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# INSTITUTED OR EMBEDDED? LEGAL, FISCAL AND ECONOMIC INSTITUTIONALISATION OF MARKETS

CRESI WORKING PAPER NUMBER: 2009-01

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**Abstract:**

Recent debates in economic sociology have raised questions about the significance of law in the economy, and specifically the role of law in the operation of markets. This paper compares a recent grand and detailed historical sweeps of the laws of the labour market by Deakin and Wilkinson with an ideally complementing similar two volume study of the history of taxation, also related to the labour market, by Daunton. By exploring the differences between the evolution of legal, fiscal and welfare institutions, this paper aims to cast light on the processes of institutional change that neither, taken separately, were able to undertake.

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“The spirit of a people, its cultural level, its social structure, the deeds its policy may prepare – all this and more is written in its fiscal history, stripped of all phrases. He who knows how to listen to its message here discerns the thunder of world history more clearly than anywhere else.”

Joseph Schumpeter, ‘The crisis of the tax state’, *International Economic Papers*, no 4., p.7.

## 1 INTRODUCTION

Recent debates in economic sociology have raised questions about the significance of law in the economy, and specifically the role of law in the operation of markets (Swedberg, 2003; Greif, 2000; Nee and Swedberg, 2005; Fligstein, 2005). The above Schumpeter quotation suggests also that fiscal regulation plays such a central role in economic development that ignoring its message would mean letting the thunder of world history pass by unnoticed. A recent publication providing a grand and detailed historical sweep of the laws of the labour market by Deakin and Wilkinson (2005) now ideally complements a similar, slightly less recent completion of a major two volume study of the history of taxation, also related to the labour market, by Daunton (Daunton, 2001, 2002, see also Daunton, 1995). Both these works adopt an explicitly evolutionary explanatory framework, even if their formulations of it differ in important respects. Although their approaches will be more thoroughly explored later, they each have a conception of the evolutions of law and fiscal regulation respectively as specific sources of variation in adaptive interaction to a changing economic environment.

By comparing their accounts, and in particular, by exploring the differences between the evolution of legal, fiscal and welfare institutions, this paper aims to cast light on the processes of institutional change that neither, taken separately, were able to undertake. The paper unembarrassedly takes advantage of the immense labour of others, therefore, as a second order analytical operation. It benefits from their richly detailed historical accounts, and necessarily involves considerably more systematisation of empirical data than is present in the originals. In so doing, the purpose of this paper is to indulge in a kind of empirical experimentation, bringing to the foreground four primary poles of evolution, economy, employment contract law, ‘welfare’ law, and fiscality. It does so in relation to labour markets, but hopefully the implications drawn from it would be equally beneficial for the analysis of other legal, fiscal and economic fields. This exercise in relation to labour markets is partly facilitated by a ‘long duration approach’ made possible precisely because labour has been continuously bought and sold over the long historical period from before the industrial revolution through to the present, although the main focus of this analysis will be the two centuries from 1750 to 1945. Consequently, it affords us with the opportunity to explore the co-evolution of economic, legal, and fiscal arrangements in relation to the operation of markets in ways not so readily available for other types of market (Harvey and Metcalfe, 2004). Although there are many characteristics peculiar to labour, as against product or capital, markets, nonetheless it is hoped that this analytical empirical-exercise will be of broad interest (Harvey, 2002). It certainly has been useful to us, for example, when considering the evolution of forms of economic organisation and transformations of laws of intellectual property in biological knowledge markets in the late twentieth century. But it is the sheer scale and scope of their works that provides strength to the analytical-empirical experimentation.

From this comparison reviewing two parallel evolutionary accounts, however, a second but equally important line of argument naturally emerges. By understanding the specificities and differences between different forms of, broadly, regulatory systems on the one hand, and economic transformations on the other, we can raise some sharper questions about concepts of the embeddedness of economies in non-economic institutions, and indeed develop further an analysis of what is meant by institutions, as against norms, or rules, formal and non-formal. The concluding part of the paper will therefore deploy the lessons learnt from the comparison to advance the critique of the concept of embeddedness, and develop an approach that recognises the specificity and interdependency of processes of economic, legal, welfare,

and fiscal institutionalisation. Specificity of, and interactive interdependency between, these four poles in our experimental model suggests that the explanatory language of co-evolution or open-systems causality may be more appropriate.

## 2 EVOLUTIONARY PERSPECTIVES

Deakin and Wilkinson have developed a distinctive perspective for understanding historical changes in formal laws. Distancing themselves from game-theoretical views (which can be exemplified by Greif, 2000) in which law is endogenously emergent from repeated economic moves of rationally calculating economic actors, they stress the need for both the distinction *and* interdependence between implicit norms and formal legal instruments.<sup>1</sup> Foregrounding the analogy between biological and social evolution, law is seen as a formal coding of information derived from the wider social world. This coding into legal concepts is the necessary manner by which information is reproduced over time – inherited, so to speak. Moreover, the very fact of a relative closure of legal systems – ‘their partial separation from the social and economic realm’ – is a condition for their acquiring legitimacy. Recognising that this separation of a formal realm of law is not a universal phenomenon, but itself a result of historical differentiation, it can never be absolute.

This characterisation of formal legal codes as a distinctively coded conceptualisation, however, forms an essential part of their co-evolutionary explanatory model. For, it means on the one hand that legal codes have their own modes of inheritance (reproduction), but also their own patterns of variation, legal innovations arising from passing new laws or making new judgements, that entail specifically legal modes. These new variations are then subject to pressures of selection, from the economic and political environments which they inhabit. The model thus proposes a toing-and-froing: new information from the external world is assimilated (op. cit. p. 31), and distinctively transformed, by formal legal processes of coding, heavily reliant on existing conceptual codes, before becoming new law, which in turn is subsequently selected for by the very information environment from which it emerged. Finally, by virtue of this toing-and-froing between two poles whose dynamics differ, there is no equilibrium point, and ‘the process of legal change...is indeterminate and open-ended.’ 33.

In their concluding reprise of their co-evolutionary model, they further develop their framework in counterposition to a Hayekian conception of exogenous law, as a preconditional architecture on the one hand (contract, property rights, etc.), coupled with emergent spontaneous order, manifest in the formation of informal norms evident in much market behaviour (Sugden, 1989). For Deakin and Wilkinson, such a model blocks the feedback loop between formal law and economic transformation, leading to a rather static view of formal law, and an underestimation of its economic significance. If market order was left to endogenous spontaneous rules, there was a likelihood of strong path dependencies around existing norms, making them inadaptable, and to leading potentially to pathologies of the market, not with respect to some ideal neo-classical market, but with respect to pragmatic, and political improvement. A legal view from a distinctive, not directly economic-participative, perspective gives scope for policy interventions. In this way, legal innovations may act as a corrective particularly to those barriers to the development of personal capabilities permitting full economic functioning, especially barriers of self-reinforcing inequalities and market segmentation. As against Hayek, there is therefore scope for policy intervention, without making claims to all-seeing, perfect information, that in turn becomes part of the ongoing co-evolutionary process of legal reformation and economic transformation.

Although this is not a point they themselves raise, effectively they distinguish between broadly the historical development of body of law concerning the employment relation or contract, on the one hand, and the parallel development of law concerning ‘welfare’ and the duty to work, on the other. For the purpose of a systematic comparison, it is worthwhile distinguishing these two strands for their different modes of interaction with the economic ‘environment’. Although

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<sup>1</sup> The premier historical example of emergent law was the *lex mercatoria*, a body of codes of contract, rules of exchange, and property rights that emerged in trading communities during the early middle ages, partially independently of the state, although often relying on state powers for enforcement (Swedberg, 2003; Weber, 1978; Greif, 1989, 2000.)

in many instances they overlap, and the boundaries between them are quite fuzzy, the former relates to the classification of work relationships, between, for example master and servant, employer and employee, whereas the latter especially concerns the changing duty to work, or, in other words, how the constraints to sell labour on the market have been historically constructed. This second strand is distinct both in that it defines who is included and excluded from the labour market, and in that it immediately involves the allocation of economic resources mobilised by the state (central or local), whether for the construction of workhouses, or for the provision of some form of welfare benefits (for example, outdoor relief). In this respect, this second body of law engages differently with its economic environment, from the first, and hence may be explored for its different evolutionary trajectory. The rationale for treating them separately, as we shall see, is that they can well be out of "synch" with each other, as much as with the economic selection environment.

With a shift in field of state intervention in markets, there is a shift in evolutionary perspectives. Daunton regards taxation as the construction of a necessary consent for resourcing collective projects over and above individual interests, and for the purposes of this paper, in particular the role of the state in securing the necessary conditions for the operation of a capitalist market economy. A two-way trust, a form of social contract, between state and people is required whereby there is sufficient consent over collective purposes undertaken by the state to engender both people's trust in the state *and* the state's trust of the people, so minimising the need for enforcement and coercion. This is therefore not predicated on any fundamental assumption of antagonism between the individual and the collective interest.

Although much less explicitly framed, the changing conditions of achieving trust are expressed in markedly evolutionary terms. There are four components to the perspective. Firstly, there are distinctive designs for assessment and collection of taxation revenue – internal logics of fiscal systems – subject to processes and rhythms of state budgeting. This can be taken as the fiscal equivalent to legal codes, and has a similar process of social categorisation, defining and operationalising target groups for taxation – landowners, salary earners, foreign traders, etc. As we will see, this means that tax categorisations and legal and welfare categorisations may intersect and conflict. Second, any taxation system needs to find a fiscal 'handle' on the economy, in terms of forms of income or types of economic activity, such as rent from agricultural land, profits from trade, consumption of goods and services, or, in the case that particularly interests us here, exchanges between engagers and sellers of labour. These handles are attached to various forms of economic organisation, liable to change, an environment therefore that selects for appropriate handles. Well-established and routinised taxes enter into normal calculations made by economic agents in their calculations of prices and profits – "old taxes are no taxes" – becoming constitutive of economic activity. Thirdly, changes in either states' needs for revenue raising or in patterns of economic activity lead to partial or radical mis-alignment between fiscal systems and the economy. Daunton cites the example of regular waged employment developing in such a way as to 'offer' a new historical handle for taxation during the early twentieth century (Daunton, 2001, 14). Constant processes of variation in tax systems result in interactions with the economic environment, ranging from fine tuning of adaptation, to radical change. Developing Bonney's (1995a, b) concept of a fiscal constitution, moments of major historical crisis require major structural change in fiscal systems. Fourthly and finally, the character of state expenditure can also alter – for example, from being primarily a fiscal-military state typical of the eighteenth and early nineteenth centuries, to assuming responsibility for expenditure on education, health, or economic public infrastructure. These expenditures in effect are the obverse side of the fiscal contract between state and people, according people rights to resources acquired by the state, and creating new social divisions or integrations between 'the public' and sub-groups within it. This in turn provides a central, and additional, selection environment for taxation, political processes that ensure the consent of the taxed in return for their rights over public resources. A critical aspect of this second, but not secondary, environment has clearly been the expansion of the suffrage, institutionalising the link between taxation and representation.

What each of these perspectives share, is that legal, fiscal, or welfare rule systems involve categorisations of the population, fundamentally, I would argue, in terms of rights over resources, whether secured through market transactions or through non-market arrangements, such as entitlements to welfare, or to public goods. In this paper, the focus will be limited to how each of these systems categorise the parties to the employment relation – or

exclude them from it; and how they each interact with, condition, and impact on the organisation of buyers and sellers of labour, the constraints and incentives to exchange, the pricing mechanisms, and the 'rights to (labour) resources and their outputs', property rights. If, accordingly, we examine the 'architecture' of the organisation of exchange involved in the formation of labour markets, it is possible to envisage a purely economic description, and, indeed, an analysis in terms of economic institutionalisation of each of its aspects, without any role for formal rule systems. At the opposite extreme, the very same economic aspects can be seen to be instituted by various possible combinations of legal, welfare, and fiscal rules. These rules have, it can be argued, different handles on each or several of the aspects of the organisation of exchange, one variant of which is displayed in the table, a variant which does in ways that will be shown, correspond with phases of the history in question. In this case, capitalist labour markets – or markets in general – could be portrayed as analogous to playing games according to rules, with the important proviso that different national legal systems prevent nations from competing under comprehensively shared rules. Formal rules give ample latitude for different strategies, individual agency, within the framework of the game. However, once an evolutionary perspective is taken, and the question of how rules change is posed, neither of these two extremes appears adequate, and we are forced to seek, dare it be said, a third way, in an evolutionary form of explanation. The evolutionary framework can therefore be tested by exploring how the respective systems of categorisation changed over time in relation to their shared selection environment, the economic organisation of the employment relationship.

<i>FORMAL RULES</i>	LAW	LAW		(LAW)	LAW OF QUALITY STANDARDS	LAW
	WELFARE		WELFARE			
	FISCALITY		FISCALITY	FISCALITY		
<i>ECONOMIC INSTITUTIONS</i>	Formation of parties to the exchange into sellers and buyers	Organisation of the parties: firms, skill groups, professions, unions, etc.	Constraints and incentives to exchange	Price mechanism	Defining what is exchanged – qualification, branding	Property rights - contract

**Table 1: Possible articulations between formal rules and economic institutions**

### 3 COMPARING ASYNCHRONIES AND TRAJECTORIES

The extended table below identifies the main changes in economic organisation relevant to employment, and aligns these to changes in legal frameworks, "welfare" law, and taxation rules related to the wage and employment. Read vertically, the table marks the key turning points for each of the four domains, while read horizontally, the synchronies (visible in clusters of regulatory changes), and asynchronies between the trajectories come into focus. Looked at on the most global level of generalisation, however, it could be argued that by the time following the second world war, finally, and after an extended history, a nexus had emerged of employment relation and a correlative wage form institutionalised in economic organisation, law, welfare and taxation. That is to say, this nexus was the outcome, rather than the precondition, of industrial capitalism. Again, staying at this most global level, there is evidence of some level of mutual adaptation and coherence between the four poles of transformation.

Yet a synchronic, horizontal analysis of the empirical evidence reveals just how contrasting, even conflictual, the relations are between the poles during any given historical phase. An analysis of the dynamics of their interactions sheds some light on processes of evolutionary change.

Date	Economic organisation		Employment law	'Welfare' law	Fiscal constitution	State expenditure	
	Labour	Firms				% GDP	
1700	Increasing wage dependency – rural. 2/3 of working population. Annual settlement by hiring servant v. cash wage labourers		[1562 Statute of Artificers, 1631 Book of Orders and Directions – corporative control, wage fixing minima and maxima]. 1747, 1777, 1798 Master and Servant Acts. Criminal and magistrate regulation of labour. Division between servants and contractors.	[1601 Poor Relief Act – only country in Europe to have a national integrated system of poor relief. Settlement Acts 1662, 1693, 1697] Restrained charity	Rates on property owners Customs and Excise duties	Taxation 8-10%	
1750	Internal contracting Disappearance of wage fixing.  Growth of 'exceptive hiring', not linked to settlement	Absence of unified managerial control: ownership combined with control		1782 Poor Relief Act establishment of workhouses for non-able, excluding idle poor from relief. Relief 7x level of France. 1795 Speenhamland Minimum wage guarantee indexed to prices			
1800	Piece rates linked to internal subcontracting	Sub-contracting: family; master-	Combination Acts 1799/1800 abolition of wage fixing for most manufacturing	Supplementary wages; compulsory labour on subsidised	Emergence of the 'fiscal state', combining taxation and National Debt.	1810, 23%.	

	Emergence of salaried middle class	servant; gang	trades 1813/1814 Repeal of Statute of Artificers – wage fixing/apprenticeship control of market entry Combination Acts, 1824/25.  1834 Poor Law Amendment Act. Abolition of settlement by hiring 1844/1856 Joint Stock Acts 1852 Todd v Kerrich – reinforcement of distinction between servant and salaried status employees (governess)	wages; outdoor relief. 1824 Vagrancy Act. Restricted relief to able-bodied, penalised refusal to work by criminal hard labour sentence. 1831 Reduction of minimum wage  1834 Poor Law Amendment Act. Enshrines principal of less eligibility. Workhouse only 1844 Outdoor Prohibitory Order – proscribing relief where workhouse an alternative. 1847 General Consolidating Order. Whole family sent to workhouse, separately housed.	1842 Introduction of Income Tax, where income is self-assessed, and undifferentiated in source, applying only to middle and upper classes.		
1850	Growth of short time hirings for time-based wages	Decline of internal contracting. Railways and Canals.				Growing	

	<p>Growth of collectively bargained wages</p> <p>1870-1880s Depression</p> <p>Introduction of sliding scale wages, with time rates based on market price in steel and iron, then coal trades, through the TU conciliation boards.</p> <p>Persistent of mixed system of price and time for internal subcontracting in cloth industry.</p>	<p>Growth of vertical integration.</p> <p>Growth of the joint stock company and separation of ownership and control (60 companies 1885, 600 1907)</p>	<p>1871 Trade Union Act and Criminal Law Amendment Act begin the establishment of collective bargaining protections and 'collective laissez-faire.'</p> <p>1875 Employers and Workmen Act: partial contractualisation, but retention of magistrates' disciplinary powers.</p> <p>Protection of Property Act dismantled the Master and Servant Act criminality of breach of contract.</p> <p>1880 Employers' Liability Act Emergence of the Employer-employee relationship</p> <p>1897 Workmens' Compensation Act - divides salaried post-holders from 'servants' (e.g bus drivers..)</p>	<p>1860s 12-15% paupers in workhouses.</p> <p>1869 Local Government Board privatisation of relief to Charity Organisation society, restricting relief to 'deserving poor'.</p> <p>1880s 20% ditto</p> <p>1900 30% ditto</p>	<p>Falling rates of indirect taxation, increasing rates of direct taxation.</p> <p>1894 Death duties with a graduated tax, distinction between precarious and spontaneous incomes, later to become active or inactive property.</p>	<p>costs of education, and public health</p>	
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<p>1900</p>	<p>Decline of pure piece rate wages Generalisation of open-ended employment on time-based hiring</p> <p style="text-align: center;">↓</p> <p>Bedeaux systems of time x productivity.</p>		<p>1906 Trades Disputes Act provided unions with legal immunities and established rights to closed shops. Devonald v Rosser 1906 mutuality of obligation in contract of employment Hanley v Pease 1915 enforcement of reciprocity of exchange, taking discipline out. Simmons v Rosser 1910 emergence of the control test for employment status 1911 National Insurance Act : manual employees gradually all brought under one umbrella – excluding casual workers, women outworkers, salaried above £160 pa.</p>	<p>Booth (1887) and Rowntree (1897) reports on poverty of working poor.</p> <p>1911 National Insurance Act. Institution of the male breadwinner model wage. Redefines unemployment in terms of suitable employment 1920 Unemployment Insurance Act increased coverage from 4 to 12 million. 1925 Widows', Orphans' and Old Age Contributory Pensions, consolidates retirement to define labour supply. 1927 Unemployment</p>	<p>1906 Abandonment of active versus inactive property as basis of taxation in favour of earned and unearned income. 1909 People's budget, introducing land taxes and graduated death duties. 1901-1913 Standard rate income tax @ 5%</p> <p>1911 Act. Regressive flat rate scheme, combined with indirect tax on beer and tobacco. 1916-19 Threshold lowered to treble taxed individuals from 1.13 to 3.9m by 1919. Standard rate income tax @30% Excess Profits Tax 1914-1920, then Corporation Tax. 1919 Income tax extended to upper manual strike – but withdrawn after tax strikes. 1922 Finance Act created the binary divide between employees (Class E) and self-employed (Class D). 1925 Budget 'new fiscal constitution': child tax</p>	<p>1900 13.3%</p> <p>1937 26%</p>	<p>Postwar construction, raising of the school leaving age</p>
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				<p>Insurance Act mitigates contributory actuarial principle, allowing intragenerational transfers of rights</p>	<p>allowances for middle class families. Assessment of tax switched from lay commissioners to Inland Revenue, although individual returns on quarterly basis. Income assessed in single return for earned and unearned income, and super-tax.</p> <p>1929 Budget decisive shift to centralised government spending, and on progressive income tax for welfare spending.</p> <p>1930 Labour budget, increased targeting of high earnings and unearned income.</p> <p>1931 National govt budget, lowering of thresholds, a further 1.2 million included in income tax.</p>		
1945			<p>Beveridge Report 1945</p> <p>National Insurance Act 1946. Enshrinement of the employment contract, creation of the binary divide of employment and self-employment</p>	<p>1946 National Insurance Act defines rights to benefits under universal social citizenship - but gendered on male breadwinner model.</p>	<p>1942. Introduction of general income tax on a PAYE basis., covering 16 million employees.</p>	<p>1948 37%</p>	

## 4 THE MASTER-SERVANT NEXUS

A useful, if arbitrary, starting point is the series of Master and Servant Acts marking the middle of the eighteenth century. These were the framing legislation of the employment relation, a 'statutory innovation' (Deakin and Wilkinson, 62), establishing the master-servant model as the enabling law for labour markets of industrialisation. As far as the statute book is concerned, they remained largely unaltered for a century, until the next phase of major employment law legislation in the 1870s. By using the Weberian term 'enabling' law (Weber, 1978), it is being suggested that these laws were constitutive of multiple economic transactions over an historic period, in this case that combined the practice of yearly or extended hiring, and an assumption, expressed forcefully by Blackstone towards the end of the 18<sup>th</sup> century, that the master had a responsibility for the upkeep of the servant in good times and bad. In Swedberg's (2003) or Hodgson's (2007) terms, the laws were constitutive of the organisation of exchange as an economic activity, rather than a regulatory epiphenomena. They were also prescribed and enforced by the breach, and, significantly, by the powers of magistrates in criminal courts.

Moreover, associated to yearly hiring was the right of settlement in the location (parish) where the work was undertaken, eventually leading to a right of parish relief in the new parish. In this respect, the Master and Servant Acts were institutionally buttressed by much earlier, indeed Elizabethan Poor Relief Act (1601), supplemented by Settlement Acts of the late 17<sup>th</sup> century, the 1722 Poor Relief Act Workhouse Test Act, and 1782 Poor Law Relief Act. These obliged the 'welfare' institutions to provide poor relief to those dependent on wages, relief that was resourced from a taxation regime of rates raised locally on property owners. Following enclosure legislation, and the growth in agricultural productivity, this historical nexus of employment law, welfare and fiscal systems enabled a controlled internal migration, and, as Deakin and Wilkinson argue, facilitated the emergence of industrial wage labour. England was the only country in Europe to possess such an arrangement, a locally administered but nationally integrated system, where welfare costs amount to between 1 and 2% of GDP, seven times that of France.

Within the logic of legal evolution, the Master and Servant Acts were both an extension and a deviation from earlier legislation – no radical or conspicuous rupture. Aspects of the master-servant model manifested continuity with the journeyman-apprentice model of the Statute of Artificers, but into new areas of economic activity unregulated by the corporative control of guilds, or wage assessment by magistrates.<sup>2</sup> Indeed, these older forms continued to exist in parallel until their abolition in the early 19<sup>th</sup> century, even if becoming increasingly marginalised in their 'enablement' of economic activity. Their scope was progressively undermined by legal changes – notably the Combination Acts of the mid- and late-18<sup>th</sup> century – which proscribed fixing of wages and prices, and collective organisations controlling labour markets to that purpose.

Yet, although constitutive of some aspects of the economic reality of employment relations, other aspects or economic organisation were certainly less framed by this legislation. In particular, many of the new areas of factory and workshop economic activity were characterised by forms of 'internal contracting', and a division between price work for the masters, and a combination of wage and subsistence for servants and wages alone labourers. The factory owners were not employers, and in some cases, merely leased out the use of factory space and machinery (Hudson, 2004; Mokyr, 2002). In others, the owners were main contractors to masters acting as internal sub-contractors. As has been widely commented, this system of piece-work was in many ways little more than bringing outworkers under one roof. Indeed, as an economic organisation piecework was almost akin to an internal commodity market, rather than labour market, especially given that prices paid in this internal market were often scaled to price shifts in external commodity markets. So, with internal contracting, whether by head of household, master, or ganger in the butty system, the sub-contractor was the engager of labour. A great variety of different combinations of piece work and more

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<sup>2</sup> The 1562 Statute of Artificers, and the 1631 Book of Orders, controlling guild membership, wage and price fixing.

subordinate time based wages coexisted. Indeed, an important economic division, predicated on but not prescribed by, the Master and Servant Acts, was that between the piecework master and the wage-work servant or labourer. As will be discussed further, piece work is a distinctively instituted process of exchange, characterised by modes of evaluation and price scales peculiar to each industry. It is payment for the output of labour, rather than payment for employment, and fluctuations in price are directly influenced by commodity markets, rather than supply side features of labour markets. As an economic 'institution' it persisted to the end of the nineteenth century and, although with diminishing significance, beyond. Indeed, it outlasted the Master-Servant-Settlement-Poor Relief nexus by many decades. With price work at the core of factory organisation, and for so long, it is scarcely surprising that much engagement of labour escaped the employment form. Before considering the progressive although lengthy demolition of this nexus, therefore, it is worth emphasising an analytical difference between the constitutive or enabling aspect of a legal frame and an adaptive or congruent aspect, with respect to an economic environment. In the first aspect, it is difficult to consider a legally framed economic practice of master-servant engagements as their own selection environment, precisely because the law is endogenous to the practice. In the second aspect, it can be argued that the Master and Servant Acts were adapted to, rather than constitutive of, internal contracting and the piece-work system. Identifying these two aspects already suggests a more differentiated analysis of the interaction between law and economy.

Turning now to the process of change of this mid-18<sup>th</sup> century nexus, two sources of change progressively undermined the Master-Servant model in the long road to an alternative nexus centred around the employment contract. A key 'source of variation' was the Speenhamland reform of the welfare regime. A second, clearly related change in economic organisation, involved the decline of long-term contracts in existing industries and the emergence of new industries that never experienced yearly hiring. This progressively undermined the organisation of exchange instituted by the Master and Servant Acts, especially the principal of reciprocity involved in the durability of the employment relation through thick times and thin. And there is possibly a third source of variation, waiting, as it were, in the wings – the salaried form of engagement of the middle class. We briefly consider each of these in turn.

In 1795, reacting to the increasing rate-burden of numbers receiving outdoor relief – a stress between the fiscal and welfare institutions of the old order – magistrates in Speenhamland introduced a form of minimum wage guarantee, fixing wages to a level indexed to the price of bread. The aim was to reduce numbers dependent on relief, by increasing numbers dependent on wages, even if these were subsidised by the rates. Moreover the wage was adjusted for the number of household dependents: more loaves for more household members. Summarising, the effect of these new rules remained minimal during the boom years of relatively high wages and employment up to the end of the Napoleonic Wars. But then, with poor harvests, high bread prices, and economic depression, the impact became considerable. Speenhamland rules were seen to have the perverse effect of depressing wages further, as employers benefited from subsidisation by rate payers, without diminishing relief-dependency of the unemployed. These can be seen as 'unintended consequences' of the Speenhamland reform, which, in economic terms, rapidly became unsustainable, ultimately leading to the radically new regime of the 1834 Poor Law Amendment Act.

Speenhamland highlights some significant points of analytic interest for evolutionary explanation. On the one hand, as a mode of instituting economic processes, welfare reform contrasts with the legal forms framing the organisation of engagement, typical of the Master and Servant Acts, but also of later reforms. By regulating quantitative, rather than qualitative, dimensions of economic activity, the rules directly transform resource flows, in this case of both wage transactions in labour markets and taxation leading to transfers from ratepayers to employers and wage earners. The 'unintended consequences' arise precisely because the rules interact with other changes in resource flows occurring within the economy – volume of cereal production, rate of employment, etc. As occurred in this case, this type of interaction can produce, quite contingently, a crisis in resource flows, an economic crisis of a kind that could not be encountered by the legal framing mode of instituting economic processes. Speenhamland rules were therefore a 'mutation' that met with quite rapid de-selection (a 'freak' that did not last long), but, unlike biological evolution, also triggered and conditioned the subsequent institution of a quite dramatically different welfare resource regime.

The second source of erosion of the master-servant nexus was the growth of shorter term hiring, both in agriculture and in new industries, and a consequential disjuncture between hiring and settlement – that is, between wage dependency and rights to relief. Furthermore, shorter-term hiring relaxed the duty on the master to continuously employ servants in good times and bad. ‘Exceptive hiring’, hiring outside the normal rules, spread to include not only newly emerging areas of employment, such as mining and mill-working, but areas of working governed by fixed and regular hours of working, outside of which the servant was not at the behest of the master. In short, the Master and Servant Acts were gradually becoming incongruent with, or mal-adapted to, their economic environment, and the framing was also less ‘constitutive’ of normal economic practices of engagement of labour. But this selective pressure was very slow to induce major legislative change. This again points to differences in the nature of interactions between law and economy, and welfare rules and the economy.

Finally, although very much waiting in the wings of history, a major division within in employment was between industrial and manual workers, covered by the Master and Servant Acts, and ‘office holders’, who were excluded from its provisions, yet whose terms of engagement approximated much more closely to the open-ended employment contract. This division was further reinforced by judicial decisions,<sup>3</sup> one which categorised governesses, for example, as office holders, as against higher ranks of domestic servants. It was a social categorisation splitting the ranks of the employed that persisted in law well into 20<sup>th</sup> century. Limitations of managerial prerogative, mutuality of obligation, appropriateness of duties, disciplinary codes, all served to create a separate form of employment for middle class professions. It could be argued that these differences entrenched within statutory and case law formed a barrier to legal change bringing about a general form employment contract. We shall shortly examine its implications for the fiscal regime that began to emerge in mid-19<sup>th</sup> century.

## 5 THE MID-CENTURY REFORM OF WELFARE

Reviewing these three processes of erosion of the force of the Master and Servant Acts and their ‘hold’ over the economy, it seems clear that welfare reform and the resultant ‘rule failure’ of Speenhamland had by far the greatest and more immediate impact. In other words, it was more the interaction between welfare reform and legislative reform that destabilised the latter, than the direct interaction of law with its economic environment. In short, we need to begin to build a model of multiple interactions between our four poles of variation, and interactions between interactions.

The decline of linkage between rights to relief (by settlement) and hiring, and the Speenhamland debacle, combined no doubt with the emergent political-economy ideology of free markets, resulted in a series of measures culminating in the 1834 Poor Law Amendment Act, further buttressed by a sequence of later measures. These measures were undoubtedly as much ‘constitutive law’ with respect to the instituting of labour markets, as the Master and Servant Acts which remained on the statute books. In addition to the master-servant engagement model, they enforced a new social division, detaching all connection between wages and relief, between the deserving and undeserving poor. Only the non-able bodied were to be entitled to outdoor relief, whereas all able-bodied, including eventually their dependents, were to be placed in workhouses in conditions that were required to be worse (“less eligible”) than the standard and quality of living than afforded by wage dependent labour at the lowest market rates.<sup>4</sup> Outdoor relief – benefits in cash to the unemployed – were to be progressively reduced or eliminated. Labour tests on ability to work provided a further instrument for reducing rights to outdoor, cash, welfare benefits.

The central aspect of this new legal framework, and the feature that made it constitutive of labour markets, was essentially the legal instruments enforcing labour market participation. It could not be left to a ‘purely economic’ choices of starve or work and calculations of utility maximisation. The 1824 Vagrancy Act which preceded and heralded the Poor Law Amendment Act, indeed compelled all able bodied people to find waged work, or be legally compelled to

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<sup>3</sup> E.g. *Lowther v. Radnor*, 1806; *Todd v Kerrich*, 1852.

<sup>4</sup> Workhouses were forced labour regimes, without pay, in which eventually the whole household of the non-able would be placed, with families separated into separate groups defined by sex, and age.

one month's hard labour. Males who deserted their families, if they became relief dependent, were also subject to criminal prosecution, with a penalty of three month's hard labour. By legally instituting the constraint to exchange – the 'duty to work' – , by re-categorising the eligible to 'welfare' from the ineligible, and by incarcerating the unemployed able bodied, the new legal framework established the 'freedom from interference' within the market exchange between masters and servants. It formally instituted the zone of market freedom, defining the respective rights, in a way that dovetailed with previous Master and Servant Acts. As the 1834 Poor Law Report expressed it:

“Let the master and servant make their bargain without interference, direct or indirect, of a law of scale of maintenance.”

Even the most formally free market in terms of price-setting was therefore instituted by law, and enforced by the use of state criminal powers. Moreover, as a welfare law, it was far from cost free, but mobilised resources largely through property taxes. By the time of the Depression of the 1870s and 1880s, workhouses had spread throughout the land, and increasing percentages of the poor lived within their walls. As a welfare-law regime it had to work as an economy of resources, and this was severely exposed for its deficiencies both by Depression itself, and by the Booth (1887) and Rowntree (1897) Reports. Although not as spectacularly as Speenhamland, the poor law regime was proving economically unsustainable by the time the economic environment it inhabited had also so changed in character as to destabilise it further (MacKinnon, 1987).

For, the mid-19<sup>th</sup> century labour market institutionalisation was legally framed not by an employment versus unemployment dichotomy, rather by an able-bodied versus non-able bodied, or *manual* employable versus unemployable divisions. Moreover, because the Poor Law was essentially framing the master/able-bodied servant-wage labour relationship, and not the master/factory owner, let alone employer/the professional salaried employee relationships, there was no general legal framing of employment - or unemployment.

Before leaving this period of great reform, two further institutional innovations were introduced, both of which inhabited a fairly restricted niche economic environments at the time, which, in each case were eventually to dominate the landscape if in considerably changed form. The first was a significant piece of 'enabling' law, the establishment of limited liability joint stock companies as a legal entity, by the Acts of 1844 and 1856. Large scale enterprises in railways and canals were relatively small in number, if economically high in profile. These enterprises pioneered the development of vertical integration, extension of employment relations, and separation of ownership from management. But only in the late 19<sup>th</sup> century did such enterprise rapidly expand in number, and become more typical of the demand side for labour. There were only 60 as late as 1885, growing rapidly, partly as a consequence of mergers and acquisitions, to 600 in 1900.

Secondly, there was the introduction of income tax in 1842, reinforcing the social division noted above, because only applying to the middle and upper classes. It was, however, a markedly new fiscal handle, compared with property value taxes or customs and excise, upon which the fiscal-military state had been based (Daunton, 2002; O'Brien and Hunt, 1999). Income, however, was not only the bundle of all types of income, from professional salaries or office post-holding certainly, but also from rent, and profits. Income was total income, undifferentiated into its component parts, and it was self-assessed, with no requirement to identify its various sources. Moreover, it was policed by a kind of peer-review system, with like minded tax commissioners approving the self-assessment at the local level. It marked only the incipient emergence, subject to major alterations, of a tax on waged income. And, just as the open-ended employment form first took roots in the salaried middle class, this was also the niche environment for the first tax on salaried income. Both joint stock legislation and income tax, therefore, emphasise the importance of not treating 'the economy' as a homogeneous selection environment. And in both cases, it must be emphasised that they were subject to contingent and major transformation: to avoid any hint of teleological explanation, they did not have future history encoded in their genes.

## 6 THE EMERGENCE OF THE EMPLOYMENT RELATIONSHIP/CONTRACT NEXUS.

It will already be evident that the emergence of a contract based employment in industrial capitalism was a slow and tortuous one, involving the interweaving of legal, welfare, fiscal rules. The interaction between our four evolutionary poles has already been shown to be complex, and this is yet more evident in the period that saw the final emergence of a new nexus around the generalised employment relationship. During this final phase, lasting from the late nineteenth century to 1945, there were many asynchronies, conflicts and incoherencies between the four poles, suggesting highly complex dynamics.

From the standpoint of economic organisation, the disappearance of internal contracting and the emergence of unified employment under managerial control was slow and varied from industry to industry. It is worth returning to the significance of piece-work, as a distinctively economically instituted economic process, in blocking the development of generalised employment. The price for piece mechanism characteristic of textile mills ensured the persistence of the division between masters as the non-employed independent subcontractors and their employed servants and labourers right up to the end of the 19<sup>th</sup> century (Biernacki, 1995). Complex compendiums of prices for different types of cloth, with different kinds of yarns, with different qualities, subject to continuous revisions with technical changes, and price fluctuations in end markets, were evidence of non-legal, yet elaborate economic institutionalisation. Nothing illustrates the distinctiveness of this institution, than the fact that time was not a measure of employment under the master contracts of engagement, particularly in England. Instead, the working day was enforced by locking workers (master and servants) in and out of the factory, closing the gate when work commenced, opening it when work finished. As a disciplinary institution, it was extrinsic to legal instruments of engagement and to economically instituted price mechanisms. The erosion and replacement of piece work for employment on a time basis was thus critical in terms of economic organisation for changing the economic environment. A key element to the generalisation of employment based wages was undoubtedly the development of 'collective laissez-faire' wage bargaining between national federations of employers and trades union. Such bargaining, facilitated by the dismantling of the Combination Acts first by the 1871 Trade Union Act, and Criminal Law Amendment Act, and subsequently by the 1875 Conspiracy and Property Protection Act that provided legal immunities to trades unions, led to the new wage scales. The emergence of general trades unions – as against craft unions – particularly broke the basis of master-servant divisions of terms of employment. But just as the old Poor Law had enabled but not prescribed the price bargain between master and servants, so the new facilitation of collective bargaining left it to the parties of the exchange to generate the new institutional forms of labour market pricing. During the interwar period, the growth of the new industries and the demise of domestic service resulted in a further dramatic shift from servant status into hourly-waged factory employment, widely perceived as liberation from permanent subordination (Glucksmann, 1990). Taylorism, 'scientific management' and the Bedeaux systems of payment in factory-based industries, introduced new price mechanisms which linked output to time, with generalised techniques for measuring productivity.

If these changes in economically instituted exchange processes were no doubt uneven in their impact, changes in law responding to this shifting environment followed their own legal, path-dependent, and piecemeal patterns of mutation. The dismantlement of the Master and Servant Acts by the 1875 Employers and Workmen Act, and subsequent legislation defining the reciprocal obligations between employers and employees, persisted in excluding salaried post-holders in their regulatory framing. In what today would seem a bizarre anomaly, for example, busdrivers were excluded from the provisions of employers' liability to employees by virtue of being considered independently responsible salaried post-holders. A series of case law judgements gradually extended the legal test of being subject to managerial control as proof of employee status. But this fell far short of a general legal status of employee for all those engaged on a salaried basis within an integral organisation, private or public. Eventually, during the interwar period, case law also began to establish a test on whether someone could be deemed to be in a contract of service, or indeed to be in a business on own account, under a contract for services. But, these tests, in typical case law evolutionary mode, accrued, layer upon layer, rather than establishing a system of rules with the force of statute (Deakin and

Morris, 1995). The more comprehensive recategorisations instituting employment contracts as a general form came from elsewhere.

As Deakin and Wilkinson argue, the changing welfare regime of the late 19<sup>th</sup> and early 20<sup>th</sup> century breaking with the Poor Law Act, were central to the establishment of the employment contract in the modern sense of contractual bargain. The economic emergence of generalised, continuous employment, was accompanied by a change in welfare rules making three innovative institutions constructing the boundaries of employment, in effect re-constituting the size and shape of the labour force on the supply-side: the growth of universal education regulated by progressive increases in the school leaving age, affecting the point of entry to labour markets; retirement, affecting the point of exit from labour markets; and the novel institution of unemployment. From the Factory Acts onwards, but especially with the late 19<sup>th</sup> century Education Acts, there was a reduction of child labour and a converse increase in state expenditure on education. A critical break, brought about by the 1908 Pension Act, aimed to divide the aged poor, from the non-able bodied and relief dependent. For those over 65, pensions replaced relief, as a matter of right.

Finally, the introduction of a national insurance based contributory resource from 1911, with successive reforms through to 1927, progressively extended the range and scope of the employed covered by insurance, thereby linking unemployment to employment. From the standpoint of creating the new employment relation nexus, insurance regulation, much more than case or statutory law, gradually moved towards a general category of employee, from a base of manual workers, it progressively included salaried non-manual, women, and casual workers. As a further instrument for controlling supply of labour, and redefining the employment and wage relation, the 1911 Act instituted a strong set of rules for a male-breadwinner model, with differential rates and rights for married women.

But of all the three regulatory poles, the radical change occurred in the fiscal constitution, and, out of synch with the other two, it was to create the binary divide, at least in principle, between employed and self-employed, with attendant rights over resources, well ahead of law and welfare regimes. No doubt this was primarily driven by a change in the nature, as well as growth, of state expenditure. From being primarily a military-security-fiscal state, with revenues flat-lining at around 10% of GDP, punctuated only by peaks of National Debt driven by war expenditures, the state's primary expenditures progressively expanded to support education, health, and infrastructure expenditures. A step-change took place in the amount of GDP channelled through the taxation system, with the construction of new collective rights to public resources. These were to be centrally established around income tax. From the early 20<sup>th</sup> century, a crucial difference emerged in fiscal handles between earned and unearned income, the latter already pioneering, with death duties, a graduated progressive form of taxation. During the First World War years, an increasing proportion of the middle class population were subject to income tax, although, in the immediate post-war period attempts to extend it to the upper-working class were successfully resisted. The extension required a break with local, self-assessment, and regular continuous salaried wages, relatively unfluctuating, provided an effective handle for taxation, to enable centrally collected. Critically, the 1922 Finance Act, well ahead of other regulatory modes, created the binary divide between one class of income tax payers (Class E) embracing in principle all employed wage earners, and the self-employed, deemed to be taxed on profits of their trade. In the period leading up to the second world war, the logic of this division was extended to embrace wider and wider sections of the working population. Major economic instabilities and fiscal crises of the state, notably the Great Depression, undoubtedly drove forward many of the regulatory changes, even if the 'economic environment' was itself markedly riven by uneven development. Finally, in 1942, the PAYE system of income tax was applied to all wage earners, covering 16 million employees.

Relative coherence and systematisation between the different regulatory modes was finally instituted through the Beveridge Reforms, and especially the 1946 National Insurance Act. The binary divide was fully integrated with the instruments regulating the supply-side of the labour force, and the legal status of employee. The employment relation nexus of law, fiscality, and welfare was both constitutive of, and congruent with, the dominant forms of economic organisation of waged labour and employment. But, the nexus was only a consequence of a long-drawn out, highly contingent process. This schematic account of the four nodes of evolutionary variation and interaction is evidence of the different modalities of change

governing each of them. As a consequence, asynchronies, – and from a backward looking perspective - inconsistencies and conflicts as much between the three regulatory nodes as between any of them and an uneven economic environment, were critical to the overall evolutionary process. Law developed to a different rhythm, and was differently 'selected', for example, from the rhythm of fiscal change, where budgetary crisis, even yearly budgetary balances, surpluses and deficits, were critical drivers of regulatory change. I now turn to draw some more general theoretical conclusions for the adequacy of different explanatory accounts.

## **7 INSTITUTED OR EMBEDDED, EVOLUTIONARY OF COMPLEX OPEN SYSTEMS CAUSALITY?**

This review of Deakin and Wilkinson and Daunton provides powerful evidence for the specificity of legal, welfare and fiscal innovation. They inhabit different institutional logics – the separation of justice from the executive, the role of courts and judicial decisions ensure that the modalities of innovation are quite different from those of welfare reform, which in turn are different from fiscal innovation and the budgetary functions of the state. Law, welfare regulation and fiscal rules are distinctive sources of variation.

The systematic comparison over the course of two centuries also sustains their arguments that the changing economic environment is also a source of variation on its own account, to which the three regulatory modes respond, if in different ways. There is less clear evidence that the law, for example, responds by translating informal codes emergent in the economy into formal codes, much stronger evidence that formal law, and its modes of enforcement, provide framing and classifying codes that homogenise otherwise quite disparate and diffuse patterns of economic behaviour – as with the Master and Servant Acts, for example. In that sense, it could be argued that the law is a selection environment for the economy, just as much as the reverse – but I come back to that. Welfare and fiscal rules, on the other hand, institute new rights over resources, impacting on economic flows of resources in quite a direct manner, and so in reverse, are subject to crises of reproduction, if, as is to be generally expected, economies behave in unexpected ways. The crises in funding pension regimes in the contemporary period, or fiscal crises of the state, are examples.

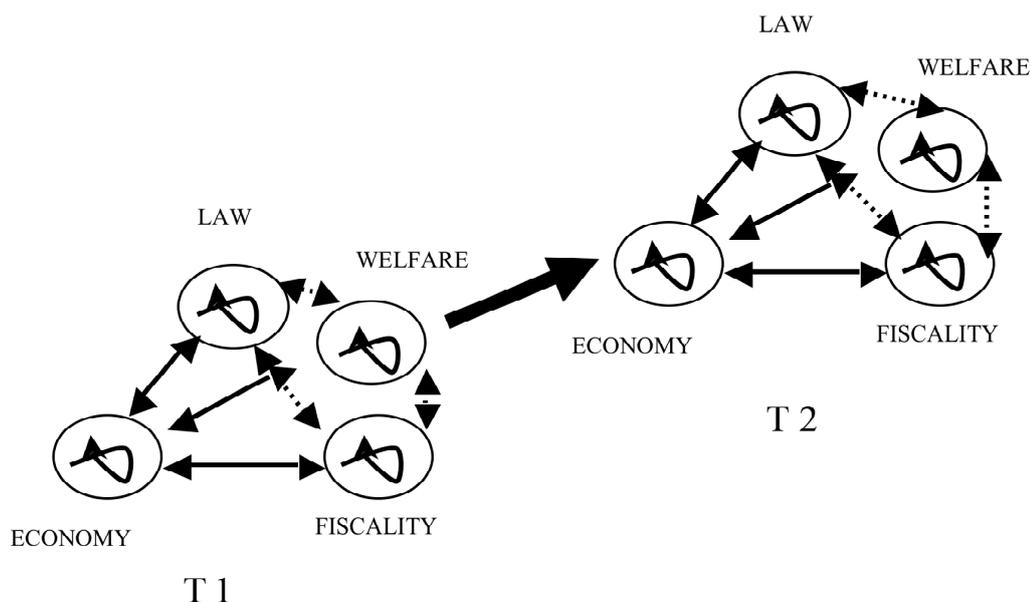
However, the explanatory framework needs to become a bit more complex at this point. For, it is also clear from their accounts and the above analysis, that legal, welfare and fiscal rules effectively institute properly economic processes. In Swedberg's or Hodgson's sense, they are constitutive of at least key if partial aspects of the economies with which they are in interaction. In the case of legal statutory instruments they define the parties of the exchange, and their respective rights. In the case of welfare regulations also define and categorise the agents, but in addition the legal instruments channel flows of resources, or impel exchanges that would not otherwise take place. And finally in the case of taxation, new channels of resources are formed through their attachment by 'fiscal handles' to categorised resources, providing citizens with collective rights, to security, education, or other public goods provided by state organisations. These create non-market economies of resources. Many of the legal and welfare instruments we have been exploring, moreover, and from the 20<sup>th</sup> century, also the tax institutions are constitutive of economic processes at the centre of economic activity – the millions of transactions that take place in labour markets, for example. So, legally or welfare regulatory instituted economic processes are immanent in the economic environment, shaping it in significant ways. But, as we have also seen, they do so only partially. The institution of internal contracting or various price institutions of piecework or the wage rates of collective bargaining, intersect with, but fall outside the scope of formal state regulation. Earlier legislation had indeed instituted price mechanism – wage assessment by magistrates, for example. So, within the economy where formal state regulation ends, and economically instituted economic processes begins is an historically shifting outcome of the evolutionary process. From an evolutionary explanatory perspective, therefore, there are no sharp or fixed divides between the law as a source of variation and selection and the economy as source of variation and selection. The exogeneity or endogeneity of law and economy is relative and contingent.

From this evidence, therefore, there is an important qualification to the Weberian concept of enabling law, if by that is meant a set of rules of the game that are preconditions for

subsequent operation of the economy – clarity of property rights, contract law, of whatever. The overwhelming picture from the historical account is one in which the formality of law emerges in mid-course of the development, consolidating and homogenising forms of economic activity, only for that formalisation to become subject to erosion and obsolescence, before a new set of formal rules emerge. There were aspects of the Master and Servant Acts that rapidly became out-of-synch with the operation of the labour market, even though other aspects continued to frame activity for most of the nineteenth century, before these too were finally superseded, to be replaced with new formal categorisations of employer and employee.

This discussion brings us to the point where certain implications for the concept of embeddedness can usefully be drawn. The independent source of variation of the law relates to the political process of legal enactment, and the operations of the judicial system. These processes and operations are certainly non-economic. But they can, as we have seen, institute and frame the specifically economic processes of exchange, at least partially so. If embeddedness is taken to mean the relative indifferentiation between economic and non-economic processes, the absorption of economic processes into social, political, cultural, or legal activities to a point where they become unidentifiable as economic, then embeddedness does not capture the relation between law and economy. Legal processes are both specific and interdependent with economic processes, and may institute specifically economic processes. The law is not absorbed into, or undifferentiated from, the economy, any more than the economy is absorbed into, or undifferentiated from, the law. The issue of interest in an evolutionary account is precisely the point of intersection between formal legal processes of institution and economic processes of institution, *of specifically economic processes*.

But the implied critique of embeddedness from this account goes much further as soon as the variety of regulatory modes is considered. We have seen the importance of distinguishing between legal, welfare and taxation modes of regulation, each exhibiting specific trajectories. Each has specific modes of interaction with the aspects of the economy. When describing the nexus between law, welfare, and taxation, there is evidence of overlapping and intersecting categorisations and rules that contingently combine together in shaping market exchanges. Historically, the very specificity of each of these regulatory modes was revealed in divergences and conflicts between their respective rule-systems, with one being out of synch with another, sometimes for extended historical periods. The interaction between different regulatory modes, as much as with the economy, is a critical aspect in understanding the process of historical transformation. An explanation of this kind therefore requires a multipolar conception – and here the analysis has arbitrarily privileged four – rather than de-differentiating one pole and another through the paradigm of embeddedness. The form of dynamic interaction we have been exploring can be graphically represented, where each of four poles have their own internal dynamics and trajectories, but in interaction and interdependence with the other three. The relationship and form of interaction, the boundaries and scope of institutionalisation of each of the poles, varies from one historical period to another. We have suggested that there was a long historical process of transition between one nexus of relationships between law, welfare, taxation and economic organisation and another (the Master-Servant nexus and the employment contract nexus), with long intervening periods of disjuncture and tension. Conflict and tension between the four poles forms a central element of the explanatory framework. A nexus is highly contingent, and any coherence is transitory and non-systemic.



This model can be viewed as a tool for thinking about explanatory frameworks. We have already suggested that the modes of interaction between each of the regulatory poles and the economy are differentiated, but as is suggested by the arrows, the interactions between the regulatory poles, how they occur, and in particular the political processes involved, suggest the need for much more reflection and historical examination. For example, the interconnection between taxation and welfare rules, because of their mobilisation and channelling of resources and the instituting of rights over them, undoubtedly generates a quite different dynamic than between either of these and law. For the sake of making the argument, each of the four poles has been taken to be homogeneous, internally integrated. Any account of the economy as a pole of interaction, as we have already suggested, requires a much more developed analysis of heterogeneity and unevenness, not just a generic concept of 'the economy'. Indeed, Daunton's concept of fiscal handle is one which could well be extended, and explored more. Identifying the changing points of attachment and interaction between law and welfare and emergent aspects of economic organisation, rather than the economies as a whole, may be an idea worth exploring. In this vein, it is worth highlighting how, the waged employment exchange of the mid-twentieth century labour market became a central institutional fulcrum to which each of these three regulatory modes are co-attached only after a long process of historical development. It achieved this degree of salience and centrality only after two centuries of industrial capitalism, rather than being either the pre-eminent economic, legal, welfare or taxation pre-condition of its development.

A final remark is called for concerning the use of the evolutionary metaphor of variation and selection. The above model and previous analysis suggested that each pole can be considered as both pole of variation and selection environment in relation to each of the others. Moreover, it was suggested that each of the regulatory poles were in some partial ways constitutive of their economic 'environment', and that the intense interactions occur within that 'environment' between regulatorily and economically instituted economic processes. This calls for a modification of the language of mutation and exogenous selection: the feedback processes are many and complex. Finally, because the dynamic involved in the model is multipolar, it may be that a language of complex, open-systems causality is more appropriate than one that implies a bi-polar dynamic or any straightforward opposition or dichotomy between variation and selection process.

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