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Doing, talking, and thinking (and why we're not getting it right)

Crashes, crises, catastrophes

On a warm but overcast Friday, on 14 September 2007, people began to queue in highstreets up and down the UK. There was a rumour that Northern Rock, a familiar name in banking, had run into trouble and was about to collapse. Savers wanted their money back, but cash supplies quickly ran out. The first run on a bank in the UK in over 140 years heralded the start of what came to be known as the financial crash. Some 15 years later, in the throes of the Sars-COV-2 pandemic, the 2008 crash looks tame by comparison. Strategies to contain the virus that had been unthinkable prior to 2020 became normalized as entire economies were shut down in the name of public health (Tooze, 2021). Governments around the world struggled to manage the overwhelming consequences not just of the disease, but of the social crises and inequalities it highlighted (Dunford *et al.*, 2020). If health systems, social care systems, and supply chains collapsed, it was scant comfort to have protected the economy.

And yet, the crashes and crises of the century so far look set to be dwarfed by the looming environmental catastrophe wrought by climate change. The implications for humanity are unfathomably profound, necessitating that every aspect of human life on earth be reviewed (Matthews, 2021). These three “Cs”, namely crashes, crises, and catastrophes, have a common thread. They comprise events that indicate that our ways of doing, talking, and thinking about law and economy might be inadequate. The financial crash forced a reconsideration of the boundaries between the freedom of self-regulating markets and the need for governments to regulate. The social crises of the pandemic in the UK so often boiled down to the pithy dualism of public health versus the economy, pit individual liberalism against government intervention, drawing on impoverished understandings of both health and wealth. And the environmental catastrophe of global warming, once again boiled down to the economy versus the environment, demonstrates the inadequacies of our mental models as we struggle to apportion value to nature, and assign legal rights to rivers, animals, and the wider environment.

In all of these contexts our mental models – those concepts and structures that we use to think about the world and our place within it – play a key role in how effectively we can understand and respond to problems. These mental models, and the “thoughtways” that link them, can be glimpsed through the way we talk: the vocabularies and grammars we use to describe and interact with the world (Cooper and Renz, 2021). But there is evidence that the way we talk plays a role in shaping the way we think. And if the way we talk shapes the way we think, then it also shapes the way we (inter-)act. To put it simply, then, the way we talk matters.

Doing, talking, and thinking

Imagine you are trekking through a jungle. Hacking out a new path is complex and time-consuming, but following an existing path is far easier. There is one problem though: the destinations that lie at the end of existing pathways are not where you want to go. You have been there before, and things did not end well. You want a different destination this time, and that means forging a new pathway through the jungle slowly and laboriously. Over time and with use though, paths solidify, the jungle relents, and you can carve out a discernible pathway to your new destination.

Human thought processes are similar. The mental models we use, and the thoughtways that lead us from one concept to another, are “channelled” gullies “carved out” for us by our language; gullies that “are formed by years of use” over our lifetime “and influenced by generations of linguistic evolution before that” (Shariatmadari, 2019, p. 152). Our mental models include shared expectations about the world too, including assumptions about how others will behave regarding rules and resources: will they stick to the rules about keeping off the grass or ignore them? Will they share that sandwich or not?

However, the more ubiquitous our mental models and thoughtways are, the less we pay attention to them, or to the concepts we are using, and how, and why. They become invisible, taken for granted, and unquestioned. But it matters “what ideas [...] we think with” (Norman, 2022, p. 5), just as “[i]t matters what ideas we use to think other ideas” (Haraway, 2016, p. 34).

We create the world when we interact with others. There might, objectively, be some form of mind and matter, but our reality can only be experienced through interaction and encouragingly, theories from fields as diverse as quantum mechanics, cognitive psychology, neuroscience, and linguistics all suggest the same (Lewton, 2021; Geftter, 2022). Similarly, as a “collective endeavour”, language is a “[p]rocess of negotiation, a phenomenon whose structure only emerges when we interact with others” (Shariatmadari, 2019, p. 101). Our words then, soundscapes that synesthetically convey concepts, both describe and construct the reality that we experience; both the tangible and immediate (such as what you fancy for tea, for example) as well as the more

conceptual, less tangible phenomena that are so central to the social structures we rely on (social institutions like the law and the economy).

Human thought processes are largely metaphorical, and our ways of talking about the law and the economy are no different (Lakoff and Johnson, 1980, p. 25; Geary, 2011). Our “ordinary conceptual system, in terms of which we both think and act, is fundamentally metaphorical in nature” from the “most mundane details” through to the concepts that “structure what we perceive, how we get around in the world, and how we relate to other people” (Lakoff and Johnson, 1980, p. 3). Metaphor is not merely an “optional, rhetorical flourish”, but our “most pervasive means of ordering our experience into conceptual systems” (Bandes, 1996; Levit, 2009). The human brain is hard-wired to detect patterns, and images and symbols are retained to a far greater extent than words alone (Levit, 2009, p. 277). Metaphors, then, are those linguistic techniques that make language colourful, symbolic, and memorable. They are the ways in which we make sense of the world and our place within it.

So, we can think of “the law”, “the economy”, and “society” as metaphors; ways of talking about nonentities “as if they were things” (Lakoff and Johnson, 1980, p. 25). The problem is that these metaphors “are so natural and so pervasive in our thought that they are usually taken as self-evident, direct descriptions of mental phenomena” (Lakoff and Johnson, 1980, p. 28). We no longer pay attention to how we are talking about shared mental models like the law and the economy, because, well, that is just how we have always talked about them.

But, if our metaphors are inadequate or conceptually inconsistent, they can perpetuate injustice, mask problems, and obscure innovative responses to pressing social challenges. What’s more, when these metaphors are overused to the point of invisibility, we lose sight of their implications, origins, and impact. By paying attention to how we talk about legal and economic phenomena, we can begin to see that preferences are “baked in” to our default ways of talking and thinking.¹ These baked in concepts, assumptions, and ideals that are intrinsic to certain words and phrases act as invisible yet powerful channels that direct what and how we are able to perceive and conceptualize, and how we respond.

But this story goes further. Metaphors not only describe reality, they create it, and in this sense, “metaphors can be self-fulfilling prophecies” (Lakoff and Johnson, 1980, p. 156; Schön, 2012; Slupska, 2021). Therefore, the metaphors we use to talk about the law, the economy, and society, deserve close scrutiny. The complexity of language with its tacit assumptions and preferences means

1 The phrase “baked in” is an analogy borrowed from computer modelling and animation and refers to part of a graphical process whereby 3D geometry textures are transposed into a 2D image texture, allowing the engine to render the texture and colour more readily. Baking consolidates a system of data into a simplified, more permanent form, and is usually non-reversible. Computer modelling originally borrowed the analogy from cookery.

that our metaphors not only construct our reality but construct us. They craft and shape our mental models and thoughtways, reflecting the “accumulation of a cultural experience”, or a “fossil record of changing communicative strategies” (Shariatmadari, 2019, p. 240). To speak, then, is to “swim in an inherited stream of images and words” that we have neither chosen nor appreciate the impact of (Herder, cited in Shariatmadari, 2019, p. 240). More crucially, generations of use have attached to metaphors conceptual baggage that contextualizes and describes. For metaphors like “law” and “economy”, this conceptual baggage tends to reflect the dominant approaches, or accepted ways of thinking, in each field that have seeped into the mainstream from their academic roots (Giddens, 1984). In turn, this has the unhappy effect of entrenching mainstream approaches, and reinforcing dominant narratives.

We are not faring well though. In the last 30 years or so, our legal and economic metaphors have led us into financial crashes, social crises, and environmental catastrophes. It is fair to ask, then, if they are serving us well. And if the answer is no, we might then ask how we could do, talk, and think differently about legal and economic phenomena, and what different concepts, perspectives, and preferences such a shift might enable. If our ways of talking repeat the assumptions and preferences of mainstream theories in law and economics, how can we imagine something different? How can we respond innovatively and imaginatively to these social dilemmas without first appreciating the role of our language in shaping how we understand the world, and how we respond to it?

The law and the economy don't really exist

Our reliance on metaphor might be more ubiquitous than you had realized. If, for example, I ask you to point to “the economy”, you might point to a bank, some coins, shops, or even cryptocurrency. What you are pointing to is, respectively, a building, some pieces of metal, more buildings, and a computer. Similarly, if I ask you to point to “the law”, you might show me a courtroom, a police officer, an Act of Parliament, and some case law. But, once again, you are pointing to a building, a person, and some pieces of paper. And yet we all understand that “the economy” and “the law” refer to certain collections of social behaviour that society deems acceptable, even useful. So then, “the law” and “the economy” are “ontological metaphors” for these collections of behaviours; useful and convenient linguistic short cuts for talking about nonentities as if they were real that save us time (Lakoff and Johnson, 1980, p. 25). These ontological metaphors then are the primary layer of meaning that we construct. They comprise a linguistic level at which we all take a collective leap of imagination, delving in to the fluidities of law's materialities, frequently without realizing (Cloatre and Cowan, 2019; Rose and Valverde, 1998).

Table 1.1 Three layers of ontological metaphors

Layer	Example
Tertiary metaphors (relational)	“The law and economy are embedded in society” “Society has become embedded in the law and the economy”
Secondary metaphors (personification)	“The law makes an ass of us all” “The markets have fallen” “The fabric of society is fraying”
Primary metaphors	Law Economy Society

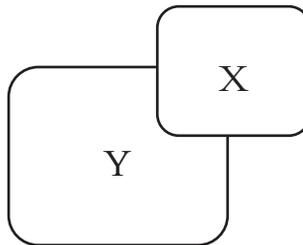


Figure 1.1 We say that X is embedded in Y.

The dilemmas appear at the second and third layers of metaphor that we construct on top of the first (see Table 1.1). We personify both the law (“the law makes an ass of us all”) and the economy (“the markets have tumbled”), creating a secondary layer of metaphor that is equally ubiquitous, and equally invisible. It has become fashionable since the 2008 financial crash to identify a problem of distance between law, economy, and society through the embeddedness metaphor. We say that the economy (and its regulation) has become “disembedded” from society. Accordingly, the obvious solution to repair this relationship is the “re-embedding” of the economy and its regulation in society. We might think of this as a tertiary, relational, layer of metaphor that describes the relationship between two ontological metaphors, as Figure 1.1 sets out.

Yet, when we recognize that neither “the law” nor “the economy” exist, save for in our linguistic tropes, describing the relationship between these (non)entities as “disembedded” from society is clearly nonsense. How can we conceive of “a law” or “an economy” separate from society? Undeniably, a common understanding is communicated. But there are conceptual inconsistencies here; leaps of faith that we all take unquestioningly. What if those leaps meant that we were further entrenching concepts that brought us to these crashes, crises, and catastrophes in the first place?

PS: Nor does society

When Margaret Thatcher notoriously proclaimed in 1987 that there was “no such thing” as society, she was both right and wrong (Thatcher, 1987). Like “law” and “economy”, we can understand “society” as an ontological metaphor; a linguistic short cut for a collection of concepts and behaviours that we lump together for convenience. We cannot point to society or touch it. We might claim to feel or sense it, but this depends on our subjective attribution of meaning. Durkheim’s ultimate “social fact” of society here stands in opposition to Popper’s assertion that all we can identify is a collection of concepts, constructs, and theoretical entities (McLachlan, 2020).

And yet, once again, it is undeniable that shared meanings are communicated. We may disagree on what exactly society is, or where it is to be found, but there is a common understanding of shared experiences and expectations. While a detailed social ontology is beyond the scope of this book (see *inter alia* Searle, 2006), questions of what makes “society” or “the social” special have troubled generations of anthropologists, sociologists, psychologists, and philosophers. For Latour, the “assembled” characteristic of the social was vital, alongside heterogeneity and composition (Latour, 2007). There is, though, a consensus that our metaphors, “conceptual models”, and “overall vision” are lacking for understanding, predicting, influencing, or theorizing “society” (Delanda, 2006; Elias, 2010).

Look out for the secondary layers of metaphor that perch atop the primary, ontological metaphor of “society”. Particularly fashionable over the last couple of decades has been the fabric metaphor, which has the potential, like a reel of cotton, to just keep giving. The fabric of society is said to be fraying, to have ripped, to be wearing thin, and to be in need of stitching back together or at least darning (see *inter alia* Tanner *et al.*, 2020).² These metaphorical threads symbolize and allow us to visualize relationships, institutions, and behaviours, as well as infrastructure and economic value. The metaphors frame the non-tangible as if it were tangible, allowing us to (metaphorically) grasp the concepts: to picture them, mentally, and envisage responses. Similarly, when referring to the strength and depth of bonds we might refer to the fashionable concept of “social capital”, a curious metaphor that invokes economic thoughtways and values to describe social relationships (Putnam, 2001; Harriss, 2002). Each of these metaphors has baked in

2 My thanks here to Tobias Berkley and the Obligations reading group at Kent Law School for pointing out that the fabric metaphor, when applied to society, has further implications. Fabric cannot self-accrete or self-repair, but requires active intervention from someone, in a manner similar to the Intelligent Design approach. When we use the fabric metaphor, therefore, we imply that we need someone to come and repair the damage done. While the metaphor does not specify who, or how, it is inevitable that any repairer will have their own sets of preferences and assumptions which they will apply in the course of their repairs. The fabric metaphor, then, is an inherently and intrinsically political way of talking about society.

fictions that undeniably add colour and vivacity to the language, but which direct our thoughtways along specific paths, guiding our mental models to predetermined concepts, often without our realization. Both primary and secondary ontological metaphors are generally so ubiquitous as to pass unnoticed; invisible until we begin to pay attention to the ways that our language colours our thought processes. But what do these metaphors and their fictions do to the ways we are able to think and talk about legal, economic, and social phenomena? And if our ways of talking mould our ways of thinking and doing as legal and economic actors, how do our metaphors use us?

How metaphors use us

While we might like to assume that we craft and deploy our language independently, the following chapters and exploration of the impacts of embeddedness suggest that our language equally crafts and deploys us. We can understand embeddedness as a tertiary, generative, ontological metaphor that both gives us a word to describe the problematic relationship between law, economy, and society, but which also shapes our mental models and our interactions. Baked into the concept of embeddedness are mainstream or orthodox approaches: doctrinal legal and neoclassical economic assumptions and preferences. And our ongoing conceptual commitment to embeddedness entrenches these each and every time we describe the law or economy as “embedded in” society.

“Generative metaphors” shape our mental models, revealing some parts of the complex social puzzle while concealing others (Schön, 2012). We can understand embeddedness, then, as a generative metaphor that guides our thoughtways, tacitly and usually subconsciously. Metaphors like embeddedness tend to facilitate the reproduction of mainstream or orthodox approaches and ways of thinking about social phenomena. Crucially, though, metaphors like embeddedness tend to place intrinsic assumptions and preferences beyond the reach of ordinary, quotidian interrogation, leaving these concepts and thoughtways free to form the foundational building blocks of what we do intentionally talk about. In short, we reproduce mainstream concepts without realizing. And we perform the mainstream approaches central to law and economics – doctrinal and neoclassical respectively – equally subconsciously. Our language then, tacitly and invisibly, constructs a frame within which we are guided to perform the mainstream preferences assumed by the dominant models that frame our understanding of the world. We are, then, guided to act as those famed characters central to mainstream economic and legal theory: *homo economicus* and his lawyerly cousin *homo juridicus*.

While the function and career of the concept of embeddedness make for interesting reading, it is useful to step back and explore its origins. The academic field of economic sociology of law (ESL) here offers an unparalleled microcosm for this study, as embeddedness is the “core concept” of ESL and

its sister field, economic sociology (ES) (Frerichs, 2009, p. 20; Cotterrell, 2013, p. 50). The “always embedded” market economy, and its regulation, have been the subject of much head-scratching and heated debate within ES and ESL literature for decades, and offer us unique insights into the implications of embeddedness-talk (Block, 2003, p. 276). Within this literature, the concept of embeddedness can be traced back to the 1944 work of political economist and economic historian Karl Polanyi.

By all accounts, Polanyi had been reading extensively about coal-mining practices in England prior to the 1944 publication of his most famous work, *The Great Transformation* (Polanyi, 1944; Block, 2001). Coal was said to be “embedded” in the walls of the mine, requiring smart tactics to secure its extraction. Nevertheless, Thurnwald, Tönnies, and Marx had all employed embeddedness in one context or another, and Polanyi’s familiarity with their works indicates an element of borrowing and refashioning (Dale, 2011; Peck, 2013). More persuasively, though, recalling her life with her husband, Ilona Duczynska Polanyi noted that Karl’s time in Britain in 1940, teaching economic history to the working classes in ex-mining towns in Kent and Sussex, brought him face to face with the horrors of the Industrial Revolution. In particular, she recalls that he was struck by what we might now term the intergenerational trauma that resulted from the dehumanizing effects of the free market. “Blake’s ‘dark satanic mills’ lived on through the generations and the British working class – even after its economic rise and in spite of it – still bore the stigmata of the crippling events of its inception” (Duczynska Polanyi, 2006, p. 311). Ilona notes how Karl was surprised that the houses Engels had written about were still standing, and that there were people living in them. What’s more, evidence of the social and environmental destruction wrought by the free market was everywhere: “black hills of slag stood in the green landscapes of Wales; from the depressed areas, young men and women who had never seen their parents employed, drifted away to London” (Duczynska Polanyi, 2006, p. 311). While *The Great Transformation*, with its embeddedness metaphor, was published in 1944, Ilona notes that it was conceived in 1940 during the couple’s stay in Britain. One way or another then, coal – the fuel of the Industrial Revolution – seems to have birthed the embeddedness metaphor as we find it in economic sociology and economic sociology of law literature.

Nevertheless, Polanyi used embeddedness sparingly, and likely without a second thought; the term appears a handful of times in *The Great Transformation* before falling off the metaphorical page for the next 40 years.³

3 The term appears twice on page 60, and then on pages 64, 73, and 135 before making a reappearance in Polanyi’s notes at the end of the book. It does make occasional appearances in Polanyi’s later works and unpublished manuscripts. It would be little more than speculation to ask if the frequency of the term in unpublished works might indicate Polanyi’s unease with the concept (Dale, 2011, p. 320). For further discussion, see Chapter 3, footnote 2, page 70.

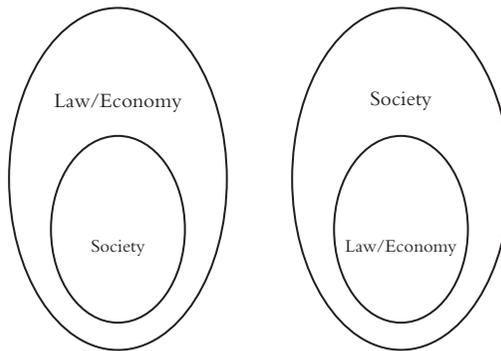


Figure 1.2 Are the law and the economy embedded in society, or is society embedded in the law and the economy?

As a relational descriptor, embeddedness implies the coexistence of two entities in space and/or in time: in this instance, the coal in the walls of a mine. As Figure 1.2 illustrates, it offers a useful visual metaphor when we are referring to ontologically separate objects. We can see that X is embedded in Y, and appreciate that they overlap to some extent, coexisting both spatially and temporally.

But when we are referring to phenomena that are distinguished only through a metaphorical fiction, the use of embeddedness to describe their relationship becomes problematic. If we accept that the law and the economy are collections of (social) behaviours, it is therefore anathema, disingenuous even, to speak of re-embedding the law or the economy *in society*. We are, then, describing the coexistence of (non)entities in space and time, by reference to phenomena that co-create each other. To revisit Figure 1.1, where X represents the economy or the law, and Y represents society, once we strip away the layers of metaphor we can appreciate that X does not, and cannot, exist unless and until it is performed or constructed by Y.

Nevertheless, our conceptual commitment to embeddedness continues to mask this point. Instead, repetition of embeddedness-talk in relation to law, economy, and society enforces their separation as distinct – albeit fictional – silos of inquiry and of action. And by re-entrenching the separation between the layers of metaphor and the silos of activity, our ongoing conceptual commitment to embeddedness enables the dominant, mainstream theories and frames within each of these silos to be reproduced and strengthened. Embeddedness-talk perpetuates dominant, doctrinal legal thoughtways and neoclassical economic thoughtways as well as the assumptions, values, and interests that are baked into these mainstream approaches.

Constructing reality⁴

As earlier paragraphs have hinted though, this goes further, with implications for how we think and act. In an accidental misstep by the Eurobarometer survey several years ago, preferences of respondents were seen to shift depending on how the respondents were identified. When they were referred to as “citizens” in the question, their preferences indicated more public-spirited behaviour, while respondents identified as “consumers” showed preferences for free markets and less civic obligations (Law, 2009).⁵

An essential step in understanding how we construct legal and economic phenomena goes back to the basics: how do we perceive the world? What is consciousness? What does it mean to be a human, social actor? While there are myriad theories of consciousness, these can be split into two broad camps: top-down, and bottom-up. Seth’s theory of predictive processing sets out to combine both of these, proposing that perception involves two counterflowing streams of signals.

There is an “inside-out” or “top down” stream that conveys predictions about the causes of sensory inputs. Then there are “outside-in” or “bottom up” prediction errors – the sensory signals – which report the differences between what the brain expects and what it gets.

(Seth, 2021; but see also Thomson, 2016)

So, as Seth argues, by taking some data from the outside world and making predictions about this (and essentially hallucinating the rest), our brains constantly make “best guess” efforts to piece together sensory data about the world and this is what we consciously perceive. Thus, “we don’t passively perceive our worlds – we actively generate them” (Seth, 2021).

There is a curious parallel here with some of the recent literature on consciousness and quantum theory which suggests that reality is constructed through interaction. While social constructivism might have become more fashionable in the social sciences as a way of understanding the reproduction of social institutions and behavioural patterns, enquiries into space-time suggest that “until two people interact, they don’t share the same reality – because it is communication itself that creates it” (Lewton, 2021; Gefer, 2022). So, then, if we construct our (legal, economic, and social) reality through interactions, our thoughtways and how we communicate these take on enormous significance, as do initiatives to shift these or shape our actions.

4 Constructivist and constructionist approaches are explored further and differentiated in Chapter 2.

5 The survey did not set out to test this, but accidentally found a discrepancy in opinions correlated with respondent identification, so it is difficult to draw firm conclusions. The Eurobarometer analysis is discussed in more detail in Chapter 5, page 133.

The suggestion that we can shape behaviour through the frames and mental models we use builds on evidence from cognitive psychology, with the field of behavioural economics as the most obvious example of putting this theory into practice. Indeed, governments have set up their own “nudge” units to design choice architecture that encourages individuals to make decisions that are in their own, or society’s, best interests, or at least their presumed best interests (Thaler and Sunstein, 2009). Cognitive psychology has begun to extend this proposition though, now also suggesting that even emotions are culturally and linguistically contingent, and that our entire mind-worlds might be shaped and coloured by language (Boroditsky, 2009; Dermendzhiyska, 2021).⁶ If this is so, our legal and economic thoughtways derive their shape, colours, flavours, and textures from our available vocabularies and grammars.

This has implications for how we describe, define, and construct legal, economic, and social phenomena, and the extent to which our metaphors shape our behaviour, as well as our ability to perceive problems and conceive of solutions. For example, if our vocabularies and grammars are those that reproduce doctrinal legal assumptions and thoughtways, might we be (unwittingly) performing as the archetypal legal man with his built-in preferences? Similarly, if we talk and think with the language of neoclassical economics, might we be performing as the archetypal economic man with his built-in preferences? This has implications not only for our thoughts and actions, but the voices and values that we are able to perceive and accommodate. If we act as *homo juridicus*, the fictional man of law, how might we understand voices and interests that traditionally lie beyond mainstream doctrinal legal models, such as friendship obligations or altruism? And if we act as *homo economicus*, how might we understand and accommodate values and preferences that lie beyond the purview of neoclassical economics, such as the environment or social bonds?

Introducing *homo juridicus* and *homo economicus*

At this point, fictional caricatures that have been lurking in the shadows of the discussion demand introductions. These are the archetypal caricatures of mainstream legal and economic theories that align with assumptions about an average legal and economic person, respectively.

⁶ This rebuts, almost fully, Chomskian notions of a Universal Grammar, or the notion that language is somehow inbuilt or native to the human brain. Instead, the evidence is emerging that language, and the thoughtways and mind-worlds that it shapes, is socially constructed. While the Sapir–Whorf hypothesis has been largely disproven, there is still intense debate about the extent to which we can claim linguistic determinism, or the proposition that language shapes thought (Boroditsky, 2009; Shariatmadari, 2019).

Mainstream theories of, and approaches to, law – summarized as doctrinal – assume the figure of a *homo juridicus*, the “rational, autonomous, man of law” whose freedom is assumed to be pre-existing and who is imagined to exist before and apart from any concept of the social (Naffine, 1998, cited in Tata, 2020, p. 30; Teubner, 2021; Norman, 2022, pp. 4–5; although cf. Supiot, 2017). Liberated from the complex and messy social and affective ties that blight real humans, he – for “he” is invariably a “he” – acts “reasonably” and “effectively”, contracting to realize his interests (Nedelsky, 2012). He enacts and applies the “black letter” of the law found in Acts of Parliament, statutes, legal opinions, and case law, performing subject to his pragmatic doctrinal reasoning that sits apart from any consideration of the social, the moral, or the political (Burrows, 2016). His language, with its precision and careful definitions, has tended to seep into wider social processes and institutions beyond Parliament or the courtroom, leading some commentators to call for a “complete reorientation in how we see the world and our place in it” (Nedelsky, 2012; see also, in particular, Fineman, 2019, 2022; Norman, 2022, pp. 5–6).^{7,8}

Mainstream, or neoclassical, economics has an equivalent. *Homo economicus* is a devoted utility maximizer, asocial, with perfect information and generally fixed preferences. While this concept of the ideal economic agent is thought to have developed out of responses to the work of Adam Smith and John Stuart Mill, dissatisfactions with the model have not tempered its impact on how we think about economics, and how economics thinks about us. Fetishes for mathematizing and quantifying every aspect of social life in the latter half of the twenty-first century, along with the ability of neoclassical economics to offer scholarly foundations for neo-liberal political preferences, secured his place in history. *Homo economicus* acts “rationally” and “efficiently”, once again eschewing matters of politics, morality, or ethics. Nevertheless, not all economists are happy with this caricature, and the groundbreaking work of Kahneman and Tversky bringing psychology into economics, developed by Thaler and Sunstein into the field of behavioural economics, is an example of a push-back, calling *homo economicus* out for the “social moron” and “rational fool” that he was ... and still is (Kahneman and Tversky, 2000; Thaler, 2000, 2016; Thaler

7 The use of fictions in the law is not a new phenomenon and was a central feature in the justification of colonialism and slavery. John Locke’s mental gymnastics enabled the claim that Indigenous communities had no ownership over the land, which, then being *terra nullius*, could be appropriated by settler-colonialists and used for extraction. Along the way, the assignment of rights to (some) humans only, placing animals and ecology in the category of property, continues to hamper efforts to rethink our relationship with the environment as well as with each other. The ongoing impact of these thoughtways is explored in Chapter 6.

8 The seepage of academic ideas and theories from the ivory tower or the courtroom echoes Giddens’ “double hermeneutic”. See (Giddens, 1984).

and Sunstein, 2009). For “he” still exerts a surprising influence on how we construct notions of economic behaviour.

As ontological metaphors, these two characters embody sets of assumptions and “unthought knowns” about the disciplines of law and economics (Lakoff and Johnson, 1980; Bernstein *et al.*, 2015). As generative metaphors, the caricatures both reveal and conceal thoughts, assumptions, and preferences (Schön, 2012). Embodied in the quotidian language and layers of the metaphors we use to talk about legal and economic phenomena, they represent “those fundamental assumptions” which people “unconsciously presuppose”, being “so obvious” that people “do not know what they are assuming because no other way of putting things has ever occurred to them” (Whitehead, cited in Naffine, 2006).

In creating these fictional renders that simplify the average person, we create convenient mental and linguistic short cuts that communicate common understanding, similar to the ontological metaphors of “the law” and “the economy”. And yet, as later chapters and the discussion on performativity explores, the problems arise when we lose sight of the fictions, the metaphors, and the conceptual heavy lifting we are asking them to do. The caricatures take on a life of their own, becoming normative markers of behaviour (Fleming, 2017). And, in the process, while we perform them, they perform us. Society is co-opted by the language and consequent thoughtways of mainstream approaches in law and in economics. The communicative potential of neoclassical economics, in offering us “clean” answers to “messy” social dilemmas, means that our preferences for quantification and mathematization have even co-opted the law (Hirsch, Michaels and Friedman, 1990; Teubner, 2021). “The image of the market became an increasingly captivating social metaphor” (Ruggie, 1982, p. 386), meaning that we are then forced “to confront, as Foucault put it, ‘the problem of the inversion of the relationship of the social to the market’” (Foucault, 2008, p. 240; Rittich, 2014, p. 342).

Our preferences for the ways of doing, talking, and thinking of neoclassical economics, and to a lesser extent doctrinal legal reasoning, reproduce and re-entrench those same dominant approaches. By the same token, the voices and values that “fit” easily into these mainstream frames are those that are prioritized, highlighted, and that naturally form the focus of our attentions. These tend to be economic interests, economic voices, and notions of efficiency, productivity, and rationality. Through language, these dominant frames determine what and how we are able to perceive, conceive, and understand, and how we are able to respond. For if we only have the language of *homo economicus-juridicus* available to us, we can only think like *homo economicus-juridicus*, talk like *homo economicus-juridicus*, and act like *homo economicus-juridicus*.

Neither caricature engages in relational or particularly moral thought processes. Neither are deeply social, ethical, or political souls, and neither are

particularly well networked within their communities. Instead, these caricatures assume an atomistic individual who is pre-socialized and lacking many of the traits that we might say make us human. As MacKenzie and Millo suggestively propose, what if we could imagine the fuller, richer, morally configured, socially situated figure of *homo sociologicus* (MacKenzie and Millo, 2003, p. 141)? And, if we had the conceptual and linguistic tools to act *as homo sociologicus*, what voices and values might we choose to then prioritize? But, this is jumping ahead. For now, let's zoom back in to explore embeddedness in more detail, starting with its role as the core concept of the fields of economic sociology and economic sociology of law (ESL).

An ongoing conceptual commitment to embeddedness

The contagion of the subprime crisis spread like wildfire through the markets, culminating in the 2008 financial crash. In its wake, a wave of literature appeared, desperately seeking answers to a crisis that had largely avoided prediction. Massive deregulation in the decades prior to the crash, coupled with an ideological belief in the ability of markets to self-regulate, had blinded regulators to the risk that some institutions had become too big to fail and could, therefore, imperil the structural organization of society. While the markets themselves – even subprime markets – continued to be socially constructed, our conceptual and linguistic tools had “floated free”, increasingly portraying markets as naturally occurring phenomena that should be allowed to self-regulate (Perry-Kessaris, 2011b). In other words, the tools we had available to understand and make decisions about the markets no longer reflected their social origins or aligned with the social construction of markets.

In the search for answers, both as to the cause of the crash and to solutions, one of the problems identified in the response literature was the (metaphorical) distance between the economy, its regulation, and the society that both were supposed to serve. By deregulating, governments had stepped back from interfering in the markets, introducing more (metaphorical) space between regulators and markets. Following the post-2008 (re-) regulatory rush, embeddedness emerged as a convenient conceptual coat hook upon which many of the problems of the economy and its regulation could be hung. In identifying the relational distance between the spheres of law, economy, and society, the literature revealed the rise of a common phraseology based around the embeddedness metaphor. In “floating free”, our ways of talking and thinking about the economy – the banks and subprime markets in particular – had come to understand markets as something separate from society; as “disembedded” (Perry-Kessaris, 2011b). The solution, seductive in its simplicity, was then to “re-embed” the economy in society. The problem, however, was the lack of context or definition. What was embedded, and in what was it – or should it be – embedded (Cotterrell, 2013)?

Two examples will suffice to illustrate the confusion. Kate Raworth's *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* has become one of the lasting contributions to pluralistic economic thinking to emerge from the 2008 crash (Raworth, 2018). In her book, Raworth sets out a manifesto for living within our means on this planet, finding that "sweet spot" within the two concentric circles that comprise the title's doughnut where basic needs are met but where the planet's resources are maintained (Raworth, 2018, p. loc.19). Raworth's goal is to reorient economics towards valuing environmental resources for more than the sum of their narrow, economic values: "If the economy is so evidently embedded in the biosphere, how has economics ignored it?" (Raworth, 2018, p. loc.1069). We are urged to "[f]orget the free market, think embedded market" (Raworth, 2018, p. loc.1220). Her "Embedded Economy", (with capital letters), "ends the myth of the self-contained, self-sustaining market, replacing it with provisioning by the household, market, commons, and state – all embedded within and dependent upon society, which in turn is embedded within the living world" (Raworth, 2018, p. loc.1380). There are myriad possible answers here to our original questions, posed by Roger Cotterrell, of what is embedded, and in what (Cotterrell, 2013)? The most likely answer is that Raworth imagines that the economy is, and should be, embedded in society and in the regulations that society makes to define, control, and direct the economy. But there are myriad other potential interpretations we might draw.

By contrast, another widely read and influential book that emerged from the 2008 crash was *The Econocracy: On the Perils of Leaving Economics to the Experts*. Published in 2017 by three dissatisfied students of economics at the University of Manchester, the book responds to the monoculture within the discipline, and the lack of adequate responses to the financial crisis on the curriculum. They were, frankly, angry at being asked to learn the models and theories that had led to the crash, while ignoring other economic theories and concepts that might offer an alternative. The authors expressed their disappointment that "students are taught to study the economy without ever having to study or engage with real people" (Earle, Moran and Ward-Perkins, 2017, p. 49). Yet, early on in the book, the authors note that "[w]e are all embedded in the economy" (Earle, Moran and Ward-Perkins, 2017, p. 4). Who is the "we"? If the authors are referring to society here, this places the statement in direct contrast to Raworth's. This contradiction can be visualized in Figure 1.2 on page 9.

So then, is the market economy and its regulation embedded in society? Or is society embedded in the market economy? What about its regulation? And why does this matter? The following section introduces an economic sociology of law (ESL) – our microcosmic study for examining embeddedness-talk – as a direct challenge to the mainstream approaches in both law and economics. In so doing, it sets out the context in which we can begin to answer these questions.

Introducing an economic sociology of law (ESL): the home of embeddedness

If we define mainstream, or orthodox, approaches to legal and economic scholarship as doctrinal and neoclassical, respectively, we might define an economic sociology of law as a combined antithesis. An ESL-inspired lens asks “how and why” we might use sociologically inspired approaches (empirical, analytical, and normative) “to investigate the relationships between legal and economic phenomena” (Ashiagbor, Kotiswaran and Perry-Kessaris, 2013). An ESL lens, then, demands careful, empirical, sociological enquiry into legal and economic phenomena. Chapter 2 maps out what an ESL-inspired approach might look like and what it has done. But, for now, to understand what an ESL-inspired approach responds to and how its core concept of embeddedness can shed light on our current social needs, it might be helpful to explore what an ESL-inspired lens sets out to do, and how, and the following discussion is situated in the context of the field of law and economic development.⁹

An ESL-inspired lens challenges the assumptions we might characterize as mainstream and demands real-world observation and validation. It is useful here to recall characteristics of mainstream approaches that an ESL lens responds to. We were introduced to *homo juridicus* or the archetypal legal man above, along with the assumptions of doctrinal legal scholarship that “legal developments can be interpreted, critiqued and validated by reference to the internal logic of” the “sealed system” of law (Vick, 2004, 178–9, cited in Banakar and Travers, 2005, p. 2). The focus tends to be on statutes, legal opinions, and legal cases, analyzed within the assumption that law is a rational and coherent analytical construct based on logic and order (Banakar and Travers, 2005; Cotterrell, 1992, p. 2). There is little space for the informal, the normative, or the grey areas of ethics and affect.

Similarly, we were also introduced to assumptions that ground neoclassical economics, which deal “with an advanced capitalist world of perfect markets; consumer sovereignty; automatic price adjustments; decisions made on the basis of marginal, private-profit, and utility calculations; and equilibrium outcomes in all product and resource markets” (Todaro, 2012, p. 7). Mainstream economics assumes “economic ‘rationality’ and a purely materialistic, individualistic, self-interested orientation toward economic decision making” (Todaro, 2012, p. 7). It tends to quantify, mathematize, and compare phenomena, whether these phenomena lend themselves to being counted or not, and whether or not we recognize that “numbers are rhetoric” (McCloskey, 2006).

⁹ The discussion that follows introduces ESL in the context of law and economic development, and the timelines and orders in which fields, movements, and disciplines are presented may differ from other areas. Thanks to Ruth Dukes for pointing this out. I’m also indebted to Amanda Perry-Kessaris for phraseology and ways of speaking about “the economic life of the law” in various contexts, each with a subtle shift in focus and framing.

These empirical (counting), conceptual (adding, multiplying, dividing), and normative (comparing one with another) techniques have, over decades, been applied more widely to social phenomena, with the unhappy result that widespread social “indicators” have become technologies of surveillance and governance, especially in the field of “development” (Davis, Kingsbury and Merry, 2010; Perry-Kessaris, 2011a). Neo-liberalism, as the political realization of neoclassical economic concepts and techniques, has seen the triad of privatization, marketization, and deregulation place ever increasing faith in the self-regulation of free markets to govern society (Mudge, 2008).

So, we might say that mainstream approaches in both law and economics share the belief that social behaviour can be understood, analyzed, and modified without much recourse to the messy realities and grey areas of society. In response, socio-legal scholarship has challenged doctrinal legal analysis, while economic sociology has challenged neoclassical economics. This is, of course, an oversimplification, and we might point to myriad other approaches that have each taken issue with one or more of the core assumptions of orthodoxies.¹⁰ Nevertheless, in combining the challenges to mainstream assumptions in both law and economics, an ESL lens might sit between socio-legal scholarship and economic sociology, borrowing from both, and responding to the limitations of doctrinal and neoclassical approaches.

To be clear though, an ESL lens asks us to approach legal and economic phenomena sociologically through empirical observation. It responds to scholarly movements like Law and Economics (the application of the empirical, analytical, and normative approaches of mainstream economics to the law) and Law and Development (the instrumental use of doctrinal law to effect economic development) and could therefore also be described as an anti-law and economics lens.

Inherited from the parent field of economic sociology, embeddedness is the “core concept” or “common denominator” of ESL, describing the variable relationship between the economy and the law with society (Krippner *et al.*, 2004; Block, 1990; Cotterrell, 2013). While there is a consensus on the central role of embeddedness within ESL, the concept itself has given rise to multiple interpretations over the decades, and there is still disagreement over exactly what is embedded, and in what it is embedded, as well as the overall accuracy and utility of the metaphor in general. Advantages and disadvantages of the concept and its many inconsistencies have been set out in the literature on economic sociology and ESL (Krippner *et al.*, 2004; Frerichs, 2011; Cotterrell, 2013). This makes ESL an invaluable starting point for exploring why we

10 In particular, law and political economy (LPE) scholarship in the US has sought to revive the insights of legal realists and critical legal scholars, interrogating the assumed separation and independence of the law from the economy. See *inter alia* (Blalock, 2015; Grewal, Kapczynski and Britton-Purdy, 2017).

might keep, reform, or abandon the concept of embeddedness in wider discourse, and the implications of any such decision.

To explain, empirically and analytically, why an ESL lens offers us such a useful starting point, a real-world context is helpful. Chapter 2 offers more detail, but for now it is useful to outline the World Bank's *Doing Business* reports and use of indicators to illustrate the problem. The *Doing Business* saga started in 2002 as the love-child of a Law and Economics approach that believed that there was an "ideal investment climate" that could attract foreign investors, thereby catalyzing economic development.¹¹ The World Bank, captivated by this notion and the new techniques of counting and measuring the uncountable and the unmeasurable, introduced indicators for phenomena like the rule of law and access to justice. These intangibles necessitated proxy indicators, and a global industry of counting the law sprang up. Unsurprisingly, "once you start keeping score, everyone wants to win", and the *Doing Business* indicators swiftly became a competitive undertaking by governments seeking to attract inward investment (Taylor, 2005; World Bank, no date).

This "rule of law Olympics" came to a screeching halt in 2021 with the publication of a scathing report by the law firm WilmerHale LLP into practices by the World Bank (Machen *et al.*, 2021).¹² The *Doing Business* initiative was closed in 2021 but is to be replaced by the *Business Enabling Environment*, meaning that the principles and concepts that underpinned it will continue to inform development policy and interventions. Based on mainstream approaches to law and economics, such policies reflect changes that have characterized the social sciences over the past 50 years. This has included a differentiation and departmentalization of disciplines that has seen schools within the academe separate out and become silos of endeavour, rarely engaging with each other. Within each silo, languages and themes – ways of apprehending the world – have developed. The continental drift of these fields of inquiry, and the silos of research that grew into Towers of Babel, characterizes not only the way we think about social life (is a problem a legal one, an economic one, a psychological one, and so on), but defines how scholars approach the world they study. "If you've got a hammer everything's a nail", and for those who research in the social sciences this reflects a tendency never to look beyond the confines of one's own discipline, however unrealistic this might be when contrasted with "the real world" (Ewick and Silbey, 1998, p. 226).

Nevertheless, as the natural sciences gained respect for their impartiality and objectivism across the twentieth century, the social sciences took note. Economics was the first to ape the methods of the natural sciences in a bid to buy the respectability and deference conferred by scientific methods. The

11 I'm borrowing the phrase "ideal investment climate" from Amanda Perry-Kessaris.

12 The *Doing Business* project is to be replaced with the World Bank's *Business Enabling Environment* indicators following the discovery of "data irregularities", political interference, bullying, management by Djankov of his team "by terror and intimidation", along with endemic conflicts of interest throughout the process (Machen *et al.*, 2021).

“physics envy” of economics in quantifying, mathematizing, and comparing social phenomena was then copied in some law schools, with the apogee of the law and economics movement realized in the World Bank’s *Doing Business* rankings (Mirowski, 1992). And yet, much of the literature on which the *Doing Business* regime rested did not, and could not, establish causation between regulatory structures and economic activity in the same way that a double-blind, peer-reviewed, controlled trial in the biomedical sciences might. In the social sciences, we can work with correlation, and some causative inferences, but we must be careful not to overstate our hand. As Chapters 4 and 5 explore, a shift towards randomized controlled trials (RCTs) in development economics marks an important methodological shift that raises different sets of questions, but, in general, the language of natural science borrowed by economics (and then by law) has tended to act as a fig leaf of rigour and accountability, masking the lack of proven causation. At the same time, the voices and interests of those who do not “fit” neatly into the neoclassical boxes of development economics have been largely silenced by the mainstream discourse, leaving communities underserved.

An ESL lens responds to these limitations. By urging a sociological approach, an ESL lens seeks bridges between the silos that characterize modern social science departments. It seeks to shift the disciplines closer together, forging an understanding of the links between the economy and its regulation, and the sociological underpinnings of both. Discussed further in Chapter 2, an ESL is therefore an integrationist lens that lends itself to constructivism, or the assumption that we might start with observing those quotidian, micro-level, social interactions. And, in the process, an ESL lens challenges the normative silence of mainstream approaches. It not only seeks to reconceptualize the legal and the economic as two sides of the same, social, coin, but emphasizes the political and moral dimensions of all social enquiry.

Nevertheless, while timely and valuable in responding to the limitations of the mainstream, an ESL-inspired lens is not perfect. Its “core concept” (Krippner *et al.*, 2004), embeddedness, is problematic on two grounds: its internal conceptual inconsistency, and its external conceptual incompatibility with the wider goals of ESL. Some economic sociologists and ESL scholars have offered interpretations that seek to remedy the embeddedness problem and this debate can shed light on our wider and more recent ongoing conceptual commitment to embeddedness and how we might innovatively respond to the crashes, crises, and catastrophes facing society (Block, 1991, 2001; Krippner *et al.*, 2004; Ashiagbor, 2011; Frerichs, 2011; Perry-Kessaris, 2011b; Cotterrell, 2013).

The career of embeddedness in ESL and two conceptual conundrums

Literature from economic sociologists and ESL scholars has plenty to say about our ongoing conceptual commitment to embeddedness, highlighting two

principal limitations. The first, echoing some of the more academic debates in ESL and our reference points above, is about “what is embedded, and in what is it embedded?” (Cotterrell, 2013). Through the following chapters, this first dilemma is referred to as the “*what* are we talking about?” problem, which relates to the internal inconsistency of the concept. As a metaphor, embeddedness has been applied so broadly, even within the niche area of ESL enquiry, that it now means all things to all people and is consequently largely meaningless (Krippner *et al.*, 2004).

Yet there is a second, more pressing concern which we can sum up as the “*how* are we talking about it?” problem. This refers to the concept’s external incompatibility with the integrationist goals of an ESL lens in seeking to shift the disciplinary silos of law, economy, and society back into dialogue with each other. The concept of embeddedness entrenches the separation of law, economy, and society. If we think back to Figure 1.1 on page 5, by describing X as embedded in Y, we understand that these are two ontologically distinct entities. In other words, *embeddedness maintains the metaphorical fiction of the ontologically separate law and economy*. And, in doing so, it allows the dominant orthodox approaches in each of these silos to be maintained, preventing innovative and imaginative sociological approaches that might (re)unite the disciplines. It denies, then, the possibility of any social constructivist understanding that we might attribute to an ESL lens, contrary to the aim of ESL in reintegrating the silos of law, economy, and society.

In reinforcing disciplinary separation, an ongoing conceptual commitment to embeddedness shapes the words and thoughtways we have available to us to describe and make sense of our world and to construct our reality. In re-entrenching the ontological separation of metaphorical phenomena like law, economy, and society, embeddedness-talk moulds our thoughtways and speech as those of *homo economicus-juridicus*. The mental models that led us into the current crashes, crises, and catastrophes are repeated, while simultaneously blinding us to alternative, distinctly sociological possibilities for acting, talking, and thinking otherwise.

Embeddedness in academic literature: drawing parallels and drawing conclusions

While Karl Polanyi is generally credited with the first description of the economy as “embedded”, there has been a good deal of ink spilt over what he might have meant.¹³ But what can an historical appraisal of embeddedness do

13 We can be fairly certain that Polanyi used embeddedness as a throwaway term, likely giving the implications of the concept little thought. He uses the term sparingly in *The Great Transformation*, although the term does creep back into some of his later notes and papers. There is evidence that Thurnwald, in fact, used the metaphor before Polanyi, although in a slightly different context. For reasons of historical anomaly though, Thurnwald appears to have dodged the bullet for coining such

for our responses to current crises? It is worth returning to the two popular literary responses to the financial crash that were introduced earlier, Raworth's *Doughnut Economics* and Earle *et al.*'s *The Econocracy*.

Raworth's and Earle's contrasting claims about the relationship between the economy and society, respectively that the economy is embedded in society and that society is embedded in the economy, mirror two similarly opposing interpretations of Polanyi by two notable scholars of his life and work: Fred Block and Gareth Dale. While – to oversimplify – Block reads Polanyi as stating that the economy (and its regulation) is embedded in society, Dale argues that Polanyi shows us that society has become embedded in the economy (and its regulation) (Krippner *et al.*, 2004; Dale, 2010b). These claims can be visualized, with Block's reading of Polanyi aligning with Raworth's claims on the left, and Dale's claim, aligning with Earle *et al.*, on the right (see Figure 1.3).

Which is correct? Is the economy (and its regulation) embedded in society, or is society embedded in the economy (and its regulation)? Or is, as Mariana Mazzucato has recently suggested, the economy embedded in norms and regulations (Mazzucato, 2021)? And then, given our observations that the way we talk matters, what difference does it make in practice?

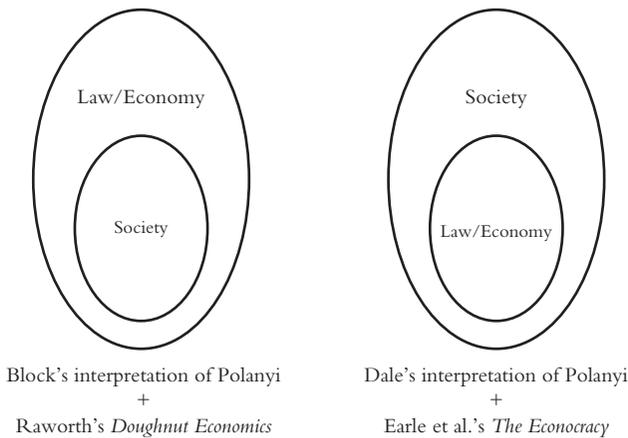


Figure 1.3 Are the law and economy embedded in society, or is society embedded in the law and economy? Raworth's claims, echoing Block's interpretation of Polanyi, are set out on the left. Earle *et al.*'s claims, echoing Dale's interpretation of Polanyi, are set out on the right.

an ambiguous and problematic term, and it is to Polanyi's works that scholars consistently return for enlightenment (Dale, 2010a, 2016).

In turning to the first limitation of embeddedness talk, namely its internal inconsistencies, or the “what are we talking about?” question, we can see that Polanyi’s macro-level embeddedness, and the later, confusingly micro-level revival of the concept by Mark Granovetter in 1985 in the field of economic sociology, leaves little consensus as to “what is embedded, and in what” (Polanyi, 1944; Granovetter, 1985; Cotterrell, 2013). Sabine Frerichs, Diamond Ashiagbor, and Amanda Perry-Kessaris have all offered possible readings of embeddedness that add consistency, seeking to reinforce the concept (Frerichs, 2011, 2012; Ashiagbor, 2014; Perry-Kessaris, 2015), and these are discussed in more detail in Chapter 3 as it traces the career of the concept of embeddedness.

If we gaze beyond the confines of economic sociology and ESL literature, the concept of embeddedness has had a fruitful career in other fields, and two notable applications stand out as instructive. John Ruggie’s theory of “embedded liberalism” and Peter Evans’ theory of “embedded autonomy” offer us two examples of embeddedness-talk that have generally been regarded as successful (Ruggie, 1982; Evans, 1995). Both combine the concept carefully with an equal-and-opposite force to construct an oxymoron that reintroduces some of the flexibility and dynamism that Polanyi might have originally intended but which has been lost in the formation of disciplinary silos and the continental drift that has separated them. Both also apply their conceptual oxymorons to narrow, carefully defined contexts, and avoid sweeping statements of principle. Both theories offer us clues as to how the concept of embeddedness might be strengthened in response to the first charge of its internal inconsistency, and these conditions for a conceptually consistent use of embeddedness are explored in Chapter 4. Readers interested in how we might use embeddedness more consistently and coherently might skip ahead to this chapter.

But even if we rebut the first charge, the second remains: the “how are we talking about it?” question. If we understand ESL as a lens that seeks to challenge entrenched legal and economic disciplinarity, embeddedness-talk becomes conceptually problematic. While an ESL lens seeks to reintegrate the disciplinary fields, embeddedness-talk entrenches their separation. In reproducing the metaphorical fiction of ontologically separate law, economy, and society, the concept of embeddedness is irreconcilable with a constructivist understanding of legal and economic phenomena, understood as two sides of the same social coin. It reproduces this separation linguistically and metaphorically, but, as the above discussion has shown, by shaping how we talk, the concept shapes how we think, and how we (inter)act.

Given the disciplinary drift, departmentalization and differentiation between the academic fields, and their production of discipline-bound, static frames that channel doctrinal and neoclassical approaches, how can we reconcile a commitment to the concept of embeddedness with the limitations

of the metaphors it seeks to describe? Even revisiting Ruggie’s “embedded liberalism” and Evans’ “embedded autonomy” here does not fully resolve this question. Either we must scale back the ambitions of ESL to reintegrate the disciplines, maintaining the metaphorical distinctions between spheres of behaviour, or we must reappraise the linguistic tools we use to describe how we construct and perform legal and economic phenomena. This latter is not such a daunting task, and Chapter 5 proposes one way of going about this. While our current focus lies with actors and their micro-level (dis)embeddedness, we might scale up to the macro- and meta-level (dis)embeddedness of institutions across space and time. Chapter 5 asks, speculatively, what if we were to shift our focus from actors to their interactions, and from embeddedness to the feedback loops that operate throughout these interactions? Readers interested in moving beyond embeddedness might jump straight to this chapter.

To be clear, what follows is not a treatise against embeddedness as a concept, word, metaphor, or even a term of art. As the following chapters show, when certain conditions are met, embeddedness can be helpful, illuminating, and entirely appropriate as a relational descriptor. The argument is more subtle, as danger lies where we lose sight of the metaphorical fictions we invoke, the concepts baked into these, and the theoretical heavy lifting that we are (tacitly) asking these concepts to do. But there are certain instances where optimal conditions of use cannot be met, and in these our ongoing conceptual commitment to embeddedness becomes unhelpful and circular. As such, Chapter 6 looks ahead, asking what the insights gained in these chapters mean for our ongoing responses to crashes, crises, and catastrophes, and what we risk by preserving our current frames in digital aspic as we are doing when we train AI systems of the future. Those interested in real-world applications of the insights of the following chapters and how we could be framing the future, might like to skip ahead to the final chapter.

Introducing our “guide” personas: Ann, Polly, and Lillian¹⁴

In keeping with ESL’s insistence on the study and understanding of legal and economic phenomena empirically, the theoretical discussion that follows will be guided and applied by three personas: Academic Ann, Policy Polly, and Lay Lillian. Each will explore an embeddedness-based ESL frame in their life and work, before shifting to the proposed alternative to assess the differences that result.

14 The three characters, introduced here as personas and developed in vignettes throughout the book, are waiting to meet you online (Williams, 2020, 2022).

Apart from bringing the discussion back to its quotidian, real-world applications and implications, the personas and their development through vignettes reflect another of the core arguments made here. This is the inadequacy of language, both to accurately reflect what we are wishing to communicate, and to lodge permanently in the brain. The former of these is a theme explored in detail through the study of embeddedness over the following chapters. The latter derives from insights from neuroscience and narrative research.

“When people tell stories or listen to them, they form mental images that are stored in memory as symbols” (Berman, cited in Levit, 2009, p. 277). While people retain only about 20 percent of what they read, they recall up to 80 percent of symbols (Berman, cited in Levit, 2009, p. 277). Narratives “light up” areas of the brain that “produce an affective response”, triggering “a release of neurotransmitters (catecholamines, such as epinephrine and dopamine) that affect both hemispheres of the brain”, leading to holistic learning (Batt, cited in Levit, 2009, p. 276). The use of empathetic narratives in the form of personas and vignettes throughout the book challenges the way that scholarship is usually disinfected of the personal, the affective, and the emotional through the process of writing (Campbell, 2016). Each of the characters has their own back story, and each comes to the concepts and theories discussed here with different requirements. Some vignettes offer illustrations. Others raise questions or pose dilemmas from a different perspective. In introducing Ann, Polly, and Lillian, the hope is to maintain the “forceful link” with reality demanded of (econo-)socio-legal inquiry (Frerichs, 2012, p. 9; Williams, 2023).

In empirically grounding the conceptual, personas and vignettes can be described as “designerly” approaches (Cross, 1982; Perry-Kessaris, 2021). There is no clear dividing line beyond which persona becomes a vignette, however there is a consensus that personas are fictional renditions of characters that embody relevant characteristics, while vignettes tend to capture short snippets of context that explore the “perceptions, beliefs, and attitudes” of the characters (Hughes, 1998). In some cases straddling the two then, Ann, Polly, and Lillian explore three contexts relevant to the arguments set out here, offering a critical, practical, and imaginative space in which we can explore the problems and solutions arising from our ongoing commitment to the concept of embeddedness (Perry-Kessaris, 2021). They offer a way of making the discussion both visible and tangible, and in later chapters allow us to ask “what if” we had alternative ways of doing, talking, and thinking. As such, they operate both speculatively (asking “what if”) and prefiguratively (acting “as if”), enabling an exploration of alternative possibilities and their implications for the three contexts chosen here: namely academic research, policy design and implementation, and then wider lay discourse across society (Perry-Kessaris, 2021). They will be our guides through the following

five chapters, exploring alternative ESL lenses, and the implications and the impact of these.

Let's meet them.

ACADEMIC ANN

Ann works in the law department at a university in the UK. Her particular area of interest is the interface between law and the economy, especially in the field of economic development. She wants to find out how a legal system can be structured to maximize inward foreign (direct) investment (FDI) flows. She has funding for fieldwork and is planning a series of interviews with foreign investors in the country she is heading to. She's booked her flights, had all the necessary jabs, and has stacked the freezer with home-cooked dinners for her partner and two teenage sons.

Ann's links with the target country go back years. She had been backpacking there on her gap year as a teenager and had fallen in love with the country, revisiting as often as she could and taking her children as soon as they were old enough. She has friends there, and over time has made contacts in the civil service and government too.

Recently, things have changed though. Vast quantities of foreign investment have poured in and infrastructure projects that had initially mushroomed have since stalled. Some years ago, development banks were the go-to for infrastructure finance for development, and they imposed conditions on borrowers. These conditions principally sought to improve conditions for foreign investors by streamlining bureaucratic processes and strengthening the rule of law, and reforms were typically based on hunches rather than evidence. But then other sources of funding appeared, and the development banks no longer had the monopoly on lending. What did this mean for the role of the law in facilitating FDI?

POLICY POLLY

Polly was only a baby when her family emigrated to the Global North. Growing up, she was aware that she had opportunities that her cousins did not. A scholarship to study at the LSE brought her to London, followed by a masters at Sciences Po in Paris and then internships in think tanks and at the World Bank back in Washington. Frustrated by global inequalities and the development industry in general, Polly had always wanted to make a difference, and had hoped that working either in the third sector or at a development bank would give her the opportunity to do this.

After a few years at the bank, working in research and policy development, Polly enjoys her work, but isn't sure she is making the impact she wanted to. The implementation gap bugs her: the bank has policies and indicators, and on paper things should be getting steadily better for people around the world. But they aren't. Then, there was the "data irregularities" debacle, which was just the latest example of data not matching up with reports on the ground. At other times, the policies she helps to shape just don't produce the desired results.

She is still in touch with a couple of friends from her university days in London, and catching up virtually she tells Ann about some of the problems with her work: that sometimes the numbers are simply wrong, and that sometimes the theories and concepts she is using don't seem to align all that well with the realities on the ground.

LAY LILLIAN

Lillian is retired, although you wouldn't think so. She's kept busy with her grandkids and volunteering, but still does a bit of cleaning for cash. Before 2008, she was optimistic about her sons' futures, but they both lost jobs after the financial crash, and her local community has seen cuts and closures to virtually every service. These have been compounded by the pandemic, and Lillian's pension now barely covers the essentials. The decade of austerity has hit her family hard and she gives her sons whatever money she has, but they still need the local food bank from time to time.

Lillian has always been interested in politics though and reads the papers every day. While her family has struggled, she notices that not everyone has suffered the same. Some people have got much richer, and the unfairness makes Lillian angry. She brought up her family to play by the rules, but she feels the rules have let her down.

Bumping into her neighbour on the way home, Lillian begins to explain her day. Ann listens, patiently, agreeing with Lillian on every point. She knows it all to be true and starts to explain to Lillian that maybe we are all talking about this using unhelpful terms and metaphors. Lillian doesn't quite understand Ann's point, but she gets the gist that maybe better mental models would help decision-makers to make fairer decisions.

Ann, Polly, and Lillian will drop in and out of the following chapters, applying the discussion to their own lives and work in the contexts of academic research, policy design, and wider discourse respectively. They each find that an ESL-inspired approach is a useful tool for challenging the shortcomings of our current mental models. Then, unpacking the proposed alternative lens in Chapters 4 and 5 that moves us "beyond embeddedness", each finds that there are

potential advantages revealed by shifting our focus to interactions and feedback loops. Ann explores the differences in her fieldwork resulting from different interpretations of embeddedness, finding that different actors and research questions are highlighted. Then, moving beyond embeddedness, she suspects that the proposed frame in Chapter 5 will offer a fuller and more accurate understanding of the complex interactions that she is hoping to investigate at the interface of the legal and the economic.

Polly finds that the proposed shift “beyond embeddedness” – focusing on interactions and feedback loops – allows her to more easily include a plurality of voices and interests in her work. She is optimistic that combined with more experimental approaches at the development bank this might reduce the implementation gap, where the results of interventions turn out to be underwhelming or have unexpected consequences. Finally, Lillian finds that focusing on interactions and their myriad ideal types allows her to describe the needs of her community in ways that are denied to her by mainstream discourse. She is hopeful that this offers her a way of challenging the mainstream narratives that have not served her, her family, or her community well. Zooming out further in Chapter 6, Lillian guides us through the real-world implications of the conceptual shifts proposed, as we explore what an alternative way of doing, talking, and thinking about legal and economic phenomena might mean for our responses to crashes, crises, and catastrophes. If we can *talk* better, this book argues that we might *think* and *do* better. The potential gains for society, were we to imagine alternative ways of talking and of thinking, could be immeasurable. An ESL-inspired lens shows us why this is important, what we might achieve, and how we might get there. So, to begin, let us turn to an economic sociology of law in Chapter 2.

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