An Economic Sociology of Law Reimagined

Beyond Embeddedness

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The next steps

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What remains of ESL without its core concept of embeddedness?

LAY LILLIAN

Lillian thought back to Ann's lectures about changing the way we do, talk, and think. Ann had said that this could give us different ways of responding to crashes and crises, and she had explained to Lillian that the way we think about law and economy are not predetermined. Nor are they laws of nature. Instead, how we talk and think about legal and economic phenomena are historically and culturally contingent, changeable, and the product of preferences.

What's more, these preferences – what we think of as important or not important, valuable or not valuable, relevant and not relevant – are equally up for discussion. At the time, Lillian wasn't convinced about how any of this could work in practice. Besides, she had more pressing worries. Her bills were due, her granddaughter was struggling to rent a room, and her sons were both trying to get re-referred to a food bank. What use did Lillian have for reframing law and economy?

We cannot universally get rid of embeddedness-talk; nor should we try to. We speak in metaphors and think in metaphors. This is eminently helpful most of the time, offering us linguistic short cuts while revealing and concealing shared concepts, theories, and working mental models. But we "run the ship aground" on a contradiction when our metaphors are not conceptually compatible (Krippner *et al.*, 2004, p. 112). And this fundamental contradiction is, this book has shown, limiting our abilities to respond to financial crashes, social crises, and environmental catastrophes innovatively and imaginatively. Even if you are sworn against constructivism, or the belief that we construct social institutions through our interactions, there is an undeniable and fundamental contradiction in claiming one phenomenon to be embedded in another, when neither exist physically or tangibly.

Should we, as many claim, seek to "re-embed" the economy in society? Should we think of the law as "embedded in" society? Should we claim that both the law and the economy have become problematically "disembedded" from society in recent decades? As the previous chapters have set out in detail, while these might pose valid questions about the relationship between law, economy, and society, in relying on embeddedness-talk, their phrasing leads us into a conceptual cul-de-sac.

We have seen that embeddedness, as the core concept of an ESL (economic sociology of law) lens, suffers from two limitations. Firstly, it is internally incoherent; the "what are we talking about?" problem. The concept has been applied to everything, and therefore no longer means anything (Granovetter, in Krippner *et al.*, 2004). This was exemplified in the application of the concept to responses to the 2008 financial crash, where everything was, at some point, said to be embedded in everything else: economy in society, society in economy, law in society, law in economy, economy in law… Cotterrell's key questions to keep in mind of "what is embedded, and in what", are good starting points but offer few solutions given the complexity of the discourse and what is potentially at stake (Cotterrell, 2013).

Secondly, our conceptual commitment to embeddedness perpetuates the metaphorical fiction of the ontologically separate law, economy, and society. This, in turn, reveals some insights, but conceals other, potentially helpful, constructivist analyses. By this, I mean that talking *as if* the three spheres were separate, and then attempting to integrate them using the metaphor of embeddedness results in the re-entrenchment of their separation. At the same time, it prevents us from thinking about legal and economic phenomena as they are socially constructed. In the light of ESL's aspiration to reunite the disciplines, the perpetuation of their separation is a problematic inconsistency that has far-reaching effects. It sets up a black box whereby one or more of the spheres is placed beyond the reach of sociological enquiry. But it leaves unchallenged the dominant discourses – those ways of talking and thinking – that constitute mainstream approaches in each sphere. For law, this is a narrow, doctrinal approach that assumes *homo juridicus*. For economics, this is an equally narrow, neoclassical approach that assumes *homo economicus*. In perpetuating these assumptions, and the preferences that are tacitly baked in to the mainstream ways of doing, talking, and thinking, we create the conditions in which we then act *as homo economicus-juridicus*. We end up wearing the blinkers of mainstream theories which then mask alternative approaches. We reproduce the same values that are prioritized in these mainstream approaches and privilege the same voices.

An ESL is one response to mainstream approaches that challenges the central assumptions of doctrinal law and neoclassical economics. But its core concept, embeddedness, sits at odds with its reintegrative aspirations for the disciplines it straddles. As an important and timely, albeit niche, lens for structuring sociologically oriented empirical enquiry at the interface of law and economy,

the embeddedness conundrum is central to ESL. But it is also fundamental for wider discourses about our responses to financial crashes, social crises, and environmental catastrophes. "Embeddedness-talk" has become increasingly fashionable since responses to the 2008 financial crash appeared, and the lessons we can draw from an exploration of ESL's core concept are equally applicable to our wider ways of doing, talking, and thinking about legal and economic phenomena. Removing the blinkers of mainstream models might involve shifting the way we do, talk, and think, and Chapter 5 suggested one possible way of moving beyond embeddedness.

Focusing on the impact of one tertiary, generative, ontological metaphor might seem overly pedantic, but the impacts of one word are extensive, and our guides, Academic Ann, Policy Polly, and Lay Lillian have explored the effects of reframing for them. Ann, our main guide in the first chapters, was planning a research trip to carry out interviews with foreign investors. She wanted to understand what this group was looking for in a host state legal system, and whether the shape of the legal system would be a deciding factor in their decision to invest, as development banks have claimed. Ann began to explore what an ESL lens might mean for her research, and quickly found that an ESL lens nudged her to consider wider social impacts of legal reform. Additionally, by approaching her research questions through a different lens, a wider pool of actors was identified as relevant for her understanding of legal reform for foreign investment. But, on reading further, she saw that there was a conundrum at the heart of the ESL lens that she was about to apply. How could a lens that sought to reintegrate the disciplines of law, economics, and sociology then separate out these spheres by talking about one being embedded in another?

At this point, Ann decided to compare two interpretations of embeddedness to explore the difference it might make. Using Block's research questions as her starting point, she set out who was involved and what the relationships were between them, and analyzed her fieldwork using two different – opposite – interpretations of embeddedness. Fred Block's reading of Polanyian embeddedness, simplified down, claims that economy (and its regulation) is embedded in society. By contrast, Gareth Dale's reading of Polanyian embeddedness, again in simplified form, claims that society has become embedded in economy (and its regulation). Ann found that these two interpretations of embeddedness resulted in different groups of actors being identified as relevant, and different foci being highlighted in their interactions. Depending on which reading of Polanyian embeddedness she chose, she would need to interview different actors, ask them slightly different questions, and pay attention to different aspects of how each answered. Ann reminded herself that these were two caricatured extremes of reading Polanyian embeddedness and that there were multiple alternatives, including Granovetter's micro level embeddedness, and many more offerings in between. For Ann, while an ESL lens offered a comprehensive and robust means to structure and undertake her research, its core

concept undermined the conceptual coherence and consistency of the lens, and she decided to explore an ESL lens that moved beyond embeddedness. She found that this gave her a conceptually consistent lens through which she could sociologically understand the economic life of the law.

Along the way, she had bumped into a friend from university, Policy Polly, who was now working in research and policy development at a development bank. Polly just happened to be focusing on a similar area – both geographically and substantively – to Ann but from the perspective of policy interventions. Polly had been enthusiastic about experimentalism and the growth of randomized controlled trials (RCTs) in the development industry, but she had admitted that the implementation gap remained problematic and had seen the benefits of RCTs. But, what happened in the textbooks and what was happening on the ground still did not always align, and Polly listened intently as Ann rushed through her latest framing exercises and what an ESL lens might mean for her research. While Polly isn't sure that ESL could solve all the Bank's problems, she immediately saw that it posed some interesting questions. She could see that as a way of balancing the diverse, complex, and dynamic needs of multiple communities, the lens could offer an alternative understanding of legal and economic phenomena in the context of economic development. More to the point, she wondered if a sociological lens might help imagine some of the unintended consequences of economically oriented law reform that countries engaged in with the aim of shaping legal systems according to the (perceived) expectations of foreign investors.

Finally, Lay Lillian, Ann's frustrated but perennially optimistic neighbour, over many tea breaks with Ann, listened while Ann explained her research. Lillian wasn't impressed with complicated words and wasted no time telling Ann that the name of the lens, an economic sociology of law, would not catch on. But when Ann started explaining that we need different ways of thinking about legal and economic phenomena, and that this might start with alternative ways of talking, Lillian began to listen. As our guide for the rest of this chapter, Lillian's thought experiments allow us to zoom out from the preceding discussions and look at the wider implications for society that the microcosm of embeddedness-talk in an ESL context have revealed.

LAY LILLIAN

Lillian's heart swelled with pride whenever she looked at her granddaughter's graduation photo – the first in the family to go to university. Now, her granddaughter had moved to another city to start a new job as a nurse. But when she had mentioned the extent of her student debt on the phone, Lillian had nearly fainted. What's more, she needed a guarantor just to rent one room in a shared house, and she had asked

Lillian. But guaranteeing rent for a year was more money than Lillian had ever had in her bank account in her life.

Fretting, but determined not to let her granddaughter become homeless, Lillian thought about the way that her family had clubbed together to purchase the council house in the 1970s, and there was money in that, she thought.

But all that money, just for one small room for a key worker. Lillian wondered what Ann might say to this, and imagined Ann's voice talking about the application of market concepts and language to housing. Lillian couldn't disagree. When she had bought her council house, the application of market principles had benefited her, but "the housing market" was failing her granddaughter now.

Fred Block's quip from 2013, that there was nothing quite like a financial crash to spur developments in critical thinking about the economy and its regulation, is a good reminder of the purpose of the current narrative (Block, 2013, p. 28). However, there is an even more pressing need for research into how we frame legal and economic phenomena, and how we might talk about legal and economic phenomena in the future. Can our conceptual and linguistic tools evolve? What might it take to alter them, and to reframe the narrative? Might this be a way to rebalance the voices and interests that our concepts and words highlight?

Complicating all these questions is the revolution in technology and the implications for our language: the Internet, big data, algorithms, and the growth of artificial intelligence (AI) systems that can engage in natural language processing (NLP). The handful of foundation models (FMs) on which NLP depends are monolithic entities with emergent qualities. In short, these FMs can engage in "self-supervised" learning, and can learn new tasks without needing to be prompted or commanded to do so (Bommasani and Liang, 2021). But they are trained on data from the Internet: data that has, for the most part, been created by a subset of flawed human beings. This data – blog posts, comments, reactions, and so on – encodes the biases and preferences that ordinary humans have. But in encoding these biases into FMs, research indicates that they are not only reproduced, but augmented (Sap *et al.*, 2020; Bender *et al.*, 2021). Thus, neo-liberal preferences for the self-regulating free market and small government are being both encoded and amplified. Political choices and decades of narrative capture by the political right are being translated into future algorithmic intelligence, potentially preserving them in digital aspic (Williams, 2022b). At the same time, this process risks placing our current analytical and normative tools beyond the reach of interrogation of future generations, and beyond the reach of any evolutionary processes.

In setting out an urgent research agenda to understand the extent of the problem and to seek ways of addressing this, later sections in this chapter

outline what the example of embeddedness can tell us about AI and the future "of our linguistic tools. Before that, however, it is worth asking what becomes of an ESL lens if we remove its core concept.

Lingering questions about an ESL lens

Before turning to Lillian musings on reframing, it is helpful to address some lingering questions that may have arisen. If we accept that embeddedness-talk introduces conceptual limitations, we might consider moving beyond embeddedness, and Chapters 4 and 5 explored one way (among many) of going about this. But, if we discard the core concept of ESL, what remains? Then, how can we address the linguistic limitations and contradictions in the lens's name? Can an ESL lens really offer a serious challenge to the preference for "clean answers" over the "dirty hands" of complex, messy, sociologically oriented research (Hirsch, Michaels and Friedman, 1990)? And to what extent is an ESL lens a political undertaking – if we advocate moving towards a morally constructed, socially networked concept of the individual, can an ESL lens be anything but political? Before turning to any of these, there are two fundamental questions that need to be addressed. What, or where, or perhaps even who, is "the social"? And "how much" economic or legal "flavours" are discoverable there (Ewick and Silbey, 1998, p. 217)?

What, where, or who is "the social"?[1]

The discussion in the preceding chapters has used "the social" to refer to situations in which two or more actors are present, although this does not mandate physical co-presence; virtual or online interactions can also see the performance of legal and economic phenomena.[2] The point, then, is that legal and economic phenomena might be understood and studied as two sides of the same, social coin, and that each and every social interaction will invoke some legal and economic aspects, whether in the use, abuse, or avoidance of formal or informal legal and economic institutions. This does not confirm or deny the exercise of power or privilege. Nor does it deny domination or control any more than it conveys a woolly sense of what we know to be "society".

And yet, proposing a shift beyond embeddedness by reinterpreting the legal and the economic through a social constructivist lens demands some explanation of what, or where, or even who "the social" is. As Chapter 1 noted,

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1 As noted in Chapter 1, a full social ontology is beyond the scope of this book, but see (Searle, 2006).
2 See (Goffman, 1959, 1967). This includes engagement with a device, over a telephone, or where we can imagine that another party is necessary for an interaction to occur. For example, agreeing to updated terms and conditions within an app necessitates interaction with the app on one's device, and this can be understood as a proxy for the company that developed the app which, here, might be understood as the other actor.

"society", like "law" and "economy", is an ontological metaphor. There is no such thing that we can reach out and touch, and yet, somehow, we understand a shared meaning. As a metaphor, then, for collections of actors and social behaviours, the previous chapters tell us that it is important that our metaphors are appropriate, and conceptually consistent. Any definition of society, or social ontology, will depend to some extent on the context. To ask what society is asks, at a micro or macro level, where the boundaries and borderlands are, and where we fall off the map.

When "society" is counterposed against "government", we invoke notions of the political power encroaching into the realm of what might, or ought to, be considered private. When "society" is counterposed against "the economy", we invoke the mental models of neoclassical economics and, usually, a trenchant belief in the power of free markets to offer solutions to social problems. In both scenarios we might think of the legal as straddling the divide, offering channels of movement and counter-movement, where contestation is performed and power plays out.

Perhaps a better question, then, is "what makes the social, social?". For our purposes here, the presence of two or more actors is sufficient for an ESL lens to structure enquiry into the legal and economic. Are there any other structures or qualities that we might note as necessary for enquiry into the social setting of the construction of legal and economic phenomena? For Roger Cotterrell, degrees of mutual interpersonal trust emerge over time, supported by the law. With repeated interactions these coalesce into networks of community. Fukuyama also points to the central role of trust in social relations, and Uzzi's work confirms the importance of trust in facilitating economic aspects of interactions.

But this leads on to a more serious challenge to a constructivist ESL lens: the ability to ask "how much"?

But "how much?": the "sociological fallacy"

There is an argument that in understanding legal and economic phenomena as aspects of the social, re-co-constructed through and within each social interaction, we lose the ability to ask "how much": exactly how much economic or legal aspect is there in this interaction or in that one? Has it increased or decreased over time? And how does it compare with the interactions being performed over there? This has been termed the "sociological fallacy", and can be important for comparing societies, timelines, geographies, cultures, and asking about the regulatory needs of one group vis-à-vis another (Peck, 2013, p. 1542). Skipping back to embeddedness-based ESL momentarily, the argument goes, if we say that all markets are always embedded, we leave ourselves no room to differentiate between different sets of institutions, or for grappling with the specifics of different market systems and societies. There is, further, no way of distinguishing between groups within a society, whether they construct

more or less economic or legal aspects within their interactions, and what their precise regulatory needs are.

While we need to be better aware of the fictions baked into our metaphors and the implications of these leaps of faith that we all take, we need ways of distinguishing between performances of the legal and the economic across space and time. If we were to retain our conceptual commitment to the embeddedness metaphor, we might look back to Block's "thick" and "thin" notions of embeddedness and his concepts of "high" and "low marketness" to describe the amount of economic colour or flavour we can discern in any given interaction (Krippner *et al.*, 2004). As the discussion has explored though, this tends to place "the market" firmly back in the black box and outside the reach of sociological analysis, although this is a function of the metaphor of embeddedness rather than of how Block wants us to talk and think about economic aspects of the social. Nevertheless, the sociological fallacy can easily fade into the economistic fallacy whereby the market is placed in a black box and left unavailable to sociological analysis. In effect, by focusing on one, we lose sight of the other, and so the cycle continues. Neither extreme offers uninterrupted views of the totality of the interaction, and with this approach we can only ask "how much" by separating out the spheres of law, economy, and society and recreating those fictions.

If we want to understand or adjust the regulatory requirements of a particular set of interactions, it might be helpful to be able to pick out the extent to which they are economic, and, for example, the type of trusting relations of community that we are dealing with. We have a set of linguistic tools that are compatible with a constructivist lens, set out in Chapter 5, that avoid embeddedness-talk. We can identify the interaction ideal type(s) and can specify if certain ideal types are more or less present. We can also continue to begin at the micro level, focusing closely on how economic and legal phenomena are performed by paying close attention to the language actors use in their interactions. We can begin to zoom out, scaling up the rankings of social interaction but maintaining a focus on the empirical: on the economic and the legal as they are performed, and on the regimes that are re-co-constructed. So, referring back to Block's research questions that prompt consideration of the extent to which non-economic goals such as moral or spiritual commitments shape economic decisions, we might note that the non-economic goals align here with Weber's affective, traditional, and belief-based interaction ideal types (Block, 2008). Thus, we are able to bring in other factors than the economic and, in turn, ask "how much?".

In short, while some find it necessary to separate out the legal and economic aspects of interactions in order to analyze them as discrete phenomena, this is not always necessary and can entrench fictions that lead to misunderstandings. The way we talk and think about legal and economic phenomena should remain as consistent as possible with how these are performed in real life for as long as possible. Retaining their social construction as the foundational backdrop to any sociological analysis is essential for understanding these phenomena as they are performed. Extraction risks losing context, and when we

lose context, we lose insights into the meaning attributed and the expectations of actors. In other words, a phenomenological understanding which enables a fully constructivist approach can only occur when social phenomena (like the economic or the legal) are understood in their full context. Then we can identify sites at which shared expectations come into play, and in so doing we can identify – should we choose Cotterrell's community lens – the regulatory requirements that might best support the mutual interpersonal trust that enables networks of community to operate.

This shift in perspective highlights how our language determines outcomes. It also emphasizes that in starting with empirical enquiry we need to start with what we can see, touch, and measure: interactions (rather than abstracted notions of metaphorical fictions like "the law" or "the economy"). As previous chapters have emphasized, the problems begin when we lose sight of the metaphorical fictions that we shape through our language, and which then shape us. By starting with careful observation at the micro level and focusing on interactions, we can remain empirically grounded. If we then choose to bring in metaphor or fiction to enable the analysis later, it is important to keep in mind that these are fictions and will operate as such – as imagined fantasies of our version of the real world, rather than the real world itself.

Removing the core concept: what is left?

An economic sociology of law (ESL) has structured and informed valuable and innovative research and continues to do so (Ashiagbor, 2011, 2013, 2014; Ashiagbor, Kotiswaran and Perry-Kessaris, 2013). At its core are central tenets and questions that are timely and crucial to empirically grounded, theoretically informed, and methodologically rigorous work in the social sciences at a time when this is needed more than ever. These include a commitment to real-world observation, evaluation and critique, and a challenge to orthodox, mainstream, doctrinal, and neoclassical approaches (Cotterrell, 1998). The focus, this book argues, lies then with the lived experiences of people as these are played out in interactions, challenging abstracted models of assumed behaviour. As such, an ESL continues to remind us that the social institutions that we live, work, and perform daily are not a given or the product of received wisdom. The legal and economic structures that we re-co-construct daily did not appear, fully formed, by some act of divine intervention. Rather, the current structures and processes, that is, our existing ways of doing, talking, and thinking, were all products of a good idea – someone's good idea – at some point in time. This applies to concepts like money and the metaphors we use to describe it as much as it does to institutions like the rule of law, the separation of powers, and the independence of the judiciary. Given the right setting, good ideas tend to stick, and are maintained by those who benefit from them or who can see the benefit in them. Nevertheless, this playing field of values is tilted to maintain the status quo, and insights into how this might be subtly shifted in

order to accommodate alternative sets of voices, interests, and values therefore constitute a high-stakes game of persuasion, politics, and power as society faces up to challenges on a previously unknown scale.

At the same time, an ESL responds to entrenched disciplinarity within the social sciences and the continental drifts of departmentalization, professionalization, and differentiation that have occurred in the academy over the past half-century. A sociological lens invites both law and economics, as scholarly disciplines, to revisit their origins as the study of social, or socially constructed, phenomena. It thereby challenges the conditions that led economics to ape the natural sciences, and other social sciences to ape economics. It challenges the notion that law is an internally sealed system or that the law can be, or should be, co-opted by economic rationalities. The suggested focus on feedback loops emphasizes the real-world construction of economic and legal regimes, highlighting the ways in which certain voices are privileged while others are silenced as we move between actions (doing), thoughts (thinking), and their expression (talking). Moving beyond ESL's conceptual commitment to embeddedness is unlikely to limit any of these overarching goals, nor will it limit ESL's demands of us to approach questions about the economic life of law critically and reflexively.

Furthermore, removing any commitment to the concept of embeddedness need not entail severing all ties with projects addressing similar problems (Dukes, 2018). Nor need it mean discarding all references to ESL as a neo-Polanyian project should we wish. Karl Polanyi set out to reappraise the historical narrative giving rise to current relationships between law, economy, and society. While the scholarly landscape has shifted since the publication of *The Great Transformation*, solidifying silos of research and practice into distinct, inflexible spheres, Polanyi's analysis of the fictitious commodities of land, labour, and money continue to offer fresh insights that challenge today's orthodoxies, as the previous chapters have shown. The need for constructivist approaches that respond to entrenched disciplinarity in the social sciences, offering us glimpses of unifying themes and common insights, has made our ongoing commitment to the concept of embeddedness problematic. But the avoidance of embeddedness-based discourse need not entail banishing other insights from Polanyi's work into the flexible and dynamic relationship between markets, regulation, and society.

What's in a name? Linguistic limitations

Perhaps one of the greater challenges an ESL lens faces is also the most trivial: that of its name. "An economic sociology of law" is, to borrow Giddens' own criticism of his structuration theory, and as Lay Lillian found, "an unlovely term at best" (Giddens, 1984). Do we reduce it to "ESL" or "ESoL"?[3] Either

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3 I'm grateful to Saadat Pirzada for drawing my attention to this and explaining the preference for an acronym that, when pronounced "ee-soul", reflects the social, ethical, moral, and political preferences of those who are studied through the lens.

way, the problem lies in the named separation of the disciplines that an ESL lens sets out to reunite. In naming the three areas of enquiry, economy, sociology, and law, the lens linguistically undermines its aspiration of responding to entrenched disciplinarity within the social sciences. While an ESL seeks to reunite discourse across the three areas, its very name re-entrenches their separation. We might refer to this as ESL's very own black box problem, by which economics, law, or worse, both, are left substantively unavailable to sociological analysis. As this book has argued, by assuming a social constructivist understanding of legal and economic phenomena, we can square this circle and enable ESL to offer a sociological lens on the interface between the legal and the economic as this occurs through (social) interactions.

Additionally, for those unfamiliar with the lens, the name can be deceptive, indicating an engagement with economics that suggests a law and economics approach. As we saw in Chapter 2, an ESL is anything but, and might more accurately be described as an anti-law and economics lens, given its goals of challenging economics imperialism and market fundamentalism. An ESL challenges the co-option of law for economic ends as well as the application of the empirical, conceptual, and normative tools of mainstream economics to legal scholarship or reasoning. Moreover, an ESL lens asserts that scholarship at the interface of law and economics should be studied sociologically, demonstrating its insistence on bringing the disciplines of law and economics back into the social sciences and reorienting them around the social, however this might be identified or defined. Nevertheless, however worthy the lens's aims might be, none of them are clear from its title.

Clean models or dirty hands?

There are still more questions. First among these is the recognition of our preference for clear answers over the messy complexities of reality (Hirsch, Michaels and Friedman, 1990). The attraction of having a clear answer to a complex social question cannot be overstated, even when this answer is wrong, or at least partial. None of us likes uncertainty or imprecision – least of all policy makers tasked with designing regulations or policy that will address a particular social problem. The woolly nature of sociological and socio-legal lenses, and their ability to capture multiple realities and values simultaneously, is both their strength and weakness. Sometimes, preference for a simple, clear answer will win out, and time-pressed policy makers like Polly will tend towards the binaries offered by more economistic models. This is not to make a straw man of quantified and quantifiable research, which can provide invaluable insights into aggregated behavioural patterns. Against this, the inherent vagueness of sociological research must take care to emphasize its value if it is to realize policy and social impact.

In other words, less quantifiable research needs to sell itself better. It can do this through good old-fashioned marketing but also through the way it presents itself. Communication of the "dirty hands" answers of sociological research need not be hidden in walls of text or placed behind paywalls of dense

terminology. Recent developments in the application of design to law and socio-legal research show how research and findings can be made "visible and tangible", offering us "enabling ecosystems" in which the research can help us to be "practical, critical, and imaginative" in our responses to pressing social demands (Perry-Kessaris, 2021). By harnessing the potential of the visual, we can identify, interrogate, and then, if necessary, sidestep the inadequacies of our language, complementing and enhancing the textual findings of careful, empirical enquiry (Williams, 2022a). The chapter title page background illustrations in this book are a case in point, illustrating some of the core concepts that are explored in each chapter. While visualizations of socio-legal concepts, methods, and frames might not replace text and verbal persuasion, they can offer another point of entry to the discussion and an alternative perspective.

ESL, politics, and power: can an ESL lens ever be apolitical?

The final question remaining is the extent to which an ESL is a political lens, or the extent to which an ESL lens necessarily engages with the exercise of power. The first question of social ontology touched on this briefly, as "social" does not, in this context, tell us anything about power relations or their expression. Similarly, "community", while sounding soft and fluffy, does not deny or elide the exercise of power, of domination, and of privilege, specifically the opposite (Perry-Kessaris, 2011; Cotterrell, 2006, p. 68).

Firstly, an ESL lens, while aware of the normativity of actors and their interactions, does not propose normative substance beyond its challenges to orthodoxies and entrenched disciplinarity. The lens is just that: a lens rather than a methodology or theory, and the choice of words is crucial here to convey something that we look through to understand the world from a different perspective. Nevertheless, claiming that any approach to social science enquiry could be anormative, apolitical, or amoral sounds disingenuous. After all, an ESL lens reminds us to reflect carefully on our preferences and biases, and to uncover the assumptions baked in to our mental models (of which we are usually unaware). An ESL lens therefore draws attention to existing normativity rather than seeking to add its own preferences.

On the other hand though, ESL specifically sets out to challenge neo-liberal performances of economic and legal phenomena. In challenging disciplinarity and the dominant discourses in law and economics, ESL seeks to balance these voices with those that are typically silenced by neoclassical or neo-liberal discourse. As we noted earlier, the term "community" does not mean some fluffy, warm notion of friendship. On the contrary, understanding relations of community means understanding the exercise of power and of privilege in the way that actors perform legal and economic phenomena. In accepting the contingency of social structures, institutions, and therefore power, ESL cannot be anything other than a political undertaking, even though this may not be the primary focus of the lens, and certainly has not been the primary focus of

this book. The discussion here has focused on the impact ESL might realize in carefully defined contexts (academic, policy, and lay, and with regard to economic development) as has been illustrated by Academic Ann, Policy Polly, and Lay Lillian.

So why might we see an ESL as a lens with political implications, if not ambitions? Neo-liberalism, understood here as the political, economic, and cultural incarnation of econo-centrism, sees the free market as "an ideological system that holds the 'market' sacred" (Mudge, 2008, p. 706). It is "built on a single, fundamental principle: the superiority of individualized, market-based competition over other modes of organization" (Mudge, 2008, p. 706). Facing this, scholars 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 (Mudge, 2008, pp. 706–9). 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" (Mudge, 2008, p. 716).

Any ESL lens claims deep reflectiveness on the part of the researcher in contrast to the veneer of scientific neutrality claimed by neoliberal and neoclassical economics. Thus, by posing an ESL-informed lens as a response to the problems with current approaches, it is difficult to argue that an ESL can be anything but political. This is true whether we continue to use the concept of embeddedness or not. For Polanyi, neoclassical economic theory attempts to realize the embeddedness of society in the market, even though his work shows that this is not – and could never be – fully possible. An ESL that looks back to Polanyi and which maintains a conceptual commitment to embeddedness will tend to challenge neo-liberal assumptions through sociological approaches that seek to re-embed the economy in society and reconfigure the relationship between the two, adjusting the regulatory requirements accordingly. Thus, in rebalancing the voices and interests that are considered (relevant) and seeking to accommodate non-economic values, there is a further natural tendency to see an ESL as a response to (political) neoliberalism.

This is problematic, as the previous chapters have shown. An ESL responds to the normative silence and supposed scientific neutrality of orthodox approaches by requiring reflectiveness about the text, context, and subtext of the research. Once again though, the importance of language and the metaphors we use are central here. Neoliberalism, being generally premised on a sharp distinction between market and state (two more ontological metaphors), 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 (Meyer and Rowan, 1991, p. 41, cited in Krippner and Alvarez, 2007; Mudge, 2008, p. 721). 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. Nevertheless, in stepping back from any "objectivity" and "neutrality" that are claimed by the natural sciences and mainstream economics, an ESL relinquishes any moral authority that it might claim, and in comparison to those approaches which do claim unbiased, clear, straightforward answers, becomes a very hard sell, but one that is essential for the future health and well-being of the social sciences. This importance is heightened in the context of the development of AI systems, which the following sections discuss in greater detail.

LAY LILLIAN

Lillian had started to look out for embeddedness as a metaphor and was surprised to see how often it cropped up; on the television, on the radio, in newspapers and magazines too. Whenever they interviewed an expert, it seemed to Lillian that they described the economy as "embedded". She began to pick out frequent hints of neoclassical economic framing too, listening out for behaviour described as "rational", "efficient", or "productive".

Thinking of her granddaughter's student loan and struggle to rent a room, Lillian began to notice some of these words and how debates tend to be framed in terms that privilege values and interests aligning with neoclassical economics. Grudgingly, she begins to wonder if Ann might have a point after all.

Updating Ann over more tea, Lillian wonders aloud whether the latest round of tax relief might be a good thing, because by paying less tax her granddaughter might have more money to spend on rent and essentials.

Ann paused, and then replied "Tax relief? You mean tax cuts? Or, to put it another way Lillian, you mean reduced investment in our public services, environment, and future generations? I'd try framing it differently. Is less investment in shared public services a good thing for your granddaughter's wallet?"

Lillian frowned.

Responding to crashes, crises, catastrophes

Lillian is probably right to be sceptical of our ability to do away with any metaphor. And yet, after a few conversations with Ann, she can see that the way we talk about legal and economic phenomena matters. Ann had explained that the metaphor of embeddedness separated out law from economy and from society, and perpetuated the narrow yet dominant ways of thinking in each of these spheres. Ann had also talked to Lillian about two other ways of using embeddedness set out by John Ruggie and Peter Evans, where they are carefully defined and meet a set of specific criteria. So, Lillian thought, it was not necessarily a case of banishing embeddedness-talk for good. It was a case of being more aware of

the context in which it was being used, and the implications of the assumptions that it perpetuated. This meant that the first challenge to embeddedness, the "what are we talking about?" question could be answered by careful definition. The second problem with embeddedness, which Lillian now understood to be the "how are we talking about it?" question, was more problematic.

Ruggie and Evans show us that when we combine the concept of embeddedness with an equal-and-opposite force, "liberalism" or "autonomy" for example, we can reintroduce some of the dynamism and flexibility that Polanyi might have originally intended, given that he was writing in an era of pre-disciplinarity. However, there remains a tension between the ultimate aims of social constructivism, epitomized in the integrative goals of an ESL, and our ongoing commitment to a relational concept that entrenches disciplinarity, separation, and the isolation of certain aspects of social behaviours for separate analysis.

So, Lillian mulls over, the question remains: are the law and economy embedded in society? Or is society embedded in the law and economy? The metaphorical fiction of ontological separation takes us back to the separation of the disciplines that occurred in the second half of the twentieth century and the subsequent aping of the approaches and methods of the natural sciences. The "clean models" of neoclassical economics and doctrinal law remove us from the "dirty", messy realities of social enquiry, where answers are not black and white, and where certainty is not guaranteed (Hirsch, Michaels and Friedman, 1990). But they also remove us from the careful, empirical observation on which social enquiry – for legal and economic phenomena are social – is founded.

Our conceptual commitment to embeddedness continues

More recent literature is illustrative of the ongoing work to reframe how we do, talk, and think about law, economy, and society, and how we understand the relationships between these three spheres as we respond to financial crashes, social crises, and environmental catastrophes.

The 2021 *Dasgupta Review*, *The Economics of Biodiversity*, recognized that our preferences are "socially embedded" and called for "changes in how we think, act and measure economic success" (Dasgupta, 2021, p. 5). The report called for individual choices to be nudged in the right direction through education to bolster institutional changes that might be realized through "sustained commitment" and "hard choices" (Dasgupta, 2021). Nevertheless, these need not be so arduous if we have the conceptual and linguistic tools to enable us to make better choices and to perform as an environmentally aware, socially situated, morally constructed *homo sociologicus*.

Statements that markets are "social construct[s]" and "living institutions [that are] embedded in culture, practice and tradition" look back to Adam Smith and pre-disciplinary conceptualizations of markets (Carney, 2020). They challenge

the continental drift of the disciplines that have produced silos of research and discourse. Increasing recognition of the social situatedness of markets indicates an encouraging willingness to shift and reframe. And yet, our ongoing conceptual commitment to embeddedness seems to endure. Arguing that economics might to focus on missions, Mariana Mazzucato, one of the leading thinkers on economic reframing, states that "markets are embedded in rules, norms and contracts" before on the next page stating that "markets are embedded in institutions and norms" (Mazzucato, 2021, pp. 20–1). In the first instance, Evans' theory of embedded autonomy is referenced, but the assertion appears to be that markets are embedded in law. It is unclear whether by "law" Mazzucato means "the state", but by any socio-legal or constructivist understanding this seems unlikely. An alternative reading might understand her argument to be that markets are embedded in "norms" (this is stated twice), implying that markets are embedded in social behaviours. Following this line of interpretation, markets are "co-created by different actors in both the public and private sectors, as well as civil society organisations" (Mazzucato, 2021, p. 21). This understanding of the co-creation of markets by actors also hints at a shift towards a social constructivist understanding of markets and their regulation, indicating the implicit but central role of the social. Nevertheless, the lack of definition reinforces the two limitations of embeddedness-based discourse set out in the preceding chapters: its internal inconsistency ("*what* are we talking about?") and its external incompatibility with constructivist lenses ("*how* are we talking about it?").

Shoehorning concepts into categories: Happy the Elephant, Chucho the Bear, and their friends

The limitations baked in to our conceptual and linguistic tools are worth worrying about. Our conceptual tools both shape and are shaped by our linguistic tools (Russell, 2003; Dermendzhiyska, 2021). When we reproduce inadequate metaphors and fictions in our speech, our actions come to align with the default, mainstream assumed caricatures that have solidified into human form over decades. We perform as *homo economicus-juridicus*. But our values and priorities have shifted. They have had to. Climate change will not conform to the economic models we have developed. Ecological destruction, the zone beyond the outer ring of Raworth's diagram in *Doughnut Economics*, is challenging existing legal and economic models in unprecedented ways and forcing a reappraisal of how we conceive of the human as a legal subject (Raworth, 2018; Matthews, 2021; Fineman, 2022; Norman, 2022). Like a torch shining brightly across a topographical landscape, casting deep shadows whilst highlighting other features, our frames reveal and conceal in equal measure. They highlight partial understandings of crises, suggesting equally partial solutions. Similarly, we can appreciate the effects of our legal and economic framing in the inequalities spotlighted by the COVID pandemic which illuminated the limitations of our existing conceptual and linguistic tools for realizing goals just as justice, fairness,

and equality. Two examples of the inadequacies of our mental models and linguistic tools relating to legal and economic phenomena, and the metaphorical fictions these necessitate, are helpful illustrations of the challenge underway to rebalance the values prioritized through our conceptual and linguistic tools.

Happy the Elephant is being held unlawfully by the New York zoo – or so her lawyers argue. Having been trucked and bartered around the world while still a baby, Happy (for that is, unironically, her name) became "trapped in human history" (Lepore, 2021). Happy's legal journey, and her petition of *habeas corpus*, follows on from those of other non-human plaintiffs, including Pablo Escobar's "cocaine hippos", and Chucho, the Andean Bear.[4] Chucho had become "severely depressed" following a bereavement, and a petition of *habeas corpus* allowed the Colombian court to find bears to be "sentient beings" and holders of some rights, although these still fall short of the full bundle of rights a human might expect (Cheng, 2021; Franceschini, 2021).

Courts have not been blind to the ecological devastation that is now threatening humanity. Responding to the wave of non-human rights cases, they have increasingly been willing to recognize the intrinsic value of affording protection in the form of rights, not because a thing is endangered or because it is the property of a human. Koko the Gorilla, in meeting and surpassing human-designed tests, proved beyond doubt that gorillas were "intrinsically worthy beings", deserving of protection. In law, however, the only way of accomplishing this has been to "promote" gorillas to the status of a person, which has been done with varying degrees of success in Western Europe, New Zealand, and Argentina (Smith, 2021). While analogies between gorillas, and even hippos, and humans can be made, and legal personhood justified on their intrinsic qualities, forests and rivers are a completely different matter. And yet, finding these also deserving of protection (from the humans to which analogies are, legalistically, drawn), courts have begun to assign legal personhood. A Colombian court granted some rights to the Amazon rainforest in a decision that urged the government to put an end to the deforestation crisis.[5] In New Zealand, the Whanganui River was given personhood status in 2017 in deference to the beliefs of the Indigenous Māori people (Kramm, 2020).

And yet, equally unironic is the extension of Western legal categories and Western legal consciousness to the things which we currently notice need protection. From us. We can only do this by stretching our own metaphorical fictions to extremes; by finding that a river is a legal person, or that a hippo is a sentient being. At the same time, by shoehorning in places and animals to

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4 The hippos were designated "interested persons" by a US court. While the ruling is not enforceable in Colombia, it marked a legal milestone in the assignment of non-human legal rights (Smith, 2021).

5 The Supreme Court in Colombia recognised the Colombian Amazon as an "entity subject of rights", just as last year the Constitutional Court did with the Atrato River. This means that the state has a duty to protect, conserve, maintain, and restore it. In Colombia, an '*acción de tutela*' is a writ for the protection of constitutional rights (Dejusticia, 2018).

Western legal notions, we affirm the dominance of Western legal conscious-ness, pushing out any space for reconsidering how we conceptualize – and whether the discourse of rights is the most suitable for challenging the damage that Western legal and economic rationalities allows (or positively encourages) (Norman, 2022).

"Earth is a political community composed of all sorts of 'persons' – only some of whom are human" (Smith, 2021). The use of metaphor and fiction in the extension of legal rights to non-human entities is rife. The term "person", deriving from the Latin *persona*, refers to a mask that an actor dons, and there-fore refers to the role that they perform in the drama. The fiction of legal per-sonality being extended to artificial persons was set out by Thomas Hobbes in 1651 when he distinguished natural from artificial persons. Over centuries, this has allowed legal personhood to extend to corporations, municipalities, and the state. But to extend this to a river demands an extra leap of metaphorical faith, and ardent belief that despite the limitations of our conceptual tools, that exten-sion of legal personhood is the only means by which we might afford some pro-tection to the environment. When contrasted with certain Indigenous beliefs about the co-constitutive roles of nature and human, Western legal conscious-ness appears unsatisfactorily narrow, and yet more "borrowing" of Indigenous conceptual tools raises more problematic questions of further appropriation.[6] While Indigenous ways of doing and thinking appreciate a "socio-natural unity", representing this in terms of entrenched legal and economic regimes and rationalities necessitates "legal animism" that "personalizes nature" (Ost, cited in Smith, 2021). New ways of conceptualizing legal personhood and the relation of humans with nature in our legal and economic thoughtways are beginning to emerge, but are far from mainstream (Matthews, 2021; Norman, 2022).

Shoehorning concepts into categories: COVID versus the economy?

Similarly, the COVID pandemic has been pitched in a dialectical battle with the economy, usually in the form of a binary discussion: we either lockdown and save ourselves but destroy the economy, or continue as normal, risking lives, but securing our economic well-being (Casey, 2020; Foucault, Agamben and Benvenuto, 2020; Proctor, 2020). While an oversimplification of the dis-course that tends towards the reductionist and the binary risks eliding nuance (see Supiot, 2021), there is little question that, in re-co-constituting the domi-nant frame of much of the discourse, neoclassical economics ensures the re-co-constitution and maintenance of the privilelge of economic voices, interests, and values. As Chapter 5 asked, if I ask you not to think of an elephant, you

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6 I'm grateful to Nick Piška and the Obligations reading group at Kent Law School for drawing my attention to this point.

will, inevitably, think of an elephant. This is just how the human brain is wired, and repetition of unhelpful frames, even to prove how wrong they are, simply reinforces them in the conscious mind (Lakoff, 2014). As the Swiss voters in Chapter 5 illustrated, if you frame an argument in economic terms, you give economic rationalities the upper hand. Moreover, the health of the economy has almost become a proxy for the health of the nation. Our conceptual tools have been shaped by decades of discourse that has painted the free market as the institution that offers a solution to all of society's ills. Liberal, or libertarian, discourse seeks to paint social regulation as anti-free market, indicating that our goal, then, is to be as free as the (fictional) free market that we imagine will save us from incursions into our liberties. This sits in the context of a wider meta level shift in narratives from publicly oriented conceptual and linguistic tools to those of the private sphere, with phrases such as "tax relief" and "taxpayers' money" embodying broader shifts in favour of individual choice and the freedom to contract.[7] There is a tendency to use the conceptual and linguistic tools of mainstream economics to compare options, choices, and outcomes. We quantify so that we can compare, again mirroring the analytical tools and normative preferences of neoclassical economics. In framing the options and outcomes in economic terms, we privilege those economic outcomes and the voices and interests that enjoy a best fit and prioritization within those models, aligning how we think and how we act with the model of *homo economicus*.

Were we to flick back to our ESL lens that has moved beyond embeddedness, we might focus instead on how interactions are performed, the language used within them, and what this tells us about how fictional metaphors construct, and are constructed by, our conceptual and linguistic tools; how we do, talk, and think. Having identified limitations, we can then interrogate their impact and challenge their effects. The lesson of a study of embeddedness-talk in the context of ESL is that we can then begin to imagine and design alternative linguistic tools that enable different sets of voices and values to be prioritized.

Rebalancing voices and values: becoming 'homo sociologicus'?

How might we imagine the socially networked, morally constructed notion of *homo sociologicus*, and what bumps might still lie in the road towards their incarnation? Reframing is key here, and we can look back in time to examples of reframing in Bhutan and that country's focus on gross domestic happiness. Then, more recently, Oslo's example of a carbon budget applies mainstream economic frames to try and shift patterns of thought and behaviour in relation

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7 I'm grateful to John Wightman and the Obligations reading group at Kent Law School for drawing this wider shift to my attention. See Chapters 2 and 5 for further discussion of this shift.

to the pressing climate crisis. However, the development and increasing application of artificial intelligence (AI), in particular AI that engages in natural language processing (NLP), raises urgent questions about the perils of preserving our current hegemonic frames and their intrinsic biases in digital aspic. What risks might we be taking by training algorithms to do, talk, and think about legal and economic phenomena as we currently do? What inequalities and biases might we be entrenching permanently, perhaps pushing our frames even further beyond the realm of conscious interrogation? Before turning to these questions, a note is helpful in introducing *homo sociologicus*.

LAY LILLIAN

Lillian was angry. She didn't often admit it, but the situation her family faced – her sons, and now their kids – just wasn't fair. She had raised a family on her husband's salary, and with a bit of help from the government, they had bought their house. But over the years, things had been sold off or privatized. Lillian thought back: she used to own the railways, the electricity infrastructure, the water, the gas, the mines, the ports, the main industries and the big names of UK manufacturing. Not any more.

Her sons both lost jobs in the 2008 crash. They had struggled ever since to get back into work – they just didn't have the right skills, despite being hard workers. She thought about their children, now teenagers and off to university – that used to be free too. Her eldest granddaughter's graduation had made Lillian so proud, but her student debts had Lillian up at night worrying.

But, thanks to Ann, Lillian appreciated that "law" and "economy" were not facts of nature. They were choices made by people that embody preferences and assumptions. She thought, then, that "austerity" had to be a choice too. Lillian now knew how theories from economics had come to structure and mould the way we talk about other areas of social life. Ann had termed it "scientism", or the way that law and economics had copied biology and physics. Lillian was now on the look out for metaphors such as "embeddedness" and found herself noticing the little word more in everyday discussions.

Seeing the effects of framing, it occurred to Lillian that our current frames normalized ways of doing, talking, and thinking that got "the poor to behave well in the world as it is, rather than questioning its justice" (Supiot, 2021).

The third cousin, our socially networked, morally constructed caricature of the archetypal social actor was introduced in Chapter 1. *Homo sociologicus* has less back story in the literature to draw on, and offers much more of a blank slate than *homo economicus* or *homo juridicus*. As *homo sociologicus* is the negation of *economicus* and *juridicus*, we can make a few assumptions, in the spirit of

reflexivity and constant reappraisal. To start with, they are freed of the gender binary, they are emancipated from assumptions of ethnicity and race, and they are removed from the structures of socio-economic status. They may be differently able, old or young, and with preferences that shift around depending on who they have just spoken to, or what they have just read.[8]

The importance of how we talk has been extensively explored over the previous chapters. Assuming *homo sociologicus* to be on board with social constructivism, we can therefore expect that they do not see "the economy" or "the law" as distinct ontological phenomena with given ways of doing, talking, and thinking, but instead notice how these social phenomena are performed as aspects of each interaction, constructing regimes and rationalities through repeated performances in social settings across time and space. This character therefore has a different starting point for empirical enquiry (as well as for conceptual musings), and, like our three personas, notices the inconsistencies we reproduce when our vocabularies and mental models are limited, inadequate, or misaligned in some way.

Lillian, by contrast, isn't convinced. She believes Ann and can see that the way we talk has an impact on how we act and interact. But she is sceptical about how widespread this phenomenon really is. Ann has only given her one example: the metaphor of embeddedness. Lillian thinks that even if we could stop everyone using it to describe the relationship between the law, economy, and society what difference might it have more broadly? Paying more attention to the ways in which we describe the relationship between legal and economic phenomena, Lillian begins to notice examples, including how Bhutan measures happiness, and how the city of Oslo is measuring carbon.

"Happy" Bhutan

Gross domestic product (GDP) was originally proposed in the 1930s by economist Simon Kuznets as a way of measuring the impact of the Great Depression. Even Kuznets noted the deficiencies in GDP when it is used as a proxy for the nation's welfare. Nevertheless, GDP has enjoyed an illustrious career.

In 1972, the fourth King of Bhutan, King Jigme Singye Wangchuck declared that "Gross National Happiness is more important than Gross Domestic Product" (Ura *et al.*, 2012; Ura, 2015; OPHDI, 2021). In the decades since, a complex matrix of indicators has emerged measuring the more conventional socio-economic concerns as well as more subjective standards of well-being

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8 Analogies with Rawls' original position behind the veil of ignorance should be avoided here, as the focus sits on *sociologicus'* interactions and feedback loops. *Sociologicus*, aware of the baked-in biases and assumptions of their linguistic tools, is careful to interrogate these and deploy them in a way that minimizes such limitations. The ideal of *homo sociologicus* set out here is in the context of an exploration of an economic sociology of law, and therefore reflects the approaches proposed more generally in this book.

such as psychological well-being and culture. Based on the Alkire-Foster method of multidimensional measurement, gross national happiness (GNH) identifies four groups of people – unhappy, narrowly happy, extensively happy, and deeply happy – and focuses on how policies can increase happiness and sufficiency among those identified as unhappy or narrowly happy (Ura *et al.*, 2012). GNH is often explained by reference to its four pillars of good governance, sustainable socio-economic development, cultural preservation, and environmental conservation. These are broken down into nine domains and then 33 indicators which are "statistically reliable, […] normatively important, and are easily understood by large audiences" (OPHDI, 2021).

The GNH then acts as a policy lens requiring that all relevant dimensions be considered prior to implementation of any policy. There is an overarching aim that government policies and projects work together for the increase of the country's gross national happiness. Given that quantification, mathematization, and comparison are the empirical, analytical, and normative tools, respectively, of neoclassical economics, it is important to note that the aim here is different. Bhutan's GNH is not, therefore, a manifesto about *not* counting, but about looking carefully, critically, at what and how we count, and how we decide what is, and what is not, important. Along with the Human Development Index (HDI), which is a summary measure of average achievement in key dimensions of human development,[9] Bhutan's GNH index offers us a glimpse of how we might seek to accommodate and prioritize alternative voices, interests, and values in what we count and measure. It offers a snapshot of what might emerge should we choose to prioritize alternative interests.

Given their performativity, indicators can shape the behaviour of those they set out to measure, and can come to act as technologies of governance (Davis, Kingsbury and Merry, 2010). Nevertheless, it is unclear the extent to which top-down measures such as the GNH index have reframed popular or broader discourse within Bhutan, indicating that shifts in conceptual and linguistic tools – especially in a global discursive context – reflect an evolutionary rather than a revolutionary trajectory. This mirrors the timescale of the capture of language and interests by the political right that we can see in the US, as Chapter 5 explored (Lakoff, 2014). Shroeder has noted that GNH tools have had "little influence" in

9 The Human Development Index (HDI) was created to "emphasize that people and their capabilities should be the ultimate criteria for assessing the development of a country, not economic growth alone". This index was created to challenge the situation where countries with the same GNI (gross national income) had different human development outcomes, prompting debates around government policy. While an awareness of shifts in goals and outcomes is desirable, a caveat about the use of indicators as a technology of governance is necessary. The HDI relies on indicators, which as previous chapters have set out, have a performative impact on the populations they quantify, and can easily become technologies of governance, meaning that we have simply replaced one small part of the system with an alternative set of interests without challenging the conceptual and normative limitations of the approach. See (UNDP, 2021).

shaping GNH media policy, and that "GNH governance structures and instruments are largely absent in shaping these interactions, yet a common set of values linked to GNH seems to underlie and shape the priorities and practices of all stakeholders" (Schroder, 2012, cited in Ura, 2015, p. 18). There is evidence of the GNH in school curricula with an emphasis on "value education" that extends "beyond a more conventional formal education framework to reflect and respond more directly to the task of creating good human beings" (Ura *et al.*, 2012, p. 21). However, policy changes have seen only incremental adjustments to national discourses.

"Sustainable" Oslo

In 2017, Oslo implemented its first "Carbon Budget" which set out to "count carbon the way we count money" (*Oslo European Green Capital 2019*, 2019). As the 2019 European Green City, Oslo introduced the Business for Climate Network to foster co-operation between the business community, citizens, and NGOs (non-governmental organizations) in addressing the impact of business on the environment. These initiatives not only encourage but demand that environmental impact is factored into policies and business plans, just as profit forecasts might be. The concept has spread, with other cities around the world copying Oslo's Climate Budget as an effective and efficient governance tool that aims to see a 95 percent reduction in greenhouse gas emissions by 2030 from their 2009 levels (*Climate Budget 2020*, 2020). While the Climate Budget pioneered in Oslo has seen some successes and offers a way of incorporating sustainability issues into the wider economic planning of the city, it is notable that the core terms are still those of mainstream economic planning: budgets and targets. The approach does not seek to reinvent the wheel but instead adds additional categories to what is already measured so that existing ways of measuring and comparing progress can be applied to environmental protection and sustainability. This is similar to the "Green GDP" paradigm which measures economic growth but incorporates the environmental consequences of such growth. Of note, however, is that once these categories are given equal weight as the growth of the economy, it enables the design and implementation of government policies to realize these goals.

Lillian is somewhat cheered to have started noticing a more pluralistic approach to the quantification of legal and economic phenomena, along with how and why this takes place. She is not convinced though. Ann had spoken about the impact of indicators on our mental models, and she wonders how much of an impact "happiness" measurements or "green" measurements have had on social regimes and rationalities – on conceptual and linguistic tools – in Bhutan and Oslo respectively. The performativity of the indicators, or the effect they produce in the society they set out to quantify, is one point. Another is the reminder that quantification, mathematization, and comparison are the empirical, analytical, and normative tools of neoclassical economics, and that the use of indicators, even to measure happiness or carbon, might

imply that while the unit of measurement might have changed, the processes of measuring, and the rationalities that demand quantification and comparison, have remained resolutely the same. For Lillian, this does not represent a wholesale shift in ways of doing, talking, or thinking about the relationships between the law, economy, and society. But it does indicate a willingness to take small steps to include a more diverse set of values and interests within existing approaches. It does indicate a willingness to consider what, and how, we measure and compare, and the descriptive language we use. The performativity of indicators aside, Bhutan and Oslo allow us to ask whether small shifts in framing might allow alternative regimes and rationalities to develop and *homines sociologici* to emerge. How might they perform? How might they talk? And how might they understand, identify, and shape preferences?

Framing the future? Rebalancing voices and values

LAY LILLIAN

With her granddaughter safely installed in a shared house and starting a new job, Lillian explained the situation to Ann. Taxpayers' money – Lillian's money – was being spent without her having a say in it. Not that she paid much tax, she admitted. But why wasn't it helping her granddaughter?

Ann paused, before pointing out to Lillian that some years ago we used to talk about public money or the government's money. Lillian nodded, agreeing. Now there was a sense of proprietary ownership over the money that Ann hinted might be divisive. Thinking to herself about Lillian's sense of ownership over the money, Ann wondered to herself, in a moment of unbridled cynicism, whether this reframing had been designed to distract voters from everything else they might once have owned but which had since passed into private ownership.

Reframing the policy as "tax cuts", and then as "reduced investment in our future public services", and noticing Lillian's eyebrows shoot up, Ann sipped her tea. She thought through some of the wider shifts in narrative framing that she had noticed, pondering larger shifts from publicly oriented to privately oriented discourse. Were property rights, freedom of contract, and the maximization of individual utility now supplanting notions of shared ownership, public goods, and social resources? And what about the cumulative effects of these micro level shifts for us all?

The political right have been framing narratives for decades (Lakoff, 2014).[10] As mainstream or hegemonic frames, these conceptual and linguistic tools align

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10 Lakoff's analysis is based in the US but applies to a greater or lesser extent throughout much of the Global North.

with and highlight the dominant voices and interests prioritized in neoclassical economics and doctrinal law, as well as the embodiment of the political realization of both in the form of neoliberalism. Reframing, or reclaiming some of the narratives, is not a quick fix but rather a longer-term strategy that might level the conceptual playing field so that we are able to imagine alternative ways of doing, talking, and thinking about legal and economic phenomena. There is little question that technology will play a significant role in our future, and the role of artificial intelligence (AI) in shaping society and perpetuating particular frames is therefore of significant relevance to if, and how, we might begin the work of reframing.

In particular, algorithms that engage in "self-supervised learning", or so-called "foundation models" (FMs) on which AI applications can be built, hold enormous promise, along with correspondingly large risks for humanity. But this is a social experiment being played out in real time on a global scale, and AI systems already sit behind many of the social interactions that previous chapters have discussed. Any time you use a search engine, make a purchase, watch television, read a newspaper, or see a doctor, you are benefiting from the development and implementation of algorithms and advancements in machine learning. Neural learning means AI systems can process or "learn", and then copy. Underpinning most AI systems now are a handful of what are referred to as "foundation models" (FMs), which are defined as "any model that is trained on broad data at scale and can be adapted (e.g., fine-tuned) to a wide range of downstream tasks" (Bommasani and Liang, 2021, p. 3).

But the magic happens when these systems do more than copy – they improvise, applying the lessons from their learning to accurately mimic trolls, or predict outcomes of operations, for example, with the power of foundation models coming from their "emergent qualities rather than their explicit construction" (Bommasani and Liang, 2021, p. 6). In other words, the potential of foundation models lies in what they can learn to do, or what they can figure out by themselves from a few so-called 'natural' language prompts.

FMs, as monolithic entities, are time-consuming and expensive to construct from scratch, and the few that exist therefore form the basis for almost all AI systems that take and adapt an FM to produce a more specialized application. This unprecedented level of homogenization has led to a situation in which almost all state-of-the-art natural language processing (NLP) models are adapted from one of a few foundation models. This can have cost-saving benefits, but means that "any flaws in the [foundation] model are blindly inherited by all adapted models" downstream (Bommasani and Liang, 2021, p. 6). Flaws, for our purposes, include anything problematic that might have been included in the data curated to train the algorithm initially, usually meaning data scraped from the Internet. Data curation is an important phase at which normative judgement comes into play, as this represents the point at which choices are made about what is important for the algorithm to learn and what is not; what is relevant and what is not. However, the data taken from the Internet to train

the FM is likely to contain not only explicitly and implicitly gendered and racial-ized language, but might tacitly reproduce the assumptions, values, and norms of a specific culture in a particular time and place. Given the available data, this is likely to reproduce a world-view consistent with dominant conceptual and linguistic tools in North America amongst those with Internet access who speak English. And, as previous chapters have explored in detail, the way we talk matters. We talk and think metaphorically, and our conceptual and linguistic tools have the potential to perform us, just as much as we believe we perform them.

While "[l]anguage has the power to reinforce stereotypes and project social biases onto others" (Sap *et al.*, 2020, p. 5477), there is a growing awareness of "representational bias", defined as "harmful biases resulting from stereotyping that propagate negative generalizations about particular social groups, as well as differences in system performance for different social groups" (Liang, Morency and Salakhutdinov, 2021, p. 1). While there is an awareness that "large data-sets based on texts from the Internet overrepresent hegemonic viewpoints and encode biases potentially damaging to marginalized populations", there is still little research into wider questions of framing, especially in relation to law and economy (Bender *et al.*, 2021). Specifically, given that Internet data encodes our dominant conceptual and linguistic tools for law and economy and forms the target of "self-supervised" algorithmic learning, what might the potential consequences be of preserving these tools in digital aspic (Williams, 2022)? Might we be preserving in perpetuity our current ways of doing, talking, and thinking about law and economy? Might we be placing our current metaphors and framing devices beyond reach of interrogation, permanently? And, given the insights of previous chapters, what does this mean for our potential to break free from the preformed assumptions of *homo economicus-juridicus* and imagine *homo sociologicus*?

Given the time and expense in constructing an FM, there is a further recogni-tion that "it is difficult to retrain a new [language model] whenever a new source of bias is uncovered from the data" (Liang, Morency and Salakhutdinov, 2021, p. 2). Indeed, recent work "has focused on defining and evaluating social bias as well as other notions of human-aligned values such as ethics, social bias implica-tions, and toxic speech in generated text" (Liang, Morency and Salakhutdinov, 2021, p. 2). In other words, biases will inevitably be baked into the FMs, and reproduced and amplified in their myriad downstream adaptations and applica-tions. This leaves us with the unsatisfactory solution of remedying unsavoury or discriminatory language *post hoc*. Current approaches to mitigating biases in future generations of foundation models "require retraining the models through adversarial trigger prompts, data augmentation or collection, and different objec-tive functions" (Liang, Morency and Salakhutdinov, 2021, p. 2).

Nevertheless, recent de-biasing initiatives have tended to focus on the more egregious, and more obvious, examples of bias in language, and gendered and racialized language has been the focus of de-biasing initiatives. While more subtle biases and the downstream harms that they can produce are beginning

to attract more attention, the richness and complexity of language *in context* as pairings of form and meaning remains somewhat at odds with the decontextualized learning carried out by FMs: the models have access to form only and cannot be said to "understand" or process "meaning". While FMs can replicate and parrot accurately and effectively, leading humans to impute meaning to the text and images generated, the models still cannot be said to understand what they are doing. The only meaning is that imputed by downstream human recipients, to whom the propagation of representational and allocational harm remains a distinct possibility (Bender *et al*., 2021, p. 615).

More worryingly though, future FMs are likely to be trained on data generated using the current set of FMs that encode and amplify bias and hegemonic framing. The question then begs whether we might be encoding neoliberal frames, neoclassical economics, and doctrinal legal conceptual and linguistic tools into the future algorithms that will educate our children, provide healthcare decisions for us in moments of greatest need, and adjudicate on our legal disputes. This is no more science fiction than the mobile phone or space tourism. Implementation of FMs and NLP in AI is being carried out by private companies and applied to real humans who, for the most part, are unaware that they are being experimented on. Have you, for example, expressly given consent for your data to be preserved online and used to train language models and future AI? While there are many wider points to be made about the risks and rewards of AI,[11] we need a greater awareness and understanding of how our current framing performs us, and how this is being captured and used to train the AI systems of the future.

Moving beyond embeddedness?

Some ten years before this book was written, socio-legal scholars interested in the economic life of the law convened a "caravan" that first "moved" and then "continued" towards an economic sociology of law (Ashiagbor, Kotiswaran and Perry-Kessaris, 2013, 2014). In the intervening decade, that caravan has grown in size and ambition, asking questions about what ESL might be and do, where it might sit, and how it might look. Research undertaken under the banner of ESL has pushed boundaries and challenged assumptions about the relationships between law, economy, and society, and promises productive avenues for future enquiries. In that decade, new generations of researchers have intellectually grown up understanding and applying an ESL as a nascent but well mapped-out lens through which to understand the world and develop exciting research programmes.

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11 For more on this, in particular the development of work on bias encoding and the de-biasing of FMs, see (Abebe *et al*., 2020; Blodgett *et al*., 2020; Sap *et al*., 2020; Bender *et al*., 2021; Bommasani and Liang, 2021; Hellman, 2021; Liang, Morency and Salakhutdinov, 2021).

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Boarding her flight, Ann was excited. Her exploration of an ESL lens meant that she was approaching her fieldwork from a different perspective. She knew how the previous trip had worked out, and on that occasion she had been far less prepared. Her lens had been narrower, her insights fewer, and her understanding had been shallower, and yet she had made a real contribution. This time, she had a wider and richer conceptual framing through which she could analyze her data, making decisions in real time about which regimes and rationalities she might like to explore further, and how these related to each other. She could follow through and explore how certain regimes and rationalities manifested on the ground, and what the dominant ways of doing, talking, and thinking about law and economy meant for the people whose lives she was briefly going to be a part of.

This book has presented an economic sociology of law as a lens through which empirically grounded, theoretically informed, and methodologically rigorous research might be carried out. However, an ESL lens has far more to give us than simply a way of approaching research sociologically at the interface of law and economy, and the previous chapters have shown that through generations of economic sociology (ES) and ESL scholarship the core concept of "embeddedness" has been contested and refined. This book has reframed ES's and ESL's internal debates about embeddedness in terms of primary ontological metaphors (the law, the economy, society) and one tertiary, generative, relational metaphor (the extent to which we can say that one or more of these is embedded in the other). Seen in these terms, we can appreciate that as a generative metaphor, embeddedness defines both the problem and solutions, revealing and concealing in equal measure. It therefore tacitly maintains the metaphorical fiction of the ontologically separate law, economy, and society, in contradiction to the aims of ES and ESL lenses which seek to challenge entrenched disciplinarity. At the same time, embeddedness forecloses areas of inquiry, placing one or more aspects in a "black box" and therefore unavailable to sociological analysis.

This is problematic enough, but as the book has shown, the implications extend further as we zoom out. Responses to the 2008 financial crash have identified suboptimal relationships between the spheres of law, economy, and society as potential causes of the crash, criticising the way that the economy, in the form of the self-regulating market, was allowed to float free from society and the regulation that had been peeled back by successive governments with decades of deregulatory tendencies culminating in the 2008 crash. While some commentators assert that the "economy is embedded in society", others claim the opposite, arguing that society is embedded in the

economy. Debates are ongoing about the extent to which we can claim either, but there seems to be a general consensus that "re-embedding" the economy in society post-2008 crash should be a priority for policy makers, economists, and all with an interest in avoiding a repeat of the financial crash. And yet, there are no definitions of embeddedness to be found, and little in the way of context to understand "what is embedded, and in what it is embedded" (Cotterrell, 2013).[12]

By examining the career of embeddedness in ESL literature, and our ongoing conceptual commitment to the concept, this book has shown that the way we talk has significant implications for our abilities to respond to financial crashes, but also to social crises and to environmental catastrophes. To respond innovatively, we need multiple vocabularies, grammars, and mental models. We need frames that can accommodate myriad, dynamic and diverse interests and values, and that can reorient or tilt the playing field in different directions according to which values we wish to prioritize. And we need an awareness of the metaphors that we use (and that use us) through quotidian ways of doing, talking, and thinking about legal and economic phenomena. We need an awareness of how these metaphors, through invisible ubiquity, come to perform the mental heavy lifting in re-entrenching dominant frames, guiding us to solutions and responses that typically reflect and enact the mainstream. And we also need an awareness of how we might be preserving and augmenting hegemonic frames in AI systems that have the potential to amplify inequalities and shift our conceptual and linguistic tools beyond the reach of future interrogation.

Nevertheless, we are where we are. So, can "re-embedding" the economy and its regulation in society fix the problems that led to the crashes, crises, and catastrophes? The discussion in the preceding chapters suggests that the short answer is no. While this approach leads us in the right direction, the concept of embeddedness renders this a conceptual cul-de-sac that reproduces mainstream frames. Instead, we might consider ways of talking that allow us to think of legal and economic phenomena as collections of social behaviours, acknowledging the metaphors where they appear and the thought processes they invoke. "Re-embedding" might get us part of the way there, but it conceals any truly innovative or imaginative responses to the dilemmas facing society.

Do we banish the word altogether then? McCloskey notes that we would be unwise "to attempt the impossible by banishing [metaphors]" (McCloskey, 1998, cited in Geary, 2011, p. loc767). Even in the generally more circumspect and reflective ESL community there is a consensus that banishing a ubiquitous

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12 In the wake of the 2008 crash, the Dodd–Frank Act was passed in July 2010 in the US which was then partially repealed in 2018 by the Economic Growth, Regulatory Relief, and Consumer Protection Act. In the UK the Financial Services Act 2012 formed part of the "sweeping" reforms. See https://bills.parliament.uk/bills/932.

term like embeddedness is unrealistic. Nevertheless, there are three reasons to be optimistic, should we wish to reduce our conceptual commitment to embeddedness. Firstly, this book shows that there are ways of talking about legal and economic phenomena that are consistent with social constructivism, and that eliminating embeddedness when talking about the relationships between law, economy, and society is not as impossible as it might first appear. Two simple shifts in focus offer a way of bringing the legal and the economic back within the purview of, or at least into dialogue with, the social. Secondly, and crucially, the point is that we become aware of the limitations of our current ways of doing, talking, and thinking and how hegemonic biases are baked in to the metaphors we rely on. Finally, should we choose to maintain embeddedness as a tertiary, generative, relational metaphor along with the ontological metaphors it relies on, there are certain criteria that can make the term as consistent and meaningful as possible. With reference to the works of Ruggie's "embedded liberalism" and Evans' "embedded autonomy", we can see that when embeddedness is applied to carefully defined phenomena in specific, narrow contexts, avoiding sweeping statements of principle, and when paired with an equal-and-opposite force, it can function as a helpful linguistic tool.

Interviewed on the *Today* programme in November 2020, Yuval Noah Hariri noted that we are all "living the dreams of dead people" (Hariri, 2020). By this, he meant that the institutions, things, and ideas we take for granted all started out as nothing more than somebody's "bright idea". This is true for the mundane and everyday (like the invention of the microwave) as well as for concepts like the separation of powers and independence of the judiciary. Similarly, our ways of doing, talking, and thinking about legal and economic phenomena are neither inevitable nor permanent, nor are they beyond challenge. They have though, for the most part, slipped beyond view into a twilight zone where they are taken for granted.

Yet these "dreams of dead people", those that we are aware of and those that have passed into obscurity, are bound up in the vocabularies and grammars bequeathed to us by, and shaped over, generations of lawyers and economists. If the history of a language is the accumulation of a cultural experience, we can think of our ways of talking as a "fossil record of changing communication strategies" along with the mental models structured to reflect the mores of society (Shariatmadari, 2019, p. 240). To speak is to "swim in an inherited stream of images and words" that we have neither chosen nor shaped. But those that we do choose in order to invoke our priorities and imagine the society in which we wish to live have never had greater importance. The "liberalism of abstractions and neutrality fails to provide a compelling account of what holds societies together", and elides what can make them thrive (Sandel, cited in Coman, 2020). An ESL lens gives us a microcosm for exploring the impact of just one metaphor, allowing us to see how we might accommodate a plurality of voices with different interests and values. An ESL lens, then, as explored over the previous chapters, shows us the value of framing. It shows us how

and why, if we are to move from performing as *homo economicus-juridicus* to a morally constructed, socially situated *homo sociologicus*, we need conceptual and linguistic tools that enable this shift. Embeddedness is just one example of how metaphors (re)frame relationships between law, economy, and society, shaping us as actors in the process. There are countless others, and they continue to tacitly shape how we are able to respond to the dilemmas facing society. In short, the way we talk matters.

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