it remains to be seen whether “he can be configured morally”.<sup>1111</sup> Or whether we would want to. Or whether, indeed, performativity could even extend this far – into the cognitive configuration of actors to the extent that they exclude moral and communal concerns from their actions. MacKenzie and Millo suggest that morally atomistic markets, were they to be created, should be done so out of silicone, as software or algorithms, rather than flesh and blood.<sup>1112</sup> The balance in approaches and frames used between *homo economicus* and his “classical apparent negation, *homo sociologicus*”, remains both elusive and perhaps even illusive.<sup>1113</sup>

### 7.3.3 Performativity as causation

Mäki’s reminder that the consequences of economic theorizing on the economy are indirectly causal rather than directly constitutive are instructive.<sup>1114</sup> Economic theories and economic inquiries do not directly shape the economy, rather people do, as the main argument sets out. It is in their various roles “as policy makers, students, investors, entrepreneurs, workers, consumers” that people come into contact with economic inquiry, and “they learn, directly or indirectly, about the contents of economic theories, explanations and predictions, and are inspired by them, perhaps by being persuaded by the proponents, so as to modify their beliefs and perhaps their motives”.<sup>1115</sup> These modified beliefs and motives translate into modified behaviour, (at which point the social scientist specialising in performativity becomes interested), which has consequences for the economy. This echoes one of the central arguments of the thesis, that the linguistic tools expressing beliefs contribute to the shaping, as well as the revelation and concealment of, mental models and ways of doing (the econolegal). The feedback loops between these that

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<sup>1111</sup> MacKenzie and Millo (n 26) 141.

<sup>1112</sup> *ibid.*

<sup>1113</sup> *ibid.*

<sup>1114</sup> Mäki (n 1048) 5.

<sup>1115</sup> *ibid.*

act in a mutually re-co-constitutive manner function in both direction, as expressed in Figure 6. However, this influence is indirect and causal, rather than directly constitutive.<sup>1116</sup>

The same is true for the CBOE experiment and the BSM pricing model. While the phrase “self-fulfilling prophecy” is a useful shorthand for describing the impact of the model on the behaviour of traders, it should not be assumed that there is a direct constitutive effect. This theoretical role played by economists testing out theories and assumptions should, however, be distinguished from the engineering roles of those who design and build markets, and whose influence is constitutive.

From this, we can say that mutual re-co-constitution of the actor and her regimes and rationalities operates through feedback loops. Expressed through language and using linguistic tools, these have a generally indirectly causal impact on the shaping of actions and interactions, regimes and rationalities, but occasionally can have directly constitutive consequences. This is also relevant to understand the impact of indicators as a technology of governance, as exemplified in the World Bank’s Investment Climate indicators and the Doing Business project as case study 2 in chapter 6 explored.<sup>1117</sup> While the indicators measure, count and compare, they tacitly shape the actions of the actors whose behaviour forms their content.

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<sup>1116</sup> Hall (n 372).

<sup>1117</sup> Economists, economic historians and sociologists have started to look at the reflexive nature of economic knowledge, and to look at the interactions between economic models and policy making, see *inter alia* Philippe Steiner, ‘The Sociology of Economic Knowledge’ (2001) 4 *European Journal of Social Theory* 443; Mary Morgan and Frank den Butter, *Empirical Models and Policy Making: Interactions and Institutions* (Routledge 2000). Others have also looked into how economic and statistical knowledge become a technology of governance, see *inter alia* Alain Desrosières, *The Politics of Large Numbers: A History of Statistical Reasoning* (Harvard University Press 1998); Davis, Kingsbury and Merry (n 35). See also World Bank (n 71); World Bank (n 19).

## 7.4 SHIFT 2: From embeddedness to feedback loops

It was noted earlier that ESL is more a frame of mind than fixed methodology.<sup>1118</sup> Consequently, there are myriad alternatives within sociology that offers tools to frame research and interactions. Given the argument this thesis puts forward that two shifts in focus are necessary to move ESL beyond embeddedness, it is helpful to examine the feedback loops that enable mutual re-co-constitution. This occurs through and within each social interaction, and mutually re-co-constitutes the actor and her regimes and rationalities, either reaffirming or challenging and reshaping these. The original notions derive from Giddens' homeostatic loops set out in his structuration theory, although these have been simplified and refer simply to feedback loops that deliberately avoid detailed epistemological constructions and contortions.<sup>1119</sup> Alternatives could have included Foucault's *epistemes*, Bourdieu's *habitus*, or Latour's ANT here, but I am mindful of Hirsch's admonition that even sociologists tend to steer clear of the "grand theories".<sup>1120</sup>

Nevertheless, structuration has the ability to both overwhelm and enlighten in the same measure, and, heeding Teubner's imperative to avoid "more jabberwocky", the discussion hopes to stay true to the core themes and "relevant concepts" while avoiding the terminological hurdles of the original.<sup>1121</sup> The focus of structuration is on "the understanding of human agency and of social institutions",<sup>1122</sup> and the theory's generalization fall into two main categories; the forces that shape the actor's thought and actions that she is aware of, and those that she is unaware of.

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<sup>1118</sup> See generally Ashiagbor, Kotiswaran and Perry-Kessaris, 'Introduction: Moving towards an Economic Sociology of Law' (n 28); Ashiagbor, Kotiswaran and Perry-Kessaris, 'Continuing towards an Economic Sociology of Law' (n 28).

<sup>1119</sup> Giddens refers to "homeostatic loops", which have more complexity than the feedback loops proposed here. This is in the interest of keeping ESL portable, lightweight, adaptable and accessible. See Giddens, *The Constitution of Society* (n 23).

<sup>1120</sup> Foucault (n 393); Bourdieu and Wacquant (n 579); Hirsch, Michaels and Friedman (n 1).

<sup>1121</sup> Teubner (n 1) 728. This piece draws on the texts of Lewis Carroll. See also Jeremy Rose and Rens Scheepers, 'Structuration Theory and Information System Development - Frameworks for Practice' [2001] Global Co-Operation in the New Millennium - The 9th European Conference on Information Systems <<https://pdfs.semanticscholar.org/859c/ef67c8f26233c07a43f6440553cf0b4eb8df.pdf>> accessed 10 October 2018. The authors state that for reasons of complexity, the entire theory should never be used, but relevant concepts picked for particular uses.

<sup>1122</sup> Giddens, *The Constitution of Society* (n 23) xvii.

Both are important, and derive from the “transformative impact which the social sciences can have on their ‘subject matter’”.<sup>1123</sup> In other words, when social scientists, (economists, for example) come up with a theory, this can ‘seep’ into the real world and have an impact on how actors think they should behave.<sup>1124</sup> This is termed the “double hermeneutic”, and can be illustrated by wondering what society might look like now if *The Great Transformation* had received the same attention as Hayek’s *Road to Serfdom*.<sup>1125</sup>

The core notion is that reflection on social processes – theories and the like – “continually enter into, become disentangled with, and re-enter the universe of events that they describe”.<sup>1126</sup> In short, “structuration” is the “structuring of social relations across time and space, in virtue of the duality of structure” or the mutual reinforcement and reconstitution of the agent and the structure through interactions.<sup>1127</sup> This means that through *meaningful* action, actors produce and reproduce the structure that both enables and constrains their actions, *as they understand it*.

For the present argument, feedback loops are therefore a central aspect of the mutual re-co-constitution of the actor and her linguistic tools, mental models and ways of doing. Through social interactions, her regimes and rationalities are consistently being reaffirmed, or challenged and reshaped. Expressed through the linguistic tools that the actor has access to, the performative impact of this also echoes the potential of the linguistic tools to shape the actor, along with her regimes and rationalities.

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<sup>1123</sup> *ibid* xix.

<sup>1124</sup> See here the introduction of the Black-Scholes formula in the markets. At first it was not particularly accurate, but valuers and traders started ‘playing to the formula’ and it became more closely aligned with real world valuations and prices. This is an example of theory seeping into practice and directly influencing it. Black-Scholes is now an accepted aspect of floatation/valuation. There are other examples as well, such as ideas about the sovereign state, representative democracy, or separation of powers.

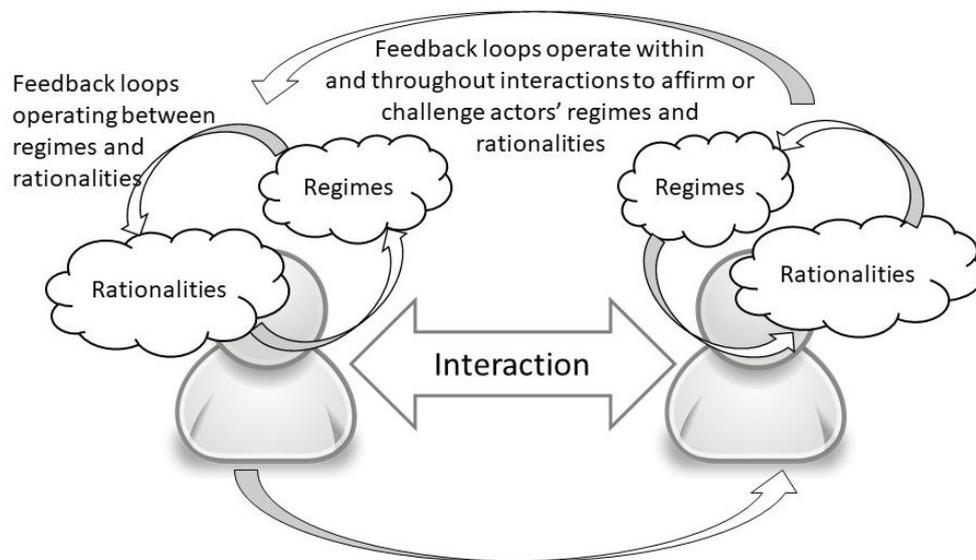
<sup>1125</sup> Both books were published in 1944, however Hayek’s impact on economics has dwarfed Polanyi’s – a legacy that western liberal (mainly Anglo-American) democracies are still coming to terms with.

<sup>1126</sup> Giddens, *The Constitution of Society* (n 23) xxxiii.

<sup>1127</sup> *ibid* 376.

Building on the feedback loops set out in Figure 6 operating between regimes and rationalities, we can zoom out to include the wider feedback loops operating within each interaction. Figure 12 illustrates the feedback loops that operate both between her regimes and rationalities, or her ways of doing and ways of thinking. But they also operate within and throughout social interactions, expressed according to the linguistic tools that she has available. As the discussion has shown, these have the potential to shape her mental models and ways of doing. Therefore, the larger feedback arrows at the top and bottom representing her linguistic tools that enable the social interaction have the potential to shape, affirm or challenge the smaller arrows of feedback loops between her regimes and rationalities.

*Figure 12 - Feedback loops operate within and throughout each social interaction, affirming or challenging the actor's regimes and rationalities*



## **7.5 Constructing an alternative lens**

An ESL lens should be portable, adaptable and flexible, at the same time as being lightweight and accessible. It offers a sociological lens on the econolegal in any

setting in a way that enables empirically grounded, theoretically informed research. By shifting our focus to interactions and the feedback loops that operate continually and dynamically within and throughout every interaction, the discussion has offered one way of moving ESL beyond its current conceptual commitment to embeddedness. The alternative set out here is both flexible and dynamic, while capable of capturing multiple levels and ranks of social interactions, voices and interests. By assessing the centrality of linguistic tools for shaping both the actor and her regimes and rationalities, the proposed lens set out here provides alternative terminology and linguistic tools for discussing the econolegal sociologically. The shifts in terminology and focus are set out in Table 9, below.

*Table 9 - Sociologically reconceptualizing the econolegal, as seen through the proposed ESL lens*

<b>Conventional discourse</b>	<b>Regime (how we might talk about doing)</b>	<b>Feedback loops</b>	<b>Rationality (how we might talk about thinking)</b>
<b>Legal system</b>	Legal aspects of interactions (instrumental ideal type)	↔	How we think about the law and legality
<b>Economy</b>	Economic aspects of interactions (instrumental ideal-type)	↔	How we think about economic life
<b>Economic Sociology</b>	How we do (perform) economic aspects of interactions	↔	How we think about economic aspects of interactions
<b>Economic Sociology of Law</b>	How we do (perform) economic and legal aspects of interactions (the econolegal) sociologically	↔	How we think sociologically about economic and legal aspects of interactions (the econolegal)

By setting out alternative linguistic tools for talking about the econolegal sociologically, this chapter has responded to two issues. It has set out one way to move ESL beyond its commitment to the concept of embeddedness which responds to the way that the concept conceals alternative sociological understandings of the econolegal. It has also shifted the focus on to interactions and the feedback loops operating within them, enabling a sociological reconceptualization of the econolegal in a manner consistent with social constructivism. By shifting the focus away from the actor, we look instead at the interaction through which we can appreciate manifestations of regimes and rationalities, expressed, affirmed or challenged through the grammar and vocabulary that enable the interaction. A focus on the feedback loops within interactions allows us to appreciate the dynamism and flexibility of complex social interactions across multiple sites, capturing a range of voices, interests and expectations.

To explore what this might look like in the real world, and the implications for moving ESL beyond embeddedness, the next chapter returns to the three mini case studies to empirically explore the proposed lens.

## **8. Beyond embeddedness empirically in three case studies**

What might happen if we applied a different way of thinking and talking about the econolegal? What new options might appear, and how could we reimagine econolegal aspects of interactions? The previous chapter set out one option for moving ESL beyond its commitment to the concept of embeddedness. This was through two main shifts in focus; from actors to interactions, and from embeddedness to feedback loops. These function within and throughout social interactions and can be expressed verbally through the available grammar and vocabulary suggested. This in turn re-co-constitutes the actor's regimes and rationalities, at the same time as the actor's own perception, conception and expression of self. This chapter returns to the three case studies that were explored in Chapter 6, and asks what are the empirical, conceptual and normative implications of moving beyond embeddedness, both for ESL and for social discourse more broadly.

### **8.1 Case Study 1: Beyond embeddedness in academic research**

The first case study offered an empirical exploration of why the commitment to a concept like embeddedness was unable to cope with ambiguity and variability in a real-world setting. The case study showed that enquiries into the econolegal varied significantly depending on the interpretation of (specifically Polanyian) embeddedness chosen. Furthermore, the lens was unable to admit a sociological understanding of the econolegal in a way consistent with social constructivist understandings of interaction.

By returning to the riots in Beragama against the ramifications of unsustainable foreign investment, we can now focus on the interactions between actors, the regimes and rationalities expressed, and the linguistic tools used to do this. We can

also look for the feedback loops that may or may not be visible through changes in regimes and rationalities. Where the feedback loops affirm or confirm a regime, they are unlikely to be immediately visible through discourse. When challenging or reshaping regimes and rationalities, feedback loops are likely to be more visible, again expressed through linguistic tools.

At the same time, we can also challenge the three limitations with neoclassical frames that an ESL responds to. We can challenge the reliance on correlated indicators by requiring careful empirical studies that can begin to address causation by talking to the actors involved. We can respond to the partiality of voices by using the community lens to search for affective, belief-based and traditional interaction ideal-types in addition to the instrumental. And we can respond to the normative silence of orthodox approaches by requiring reflectiveness on the part of the researcher as to her own biases and assumptions, but on the dominant regimes and rationalities within the society that she is researching.

The language of regimes and rationalities and the focus on feedback loops that operate between these means that we can begin to reconceptualize the econolegal as an aspect of the social, taking an approach consistent with social constructivism. We are therefore able to see, understand and talk about the econolegal as it is performed and constructed through and within each social interaction, taking it to be one flavour of the social.<sup>1128</sup> This avoids implicitly re-entrenching existing silos of disciplinarity and the resulting economics imperialism.

For the purposes of simplifying the illustration to better demonstrate the lens, relevant actors can be condensed into three broad groups; civil society actors, government officials, and foreign investors. The table of actors identifiable in advance of travelling to Beragama, and their simplification into three groups, is set out in Table 10, below.<sup>1129</sup> This mirrors the approach taken by Perry-Kessaris in her study of the relevance of the legal system to inward investment flows in Bengaluru,

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<sup>1128</sup> Ewick and Silbey (n 63).

<sup>1129</sup> This is for convenience and illustration. The researcher can include however many actors or sets of actors she thinks would be relevant, keeping in mind the focus is on their interactions.

India.<sup>1130</sup> The enquiry is then structured according to the three social roles of law; namely expressing the trust that binds actors together, providing gateways for social participation, and setting out spaces for the co-ordination of diverse interests.<sup>1131</sup>

*Table 10 - Simplified list of actors in Beragama*

<b>Category</b>	<b>Actors and potential actors included</b>
<b>Civil Society</b>	Villagers Monks NGOs and campaign groups, environmental activists Journalists Local business people (Tourists?)
<b>Government</b>	Local government officials Central government officials Bureaucrats Administrators Judiciary(?) Police Army Engineers and surveyors
<b>Investors</b>	CCCC actors (builders, businessmen, financiers, bankers, engineers, etc.) Lawyers working for the CCCC Directly involved and also potential future Chinese investors

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<sup>1130</sup> Perry-Kessaris, *Global Business, Local Law* (n 11).

<sup>1131</sup> *ibid* 63 onwards.

### **8.1.1 Back to Beragama**

The groups of actors set out in Table 10 are chosen because the interactions between them, and the feedback loops that operate within these, can be readily identified. By condensing the various actors into groups as I have suggested in the table above, we are assuming that the actors in each of the groups share certain (econolegal) regimes and rationalities (ways of doing business, ways of interacting with the legal system) that enables their grouping. We can then compare the regimes and rationalities of each of these groups, as identified through their interactions. This can be done through interviews, questionnaires, and any research method that allows for an understanding of the ways in which actors describe their relations and interactions.

By focusing on regimes and rationalities, we can see that when these do not align between groups of actors, discontent and distrust can ferment. If regimes and rationalities are different, these are likely to be expressed through different linguistic tools. In other words, it is possible that the government actors will use linguistic tools more familiar to neoclassical economics, indicating their rationalities might be dominated by the empirical, conceptual and normative frames of neoclassical economics. By reference to “over our dead bodies”, Beragama’s villagers are using different, more emotive, linguistic tools that indicate that their rationalities are less likely to be dominated by neoclassical economics frames. Instead, we can understand these in terms of their affective interactions – the land is ancestral; their belief-based interactions – the land is near the temple and the community shares similar beliefs; and their traditional interactions – the land has been used for growing crops and for subsistence for generations. Additionally, interactions may have an instrumental element, and here we can begin to identify villagers’ econolegal regimes and rationalities. The difference here is that this is contextualized in a broader understanding of ways of doing, thinking and talking that might be different from those used by other sets of actors.

Table 11 sets out the economic and legal aspects of interactions between these three groups of actors as they are performed/re-created/re-co-constituted in

regimes and rationalities. It offers a check list for the researcher of what to be aware of, and what to look out for when analysing interactions and the feedback loops that operate therein. It is also important to keep in mind that while the grammar and vocabulary used by actors to interact offers clues to their regimes and rationalities, what is not said is often as important as what is, and additionally how it is said.<sup>1132</sup>

*Table 111 - Approaching the econolegal sociologically in Beragama*

Interaction:	Civil society	Government	Investors
Civil society	[Do actors within this group share regimes and rationalities to the extent that this is available to analysis as a cohesive group?]	Instrumental-Belief based-Affective-Traditional  Micro-Meso-Macro-Meta  Empirical-Analytical-Normative	Instrumental-Belief based-Affective-Traditional  Micro-Meso-Macro-Meta  Empirical-Analytical-Normative
Government	Instrumental-Belief based-Affective-Traditional  Micro-Meso-Macro-Meta  Empirical-Analytical-Normative	[Do actors within this group share regimes and rationalities to the extent that this is available to analysis as a cohesive group?]	Instrumental-Belief based-Affective-Traditional  Micro-Meso-Macro-Meta  Empirical-Analytical-Normative
Investor	Instrumental-Belief based-Affective-Traditional	Instrumental-Belief based-Affective-Traditional	[Do actors within this group share regimes and

<sup>1132</sup> Krzyzanowski (n 441); Ewick and Silbey (n 63).

	Micro-Meso- Macro-Meta	Micro-Meso- Macro-Meta	rationalities to the extent that this is available to analysis as a cohesive group?]
	Empirical- Analytical- Normative	Empirical- Analytical- Normative	

The grammar and vocabulary used to express rationalities and regimes can indicate where these might misalign between groups of actors. This can be drawn out from an analysis of ideal types in micro and meso-level interactions. This might indicate a lack of trust, malcontent, or even active conflict between groups of actors as well as suggesting regulatory requirements or policy decisions that might address this, both formally and informally. An awareness of feedback loops can then assess the changes in regimes and rationalities contingent on interactions. By moving beyond embeddedness, we can reimagine the econolegal as an aspect of the social, performed and re-co-constituted through interactions. At once, we are able to challenge entrenched disciplinarity, as well as econo-centrism, enabling a fresh perspective that might reveal alternative regulatory solutions.

## **8.2 Case Study 2: Beyond embeddedness for policy and the investment climate**

Embodying an extreme form of econo-centrism, the Investment Climate campaign has evolved into a reform programme that aims to create the right climate to attract inward investment. Case study 2 in chapter 6, along with the discussion in chapter 2 on the literature surrounding the Investment Climate campaign outlined the narrowness of the frames used, and the way in which this served to silence and exclude the non-economic. The proposed lens responds to this, and by focusing on interactions, the ideal types encourage the researcher to look beyond the economic

(or narrowly instrumental) to consider other motivations, expectations and interests that guide and shape regimes and rationalities.

It is not, then, a case of adding on elements to the existing frames used by the World Bank, as the introduction of behavioural economics in the 2015 World Development Report indicated a willingness to do.<sup>1133</sup> Instead, the proposed lens asks for a shift in the primary focus. By focusing on interactions and feedback loops, and identifying actors' regimes and rationalities, we can more closely align theory and reality in the context of development policy. If we know how and why actors are behaving, it might be possible to target policy more effectively. As the above discussion has noted, legal reforms implemented by governments resulting from the impact of World Bank indicators as a "technology of governance" often meant little to foreign investors.<sup>1134</sup> The impact, though, is felt by the local population. A lens that allows a deep understanding of the regimes and rationalities of the affected actors, in a manner similar to that in the first case study, could allow for more targeted reforms that engage with investor rationalities and regimes, but have less impact on the local population.

Perhaps more importantly, by offering an alternative way of talking about the econolegal sociologically, the lens offers a way of challenging the entrenched disciplinarity. This also challenges the conditions that enable economics imperialism. The preference of policy makers for neat, "clean" answers to complex social problems notwithstanding, sociologically compatible linguistic tools for talking about the econolegal opens up the possibility of alternative ways of thinking about and doing economic and legal aspects of social interactions.<sup>1135</sup> We are then able to reimagine the econolegal sociologically, refocusing development policy through careful empirical understandings of the social setting in which development is intended to occur. Moreover, by facilitating reintegrative work within the disciplines of law, economics and sociology within academia, the possibility

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<sup>1133</sup> World Bank (n 58).

<sup>1134</sup> Perry-Kessaris, *Global Business, Local Law* (n 11); Perry, *Legal Systems as a Determinant of FDI, Lessons from Sri Lanka* (n 33); Davis, Kingsbury and Merry (n 35).

<sup>1135</sup> Hirsch, Michaels and Friedman (n 1).

presents of alternative challenges to econo-centrism that can mount a challenge to the ongoing (and continuously entrenched) dominance of neoclassical economics. The potential gains are significant, both from methodological pluralism within social science research, but also through development policy initiatives that are able to capture and analyse social reality more broadly. At the same time, the concept of development, when seen through a lens such as that proposed above, open up the possibility of a broader notion of development that stretches beyond the economic. A sociological lens offers a range of factors that might be prioritised, including justice, equity, fairness, sustainability, and so on. These might be more or less visible or more or less important as actors' regimes and rationalities are understood. This is not instead of the economic, but in addition to it.

The wider implications for reconceptualizing the econolegal, and what this means for the ways in which we are able to respond to phenomena like the 2008 financial crisis, is taken up further in the third case study.

### **8.3 Case Study 3: Beyond embeddedness in lay debates**

The third case study in chapter 6 compared two popular books on economic theory published after the 2008 financial crisis. These both reflected the conceptual commitment to embeddedness that ESL shares. Both also used the term explicitly, imprecisely, and without definition, but mirrored the interpretations of the term set out by Fred Block and Gareth Dale. The empirical analysis provided a setting for exploring the implications of a broader commitment to the concept of embeddedness, and the way that linguistic tools based on that commitment contribute to the shaping of our mental models, our ways of doing, and ability to respond to the limitations of current approaches.

In the light of the discussion in chapter 7 about the performativity of language, and the shift in focus to interactions and the feedback loops that operate with them, the third case study offers an interesting setting for exploring the implications of moving beyond embeddedness. In particular, this raises questions stemming from

the way in which moving beyond a commitment to the concept of embeddedness reveals alternative linguistic tools for discussing the econolegal, and therefore alternative rationalities and regimes. It raises questions such as whether a sociological reconceptualization of the econolegal can open up ways of talking, thinking and acting more like *homo sociologicus*, and less like *homo economicus*?<sup>1136</sup> What does this mean for the role of the econolegal in society and from our expectations of it?

By shifting the focus on to interactions and the feedback loops, we can talk about the econolegal as aspects of the social, while also looking out for other ideal types and motivations. The concept of embeddedness enabled a realisation of the distance between the disciplines, and the dominance of econo-centrism both over and within other social science disciplines. Embeddedness therefore provided the tools to identify the problem. But to imagine solutions to this, we need to move beyond embeddedness-based discourse, and reconceptualising the econolegal as one aspect of the social is one way of going about this. By seeing regimes and rationalities as socially constructed and performed through interactions, we can also appreciate their contingency, dynamism and flexibility. We can begin to ask what other aspects of the social are also important in particular settings, and how these shape actors' regimes and rationalities. By creating the methodological space to appreciate the non-economic and the differently rational, we create the space for asking how constructivist understandings of econolegal aspects of interactions can be understood, regulated, and performed. Further, how can these support and develop a coherent sense of the social in a manner consistent with the values and goals society chooses to prioritise – whether these are narrowly economic or not.

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<sup>1136</sup> MacKenzie and Millo (n 26) 141.

## 8.4 Conclusions

What possibilities emerge for society when we change the we do, think, and talk about the econolegal? Can we even reshape unthought knows and behaviours from *homo economicus* to *homo sociologicus*? Can we reorder society's priorities, shifting away from econo-centric targets that mainstream orthodoxy currently promotes?

Chapters 7 and 8 have suggested that moving the vocabulary and grammar of the econolegal beyond the current commitment to embeddedness offers one way of going about this. The proposed ESL lens set out in chapter 7, and explored empirically in this chapter, shows one way of reconceptualising the way we do, think and talk in a sociological way consistent with constructivism and the reintegrative aspirations of ESL. It highlights the roles of regimes and rationalities, and how comparing these can help us understand actions, motivations and frictions.

Empirically, the first case study demonstrated that moving the frame beyond embeddedness enhanced the coherence and consistency of the vocabulary and grammar used to identify actors and their regimes and rationalities. A broader pool of actors is likely to be sought, and the differently rational can be appreciated alongside the orthodox economic "rationality". Thus, in the case of Sri Lanka, we can place economic, legal, as well as social goals and motivations of all actors on the same page at the same time, without inherently prioritising the economic.

Conceptually, the second case study showed the problems that arise when we speak about the law and the economy being embedded in society. By treating these as separate entities – as disciplinary silos – reintegrative interdisciplinarity is effectively precluded. This reinforces the econo-centrism that has come to define the mainstream. By moving the debate beyond embeddedness, we have the opportunity to capture a wider range of voices and a more diverse set of interests that fall outside the realm of neoclassical economics. There is more chance, therefore, of addressing mismatches between theory and reality because we can more accurately understand reality on the ground, and then imagine better

interventions that take account of the wide range of regimes and rationalities involved.

Normatively, the third case study addressed the immediate problems of terminology, but moved on to broader questions about what might be achieved by thinking and talking about the econolegal sociologically. By speaking of the econolegal as one aspect of the social, we minimise the econo-centrism that has defined social science research and social discourse more broadly. We can then introduce other factors that might be equally important, such as sustainability, equality, justice, and so on. By shifting the aspirations of the discourse away from neoclassical economic goals, and by speaking differently about the way society interacts, the Eurobarometer research suggests that we might alter the way society behaves. The importance of feedback loops operating within and throughout social interactions raises the possibility that this in turn could shape our perceptions of selves. By reshaping our regimes and rationalities, could we shift patterns of behaviour from *homo economicus* to *homo sociologicus*, and what might this mean from the type of society we aspire to, and for our expectations of social life?<sup>1137</sup> Some of these questions are taken up further in the final chapter.

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<sup>1137</sup> *ibid.*

## **9. Conclusions and reflections**

This thesis has set out an ESL as a response to the limitations of mainstream, orthodox, econo-centric approaches to understanding the econolegal. Through three vignettes which were developed into mini case studies, the arguments have been explored and developed in academic, policy and lay contexts. Part II of the thesis focused on embeddedness as the core concept of ESL, and its internal inconsistencies and external incompatibilities with reintegrative aspirations. Part III then offered one solution, setting out an alternative lens and returning to the case studies to see what this might mean empirically. To this end, the thesis has made three main contributions. Firstly, it has addressed the challenges of ESL's commitment to the concept of embeddedness, exploring in detail the problems and limitations that arise from this ongoing commitment and illustrating these empirically. Secondly, it has proposed a way of moving ESL beyond embeddedness by suggesting two shifts in focus that offer an alternative lens. Finally, it has included research on performativity to consider the possibilities that might be realised throughout society by moving the wider discourse beyond embeddedness. These three contributions are set out in more detail.

### **9.1 Contributions of the thesis**

The first contribution of this thesis is the observation that ESL's conceptual commitment to embeddedness superficially enables it to respond to the limitations of dominant, econo-centric approaches. However, it is internally inconsistent, with little agreement of what is embedded, and in what. As the first case study discussed in Chapter 6 illustrated, this can lead to an empirical application of embeddedness based ESL with significantly different results depending on the interpretation used. It is also externally incompatible with ESL's reintegrative, interdisciplinary goals, and social constructivist understandings of interaction. A commitment to the concept of embeddedness entrenches the separation of the disciplines at the heart of ESL; namely economics, law and sociology. By maintaining the fiction of these

metaphors, embeddedness-based ESL precludes any imagination of a constructivist understanding, where the econolegal can be spoken of as an aspect of the social.

This is not to deny that the concept has any utility; embeddedness both reveals and conceals. It reveals the problems with current, econo-centric frames that have seen economics imperialism and entrenched disciplinarity separate out the economy, the law, and society into separate silos of endeavour. It offers a convenient way of describing the limitations of the current relationship between the disciplines, and an accessible way of describing a challenge to dominant frames: “the economy ought to be re-embedded in society”, for example. But in doing this, the commitment to the concept and its ongoing use serve to further re-entrench the disciplinarity it seeks to overcome. By using linguistic tools that separate out the economy, law and society, we reinforce their separation, both as disciplinary fields of research and as areas of social endeavour in real life. The concept of embeddedness therefore contributes to the re-entrenchment of the conditions that enabled econo-centrism, as can be seen in the World Bank’s Investment Climate campaign and other World Bank publications.<sup>1138</sup>

At the same time, the commitment to the concept of embeddedness also conceals alternative approaches that might offer a sociologically compatible challenge to the status quo. By re-entrenching disciplinarity, linguistic tools preclude a sociological reconceptualization of the econolegal. Functioning as an unthought rationality, the concept of embeddedness shapes our mental models and ways of doing the econolegal, foreclosing alternative, imaginative responses to events like the financial crisis that might offer a reconceptualisation.

This is not to make a straw man of the term however, and used precisely and carefully, embeddedness can be a useful relational descriptor, as exemplified by the

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<sup>1138</sup> World Bank, ‘World Development Report 2019: The Changing Nature of Work’ (n 902); World Bank, ‘World Development Report 2018: Learning to Realise Education’s Promise’ (World Bank 2018) <<https://www.worldbank.org/en/publication/wdr2018>> accessed 13 July 2019; World Bank (n 12); World Bank (n 168); World Bank (n 58); World Bank (n 8).

work of Ruggie and Evans.<sup>1139</sup> Nevertheless, as the third case study showed, a broader commitment to the concept of embeddedness extends beyond ESL, shaping and moulding our regimes, rationalities, and self-perception as *homo economicus*, even if we are not aware of this.

The second contribution of the thesis has been to propose an alternative vocabulary and grammar of econolegal aspects of interactions. This moves an ESL beyond embeddedness, dispensing with the concept entirely. The proposed vocabulary and grammar refer to the econolegal as aspects of social interaction in a way that is compatible with the underlying assumptions of social constructivism and the reintegrative aspirations of ESL.

The discussion suggested two shifts in focus that could move ESL beyond embeddedness. Instead of focusing on the actor and her embeddedness, we can focus on interactions and the feedback loops that operate within these, re-constituting both the actor and her regimes and rationalities through interaction. As an example of a lens that moves ESL beyond embeddedness, the thesis suggested combining the work of Cotterrell, Frerichs and Giddens.<sup>1140</sup> This offers the community lens with rankings of social interaction that gives us the vocabulary of interaction ideal types as well as that of regimes and rationalities. This prompts us to look beyond the narrow confines of econo-centric frames to consider all aspects of interactions (instrumental, affective, belief-based and traditional), as well as their ranking (micro, meso, macro-regimes, and meta-rationalities). This vocabulary and grammar of interactions open up alternative ways of thinking about the econolegal that are both internally consistent and compatible with social constructivism.

The third contribution of the thesis is to suggest that by reducing the reliance on econo-centric frames, we might become able to include other notions, interests and voices into academic, policy and lay discourse. By drawing on research into

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<sup>1139</sup> Ruggie, 'International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order' (n 67); Evans (n 67).

<sup>1140</sup> Cotterrell, 'Community as a Legal Concept?' (n 69); Frerichs, 'Studying Law, Economy, and Society' (n 4); Giddens, *The Constitution of Society* (n 23).

performativity, this opens up possibilities for altering the way we perceive econolegal phenomena and changing how we think about and perform the econolegal. More radically, there is the potential to shift society's expectations of the econolegal; away from those of *homo economicus* towards her sociological cousin, *homo sociologicus*.

Changes in *ways of speaking* about the econolegal may leak from academia into society and spread accordingly, but are unlikely to prompt a top-down change that governments or international finance institutions can unilaterally adopt.<sup>1141</sup>

Nevertheless, by calling for the sociological reconceptualization of the econolegal, an ESL can offer a powerful counter-narrative to orthodox and doctrinal approaches. It provides a lens for empirically-grounded, theoretically and methodologically-informed scientific research that challenges not just the empirical reality currently assumed, but the conceptual and normative implications that shape and inspire it. The focus is therefore, to invoke Hirsch, on having “dirty hands” and “being right”, however complex the answer then may be.<sup>1142</sup>

## 9.2 Unresolved questions

The thesis has exposed and left unresolved three issues; namely, the woolliness of sociological approaches, the centrality of embeddedness as ESL's core concept, and ESL's ongoing ability to respond to neoliberalism and other political movements without its core concept.

Firstly, sociolegal, econosociolegal, and sociological lenses can sometimes feel “woolly” and frustrating in comparison to the pseudo-certainty of econo-centric

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<sup>1141</sup> Illustrative here is the term “microaggressions”, coined in the 1970s by Chester Pierce whose psychology highlighted the subtle insults and dismissals levelled at black Americans. The term has moved beyond the confines of psychology and critical race theory to reshape the discourse in a manner that enables us to question our *ways of doing* and *ways of thinking about* our social interactions in certain settings. See Anthony D Ong and Anthony L Burrow, ‘Microaggressions and Daily Experience: Depicting Life as It Is Lived’ (2017) 12 Perspectives on Psychological Science 173.

<sup>1142</sup> Hirsch, Michaels and Friedman (n 1) 54.

approaches.<sup>1143</sup> It is no surprise that policy makers tend to be more willing to engage with quantified views of the world that point to relatively simple answers to complex social problems.<sup>1144</sup> As Hirsch notes, “[h]aving a clear argument” is often more important than “being right”.<sup>1145</sup> Qualitative and mixed methods research can offer a welcome addition to the quantification that mainstream econo-centric methods has embraced, targeting questions of causation that can support or challenge findings based on correlation. There must be a clear explanation and justification for engaging with ESL in a way that makes clear its ability to bring together complex patterns of social interaction that more accurately capture social reality.

There is a second strand to this unresolved question, given the suggestion that ESL must move beyond embeddedness if it to successfully challenge econo-centrism. Embeddedness is not only a ubiquitous relational descriptor in every day language, but also offers an easily accessible visual metaphor. In short, from a distance, everyone understands what the concept means until we zoom in and see the concept pixelate. Furthermore, there are situations when use of the term is not only appropriate but eminently helpful, and some of these have been discussed above. However, when referring to phenomena which are not sufficiently conceptually separate, problems arise. The question that then presents is whether we can universally agree on the extent of conceptual separation or similarity of phenomena, specifically in the social sciences. Even among sociolegal scholars and economic sociologists who agree that their approach is constructivist, there remains disagreement about the extent to which econolegal aspects of interactions *are* (essentially one and the same as) the social?<sup>1146</sup> Social constructivism resembles a continuum more than a destination, and this divergence might even be caused

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<sup>1143</sup> Perry-Kessaris, ‘What Does It Mean to Take a Socio-Legal Approach to International Economic Law?’ (n 4) 4.

<sup>1144</sup> Hirsch, Michaels and Friedman (n 1).

<sup>1145</sup> *ibid* 54.

<sup>1146</sup> Kurkchiyan (n 63); Marc Hertogh and Marina Kurkchiyan, “‘When Politics Comes Into Play, Law Is No Longer Law’: Images of Collective Legal Consciousness in the UK, Poland and Bulgaria’ (2016) 12 *International Journal of Law in Context* 404.

rather than just merely hindered by the inconsistencies between terminology and aspiration; embeddedness and constructivism. Marina Kurkchiyan has suggested that while “few would dispute” that law is “socially constructed”, when we talk about the “the law” we have to separate out the law and talk about it *as if it were* a separate phenomenon, in order to make it available to analysis.<sup>1147</sup> This indicates a willingness to create and use a metaphor for the purposes of analysing the empirical, which seems a long-winded way of going about research that deliberately introduces a distance from reality. Once we have analysed the problem using metaphors, how possible is it to reinsert an appropriate solution back into the messy, empirical world? Indeed, this is one of the central criticisms of mainstream, neoclassical economics, prompting the suggestion that a preferable approach might be to find a way of talking about, and analysing the real world in a conceptually consistent and compatible manner that also enables research.

The second unresolved question asks what remains of ESL if we remove its core concept? Is ESL still a distinct and identifiable sociological lens onto the econolegal? And what heritage can this claim within the social sciences if we cannot trace back a conceptual commitment to embeddedness? Finally, what does this mean for the literature that ESL looks to for its foundations? Can we still see an ESL as a “Polanyian” (or “neo-Polanyian”) endeavour, for example, if we remove its conceptual commitment to embeddedness?

There is a tendency to compare the discussion throughout the thesis with picking at a loose thread (embeddedness) on a jumper (ESL) and unintentionally unravelling the entire garment. This fails to take account of the goals, key assumptions and aspirations of ESL that remain constant, consistent, and unchallenged despite the removal of its commitment to the concept of embeddedness. Nevertheless, the purpose and unity of ESL as a distinct sociological approach might require attention to clarify not only what holds the field together but also what differentiates an ESL lens from other sociological approaches.

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<sup>1147</sup> From discussions with the author. See also Kurkchiyan (n 63) 366.

ESL has structured and informed valuable and truly innovative research.<sup>1148</sup> At its core are central tenets and questions that are timely and crucial to scientific, empirically-grounded, theoretically-informed work in the social sciences. These include a commitment to empirical and real-world observation, evaluation and critique, and a challenge to the orthodox, mainstream, doctrinal approaches.<sup>1149</sup> The focus sits with the lived experiences of people and how they act and interact, challenging the abstracted models of how people ought to act, or how we think people might act. An ESL also sets out to respond to entrenched disciplinarity within the social sciences by sociologically reintegrating the way disciplines are able to communicate, thereby challenging the conditions that enabled econo-centrism and economics imperialism.

Moving beyond ESL's conceptual commitment to embeddedness is unlikely to limit any of these goals, as the proposed lens set out in Part III explored. In fact, moving to an approach that focuses on interactions and feedback loops, and which uses the vocabulary of regimes and rationalities, could offer the lens greater internal consistency. At the same time, it could also frame the econolegal sociologically in a manner compatible with social constructivism. In this sense, breaking a commitment to the concept of embeddedness could move the lens forward in a way that embraces the performative impact of our econolegal vocabulary and grammar on the researcher, actors, and the regimes and rationalities of both.

Furthermore, removing any commitment to the concept of embeddedness need not entail severing all ties with projects addressing similar problems though, as Dukes shows with her approach to the econolegal.<sup>1150</sup> Nor need it mean discarding all references to ESL as a neo-Polanyian project. Polanyi's work encourages us to

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<sup>1148</sup> Ashiagbor, Kotiswaran and Perry-Kessarar, 'Introduction: Moving towards an Economic Sociology of Law' (n 28); Ashiagbor, Kotiswaran and Perry-Kessarar, 'Continuing towards an Economic Sociology of Law' (n 28); Ashiagbor (n 40); Diamond Ashiagbor, 'Unravelling the Embedded Liberal Bargain: Labour and Social Welfare Law in the Context of EU Market Integration' (2013) 19 *European Law Journal* 303; Perry-Kessarar, 'The Case for a Visualized Economic Sociology of Legal Development' (n 345); Perry-Kessarar (n 43); Dukes, 'From the Labour Constitution to an Economic Sociology of Labour Law' (n 66).

<sup>1149</sup> Cotterrell, 'Why Must Legal Ideas Be Interpreted Sociologically?' (n 7).

<sup>1150</sup> Dukes, 'From the Labour Constitution to an Economic Sociology of Labour Law' (n 66).

challenge some of the contentions of econo-centric frames. He asks us to look at the relationship between the economy and society in a different light, and identifies the fictitious commodities of land, labour and money as partly responsible for the fiction and metaphors that we are currently performing.<sup>1151</sup> By the same token, since *The Great Transformation* was published, the academic, political and social landscape has shifted significantly. The neoliberal project alone, understood as a political shift with economic and legal implications, means that an ESL cannot directly address Polanyi's core thesis without doing so in the light of radical changes that have shaped the institutional landscape in which our responses are formulated. This is in addition to the shifting landscapes within academic research, departmentalization, funding sources, social science silos, economics imperialism and the ways these manifest in econo-centric policy responses to social problems such as the Investment Climate campaign.

While the contention is that by refocusing on ESL's goals and aspirations, it can remain a coherent, identifiable lens despite the removal of its core concept, there remains a "black box" challenge with the name of the lens itself. An "economic sociology of law" may aspire to sociological reintegration, and the proposed lens set out in Chapters 7 and 8 offered an integrated, interdisciplinary approach to the econolegal as an aspect of the social. Nevertheless, the name of the lens contains its own "black box" contradiction.<sup>1152</sup> As the discussion in chapter 3 touched on, by maintaining the name of ESL, the implication is that the economic, legal, and social are somehow separate phenomena, contradicting the aims and aspirations of the proposed lens. The thesis therefore acknowledges that while the conceptual differentiation of econosociolegal phenomena is one of the main arguments for moving the lens beyond embeddedness, the name of the lens itself contains a similar conundrum. This requires attention for the future coherence of the approach.

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<sup>1151</sup> Polanyi (n 47).

<sup>1152</sup> Perry-Kessaris, 'The Case for a Visualized Economic Sociology of Legal Development' (n 345) 179.

Thirdly, what are the implications for ESL's ability to respond to the neoliberal project of moving the lens beyond embeddedness? This also raises questions of the cultural and political implications of ESL as a lens that explicitly sets out to challenge econo-centrism and the dominance of orthodox, neoclassical frames. Neoliberalism can be characterised as the political and economic incarnation of econo-centrism, setting up ESL as a challenge not only to the econolegal mainstream, but its political and cultural aspects. Neoliberalism, which sees the free market as "an ideological system that holds the 'market' sacred", sits in opposition to the sociologically reintegrative aspirations of ESL.<sup>1153</sup> The neoliberal approach is "built on a single, fundamental principle: the superiority of individualized, market-based competition over other modes of organization".<sup>1154</sup> Facing this, intellectuals are hindered in their responses by being "embedded in disciplinary professions" which have interests and competitive dynamics of their own, as well as the "internationalization of the economics profession" which mirrors the earlier discussion about economics imperialism.<sup>1155</sup>

Moreover, "[n]eo-liberalism's ideological distinctiveness is identifiable in the missions of international political organizations, which mark the political institutionalization of dominant schools of economic thought".<sup>1156</sup> The use of the World Bank's Investment Climate campaign as a case study here derives from its embodiment not only of economics imperialism and social science silos, but also of neoliberal ideology. Thus, while an ESL claims deep reflectiveness on the part of the researcher in contrast to neoliberal and neoclassical economics' supposed scientific neutrality, by posing an ESL-informed lens as a response to the problems with current approaches makes it difficult to argue that an ESL can be anything but political.

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<sup>1153</sup> Stephanie Lee Mudge, 'What Is Neo-Liberalism?' (2008) 6 Socio-Economic Review 703, 706.

<sup>1154</sup> *ibid.*

<sup>1155</sup> *ibid* 706–709.

<sup>1156</sup> *ibid* 716.

For Polanyi, neoliberal political theory attempts to realise the embeddedness of society in the market, even though he shows that this is not fully possible. An ESL that looks back to Polanyi and which maintains a conceptual commitment to embeddedness will tend to challenge neoliberal assumptions through sociological approaches that seek to re-embed the economy in society and reconfigure the relationship between the two. Thus, there is a further natural tendency to see an ESL as a response to (political) neoliberalism.

This is problematic though. ESL responds to the normative silence and supposed scientific neutrality of orthodox, econo-centric approaches by requiring reflectiveness about the origins, context and subtext of the research. It defines itself therefore against doctrinal approaches through the assumption there is no neutral, objective place from which research can be carried out. We are also reminded to look at the regimes and rationalities of actors as these are expressed through interactions, and the feedback loops that enable their re-co-constitution.

Krippner and Alvarez also point out the duality entrenched in neoliberalism between the market and the state, and the depth of the sharp divide between the two.<sup>1157</sup> Neoliberalism then draws on these metaphors and can be understood as a “set of myths embedded in the institutional environment” that tends to anchor political actors’ orientations.<sup>1158</sup> In the light of the discussion on performativity, this might be restated as a set of myths that construct and perform the institutional environment, shaping actors, their regimes, and their rationalities in the process. But any reference to Polanyi will entail an inherent tendency to fall back on the language of embeddedness as a convenient way of visualizing both the current *is*, and the future *ought*. The clear conceptual distinction between “market” and “state” echoes some of the earlier discussions, and is perhaps unsurprising given the use of embeddedness one again as a relational descriptor and metaphor. However, the language used serves to re-entrench the status quo, preventing the

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<sup>1157</sup> Krippner and Alvarez (n 629).

<sup>1158</sup> Mudge (n 1153) 721. Mudge draws on the work of JW Meyer and B Rowan, ‘Institutionalized Organizations: Formal Structure as Myth and Ceremony’, *The New Institutionalism in Organizational Analysis* (WP Powell and PJ DiMaggio, eds) (University of Chicago Press 1991) 41.

sociological reconceptualization of the econolegal that the thesis has sought to enable.

### **9.3 Moving forward**

There is a general consensus about the dominance of market mentality and its impact on the way we do, think about, and talk about econolegal aspects of interactions.<sup>1159</sup> There is, though, disagreement about the historical factors that led to the dominance of econo-centric models, and the precise social mechanisms involved. There is also disagreement about the most appropriate grammar and vocabulary to talk about, and to challenge, the dominance of econo-centrism and free market rationalities. This thesis argues that the vocabulary we use must be robust, consistent, and compatible with supporting theories and underlying assumptions if it is to challenge existing orthodoxy and allow the imagination of alternatives.

Empirically, the three mini case studies have shown that an alternative ESL lens that has moved beyond the embeddedness conundrum can reveal a wider range of voices, interests and interactions than might be the case with both mainstream econo-centric lenses, and existing ESL approaches. We can facilitate the inclusion of more types of actors in a frame that is both internally consistent and yet compatible with reintegrative and inter-disciplinary goals, and with a vocabulary and grammar that brings the econolegal into line with other interests and motivations driving interactions.

Conceptually, the case studies have shown the importance of the language used for perception, conception and understanding of complex and dynamic interaction patterns. The thesis has explored the ways in which consistent application of concepts can suggest a more flexible, responsive policy space that is more able to

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<sup>1159</sup> See Dale, 'Lineages of Embeddedness: On the Antecedents and Successors of a Polanyian Concept' (n 611); Perry-Kessaris, 'Reading the Story of Law and Embeddedness Through a Community Lens' (n 40).

respond to the precise needs of the local situation, once this has been fully understood.

Normatively, the case studies have explored the behaviour resulting from the way we do, think and speak about econolegal phenomena. They have done this by denying the fictions of researcher impartiality and the metaphors of “economy” and “law”, and by insisting on the re-co-constitution of the econolegal as an aspect of every interaction. The implications of some of the research on performativity indicate that this raises more questions, such as the type of behaviour and interactions society wishes to encourage, which it wishes to make unavailable, and which goals and aspirations society chooses to prioritise. What do we expect from the econolegal within society? How do we expect the legal aspects of interactions to enhance our experience of society, our access to justice, our participation in society and the co-ordination of our interests? Similarly, how do we expect the economic aspects of our interactions to manifest? What levels of poverty and inequality are we willing to tolerate, and what levels of participation and co-ordination of interests can we expect? These are the questions that become visible and legible when we shift our attention away from the constraints of embeddedness and towards a more empirically relevant conceptual framework of interactions and feedback loops.

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