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Management & Organizational History

ISSN: 1744-9359 (Print) 1744-9367 (Online) Journal homepage: https://www.tandfonline.com/loi/rmor20

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To cite this article: Louis Pahlow & Sebastian Teupe (2019) Introduction: Business and the Law, Management & Organizational History, 14:4, 311-316, DOI: 10.1080/17449359.2019.1718900

To link to this article: https://doi.org/10.1080/17449359.2019.1718900

MANAGEMENT & ORGANIZATIONAL HISTORY
2019, VOL. 14, NO. 4, 311–316
https://doi.org/10.1080/17449359.2019.1718900

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Introduction: Business and the Law

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What is the relation between businesses and the law? Although few would doubt that firms are acting in tightly regulated legal environments, and have done so for decades, no consensus has emerged on this question. While some scholars have assigned to the law an almost deterministic quality (Pistor 2019; Hodgson 2015; La Porta et al. 1997, 1998, 2008) others have questioned its importance, at least with regards to corporate governance (Cheffins 2001). Business historians in the Chandlerian tradition, too, had been doubtful about the importance of law for explaining structural change (Chandler and Daems 1979; Hannah 1979). They were countered, however, by historians of antitrust (Lamoreaux 1985; Dobbin and Dowd 2000) or incorporation law (Guinnane et al. 2007) who explained firm decisions in light of the regulatory context. A recent wave in business history on rethinking regulation (Balleisen 2017; John and Phillips-Fein 2017; Phillips Sawyer 2018), business crime and scandals (Hollow 2014; Berghoff, Rauh, and Welskopp 2016; Berghoff and Spiekermann 2018; Taylor 2018; van Driel 2019), or organizational dynamics (Fleming 2016; Wadhwani 2018) has highlighted the multiple dimensions at the intersection of law and economics (Dahlén and Larsson 2014; Pahlow 2014). They have helped opening up the field of interdisciplinary research in which this Special Issue positions itself.

From this perspective, the meaning of law and its economic effects cannot be fully understood in a reductionist fashion that limits itself to seeing law simply as legislation or jurisdiction. It also calls for moving beyond the historical ramifications of legal doctrines, which have often obscured the view of legal reality (Edelman and Suchman 1997). Rather, the focus here is on an evolutionary understanding of the law, which analyzes the steering power of legal regimes under the conditions of their economic, also socio-economic and political challenges. The historical actors themselves often assessed the significance of legal rules in such a more differentiated way: Karl Geiler, business lawyer and founding Professor at the Mannheim Commercial College ('Handelshochschule'), pointed out in 1927, that for example company law is being a fluid, non-static regime, of whom the one who knows only the written law would have no idea (Geiler 1927). Certainly, at a time of cartelization these words might not really be surprising. But, what do we know about lawmaking (and also rule-breaking) inside cartels, company groups or business associations? Moreover, how did conflict regulation in such organizational regimes work outside of state courts? And finally in which way did they influence the legislator or policy-making? Business historians e.g. in Germany have analyzed corporations and their business strategies with a view on specific

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legal settings (Reckendrees 2000; Roelevink 2015) but have rarely focused systematically on the specificities of legal dimensions, e.g. conflict regulation or the conformity with legal matters outside these undertakings. This is evident in encyclopedic representations of business historians in which law is not an issue, or at most in the context of politics (Berghoff 2016; Plumpe 2018).

Cross-disciplinary approaches between economic or business and legal historians could be a promising way to gain new insights and a better understanding of law within business, and vice versa. Seeing the legal system as a distinct, but also dynamic element embedded in changing socio-economic contexts, and not detached from economic and political challenges introduces a degree of contingency that highlights the importance of historical empirical research. Under these conditions, two central questions that have troubled researchers for many years can be put in a new context: first, the question of law as a precondition for business development and economic growth, as well as its economic effects in the long run; second, the question of the causes and interdependencies of legal change.

The economic effects of legal institutions

Regarding the first question, at the level of economic policy and its supporting legal framework a paradox is still pending. The so-called home country of the Industrial Revolution, England, was in a reform bottleneck concerning the legal basis and the approval of newly incorporated stock companies. This reform backlog was only overcome in the middle of the 19th century by the liberalization of stock corporation law with the Joint Stock Companies Act (1844), the Limited Liability Act (1855) and the Joint Stock Company Act (1856) (Harris 2000). Remarkably, however, this had not prevented industrialization and rapid economic growth before. France, in contrast, an industrial latecomer, had seen an institutional revolution already with the Codifications of the Napoleonic era: the Code civil of 1804 and the Code de commerce of 1807 changed the legal conditions of entrepreneurial activity in a sustainable way (Acemoglu et al. 2011). While the English Common Law System had not restrained the Industrial Revolution, and legal reforms had been enacted after the 'take-off', industrialization in France would follow the codification of civil and commercial law. However, it did not match the economic performance of England and later Germany. The study of the history of legislation alone cannot fully explain this supposed paradox.

Rather, the companies' economic success and their ability to adapt to changing market conditions, as we see in England, was also due to the companies' constitutions, which were based on statutes, contracts, or informal rules. This leads to the general question, whether and to what extent law can be made responsible for the economic success of a company and its capacity to act. The significance of legal norms for this process is controversially discussed both in economic theory and in economic history research (Hovenkamp 1991). The Legal Origin Model, for example, assumes that growth based on market processes is favored by common law systems (e.g. in England), while continental legal regimes (such as in France or Germany) tended to hinder it (La Porta, Florencio, and Shleifer 2008). Nonetheless, many historians have produced contradictory evidence (Musacchio and Turner 2013). Scottish partnership banks had greater organizational flexibility under a civil-law regime than would be expected by the legal-origin-literature (Acheson, Hickson, and Turner 2011), and the same applies to many other civil-

law countries as well where, for example, the Limited Liability Company produced more rather than less organizational choices (Guinnane et al. 2007). A closer look at the timing of the introduction of specific legal institutions and their economic effects have been particularly challenging for the legal origins-narrative. Hubert Kiesewetter´s study about the industrialization in Saxonia (until 1865 without any civil codification) pointed out that economic growth and the innovation power of business and its success did not depend on common law regimes (Kiesewetter 2007). Baden, however, adopted the French Code civil as 'Badisches Landrecht' in 1809, but started its industrialization even after 1840, when Baden joined the 'Zollverein' (Selgert 2013). In the United States (Hilt 2008) and the United Kingdom, the separation of ownership and control seems to have taken place at least partly independent from the legal institutionalization of investor protection rights, relying instead on 'alternative institutional structures' (Cheffins 2001, 460).

A closer look, therefore, points to the fact that the relevant legal institutional changes did not occur at a specific point in time, but that such a change was a complex, multi-faceted and often intertwined process, the outcomes of which could be quite different, depending on the larger economic setting. This can also be seen in the recently diagnosed 'varieties of capitalism' (Hall and Soskice 2001), whose legal roots should not be overestimated either (Deakin et al. 2017). As criticism of certain institutional economic assumptions, in particular, has shown, the economic effects of institutional changes cannot be measured and attributed as clearly as the relevant literature claims (Kopsidis, Bromley 2016). Rather, the transformation of economic challenges has often been accompanied by a transformation of legal rules and their forms of application. In this issue, *Shimizu* shows that legal forms for enterprises also detached from their original intentions and could exist and be further developed under other business environments, e.g. for SMEs, in which they were subject to their transformation processes. *Burton et al*. show that innovation in company law was only one factor among many for the transformation of Quaker business, and its influence could only develop over time and through various channels.

Legal change

Formal institutions, or legal rules, as the second question indicates, are thus subject to permanent pressure to adapt, because changes both in their semantic environment (*Flaatten*) and in the everyday practices (*Teupe*) addressed by the institutions must constantly be taken into account (Aldrich and Fiol 1994; Plumpe 2009). Law is non-static, it could be fluid, and even understood as a medium of control it still depended on many actors with many interests (*Hederer, Klebaner*). And of course, law has different levels of assertiveness, and is not necessarily restricted to nation-states (*Pahlow et al*.). It can be implemented in a hierarchical structure or be restricted by regulatory intervention (*Storrs*). A consistent theme that is shared by the papers collected in this Special Issue is this: The question, why legal change occurred, or in which way lawmaking depended on business strategies or business behavior, and how legal regimes engaged or restrained economic growth, cannot be sustainably answered with a theoretical approach alone.

Thus, in our opinion, business and economic historical approaches are needed to answer the question. Law is not limited to legal acts or court decisions, it could be legally stretched by individual actors maybe 'contra legem' or 'praeter legem', and in some areas,

self-made rules or contractual regimes could turn into legislative activities. Valid statements about the relationship between law and business can only be made if, in addition to a determined examination of the legal basis, the effects of the actors on law are also taken into account. As such, the Special Issue is indebted to an older tradition of legal scholars like William Hurst (1964) and Charles McCurdy (1978). We also follow Schumpeter in understanding economic action as an open and dynamic 'historical process', driven by multiple factors and with the potential of 'creative destruction' (Schumpeter 2010: 71; Wadhwani and Lubinski 2018).

On this basis, our topic as an object of historical or legal-historical research can be liberated from previous (also polemicizing) descriptions and theoretical overloads that have rather hindered its empirical analysis and thus its historicization. It is only this reconceptualization that opens up a microhistorical perspective of actors in order to grasp and analyze the effect of specific, interrelated social practices (Welskopp 2017), which is repeatedly generated anew, in legal-historical detail as well. This actor level can affect entrepreneurial (*Shimizu, Teupe*) or political (*Hederer, Storrs*) actors. It also allows historians – and also legal historians – to pay closer attention to individual actors and 'motivations', and why they succeeded or failed in changing the legal framework.

Acknowledgments

This Special Issue on „Business and the Law. Historical Perspectives on Legal Change" originates from a workshop at the University of Bayreuth in 2018. The editors would like to thank all participants for valuable discussions and comments, including those who are not represented in this SI: Robert Bernsee, Michael Buchner, Alexander Donges, Harald Espeli, Miriam Frey, Raphael Hennecke, Jan-Otmar Hesse, Martha Prevezer, Kim Priemel, Eva Schäffler. Sincere thanks in particular to Brian Cheffins who also provided helpful comments on a draft of this introduction.

Disclosure statement

No potential conflict of interest was reported by the authors.

Funding

Generous funding by the German Research Foundation (Project 388105383) is acknowledged.

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