Call for papers

Revisiting the 'constitutive idea': limitations, genealogies, scholarship

5-6 July 2023, Cambridge, UK

Deadline: 15th February 2023

Themes

The notion that law 'constitutes' the economy provides a powerful framework for understanding the relationship between law and economic processes. Contributions from various disciplines,[1] approaches,[2] and themes[3] have helped shape and refine the 'constitutive paradigm' over time as an alternative to the Law & Economics perspective. The recent launch of the Law and Political Economy (LPE) project (https://lpeproject.org/) is a significant milestone for the constitutive approach, thanks to its ability to energise legal scholars and students. Armed with a renewed belief in the idea that law can 're-construct' the social and economic world in fairer ways, LPE-inspired researchers have taken on the challenge of developing legal-political strategies that can help solve the problems plaguing our world. This call to action could not have come at a better time: poverty, racism, and injustice demand that we put our legal creativity to good use.

Against this dynamic backdrop, the workshop invites a collective reflection on the contours of the constitutive idea. What is the role (if any) of a theoretical inquiry into the notion of law's 'constitutive role' in these times of pressing social needs?

As previously hinted, the effervescent LPE turn in constitutive scholarship appears marked by ambitions to have practical application. While these objectives are hardly surprising – our socioeconomic world needs (legal) (re)structuring rather than pure theorising – they also pose some important questions. In particular, we argue that if a robust theoretical reflection does not support practical applications, law's constitutive role risks being *oversimplified* and the framework *misused*. Part of the problem lies in the intuitive clarity of the concept of 'constitution', which, paradoxically, may obfuscate the entanglement between law and society it aims to describe.[4] More specifically, the notion that law can *shape* and, if necessary, *reshape* social reality may lead to an overestimation of law's potential to deliver change and blur the distinction between legal and social change. This is a problematic foundation for the creation of legal strategies. Can we strengthen the constitutive approach – and its applications - by better defining the contours of law's constitutive power?

To begin the discussion, we propose focusing on three aspects of the constitutive paradigm: its limitations, genealogy, and scholarship.

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[1] E.g. in economics see Samuels, 1989; in sociology see Callon, 1998.

[2] E.g. legal institutionalism, economic sociology of law, and European investigations. See, respectively, Deakin *et al.*, 2017; Ashiagbor *et al.*, 2013; Dukes, 2019; Bartl, 2020.

[3] E.g. the recent focus on race: Ashiagbor, 2021; Gonzalez and Mutua, 2022.

[4] On the point, see Lang, 2013.

Starting with the **limitations**, we argue that much can be learnt by focusing on the ontological and epistemic *constraints* that (may) limit law's potential to reorganise economic processes. At least two dimensions should be mentioned here.

On the one hand, there is the relation between law and social change. As mentioned above, the constitutive paradigm – and, in particular, the suggestive language of '(re-)constitution', '(re-)structuring', and '(re-)codification' – risks misrepresenting the link between law and socioeconomic reality, making that link appear more frictionless and linear than it is. Is this an acceptable approximation of the law-reality nexus, or should constitutive strategies aim to refer to a more nuanced understanding of law's role in the economy and social reality at large?[5] Choosing an appropriate theory of the law/reality interface seems crucial because it allows us to answer some further questions. How far can we rely on law to (re)orient the economic system when law itself intimately underpins such a system by participating in its construction? Should we consider that an excessive reliance on law as a tool for social change might lead to negative side effects, such as an undesirable ossification of legal structures and an over-juridification of social reality? Do these side effects suggest that there are times when our ameliorative efforts would be better pursued via political means instead of legal-political ones?

On the other hand, there is the matter of legal change itself. Contributions which have developed alternative legal imaginaries appear to presuppose legal structures are malleable – that is, they seem to assume that law may flexibly absorb and accommodate recommended changes. From this perspective, alternative legal meanings are often implicitly considered *contingent* and *fungible*. Is this notion of legal change nuanced enough? Can new legal meanings replace existing ones so effortlessly? If not, can we better understand the constitutive idea by drawing on theories that explain why law may react rigidly to change, such as path dependence and complexity?(Ruhl, 2008)

The second path we propose is a **genealogical** one, in a broad and comparative sense. Crucially, we believe this investigation should go beyond the link between LPE, legal realism, and critical legal studies and look into other, less-explored linkages, such as those between legal institutionalism, economic sociology of law, and European reflections on the economic constitution and social market economy. A genealogical reflection would allow us to reconstruct how various perspectives have grasped the constitutive concept, showing conceptual divergences and convergences *concealed* by the ubiquitous reference to law's 'constitutive power.' This reflection could also look at the methodological approaches employed by different traditions. For example, what is the place of empirical methods in studying law's role in economic processes? Moreover, how have the mentioned approaches resisted theoretical and applicative difficulties – or, conversely, why have they succumbed to them, losing their bite? Finally, is there anything to be learned from the Law and Economics experience that could strengthen the constitutive approach?

The final aspect we propose to focus on is that of the constitutive **scholar and scholarship**. This workshop provides an opportunity to compare, contrast, and synthesise various inclinations toward theory. While the starting point of this call is that theory is required to support the advancement of the constitutive paradigm, both the role of theory within it and the profile of the legal scholar remain debatable. Is there an unarticulated tension among different conceptions of scholarship – and space for 'activism' – suggested by various constitutive approaches? Furthermore, does the constitutive paradigm encourage a fundamental reorientation of our theoretical concerns and the production of new questions? For example, do empirical investigations aimed at guiding strategic initiatives better capture the practical aspirations of the LPE turn and, hence, merit additional space?

[5] E.g. the concept of co-evolution; see Deakin, 2011.

Participation

In addition to the confirmed speakers below, we aim to select 5 PhD and Early Career Researchers, broadly defined. To submit a paper proposal, please send a 500-word abstract to Andrea Peripoli (ap880@cam.ac.uk) by **15th February 2023**. We aim to finalise the selection by the end of February.

Accommodation and food expenses during the workshop will be covered; a contribution towards travel expenses will be provided.

The event will be held in person over two full days, but the venue allows for hybrid participation.

Expected contributions, timeframe, and output

Presentation of original work at the workshop, either as shorter (ca. 4-5.000-word) or longer (ca. 8-10.000-word) papers. Draft papers should be circulated by the start of July 2023.

We are currently seeking a publication outlet, ideally a Special Issue.

Confirmed speakers

1. Zoe Adams – King's College and Affiliated Lecturer in Law, University of Cambridge
2. Diamond Ashiagbor – Professor of Law, Law School, University of Kent
3. Marija Bartl – Professor of Transnational Private Law, Law School, University of Amsterdam
4. Vladimir Bogoeski – Assistant Professor, Amsterdam Centre for Transformative Private law
5. Anna Chadwick – Senior Lecturer, School of Law, University of Glasgow
6. Ruth Dukes – Professor of Labour Law, School of Law, University of Glasgow
7. Sabine Frerichs – Professor, International Institute for the Sociology of Law/Ikerbasque Foundation (Spain), Vienna University of Economics and Business (Austria)
8. Marco Goldoni – Senior Lecturer, School of Law, University of Glasgow
9. Ioannis Kampourakis – Assistant Professor in Law and Markets, Erasmus University Rotterdam
10. Robert Knox – Senior Lecturer in Law, The Liverpool Law School, University of Liverpool
11. Liam McHugh-Russell – Assistant Professor, Schulich School of Law, Dalhousie University
12. Athena D. Mutua – Professor and Floyd H. & Hilda L. Hurst Faculty Scholar, Buffalo Law School
13. Maayan Menashe – British Academy Postdoctoral Fellow, University of Cambridge
14. Andrea Peripoli – Peterhouse and Affiliated Lecturer in Law, University of Cambridge
15. Amanda Perry-Kessaris – Professor of Law, Law School, University of Kent
16. Kerry Rittich – Professor, Faculty of Law, University of Toronto
17. Maria Tzanakopoulou – Lecturer, Department of Law, Birkbeck

Organisers

Diamond Ashiagbor, University of Kent
Marija Bartl, University of Amsterdam
Andrea Peripoli, University of Cambridge

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