STUDIES IN SOCIAL SCIENCES, PHILOSOPHY
AND HISTORY OF IDEAS 12

Adriana Mica / Jan Winczorek / Rafał Wiśniewski
(eds.)

Sociologies of Formality and Informality

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The way sociology frames the relation between formality and informality is not only complex and multifaceted, but has also evolved over time. This volume offers contributions by international authors that illustrate distinct types of theoretical framings and present various sites of inquiry. It proposes a typology comprising: the sociology of informally embedded formality, the sociology of formally embedded informality, the sociology of the interaction between formality and informality and the sociology of the emergence and transformation of formality and informality.

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Edited by Andrzej Rychard

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Contents

Adriana Mica, Jan Winczorek and Rafał Wiśniewski

Sociologies of Formality and Informality

Formality and informality are indelible elements of social life. They also happen to bear a special relationship to each other. On the one hand, the persistence of modern societies depends on a great variety of formal structures such as formal organizations and formal rules, which organize collective life and guide individual actions. On the other hand, today's societies are also perpetuated by a wealth of informal practices, including ones performed within and around formal institutions. It is indeed trivial to observe that every formal rule, organization or interaction is accompanied by an informal counterpart.

Conversely, every informal practice, institutionalized or occasional, takes place in a formal environment. Undeniably, this dialectics has many practical consequences. It also renders formality and informality as interesting objects of study for sociologists, traditionally inclined to lurk behind official facades. Has a social institution been successful because it had formal traits or just to the contrary, because it included informal elements? What are the informal undercurrents and preconditions of formal life? Is the informal side of an institution reasonably tamed by rationally crafted formalities or stifled by irrational bureaucracy?

This interest in the formal and the informal spans across many sociological disciplines. It has a firm place in the sociology of organizations, sociology of law, sociology of culture, development studies, sociology of work, and discourse analysis. Already this disciplinary multiplicity constitutes a sufficient reason to speak of sociologies of formality and informality rather than about a single sociology of these phenomena. As it often happens, representatives of different sociological trades are not necessarily in agreement as to what counts as formal or informal and what role they actually play in the phenomena studied.

For these reasons, the view of formality and informality and their linkage in sociology is complex and multifaceted. Anyone who intends to present the state-of-the-art in this field thus runs the risk of omitting some intricacies of theoretical baggage. One way to ensure that actual synthesis is provided is to start with the criteria that are used by particular sociological discourses in depicting the relationship between formality and informality. Stinchcombe (2001, 5–9), for example, advanced a typology of informality in the context of law and organizations comprising: "informally embedded formality", "formality being constructed" and "classical informality". At least one of these categories, if not

two, could be hijacked for the purpose of creating a categorization of the general perspectives on the interlinkage between formality and informality. In turn, we could identify specific streams for conceptualizing formality and informality within these discourses – i.e. as revealed, for example, by the Böröcz (2000) and the Guha-Khasnobis, Kanbur and Ostrom (2006, 5) categorizations of literatures on informality. Böröcz (2000), for instance, identified two categorizations: "the school of »generic informality«" and the school of "sectoral informality". While coming from a public policy analysis viewpoint, Guha-Khasnobis, Kanbur and Ostrom (2006, 5) highlighted two framings that are nonetheless of sociological relevance: "the reach of official governance" and "the degree of structuring". In a similar vein, we could further differentiate among ways of depicting informality in terms of forms of constraint (new institutionalism – see North 2000), level of abstraction (sociology of law – see Stinchcombe 2001) and degree of freedom in interpretation of role requirements (sociology of culture, research of social cooperation – see Misztal 2000).

We propose a typology comprising: *the sociology of informally embedded formality*, *the sociology of formally embedded informality*, *the sociology of the interaction between formality and informality* and *the sociology of the emergence and transformation of formality and informality*. Learning from the analysis of a seminal author in economic sociology, we could benefit from looking at these notions as being meta-assumptions grounding the sociology of formality and informality – as in Portes (2010, 13), the four directions of investigating formality and informality presuppose distinct "«lenses» through which reality is grasped and explored". Still, more than in the case of economic sociology, in the sociology of formality and informality these meta-assumptions appear as superficially competing. We say competing because, when rendering the classification, it was almost as if we took Beckert's (2006) distinction between the "interpenetration" and "embeddedness" approaches to the relationship between the economy and society in economic sociology, and adjusted and extended it to depict views on the linkage between formality and informality in contemporary sociology. The following brief outline of the four frameworks for approaching this problem will probably give an initial idea of the extent to which these perspectives seem to be competing or not. Its purpose is also to show that the chosen contributors are authors whose work is illustrative of distinct types of theoretical framings and presents sites of inquiry as various as possible.

Part I concerns the *sociology of informally embedded formality* – that is, sociology relying on, or bringing in, informality-related explanatory mechanisms in the study of formality, formalization and formal organization. As is visible in the first contribution, in the sociology of law and the sociology of organizations,

this stream of research is highly indebted to Stinchcombe (2001). In this chapter, Robert Dingwall, another established contributor to this stream, revisits the arguments made in the paper co-authored with Phil M. Strong, *The Interactional Study of Organizations* (1985), in the context of new developments in framing formality brought by new institutionalism, and inhabited institutionalism theorists in particular. The chapter promotes the research of the interactional construction of organizational formality. The notion of *charter*, which is proposed for framing the formal dimension of organizational life, aims to restore some balance in the study of formality. The idea is to study formality in a way that would not give in to the informality aspects to the extent that it would end up considering that "formality is all a fraud" – as Stinchcombe (2001, 1) observed that sociologists usually do – yet also not overlook the input of people towards the construction, negotiation, display and challenge of an organization's charter. In Chapter II, Grażyna Skąpska and Grzegorz Bryda interpret findings pointing to an obvious discrepancy between the opinions of lawyers and non-lawyers concerning the implementation of the rule of law in Poland. The discussion on the issue offers the occasion to touch on two related topics. First, the research looks at the reconsideration of the rule of law in the XXI century, subsequent to jolting social changes and the uncertainty facing regulation and implementation. Second, the authors discuss the need of an *empirical account of the rule of law* grounded in social experiences, in local memory and local knowledge. Although not framed in terms of "a charter", the chapter comes very close to the study of formality in the framing advocated by Dingwall and Strong. What evidently counts as an advantage of Skąpska and Bryda's paper, however, is that they interpret the relation and engagement with the rule of law charter by various social actors.

Part II presents contributions from the *sociology of formally embedded informality*. Depending on the case study, this sociological investigation results in a general recognition of the structural embeddedness of informality in the degree of regulation, costs of complying with the rules institutionalized by the state, or the ability and scope of regulation enforcement (see Fernández-Kelly and Garcia 1991; Sassen 1997; Portes and Haller 2005; Centeno and Portes 2006; Kus 2006; Portes 2010; Kanbur 2012). In the first paper in this section, Liela Groenewald redefines the notion of informal settlement in such a way that this would be more representative of the experiences of ordinary, poor people living in informal settlements in the global South and in particular in southern Africa. She insists on mainly three aspects: the interconnection between formality and informality; class structure and conflict of interest; and tenure insecurity and precariousness (primarily contributed by the state, the formal domain). Groenewald makes a

point regarding the third characteristic, namely that the insecurity felt in relation to the formal domain pops up as the primary factor in the self-reflective conceptualization of the residents of informal settlements. She also indicates how this aspect "creates conceptual problems for a purely repressive state response". In the next contribution, Stef Adriaenssens, Dieter Verhaest and Jef Hendrickx also deal with a multidimensional definition of informality, and informal work in particular. In their case, however, the causal priors are all located in formality, in types of regulation. The authors advance a pilot study of multidimensionality – a binary depiction of informality in relation to labor regulation and taxation. The topic is quite relevant because the *multidimensionality of informality* has the potential to reveal both the pros and cons of defining informality as a violation and lack of protection by regulatory structure.

Part III is dedicated to the *sociology of the interaction between formality and informality* – that is, sociology which is less interested in clearly delimiting the formal and informal domains, and more in establishing types of relationships between formal and informal institutions, and in revealing their mutual conditioning, entanglement or decoupling (see Meyer and Rowan 1977; North 1990; Pejovich 1999; Lauth 2000; 2004; Misztal 2000; 2005; Nee and Ingram 2001; Helmke and Levitsky 2006; Pejovich and Colombatto 2008; Bromley and Powell 2012; Van Assche, Beunen and Duineveld 2014). In the first paper in this section, Barbara Misztal continues and revises the understanding of informality that she originally drafted in the book, *Informality: Social Theory and Contemporary Practice* (2000). In addition to Erving Goffman and Norbert Elias, she now also builds on Michel Foucault in the study of re-patterned configurations of formality and informality. The paper analyzes changes in the relationship of informality and formality in the contemporary setting, and the consequences of these developments in terms of the emergence of new types of informality (*formalized* and *instrumental informality*), and of the sustainment of cooperation and the exercise of social control. In the second contribution, Mikko Lagerspetz discusses the relationship between formal policies and informal practices now prevailing in the Estonian minority incorporation regime. The advanced case-study on the process of changing the Russian gymnasiums' language of tuition allows him to make some inferences about the mechanisms and possible consequences of decoupling in the political field. In the third work, Hans-Joachim Lauth, in a similar vein, examines the relationship between rule of law and informal legal systems in functioning and deficient types of *Rechtsstaat*. He specifies that the interaction between the systems differs in relation to the political regime types, and puts forward a categorization of competing legal systems on the basis of evidence from authoritarian regimes and young democracies – *hybrid legal system* and the *deficient rule of law.*

Lastly, Part IV deals with the *sociology of the emergence and transformation of formality and informality*. This stream studies how interaction processes effect the transformation of existing institutions or the emergence of new ones; and it also follows processes for the formalization of informal institutions, as well as sequences of informalization and the relaxation of formal rules (Knight 1992; Tsai 2006; Grzymala-Busse 2010; Carruthers 2012; Haldar and Stiglitz 2013, 113). In the first contribution to this part, Timothy Eccles depicts both the processes of the construction and deconstruction of formality in the context of deregulation of building control in the UK – that is, fragmentation of authority in the field. Eccles shows that transformation or lack of authority does not equal informalization, or a move away from formality. He introduces two concepts: *meta-formality* and *trans-informality*. The former pertains to the situation when various, competing, authorities act in a rational-legal manner, without a single dominant authority. The latter meanwhile is employed when informality moves towards formality, in the sense that the rational-legal approach is adopted into certain informal systems. The notions are important because they encourage thinking "outside" the formal-informal distinction/continuum. By pointing out that formality is no more unitary and homogenous than informality is, Eccles brings to our attention the interaction between formal and formal institutions and systems, in addition to that between formal and informal ones. In the second chapter, Aleksandra Herman deals with a phenomenon recalling Eccles's trans-informality – processes of the reconfiguration of power at the local level which entail the absorption of informal political forces in the formal domain, and the blurring of boundaries between the formal and the informal in the political field. She looks at how separate social institutions operate at the bottom level of self-governance and considers the political potential of informality in the local environment. We can risk a comparison between the two approaches: Eccles is interested in the manner in which processes of construction and deconstruction of formality within the field of regulation lead to new types of formality and informality, while Herman looks at how similar processes, within the field of local politics, lead to the blurring of boundaries. In the third chapter, Francisco Linares advances a computational simulation analysis of the effect of the network topology on the emergence of informal norms of resistance among peer workers. Although the contribution clearly gravitates towards the area of the sociology of the emergence and transformation of informality, before its conclusion it makes inferences about the role played by workers' formal organizations within firms as well. The findings confirm the author's intuitions about the potential for *computational simulation analysis in the sociology of formality and informality*.

What does this brief outline of the book tell us in relation to the sociology of formality and informality in general, and about these edited papers in particular? Regarding the former, it certainly shows us that there is a sustained and conceptually quite developed stream of research into the relationship between formality and informality. We underlined herein the aspects of (two-way) embeddedness, interaction, and emergence and transformation, but surely it is just a matter of time before other treatments gain consistency and visibility, too. There is also the issue that these meta-assumptions now appear more as complementary, rather than as competitive. Regarding the edited papers in this volume, the summary seems to indicate that efforts to keep the direction of study on the formality and informality interlinkage has inevitably led us to discover various, analyzable and conceptualizable, manifestations within formality (see *meta-informality*, *hybrid legal system*, *deficient rule of law*, *charter*) on the one hand, and informality (see *trans-informality*, *formalized informality, instrumental informality, multidimensional informality*) on the other. Although this is obviously related to the recent changes in these domains as well, one cannot help but notice that initial efforts to strictly delineate the formal and informal "sectors" took us in the direction of seeing the boundaries not as clearly defined, but instead as blurred.

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Part I: The Sociology of Informally Embedded Formality

Robert Dingwall

Formality in the Interactional Study of Organizations

> […] Dingwall and Strong recognized the interpretative divide between interactionist and mainstream definitions of organizations…despite the promise of their insight, the work of Dingwall and Strong did not gain much attention in terms of promoting theoretical or methodological innovation in either organizational analysis or interactionist theorizing […] they were simply ahead of their time (McGinty 2014).

In 1985, Phil Strong and I published a paper in what is now the *Journal of Contemporary Ethnography*, examining the condition of the interactionist approach to the study of organizations (Dingwall and Strong 1985). The paper had had a long gestation, beginning in lectures given by Strong to undergraduates at the University of Aberdeen in the early 1970s and developed through his ethnography of a clinic serving children with learning disabilities (Strong 1979). Strong supervised my PhD thesis on a professional school training public health nurses (Dingwall 1977) and the paper was also informed by my experiences in a research group in socio-legal studies, studying the inter-organizational system for child protection in England (Dingwall, Eekelaar and Murray 1983). Strong died in 1995, at the age of 49, and I have given little thought to the paper since. However, McGinty's advocacy persuades me that it is worth revisiting, particularly to explore the path not taken by the new institutionalists. Where they read Meyer and Rowan's (1977) seminal paper on organizational structures as myth and ceremony and turned to Weber for a future direction (DiMaggio and Powell 1983), we incorporated the same paper into Strong's scholarship on Goffman, and my reading of Everett Hughes, to develop an interactionist vision for the study of organizations. In the marketplace of ideas, we lost out. However, as McGinty notes, we anticipated problems with the institutionalist account that were never quite resolved and which have recently been underlined by the proposals for an "inhabited institutionalism" (Hallett and Ventresca 2006).

This chapter, then, has three elements. First, it revisits the arguments of the 1985 paper, at least as I understand them, and its debate with the negotiated order approach that dominated interactionist studies at the time. Why did we insist that there was more to organization than the informal relations stressed by negotiated order writers? Second, it considers the history of the new institutionalism and its partial reading of Weber. Finally, it examines the recent work in

"inhabited institutionalism" and discusses whether this is a satisfactory solution to the problems that it identifies – or whether it remains unduly constrained by the interactionist tradition that Strong and I challenged.

The interactional study of organizations

The 1985 paper begins by positioning the negotiated order approach to the study of organizations, represented by the work of Anselm Strauss and his collaborators, in contrast to the rational, comparative-structural, approaches that had dominated the literature since World War II. The latter focussed on the study of formal organizations, which was separated out from the study of social organization, the orderliness of everyday life. Formal organizations were those established for an explicit purpose to achieve specified goals. Systematic research on the effectiveness of various organizational forms for achieving particular goals could inform the rational design of structures to deliver preferred outcomes. However, this rational paradigm had struggled with the accumulation of empirical anomalies. Four were identified: members did not observably act in the rational and rule-governed ways assumed by the model; members did not share clear and unified goals; rules were found to rest on bargaining power rather than rational planning and, moreover, could not be followed unreflectively; power and hierarchy were not associated in a simple fashion. During the 1950s and 1960s, various attempts were made to accommodate these findings by acknowledging that organizations had both formal and informal aspects. The latter, however, were regarded mainly as a random source of noise and subversion that evidence-based organizational design would eventually eliminate.

Strauss turned this thinking on its head. The negotiated order programme abolished the distinction between formal and social organization by treating the former merely as an ecologically bounded version of the latter. Formality was an epiphenomenon, a transient creation for certain purposes in certain contexts. He summarized the approach in six axioms: all social order is negotiated; these negotiations take place in a patterned and systematic fashion; their outcomes are temporally limited; the negotiated order constantly has to be reconstituted as a basis for concerted action; the negotiated order on any day consists of the sum total of the organization's rules, policies, and local working understandings or agreements; and, finally, any change arising within or imposed on the order will require renegotiation to occur (Strauss 1978, 5–6). While Strauss and his collaborators created a very substantial body of work, it had limited impact upon the mainstream of organizational studies, although it attracted the attention of some Marxist writers who saw it as offering a way to investigate praxis. As they pointed

out, in criticisms echoed by some interactionists, discarding the notion of organizational structure made it difficult to deal with issues of coercion or constraint. Strauss (1978, 247–258) responded by elaborating two subsidiary concepts: the "negotiation context" and the "structural context". The negotiation context referred to the properties of a local situation that constituted conditions in the course of negotiation. The structural context was the overall framework of conditions within which all local negotiations occurred. Strauss gives the examples of production technology, the size and differentiation of firms in an industrial sector and the balance between fixed and variable investment. Neither of these completely solved the problem: other investigators found it hard to determine what would actually count as limiting conditions and which conditions were practically relevant to actors. Nevertheless, they did constitute an acknowledgement that some account of extrasituational constraints was necessary. Strong and I concluded that negotiated order had inverted the original error of formal organization theorists. By asserting that there was only informality, scholars in this tradition were forced into awkward accommodations to reintroduce formality.

The accumulation of empirical problems had also prompted a parallel response among specialists in the study of organizations, the so-called "new organization theory". Meyer and Rowan (1977) argued that organizational structures should be treated as legitimating myths rather than literal descriptions of relationships between actors. While the mainstream tradition had focussed on those elements of Weber's work that examined the rational design of bureaucracies as the hallmark of modernity, they noted that Weber's own analysis of organizational forms stressed their embedding in particular types of society. The legitimacy of bureaucracies did not derive from their rationality *per se* but from the expectation of other actors in their environment that these organizations would adopt a rational "vocabulary of structure". Formal rationality was only important in a society that valued formal rationality. The actions of organization members were constrained by the prospect of having to account for them in terms that could be reconciled with the established cultural expectations of organizations. The formality of these expectations – in laws, regulations, bookkeeping, etc. – was what distinguished formal and social organization. Strong and I noted that, although this made both language and its use into central topics of inquiry for the study of organizations, the "new organization theory" did not seem to have a way to deal with this, beyond conventional ethnographic methods.

I shall discuss later the way in which the "new organization theory" evolved into the "new institutionalism". Strong and I struck out in a different direction. In particular, we noted the way in which Meyer and Rowan's discussion echoed Garfinkel's remarks on the concept of organization:

> [T]he term "an organization" is an abbreviation of the full term "an organization of social actions". The term "organization" does not itself designate a palpable phenomenon. It refers instead to a related set of ideas that a sociologist invokes to aid him in collecting his thoughts about the ways in which patterns of social action are related (Garfinkel 1956, 181).

While Strauss and his associates had used Garfinkel's analysis of the indeterminacy of rules to make them irrelevant (Strauss et al. 1964, 313) ethnomethodologists always underlined their constraining nature. Although they accepted Wittgenstein's argument that the meaning of a rule depended on the context in which it was used, they recognized that the context could require that the rule be acknowledged and action justified by reference to it. Bittner, for example, proposed that the official descriptions of formal organizations could be treated as:

> a *generalized formula to which all sorts of problems can be brought for solution…* [acquiring] *through this reference a distinctive meaning that they would not otherwise have.* Thus the formal organizational designs are schemes of interpretation that competent and entitled users can invoke in yet unknown ways whenever it suits their purposes (Bittner 1965, 249–250).

He went on to identify three practices that both members and observers (including researchers) used to make this generalized formula visible: compliance, stylistic unity and corroborative reference. These have "determining power", "discipline" and "prohibitions" in relation to actions that take place within the jurisdiction of the generalized formula. While broadly endorsing this approach, Strong and I pointed to some limitations. Firstly, the properties of the generalized formula were excessively vague. Minimally, we thought, it had to be able to characterize action as intended to achieve some end – which might be why conventional organizational analysis was so preoccupied with goals. Secondly, we were not convinced that it provided an adequate basis for distinguishing between social and formal organization, which was clearly a distinction that members of our society thought to be important. We went on to propose our own conceptual terminology for the analysis of formal organizations, of "charters" and "missions", paralleling Hughes's (1971) use of "license" and "mandate" to characterize occupations. (Occupations may be thought of as another distinctive kind of organization in modern societies.) This terminology was then linked to a detailed set of methodological and research design proposals that constituted a programme for investigation.

The synthesis proposed by Strong and myself was not unique within its context: the original paper has extensive citations of the work that we built on and other authors were making similar proposals, particularly Silverman (1975). As

a movement, however, the impact was relatively limited. McGinty (2014) could only find seven identifiable citations to our work, although Silverman's certainly had more impact than this. It is probably fair to say that neither Strong nor I were great advocates for our approach, mainly because of our career contingencies. Strong went to the Open University and was heavily involved in writing course texts and then in a big project on the social history of AIDS, left unfinished at his death. For me, the ideas were formulated at the end of two projects on organizational ethnography and I did not become involved in such projects again, particularly as the kind of access that I had enjoyed became more difficult with the rise of ethical regulation regimes. I only fully used the approach once, in a re-analysis of some of my PhD data (Dingwall 1986). Neither interactionists nor ethnomethodologists and conversation analysts were particularly interested in the kind of synthesis we were proposing – these fields were less sharply distinguished in the UK in the 1980s than they were in the US or became later in the UK (Strong 1988). In effect, the work was something of a dead-end. This does not, however, necessarily mean that it has become irrelevant.

The new institutionalism

The mainstream inheritance from Meyer and Rowan (1977) lies in what has become known as the "new institutionalism". The connection is explicitly made – Powell and DiMaggio's (1991) edited collection that serves as a manifesto for this approach reprints Meyer and Rowan's paper as its first chapter, before their own seminal paper, *The Iron Cage Revisited* (DiMaggio and Powell 1983). The authors begin by anchoring their approach in the Weberian agenda for the study of organizations and its depiction of the spread of bureaucracy as the expression of formal rationality in a system of control that is both efficient and powerful. The iron cage is a metaphor for the suppression of human individuality so that rational production techniques can assure that all goods and services will be created and delivered in an optimum fashion without discrimination, except perhaps in relation to one's ability to pay for them. While formal bureaucratic rationality had come to dominate large corporations and the administration of the state, its drivers had changed in other sectors. DiMaggio and Powell suggested that all organizations are being forced into the same mould by the concerns for legitimacy that were identified by Meyer and Rowan's reading of Weber. While the early entrants to any particular institutional field might have some scope for variation, their competitors were pressed to adopt the same models, which, in turn, become constraints on the first movers. Legitimacy is crucial to the perception, by those other organizations that constitute its wider environment, that any

particular organization is robust, stable, well-functioning and a credible partner for the exchange or supply of material or symbolic resources. DiMaggio and Powell describe this process as isomorphism, occurring through three types of mechanism: coercive, mimetic and normative.

What has not, perhaps, been recognized with sufficient clarity is that Meyer and Rowan, on the one hand, and DiMaggio and Powell, on the other, are not addressing exactly the same problem. Meyer and Rowan's question might be characterized as "how do we know a formal organization when we see one?" DiMaggio and Powell's, however, might be phrased as "why do formal organizations tend to look the same?" Both are entirely proper questions for organizational scholars to ask but they do lead in different directions. Strong and I argued that it was possible to look at Meyer and Rowan's work as promoting a programme of research into the interactional construction of organizational formality, repairing some of the problems created by the negotiated order emphasis on informality. This would be consistent with the historic legacy of institutionalism, which, as Stinchcombe (1997, 2) notes, was traditionally a study of organizations "created by purposive people". In the new version promoted by DiMaggio and Powell, however, organizations lose their grounding in action. In Stinchcombe's (1997, 2) words, "collective representations manufacture themselves by opaque processes, are implemented by diffusion, are exterior and constraining without exterior people doing the creation or the constraining". He goes on to criticise both of these key papers for failing to ask why formality might be demanded of an organization. Consider, for example, the well-documented tensions when Silicon Valley companies have sought stock market listings to raise additional capital – and potential investors have demanded that the companies acquire structures that look more familiar to them as a condition of supplying funds. If ceremonial compliance with environmental expectations is all there is, why do people take the ceremonies seriously? Formality needs to be enacted by organization members who acknowledge what is at stake. Ceremony must be accompanied by moral commitment, not just lip-service. There is a difference between a trial and a show trial: although both may share the same ceremonial form, only one of them seeks to achieve substantive justice.

In effect, new institutionalism ended up reifying organizations as actors on their own account rather than as the outcome of action by people pursuing their own strategies and logics in response to an environment. This allowed it to advance a set of hypotheses about isomorphic change that are potentially testable by various kinds of quantitative study (Greenwood and Meyer 2008). DiMaggio and Powell draw on a good deal of ethnographic work, and note its consistency with their approach (DiMaggio 1998). DiMaggio (1988) also complained about

the neglect of agency by other institutionalists. Nevertheless, their programme left space for the new institutionalism to be domesticated by established approaches in the field.

> Much of the narrowness in modern institutionalism…is explained by the lack of detail in the conceptions of institutions. A narrow conception is easier to mathematize. This in turn is due to ignoring the work of people who put the detail into institutions and who constrain people and organizations to conform to institution's exteriority. But if the guts of the causal process of institutional influence are left out of the model, then we successfully mathematize abstract empiricism, an empiricism without the complexity of real life (Stinchcombe 1997, 6).

DiMaggio and Powell's account has worn less well in some other respects too. Firstly, there is the translation error at the heart of their key metaphor. As Baehr (2001) has pointed out, the phrase "iron cage" was introduced by Parsons in his translation of *The Protestant Ethic* and is not consistent with Weber's original text. The German phrase expressed the idea of a shell "as hard as steel", into which an individual can withdraw in retreat from the harsh world of formal rationality. This does not necessarily undercut DiMaggio and Powell's argument about the ways in which organizations may be imprisoned by isomorphic pressures. However, it does affect the legitimation of the argument and goes to some of Stinchcombe's points about its neglect of individual agency. There is a difference between an individual who has formal rationality imposed on them and one who chooses to retreat into some private space to escape from it. Secondly, the representation of the driver for organizational rationalization as deriving from strategies of control on the part of governments or large corporations may well have been true in Weber's day but looks less credible with the advance of technology and the stripping out of middle management. While these were barely visible at the time when the new institutionalism was proposed, the implied path dependency in these sectors has certainly been disrupted. Call centres need minimal supervision because the computer logs individual performances. Functionally, this may still operate like a Prussian bureaucracy – but the army of supervising bureaucrats has disappeared.

Recent writers in the tradition of organization studies have, then, been calling increasingly for a new synthesis that retains some of the insights of neo-institutionalism but grounds these in stronger accounts of the practical construction of organizations by people dealing, in a historical context, with the everyday contingencies of technology, resources and culture.

> […] when we only count the outcomes of institutional processes we overlook everything that is interesting in the "institutional story." Institutional theory has largely failed to retain methodologies that are consistent with their need to attend to meanings systems,

> symbols, myths and the processes by which organizations interpret their institutional environments (Suddaby 2010, 16).

Barley (2008) notes that, while neo-institutionalism is the only macro-sociology of organizations to have developed out of micro-sociological roots, its research programme has largely neglected them. He returns, as Strong and I did, to Hughes and Strauss to lay out their claims to have offered a substantial theory of institutions and organizations that has been obscured by some of the sectarian conflicts of US sociology. Although Barley does not put it in quite this fashion, the fact that Hughes and Strauss did not write theory that looked like "theory" in the writings of Marx, Adorno, Foucault or Deleuze did not mean they did not write theory. Within the Chicago tradition, theory was a second-order generalization from empirical work that allowed case studies to be placed within a wider frame, rather than an armchair exercise in *a priori* critique. While Barley presents arguments from within organization studies for taking the interactionist tradition more seriously, a parallel development within interactionism has sought to re-embrace institutionalism.

Inhabited interactionism

Although the phrase "inhabited institutionalism" has a longer history, its most systematic exposition is in the work of Hallett and various collaborators or associates. While the approach has been used in a number of empirical studies, its programme is best articulated in Hallett and Ventresca's (2006) discussion of Gouldner's classic study, *Patterns of Industrial Bureaucracy* (1954). They argue that this text stands at a critical juncture in studies of organizations before symbolic interactionism was set apart, or set itself apart, from the mainstream. Moreover, it is unquestionably acknowledged as institutionalist work by leading figures like DiMaggio (1988) and Perrow (1986). Gouldner's study of a gypsum mine occurred at a moment of transition with the death of a long-serving manager, whose approach had been highly informal, and his replacement by an incomer, who was expected by the company's management to use a more formal and bureaucratically rational style. The study provides a detailed account of the external sources that pressed on the local manager for the formalization of controls, target-oriented production and the adoption of rational bureaucratic models for the mine's organization. In this respect, Hallett and Ventresca note, Gouldner's work is clearly a precursor to neo-institutionalism. However, his ethnographic approach added a dimension on the enactment of the supposed institutional logic of formalization. Its encounter with a prior order, characterized by informality and personal authority, blunted the force of rationality, generating a complex of

responses from mock compliance and partial engagement to active conflict. The expression of the apparently disembodied social forms of institutionalism was accomplished through interactions that changed their practical meaning. Specifically, Gouldner's analysis placed the organization that he studied within a context of history and community, within the encounters of specific actors, and within a spirit of scepticism about the claims made on behalf of abstracted models of organization and their effects. The result was to treat the mine as an institution inhabited by people whose interactions generated the observable order, while being constrained by a variety of external audiences. In this it effected a reconciliation between structure and agency.

Hallett (2010) himself has published an account of a similar moment in the life of an elementary school, where a new principal was appointed by the school district to introduce a new accountability regime. This was designed to standardize the practice of an established group of teachers accustomed to a high degree of diversity and autonomy in their pedagogy. It became the focus of an intense struggle between teachers and principal, with casualties on both sides. As with other studies in this line, it is based on skilful ethnography. However, it is not clear that it fully resolves the problems that Strong and I identified with the negotiated order approach, as opposed to simply reinvigorating it for a new generation. As Hallett and Ventresca (2006) pointed out, there was a sub-text to Gouldner's work in his interest in the politics of class struggle, which could not be openly expressed in the early 1950s when McCarthyism was in full flow. *Patterns of Industrial Bureaucracy* (1954) is a celebration of the workers' fight back against the corporation. In the same way, Hallett's elementary school teachers are the true heroes of his paper in their defence of classroom autonomy against target-driven management. This romantic strain permeates a good deal of interactionist work (Strong and Dingwall 1989). As Strong (1988, 18) once commented, qualitative sociologists had a preference for being "right-on" rather than right – in the sense of correct rather than neo-conservative! The elementary school is a site for a study of change, conflict, professional autonomy and the like – but the organization is still missing. These comments on the negotiated order programme seem equally applicable to inhabited institutionalism (Dingwall and Strong 1985, 208).

> Formal organizations [are] merely ecologically bounded social organizations in which actions [are] united only by territorial or temporal coincidence. A hospital, for instance, [is] simply "a professionalised locale, a geographical site where persons drawn from different professions come together to carry out their respective purposes" (Strauss et al. 1963, 150).

To be sure, Hallett (2010) discusses the environmental context and something of the history of the school that he studied but his main focus is on the struggle for

control rather than on the constitution of the organization, "the study of politics in the fundamental sense" (Hughes 1971, 291).

This is not to criticise Hallett for doing something different from what I or, I imagine, Strong would have done – but it is to say that inhabited institutionalism continues to leave an empty space when it comes to the question of formality. What does it mean for social organization to become formalized? How is this accomplished?

Why does formality matter?

As Stinchcombe (2001, 1) observes, sociologists have come to view formality as a fraud. The study of formal organizations has been abandoned because formality is thought to be purely a matter of myth, ceremony and ritual. Against this, he argues that formalization occurs when substantively important stuff needs to get done. This process may be hijacked to add importance to stuff that is not really all that important – but we should not be misled by this. The availability of formality makes it possible for specific matters to be referred to general and abstract principles, which then provide a basis for the unification of those matters into coherent and consistent patterns of action. Although Stinchcombe comes from a very different starting point, this is, in essence, the same argument that Bittner (1965, 249–250) makes in the passage quoted earlier. Formality means that we do not need constantly to stabilize meaning by reference to the fundamental substance that it encodes. It is an inscription device (Latour and Woolgar 1979) that defines events for all practical purposes within the limits of its application. That process of application is available for empirical study and we may from time to time wish to open up the black box and explore its workings. However, practical actors do not need to do this. So, for example, Stinchcombe notes that most of the time we can assume that courts do justice because there are special times and places where that process is examined by both internal and external actors, either to fill in gaps in the application of law or to question whether the law itself achieves the purported goal of delivering justice as a substantive good. The fact that courts may rest on a great deal of ad hoc and informal organizational actions (Feeley 1979; Church Jr. 1985) does not mean that formality is irrelevant, because it provides the very framework that makes those actions possible. This is not Stinchcombe's example, but Lynch's (1997) discussion of the way in which references to "the judge" integrate and make sense of action in a courthouse might exemplify what this kind of approach can achieve. Reference to the judge transforms interaction into *organizational* interaction, governed by a distinctive reference that is not wholly determined by the parties. As Lynch

shows, the judge need not be physically present for this influence to be evident. As such, the interaction is no longer informal and self-governed by the parties but operates within the shadow of whatever it is that the office of judge represents. The elevation of informality risks destroying features of social life that we consider to be substantively important (Atkinson 1982). As such, it is critical for sociologists of organizations not to approach formality as if it were a sideshow, a mere veneer on the reality of informal organization.

Studying formality

Strong and I proposed that the formal dimension of organizational life could be captured by the notion of a charter, which we modelled on Hughes's concept of professional, or occupational, licence.

> An occupation consists in part in the implied or explicit license that some people claim and are given to carry out certain activities rather different from those of other people and to do so in exchange for money, goods, and services (Hughes 1971, 287).

A charter is the concept to which organization members orient in their dealings with one another and with non-members to establish the limits of action that can be legitimately considered to be organizational. It refers to the organization's notional contract with other institutions for the coordination of a certain area of human action for an agreed or specified purpose. In some sense, a charter can be said to represent the constraints on a member's freedom of action that he or she experiences or depicts as exterior, objective and given. As Goffman had discussed this phenomenon,

> [E]ach of these official goals or charters seems admirably suited to provide a key to meaning – a language of explanation that the staff, and sometimes the inmates, can bring to every crevice of action in the institution (Goffman 1968, 81).

Formal organizational action describes those elements that operationalize the charter and make it visible or hearable to both members and non-members.

Where should we look to understand formality? Strong and I suggested that interactionists had been somewhat misled by their tendency to focus on the underlife of organizations, what later became known as the "street-level" (Lipsky 1980). As I showed (Dingwall 1986), professional education looked very different from the perspective of faculty trying to decide who they could certify as competent compared with the traditional approach of focussing on students trying to get through. Formality was critical to the construction of an account of the grounds for failing students that would be defensible under unknown future circumstances of possible challenge or review. Like other senior organizational

personnel, faculty make a set of decisions that resolve and embed organizational charters in ways that provide a framework for the actions of lower-level personnel, students or clients. While one could identify implicit charter references in everyday interactions at this level, it was unusual to find them regularly and actively invoked.

There are, however, occasions when the organization's charter is placed on display or called into question. Some of these have been treated as uninteresting by interactionists, such as official ceremonies, which may, indeed, be full of platitudes – but these are platitudes that tell the acute observer something important about how members of the organization choose to represent the organization to its audiences. The induction of new members or the staging of public launches for new initiatives may also have something of this character. Other events may place the meaning of the charter in question. In some contexts there are formal policymaking discussions on boards and at management retreats: here is a change in the legal regime that surrounds us – how can we respond in order to survive and prosper while retaining our collective identity? In the same category, we might consider occasions like audits, assessments, evaluations or complaints handling. All of these require the people involved to articulate their understanding of the charter and demonstrate their compliance with it. This list is not exhaustive – nor could it be: charter discussions may occur anywhere at any time. Our concern in drawing attention to such occasions was to encourage efficiency in fieldwork. Here are places where it might be profitable to start looking, if we are to get a proper appreciation of the role of formality in organizations.

Conclusion

The study of organizations has yet fully to resolve the relationship between formal and social organization. What is it that distinguishes some specific set of purposive and co-ordinated actions from the general production of orderliness in society? This chapter does not fully answer that question. However, it has established that it is still a question worth asking, that it has not been satisfactorily answered and that there might be relatively straightforward ways to produce an answer. The first step, though, is to take formality more seriously. It is not mere show, an epiphenomenon to be pushed aside in search of the "real life" of informal organization. Formality creates the conditions under which informality can occur and plays a key role in their integration. It is the fulcrum for sustaining legitimacy in the eyes of various environmental actors. As such, it requires equal weight and attention in organizational analyses – we need to examine the suits as well as the sandals.

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Grażyna Skąpska and Grzegorz Bryda

Empirically Grounded Rule of Law

This paper is based on the following data:

(1) We have drawn first on the data regarding the level of trust in the judiciary in Poland, collected in 2009 in a survey sponsored by the Polish Council of the Judiciary – *Public Confidence in the Judiciary in Poland. Report from Quantitative Research Prepared by CBM Indicator* (CBM Indicator 2009). This research project was conducted from April 25th to May 7th, 2009, with the use of individual standardized questionnaire interviews. Research tools consisted of 71 basic questions and 35 questions related to socio-demographic data. The research project was conducted on a representative sample of adult Poles aged 18–75. It was a nation-wide representative sample regarding gender, age, education, size of locality and region (voivodship). 1500 interviews were conducted. The research project was prepared by Grażyna Skąpska, and the survey questionnaire by Grażyna Skąpska and Grzegorz Bryda. In this paper, this research will be referred to as the *Public confidence in the judiciary in Poland* (CBM Indicator 2009) project.

(2) The paper is also based on the general data from evaluations of the courts and other political and legal institutions collected in public opinion surveys conducted in Poland in the years 1997–2011 (see Skąpska and Bryda 2013).

Introduction

Even a not particularly keen observer of the public debate in Poland could easily assess that there is a great discrepancy between opinions concerning the implementation of the rule of law between lawyers and non-lawyers. According to lawyers, the rule of law, or rather in the European continental tradition, the law-governed state principle, is fully protected in Poland, it presents one of the Polish constitution's opening norms (The Constitution of the Republic of Poland of 2 April 1997, Art. 2; The Constitution of the Polish People's Republic of 22 July 1952 (amended), former Art.1), and it is supported by other constitutional provisions (notably by Art. 7). Further, this crucial principle is developed in constitutional provisions on the protection of fundamental rights, especially regarding penal law, and the protection of private property, as well as in other constitutional provisions, including the Constitution of the Republic of Poland of 2 April 1997,

Chapter VIII, which defines the autonomy of the system of justice and Art. 178, which defines the independence of judges. Special attention should be given to the impartiality and independence of judges. The rule of law is also protected by the Constitutional Tribunal, and the system of justice as a whole. Moreover, its realization is protected by the European Convention on Human Rights and Fundamental Freedoms, by the decisions of the European Tribunal of Human Rights, and of the European Tribunal of Justice.

On the other hand, according to many publicly expressed opinions, the rule of law is severely violated in Poland. Such critical opinions concern those, who are engaged in the making of law, mainly parliamentarians, and those, who are responsible for law enforcement: judges, prosecutors, police and public functionaries. Such critical opinions were recently expressed in Poland in two popular movies released in 2013: Ryszard Bugajski's *Układ zamknięty* [Closed Network] and Wojciech Smarzowski's *Drogówka* [Road Police]. In those movies – of which one is based on a true story – there are many examples given of drastic violations of the rule of law, the corruption of the police officers and the corruption schemes of the involved prosecutors, police and the high circles of authority in the prosecutor's office and politics.

The discrepancy of opinions could be easily explained. Lawyers think about the rule of law in terms of the "written law", that is, constitutional provisions, statues and procedures, whereas non-lawyers debate the rule of law in terms of the "living law", with their personal experiences with the execution of laws in courts and governmental institutions, and the news about the application of law they find in the mass media, predominantly on TV and newspapers. The latter are characterized by a high degree of criticism. The critical point, and the "junction" of the promise expressed in the written law, and the reality of this principle's real implementation and protection, presents the anatomy of a functioning system of justice as it is broadly understood: the decisions of courts and the functioning of the prosecution and the police. Courts and judges have an especially salient importance. They connect the legal expectations of an abstract principle with an actual, real case, or a conflict, and the social expectations and experiences linked with it. Hence the formation of an empirically grounded and not merely abstract concept of the rule of law is rooted in the decisions taken by judges, and other public functionaries. Consequently, the measure of the popular perception of the rule of law is the level of trust in courts and the judiciary[1].

1 The results of the international comparative research on the courts and the judiciary are also worthy of notice. The research conducted by two leading organisations,

Concerning the abovementioned discrepancy of opinions, we are going to develop a twofold argument in this paper. Firstly, we will argue that the very concept of the rule of law, which was invented in the XIX century, has been both reconsidered and conceptualized anew in the XXI century, following the dramatic social changes, and in view of the entirely new challenges faced by law making, and law enforcement. Such reconsideration is particularly important during times of fundamental social change and democratic reconstruction following the collapse of dictatorial or totalitarian regimes. It is the "account" of the rule of law not only with reference to important and rudimentary legal values – namely the classical values of legal certainty and predictability, but also, in its more contemporary version, justice and protection of human rights. Secondly, as it was already argued, sociologists would stress an empirical account of the rule of law grounded in social experiences, in local memory and local knowledge, reflected in popular opinions on the application of law, and in the trust in the judiciary, discussed earlier.

It must be particularly emphasized that the level of trust in public institutions, similar to the level of trust within personal relationships, is strictly connected to social cohesion, stability and orderly changes of a transitional nature, or abrupt changes characteristic of transformation. The situation of Eastern European courts is outstanding because the law and judiciary have been subject to deep transformation. According to editors of a book on the court system in East-Central Europe, despite some profoundly transitional features and the huge and complex system

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Freedom House and the World Bank, indicate a decrease in the quality of the rule of law in Poland. In 2007 an assessment of justice in Poland by Freedom House gave the country a score of 2.25 (with 1 as the best and 7 as the worst mark), which suggests a decrease in comparison with the 2003–2004 period, when the mark was 1.5 (see Freedom House (2003; 2004; 2007) *Nations in Transit* reports on Poland). Emphasised was the excessive number of cases in relation to the possible efficiency of the court, and the resulting delays in court proceedings, low trust in courts on the part of society and the insufficient number of places in penal institutions. The World Bank data on the rule of law show a similar assessment of the functioning of the rule of law in Poland. The result in 2005 was 60, in 2006 and 2007 it was 59, and in 2008 the grade was 65. This means that in the opinion of the World Bank, on the basis of several dozen research projects, 65% of the countries have worse functioning legal systems than the one in Poland (the higher the index, the higher the grade; the index fluctuating between 0–100). It should be added that in previous years the assessments of the rule of law in Poland conducted by the World Bank were better, yet since 1998 they have been regularly decreasing (in 1998, 70% of the countries worldwide had legal systems functioning worse than ours, in 2002 – 66%, in 2006/2007 – only 59%) (see Worldwide Governance Indicators (WGI, n.d.) on Poland 1996–2013).

of written law inherited from the past, these developments in Eastern Europe are discontinuous and include rather revolutionary features of the abrupt changes of the political system followed by complex social and economic transformations, and finally, of the legal system (Přibáň and Roberts 2003, 1).

The differences between lawyers and non-lawyers regarding opinions on the practical implementation of rule of law is to be debated in the particular context of the transformation. After the "round table agreements" these countries reconstructed their political, economic and legal systems. They enshrined the rule of law in their constitutions, but they also had to deal with the legacies of the communist past. Those legacies, and the innovative "transitory justice" (Teitel 2000) approach to law contributed in an important way to the discrepancy between the formal, legal understanding of the rule of law, especially in its classical entourage, and the empirical reality of the "living law" after the collapse of the former system. Therefore in this paper, after the short description of the difficult issue of the past, the legacies of "lawful revolutions" and the approach to the rule of law they promoted, and the empirical reality with which they were confronted, we will debate the contemporary accounts of the "living rule of law" in popular opinion, on the basis of empirical data on trust in the judiciary.

Brief remarks on the important issue of the past: The socialist rule of law

The historical experiences of Eastern European countries, in particular those of Poland, have determined a special approach to law, treated as an instrument of a foreign, often hostile power. These historical experiences – and in the Polish case also the experiences of the XIXth century when Polish territory was divided and the Polish state ceased to exist – have an obvious impact on the legal consciousness and legal cultures of the societies in question. The deciding factor, namely the imposition of communist governments, was the catalyst for fundamental political, economic and social changes that were introduced in this region after 1945. Thus, in 1945, the Soviet Army entered Poland, and other East-Central European countries. That was followed by a series of political and legal acts. First, prior to the Soviet Army entering Polish territories, the provisional government was created, which was already forging a new Polish state in accordance with communist principles. It worked closely with the Soviet Union, and was under the particular control of Stalin. Its Department of Justice ensured that politically reliable judicial officials were recruited in the future administration of justice in the Polish People's Republic. The provisional government's aims in Poland, similar to other new communist countries, were threefold: to legitimize the quasi-judicial functions of

the secret police, to control citizens' activities and to assume control over private property. After the first "elections", in the early 1950s Soviet-style constitutions were introduced and the councils-of-state – the primary executive organs of government – were created and were granted full legislative powers. Moreover, the legal system imposed on the societies of East-Central Europe was highly bureaucratized to ensure complete control over decision-making. In Poland and elsewhere, the concept of "socialist rule of law" was invented, and the judiciary, the bar and police were restructured under the tight supervision of the communist party. In accordance with the "socialist rule of law" principle, the whole legal system and the judiciary as its functionaries were transformed firstly into instruments of the class struggle and, secondly into door-keepers for the new system of power.

As is stressed, the significant feature of communist law and its application was a predominance of public law over private law. The public interest was, as one reads, "[…] translated into state interest, i.e., the Communist Party's interest" (Fijałkowski 1999, 247). The judges were trained according to this framework, and received legal indoctrination in Marxist-Leninist theory (to attend the so-called evening university of Marxism-Leninism was obligatory for legal practitioners until the 1990s). All of that led to the formation of a particular culture of lawyers, characterized by political conformity, formalistically understood legal positivism and the absence of an individual rights culture. The judges, as it is argued, were primarily seen as law enforcement agents and not as defenders of individual rights (Wagnerová 2003, 177, 178). They were also strict adherents to the formalistically applied law and subjects to the political power of the state.

To these remarks on the general political context in which the judiciary was functioning and the socialist rule of law was practised, one should additionally note the contempt for law and judges, so characteristic of Leninist-Marxist ideology (Krygier 1994, 137ff; Czarnota and Krygier 2007, 164ff). The low wages of judges, the very poor equipment of courts, and the general organizational chaos contributed strongly to the decline of legal culture, and influenced the decline of the prestige of courts and the judiciary.

Legal certainty and predictability characteristic of the juristic version of the rule of law versus "transitory justice"

As it is also observed, the break with communism and the building of new regimes has become to an important extent a legal problem; and the East European transitions took a legal and often also a constitutional form (Arato and Sajó 1991, 101; Király 1995; Sólyom 2003; Skąpska 2011). The rule of law, in its classical and

juristic version, indeed at those times almost a civil religion, legitimized profound political change in the eyes of the outside world. Legality, i.e. the strict adherence to the juristic version of the rule of law, presented also a key component of the semantics promoted by members of the democratic opposition in East-Central Europe.

The initial description of these events as "lawful revolutions" came from Hungary – notably from a prominent intellectual and participant of the Hungarian roundtable, János Kis, as well as from Kálmán Kulcsár, the then Minister of Justice in the still communist government. For the former author, the parties seated at the Hungarian roundtable were mostly interested in securing stability and continuity for the legal order in Hungary (Kis 1995). This position was later strongly supported by the actions of the Hungarian Constitutional Court, especially by its then President, Justice László Sólyom, who often stressed legal stability and certainty as dominant features of the Hungarian transition (Sólyom 2003, 20, 21, 39) having described it as a "revolution under the law" (Sólyom 2003, 39).

This attitude had also been highly evident in the writings and activities of persons like Václav Havel; it was practiced by Charter 77 in Czechoslovakia, by the Committee for the Defense of Workers in Poland, and by the oppositionists of the Polish Round Table even at the price of losing their credentials among the society (Skąpska 1990). Thus, according to a prominent Czech author, "[…] the rule of law became one of the most important revolutionary demands" (Přibáň 1999, 45).

The concept of lawful revolutions refers to the unquestioned formal legality of the political transformation limited by the existing law and its procedures. Thanks to not only the classical notion of rule of law, but also legal certainty and predictability, citizens could reasonably arrange their affairs, and the law preserved its autonomy, that is, its distance from political pressures. Presently, as it was mentioned, such a classical concept of the rule of law is supplemented by the protection of human rights and the promise of justice (The Constitution of the Republic of Poland of 2 April 1997, Art. 2). This modern, albeit still juristic version of the rule of law appeals to important moral values and to citizens' expectations. It also has an important political dimension. The second article of the Polish Constitution declares Poland to be a "democratic, law governed state", stressing in this way the democratic law-making procedures. It stirs great expectations, put to the test by the challenges inherent in the difficult legacies of the past and dilemmas created by the post-communist transformation, as well as the results of the introduction of the free market economy. First and foremost among those results was the promise to simultaneously protect individual

property rights, and to create rights for the new owners of privatized national enterprises (Skąpska 2011, 185–218).

Moreover, in the light of the previously mentioned argument of this paper, the classical and juristic notion of the rule of law should be supplemented by the daily life experiences of citizens, their contacts with law and their perceptions of law, linking the liberal ideal with the locally rooted interpretations of it.

Hence, to understand the discrepancy of opinions between the lawyers and non-lawyers on the installment of the rule of law after the collapse of the former regimes in Eastern Europe, one has to take into account the broader axiological and sociological understandings of this concept. Above all, one has to remember that the new governments, courts and judges were confronted with tasks that required more than simply a formal understanding of this concept and which went far beyond the already mentioned rudimentary values of legal certainty and predictability. These courts had to deal with new issues and cases having only the old, or the slowly changing system of law at their disposal, not compatible with the legacies of the past that were "greater than the existing law", such as the mass scale human rights violations, or the mass scale deprivation of property rights. They were also confronted with quite novel tasks and issues brought about by rapid economic change, or the accession to the European Union.

A burning question emerged regarding how to deal with past atrocities, and the grand scale human rights violations committed by the functionaries of the former regimes, how to punish perpetrators and instigators as well as how to compensate the victims and still protect the rule of law principle. Equally important were the tasks linked with the restitution of the property rights of the owners deprived of their property by the communists, and the simultaneous protection of the newly created property rights of the new owners of the privatized state property.

There is a vast literature already devoted to the human rights violations committed by the dictatorships, and the ways of dealing with such a legacy have been undertaken by the particular governments. Here we would only briefly outline three ways in which the courts dealt with such issues. All of them are to be evaluated in the political context of East-Central Europe in which the new governments were to act: the delicate balance which resulted from the initial agreements between the communist functionaries engaged in dismantling the old system and the democratic opposition on the one hand, and the emerging networks and interconnections between the interests groups involved in the post-communist reconstruction on the other.

The first approach to those tasks was compatible with the classical and juristic understanding of the rule of law. It consisted of a strict adherence to the existing law and procedures, based on the mentioned values of legal certainty and predictability. Because of this characteristic, the approach turned out to be rather "perpetrator oriented". This approach to past human rights violations could be summarized in the following way: "we had expected justice, but we got the rule of law". The second could be described as a way led by moral standards, especially in the "hard cases" of transformation. It was closer to the daily life experiences of people living under the past regime and especially to those of its victims: persons whose fundamental rights were violated, political prisoners, persons fired from their jobs or from universities because of their political convictions, persons deprived of their property, or those defined as "capitalists", "kulaks" or "bloodsuckers". It was later described as a "transitory justice" (Teitel 2000). It consisted of an innovative, even ingenuous, approach to state law based on the international regulations and practices of dealing with human rights violations, and also on the standards set by the Nuremberg Trial of the top Nazi functionaries responsible for the Holocaust, and by the trial of Rudolf Eichmann in Jerusalem. In contrast to the former, classical understanding of the rule of law, this approach was rather victim oriented. To be legally valid, it was supported by the defining of the human rights violations committed by the communist functionaries as genocide, and of the communist party as a criminal organization. Such an approach required strong political support by a politically strong leadership, such as it was at that time of the presidency of Václav Havel in the Czech Republic.

The third approach to the legacies of the past could be described as opportunistic, and even cynical. It consisted of a formal adherence to the existing state law, in order to avoid the punishment of perpetrators, as well as of policies aimed at the protection of the former regime functionaries because of the deep interconnections, nepotistic or corruptive relations between the judiciary, public prosecution, parliamentarians, government officials and later, the "newly rich". These relations could have very old roots, based in former friendships or collaboration between functionaries of the former regime (Skąpska 2009). In the event of its application to the "hard cases", its main effect was a manifestation of corruption in all possible meanings of the concept.

All those difficult issues became the subject of popular opinions on law and justice. The growing criticism in the actual realization of the rule of law principle reflects dissatisfaction with its fulfillment with regard to the crimes committed in the past. Thus, in the year 2014, 25 years since the beginning of democratization in Poland, more than one-third of the Polish population is of the opinion that the Polish government and courts did not resolve satisfactorily the difficult

issues of the past[2]. The importance of such difficult issues is indicated by court cases, which are discussed and remembered as symptomatic, and are indicators of the failure of rule of law. According to the already mentioned research conducted in Poland in 2009 and published in the report *Public confidence in the Judiciary in Poland* (CBM Indicator 2009) – 20 years after the Round Table Talks and the revolutionary changes they initiated – still among the most important and unsatisfactorily resolved court cases mentioned spontaneously by the respondents answering an open question of the questionnaire were "the Wujek coal mine pacification by the military in 1981", and "the events of December in 1970". Among the cases from the list, the respondents indicated the Wujek coal mine pacification, the case of Grzegorz Przemyk, who was murdered by the political police, and the events of December 1970, next to economic transformation related cases such as the coal scandal and the death of Barbara Blida, the Fund for Foreign Debt Servicing scandal, the case of Roman Kluska, the *Żywiec* brewery trademark case, and the case related to the property rights of the Wedel trademark[3]. Needless to say, these cases are among the most often reported and debated in the mass media and are also the most often cited sources of information about law and its application[4]. Other cases broadly reported by the media, and that are important for the formation of opinions on the application of law in courts, include the homicide of Wojciech Olewnik, the so-called "sex-for-employment affair" of the political party *Samoobrona*, the Rywin case, where a grand scale corruption attempt led to governmental change, the Gen. Papała

2 These are the newest data from the survey conducted by CBOS in February 2014 (see Pankowski 2014).

3 Cases including the Wujek Coal Mine Pacification, when several people were killed by the police forces, following the order of the highest ranking officials, above all Gen. Kiszczak, as well as the events of December 1970, where many persons were also killed following orders from Gen. Jaruzelski, the homicide by the police of student Grzegorz Przemyk in 1983, and the still unpunished criminal activities of the high ranking officials in Poland, as well as the criminal activities of the ordinary policemen (Grzegorz Przemyk case). The case of the *Żywiec* brewery trademark from 1993, the Roman Kluska case of 2002, and the case of Barbara Blida from 2007 present cases related to economic transformation and of a grand- scale corruption and nepotism in which the new authorities were involved. Roman Kluska was a very successful businessman accused of tax evasion and arrested, but was ultimately cleared by the court; Barbara Blida, a former deputy minister of construction, was accused of corruption and committed suicide as police searched her house.

4 It is noteworthy that the media, the TV and the press present a constant, most important source of knowledge, and opinions on law and the judiciary (Daniel 2007, 72, 73).

case, and the case concerning the deaths in medical ambulances in Łódź, as well as the unresolved criminal cases and the case illustrating the methods used when attempting to corrupt the law making process[5].

Factors important for the popular perception of the rule of law

All these difficult issues help to explain the relatively low level of trust in courts and the judiciary in post-communist Poland.

Aside from history, popular opinion on courts and judges is also formed from various sources of knowledge regarding the execution of laws as well as personal contacts with courts.

As already mentioned, the main source of knowledge about law and the application of laws are presentations given by mass media – TV and newspapers. They play an enormous role in the formation of popular images of law, the judiciary and the court system; therefore they have a salient impact on the opinions about the fulfilment of the rule of law in popular consciousness. Opinions communicated by the media are of particular importance also because they are accessible to everybody, and are subject to informal exchange. They awaken emotions, because they are focused on the most controversial, political and criminal cases. Therefore, they are not only informative, but also performative.

The media fulfil this important role in a very peculiar way.

In light of the research conducted in Poland, the readers are not only wrongly informed about law and court decisions, but the media often create a negative image of the judicial system, and impair its authority. The opinions propagated in the press on law and courts – even by some prominent journalists – are mostly one-sided, i.e. critical, highly emotional; they are concentrated on cases that awaken serious doubts, and they are often accompanied by sensational "news" on the corruption of the system of justice, accusations of nepotism, and the ties of judges with the old regime (Daniel 2003, 134; 2007, 73). The contacts with courts and court proceedings present another important factor in shaping the

5 Wojciech Olewnik was the son of a Polish businessman. He was kidnapped and murdered in 2001. After years of investigation the case is still not resolved, and allegations that high ranking police officers were somehow involved in it have not been falsified. The assassination of General Marek Papała – the then Police Chief – in 1998 bore all the signs of a contract killing, with evidence pointing to business and political circles of that period. The attempt of Lew Rywin in 2003 to corrupt one of the most known dissidents and journalists had riveted Poland like no other corruption scandal. It led to the resignation of the Prime Minister and a change of government.

opinions about the judiciary. This factor underwent a significant change after the collapse of the former regime. Thus, in the year 2009, 30% of Poles declared personal contacts with courts to be the most influential factor in forming their views (Skąpska and Bryda 2013, 87).

The formation of trust in the judiciary is affected by features that determine differences between law-applying institutions, especially courts, and other public institutions. American research on satisfaction with court decisions (Tyler 2006) indicates the particular importance of procedural fairness (fulfilment of the fair trial principle). It means the observance of procedural standards in each particular case, including especially the independence and objectivity of judges, the equal treatment of parties, the right to defence, understood as a right to present one's own argument and to respond to the opponent's argument, transparency of proceedings, and a right to legal support, to decide on the personal, subjective feelings that one was treated fairly, independently of the final decision (verdict) of the court (Tyler 2006, 37). Thus, in this broader conceptualization, procedural justice means not only the fulfilment of the strictly legal standards, but also the observance of some cultural standards, i.e. the cultural norms responsible for the "civility" of the proceeding's participants treatment, and the communicative standards: the communicative rationality of the court's proceeding, i.e., the truthfulness, the intelligibility and argumentative validity of the communication in the court. Here the particular responsibility rests on the judge, his or her way of communication with the parties and the broadly defined "court trial culture", including in particular respecting the authority of the court. Aesthetics and dramaturgy are not to be disregarded here – the architecture of buildings, arrangement of court rooms, outfits of the parties and the "judicial etiquette" on the one hand, and the substantive competence of the judges on the other. Cultural factors overlap or cross with the mentioned factors comprising a "fair trial" and constitute an important context for the implementation of this principle. Yet another important context for the popular perception of the rule of law, and in effect, the popular trust in judges and courts consists of the organizational standards and the actual law enforcement. It should be emphasised that even the most suitable formal guarantees of a fair trial may be ineffective if participants in the proceedings will experience mediocrity, disorganization and arrogance.

Hence, the level of trust placed in courts and judges, and the opinions on the fulfilment of the rule of law principle differ depending on historical experience, the approach to the violation of human rights committed by the functionaries of the former regime, and the actual fulfilment of the fair trial principle: the broadly understood procedural justice in the process of executing the laws in the context

of the communication, culture and organisation of the court proceedings and the enforcement of court decisions.

Let's look closer into data from the *Public confidence in the Judiciary in Poland* (CBM Indicator 2009) report.

As it was already mentioned, according to the results collected in the survey on the public confidence in the judiciary in 2009, in Poland the number of persons who have participated in proceedings before the court is rapidly increasing. The respondents' declarations shed light on this matter, revealing that this percentage had reached 30% in 2009. The data confirm the hypothesis that the system change results in an increase in contacts with instances of the actual application of laws. Another set of data indicates that Poles participate in court proceedings mainly in the role of witnesses (59.1%) and claimants (27.5%).

It should be emphasised that Poles most often appear before civil courts. Thus, the opinions on the courts and trust in courts among the participants in the proceedings are mostly shaped by contacts with civil courts.

As the data indicate, only 3% of the Poles surveyed have absolutely no trust in courts and 3.5% declare complete trust. The prevailing opinion, however, indicates high and rather high trust in the courts' ability to serve justice. In fact, on a 7-step scale, the respondents assessed their level of trust in courts mainly as 4 (29.9%), 5 (25.3%) and 6 (14.9%). Thus, in the light of the survey, over one-third of the Poles, by assigning a digit corresponding to their level of trust, indicate a somewhat ambivalent attitude, whereas 40% of the Poles assess their level of trust in courts as predominantly positive (that is, a total grading of one's own level of trust as 5, 6 or 7).

The idea that Poles believe in a significant role for the courts and the law in regulating disputes is confirmed in the data on the institutions to which the Poles would turn when faced with a disputable matter regarding ownership or financial liabilities. Most often it would be either attorneys at law (lawyers) to whom one should turn for assistance (25.5%) or to the court directly (16.8%). The respondents hope for an accurate and reliable resolution and the chance of retrieving the disputed item or money. Therefore, over 40% of adult Poles notice and appreciate the importance of professional advice and the significance of proceedings before the court in civil cases. What is characteristic is the low percentage of opinions indicating professional mediation as a method of regulating disputes over property and financial cases (6.1%). The survey research leads to one more conclusion: Despite the strong emphasis placed on the so-called alternative methods of regulating disputes as well as the relatively high costs of proceedings before the court, financial and otherwise (e.g. in the form of wasted time, the need to prepare for the proceedings, stress and uncertainty as to the

outcome), Poles are somewhat more oriented towards fighting and a willingness to prove their rights rather than adopt an amicable attitude and willingness to reach a compromise. Without a doubt, the chances for the enforcement of judicial decisions play an important role here.

An attempt was also made to examine the assessment of courts and judges with regard to their independence and impartiality, independence from the media, resistance to the influence of other participants in the proceedings (attorneys at law, prosecutors, experts and other participants) as well as the fairness of judgments and overall professionalism.

The gathered data indicate that on a five-point scale the independence of courts was evaluated favourably, when asked about in general. Specifically, 46.1% of the respondents strongly agree or agree with the declaration that nobody has influence on judicial decisions and judgments, 24.4% disagree and strongly disagree. The opinions concerning the professionalism of judges are also high. 55.8% of the respondents agree or strongly agree with the opinions that judges demonstrate high professionalism and experience in hearing cases, 9.6% disagree or strongly disagree. Further questions about the independence of courts, however, indicate inconsistencies and contradictions in the opinions of the respondents.

Thus, 25% of the respondents disagree or strongly disagree with the opinions that judges succumb to undue influence, whereas 42.8% agree or strongly agree with such opinions. 40.6% of the respondents agree or strongly agree with the opinion that courts are free from any political influence, especially the influence of political parties, whereas 27.4% disagree or strongly disagree; 25% disagree or strongly disagree with the statement that courts are influenced by the media, and 42.8% of the respondents agree or strongly agree with this statement. In the light of the opinion of the majority of the respondents, courts succumb to the influence of lawyers, prosecutors and experts, and the pressures from the participants in the proceedings. 18.1% of the respondents disagree or strongly disagree with the statement that judges are impartial in relation to the participants in the proceedings, whereas 47% agree and strongly agree with it.

The respondents differed rather considerably in their opinions as to whether courts pass fair judgments: 29.5% of the respondents disagree or strongly disagree with the statement that courts always pass fair judgments, whereas 36.5% of the respondents agree or strongly agree with it (CBM Indicator 2009).

In conclusion, a major part of Polish society believes that in general nobody can influence judicial decisions and that courts are under no influence of political parties, yet a considerable part of the respondents is of the opinion that judges are not impartial, but instead they succumb to the influence of the media and other participants in the proceedings – which affects the realisation of the fair trial principles.

Moreover, as indicated by the data, whether one participates in proceedings before a court has no direct influence on the opinions of the respondents. This finding is confirmed by the comparison of the declared level of trust in supranational and international courts (the European Tribunal of Human Rights, the European Tribunal of Justice, and even the Tribunal of The Hague), domestic courts of the highest level (the Supreme Court and Constitutional Tribunal) and various types of domestic courts. The respondents declare higher trust in European courts and supranational courts than in the Polish courts (CBM Indicator 2009).

Supranational courts and domestic courts of the highest level – with which only few respondents had any direct contact and about which they know almost nothing – enjoy the highest level of trust in the opinion of Poles. Thus, 7.7% of adult Poles declare full trust in the European courts and international courts, only 0.7% declare a complete lack of trust in such courts, whereas nearly 50% of the Poles surveyed declare that their level of trust is 5 and 6, which indicates above-average trust (an increase of 10% in comparison with the abovementioned declared average level of trust in Polish courts).

The survey was focused on the assessment of the work of the courts, the manner in which cases are heard, and on the functioning of the courts. Moreover, the respondents were asked about their level of satisfaction with the judicial decision with regard to their own case. The respondents were requested to assess the work of courts on a 1 to 5 scale with regard to the availability of information at court secretariats, the speed, professionalism and efficiency of service at the secretariats, the openness of the proceedings, the reliability of the evidence assessment, the efficiency of the court proceedings and the politeness of the court secretariats' personnel. On the basis of the findings it is possible to formulate a general conclusion that the respondents rather highly assess the work of the courts with regard to the abovementioned features. As the data indicate, the highest grade was given to the politeness of the personnel and to the professional service at court secretariats, and also, respectively, the openness of the proceedings and reliable assessments of evidence. The lowest scored was the assessment of the efficiency of the proceedings. The last of the mentioned opinions is reflected in the data on the duration of proceedings regarding the cases in which the respondents participated. In fact, in the opinion of a vast majority (58.7%), the proceedings last too long. In general, however, the assessment of the work of courts was rather high: the mean assessment on the 7-point scale is 4.27.

It should also be noted that the respondents participating in the proceedings were mostly satisfied with the judgment (68% of the respondents); one-third of the respondents were dissatisfied with the judgment as it did not satisfy the respondent or was unfair, or the case was lost. The majority, over 70% of the

respondents who participated in the proceedings, declared satisfaction with the court's argumentation, 29.1% of the respondents were not satisfied with it, assessing it as unclear, biased or unfair.

Summing up, the majority of the participants in the proceedings before the courts in Poland assess the work of courts positively. This includes persons who lost their cases. It is a significant and beneficial difference with the popular images of law and the application of law.

In order to examine the culture of the trial and atmosphere of the courtroom, the respondents were also asked about the features describing the conduct of judges. A list of 14 various features describing the conduct of judges during proceedings were presented to the respondents. The features included: chaotic – organised, emotional – logical, lenient – strict, unworthy of respect – respectable, unprofessional – professional, unfriendly – friendly, impolite – polite, careless – careful, unbalanced – composed, hasty – calm, biased – impartial, submissive – firm, superior – approachable, jocular/witty – serious. As the results of the analysis indicate, the mean assessment of each of these features is high – about 5 on a 7-step scale. Moreover, a vast majority (80.5%) of the participants in the proceedings before the court stated that the judge was in control of the proceedings, and the authority of the court was observed.

The personal culture of a judge and the outcome of court proceedings play an important role in the shaping of trust in courts and the judiciary. The level of trust is definitely higher when a judge conducted a trial politely and professionally rather than coldly/impolitely and with an air of superiority, and when a respondent declares that he or she won a case in a court and was pleased with the judgment and the statement of reasons. From the respondent's perspective, the outcome of the proceedings is more important than the personal culture of a judge. A positive outcome increases the level of contentment (satisfaction and the feeling that a fair trial was conducted).

Finally, the duration of court proceedings – in particular the length of the proceedings and waiting time for the court's judgment – is very important with respect to the level of trust placed in courts and the judiciary. Trust in courts and the judiciary increases as the duration of court proceedings decreases, in accordance with the principle that courts should judge quickly, effectively and justly. According to the data analysis, trust in courts and the judiciary is thus a direct reflection of personal experience connected with judges, the institutional efficiency of courts, the duration of court proceedings and the effectiveness of the enforcement of decisions/verdicts.

The level of trust in public institutions (including courts) is diversified, and the institutions assessed by the respondents have different locations/positions in

social space. In order to present this mutual position of institutions in relation to the public trust survey, a distance matrix between the assessed public institutions was constructed on the basis of multidimensional scaling. Multidimensional Scaling, MDS, is a statistical technique enabling detection of so-called latent variables that, although not directly observed, explain similarities and differences between the studied objects (in this case, public institutions). At the beginning of the procedure there is usually the distance or similarity matrix between the objects. This may be, for example, a correlation matrix. Multidimensional scaling aims at the distribution of objects as points in n-dimensional space, so that similar objects are closer to one another. The result of the analysis is for each object *n* of real numbers forming the Cartesian coordinates[6].

The distance matrix of the studied public institutions was created on the basis of the arithmetic means of the evaluations of trust in these institutions. The obtained results were subject to multidimensional scaling with the use of the ALSCAL algorithm (Alternating Least Square Scaling). This algorithm enables the analysis of data measured in order, interval and quotient scales; it also ensures the possibility of analysis on discrete and constant, symmetric and non-symmetric data.

The application of multidimensional scaling for the data from the trust in courts and the judiciary survey would enable the creation of a geometrical representation of the analysed objects, i.e. public institutions and the presentation of similarity between them.[7] The positioning of public institutions in the context of trust using the ALSCAL algorithm is presented in the chart below.

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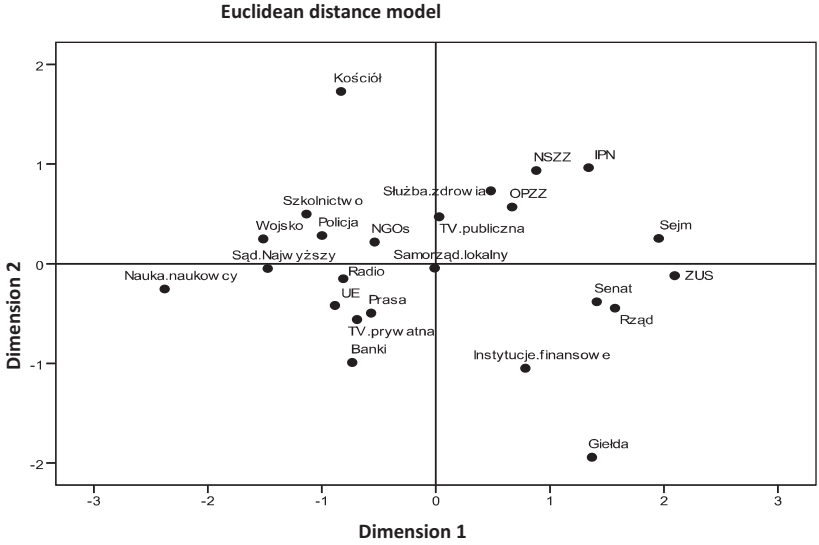
6 Multidimensional scaling is used for finding structure in the set of distances between particular objects. It is possible by attributing observations to particular places in conceptual space (usually two- or three-dimensional) so that the distances between the points in space, as close as possible, correspond to particular measures of non-similarity. In many cases dimensions of this conceptual space may be interpreted and used for better understanding of the data. If n=<3 (n number of dimensions) the results may be presented in a chart. Rotation of the coordinates system and the mirror reflection do not change the distance between the items so that the result of scaling may be subject to rotation or reflection. Most often it is done when the discovered dimensions correspond to geographical coordinates. Multidimensional scaling is an alternative method with respect to factor analysis.

7 In the analysed example the index of adjustment of the received model to input data (STRESS) amounts to 0.148 and the RSQ measure = 0.895. If the coefficient STRESS =< 0.2, the received configuration is in monotonic relation to the input data.

Chart 1: Social perception of distances between public institutions



Legend:

Kościół	Church
NSZZ	NSZZ (Independent and Self-Governing Trade Union
IPN	IPN (Institute of National Remembrance)
Służba zdrowia	Health Services
OPZZ	OPZZ (All Poland Alliance of *Trade Unions*)
Szkolnictwo	Education
TV publiczna	Public TV
Wojsko	Army
Policja	Police
NGOs	NGOs
Sejm	Sejm
Sąd Najwyższy	Supreme Court
Samorząd lokalny	Local self-government
ZUS	ZUS (Social Insurance Company)
Nauka, naukowcy	Science, scientists
Radio	Radio
UE	EU
Prasa	Press
TV prywatna	Private TV
Banki	Banks
Senat	Senate
Rząd	Government
Instytucje finansowe	Financial Institutions
Giełda	Stock exchange

The analysis of the chart makes it possible to state that the directly observed similarities between public institutions (the social positioning of institutions) may be presented as the resultant of two dimensions of social perception. Dimension 1 can be interpreted in the context of the implementation of private – public interests by institutions, whereas dimension 2 can be interpreted as the power – knowledge dominance[8]. The two-dimensional systematisation space distinguished under the analysis suggests that the original criterion for the shaping of trust in public institutions is the relation with public interest, whereas the secondary criterion is political neutrality.

According to these two criteria, the Supreme Court, in comparison with other public institutions, is positioned in the social consciousness as a politically neutral institution engaged on the one hand in the protection of the public interests/good, and on the other hand in the protection of private interests. The Supreme Court is perceived as a mediator of the interests of various social actors, a mediator independent of political pressure. Moreover, the Supreme Court is located among the institutions which are not involved either with politics or the market, and are rather connected with the protection of the public good. This finding, presented above in the distance model, supplemented by the data on the level of trust in the supranational law-applying institutions (European and international courts) focused on the protection of human rights, justify an argument that the protection of the public good and human rights protection are deciding factors for the level of trust in courts and judges, and for an empirical legitimation of the rule of law.

Concluding remarks

The rule of law presents a salient characteristic of liberal democracy; it is enshrined in constitutional and state law. However, this principle is to be reconsidered, especially after the collapse of authoritarian/totalitarian regimes. At those times, in order to establish an empirically rooted rule of law, i.e., to form an empirically valid popular conviction that the rule of law is protected, the legal principle should be understood broadly, including social knowledge about past human rights violations and social experiences with the injustices of the past.

The instalment of liberal democracy and the introduction of a market economy also constitute important contributions to the formation of popular opinions on the rule of law, measured by the level of trust in the judiciary.

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8 If we make a rotation (transformation) of the coordinate system for a better interpretation of data, the trust in public institutions appears to be shaped in the following dimensions: religion – economy and knowledge/law – tradition.

The findings of the public confidence in the judiciary survey indicate a significant increase in the number of contacts within Polish society with applications of the law, which is closely related to the consolidation of the market economy. They clearly indicate the trend, observed within the last years, consisting of the slow improvement of the opinion concerning the execution of laws. It thus appears that we approach the reversal of trends and the overcoming of the "transformation trauma".

In the light of the survey data, trust in courts is diversified and arranged in a hierarchy in social consciousness. The courts most trusted by the Poles are transnational courts, including European courts, as well as the supreme national courts (the Supreme Court and Constitutional Tribunal). Contact with a court and the respondents' experience connected with it are also important factors. Also, the final effect and respondents' satisfaction with their contact with courts are significant. The obtained results enable the formulation of further conclusions in that respect.

Compliance with the rules governing a fair trial, i.e. the application of procedures by courts and the fulfilment of procedural guarantees, are important for the level of trust. Moreover, the "soft" components of a fair trial appear to be significant for the shaping of trust in courts and judges, such as the appearance/architecture of court buildings, courtrooms' arrangement, judges behaviour in the courtroom and mutual respect shown by participants before a court. The influence of the said "soft factors" related to the execution of a fair trial should become the subject of further sociological research. It is worth indicating here other interesting relations, revealed by the analysis of survey data. What is particularly interesting is the assessment of the Supreme Court as a politically independent institution, and an institution positioned among those that are focused on the protection of the public good and human rights.

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Part II: The Sociology of Formally Embedded Informality

Liela Groenewald

Understanding Informality: Conceptual Lessons from Informal Settlement in Southern Africa

Introduction

Urban Sociology and Urban Studies more broadly have provided an intellectual home for the empirical study and the conceptual development of informality, primarily as it manifests in the sectors of the economy, politics, and housing. Since different definitions of informality betray normative assumptions about informality, these definitions also have implications for social justice. Descriptions of informality in hegemonic discourses that portray informality as separate or decoupled from the formal tend to portray informality as deviant, betraying normative assumptions that the formal ideal should be pursued or protected (Groenewald et al. 2013). Instead of strategies that empower those who resort to informality, these assumptions can lead to strategies to regulate, control or repress informality. This is often to the detriment of marginalised communities.

In the context of South Africa, where three hundred years of colonialism and legislated racial discrimination lasting until the late twentieth century have produced large-scale, deep and chronic poverty coupled with extraordinary levels of inequality, researchers have emphasised the ethical obligation on social scientists to develop accounts that could resonate with the poor, rather than to reiterate and rationalise the perspectives of the well-off classes. Failing to heed this obligation leads not merely to ethical difficulties, but also to concerns about rigour, since significant knowledge gaps and biases arise from the overwhelming domination of social science by the accounts of the powerful (Nader 1972, 292–295; Connell 2007, 216). Taking account of the knowledge risks involved in generalising about informality based on empirical work in the comparatively privileged context of the global North, the purpose of this paper is to demonstrate that the knowledge and theories of informality can be advanced by taking account in particular of work from southern Africa, where informality is concentrated.

Mindful of the need to produce work that excavates the perspective of the marginalised, rather than to simply reinforce power relations, scholars working within the critical paradigm have embraced definitions that emphasise the particular precariousness of people who build livelihoods in the informal sector, the

conceptual distance between hegemonic definitions of informality and the aspirations of people who employ informality in pursuit of incremental improvements to these precarious lives, and the need for intellectual interventions to shift dominant thinking in a direction that can resonate with and assist ordinary people.

The question of whether the formal and informal sectors are separate entities or are entangled with one another has therefore arisen as a central concern for critical scholars. In this regard, important lessons can be drawn from diverse experiences of urban informality. To do so, this paper draws on the theoretical foundations of a research project[1] focused on the interaction between the extremes on this formal-informal continuum, i.e. the response of the formal state to informal settlement in the context of post-apartheid South Africa. First, the paper draws attention to the plurality of experiences of urban informality that is available to social researchers. Next, public policy responses and their implications for informality are considered. Based on this, the paper concludes that a conceptual shift with regard to the definition of informality is necessary for the sake of accuracy and rigour.

Plural experiences of urban informality

At the beginning of the twenty-first century, for the first time since the dawn of humankind, most people are living in cities (Bekker 2006; Davis 2006). In about twenty years, city dwellers are expected to constitute two-thirds of the world's population. Almost all of this projected urbanisation will occur in less developed regions, so that not a single local region where the majority is rural should remain by 2030 (United Nations Population Fund 2005). In 2001, the UN estimated that nearly a third of the global urban population, numbering nearly a billion people, lived in slums (UN-Habitat 2003). Poor people constitute approximately half of the 7 billion people in the world (Population Reference Bureau 2011). In less developed countries, where population growth of about 76 million people per year is taking place, the proportion of people living in poverty is also escalating. As a result, the world's largest numbers of slum dwellers can be found on the continents of Asia and Africa as well as in Latin America (UN Habitat 2003).

The need for comparison across countries has led to the widespread use of the UN definition of urban areas as those areas with more than twenty thousand inhabitants within its boundaries and of cities as those with more than a million inhabitants (Kasarda and Crenshaw 1991, 470). The unprecedented

1 I wish to thank the National Research Foundation (NRF) of South Africa for funding this work.

pace of urbanisation and the concentration of poverty in informal settlements may be interpreted as the key challenges facing the local state in the developing world today. The pace of urbanisation is both new and unique to the developing world, but the process of urbanisation fits patterns of economic and social change that occurred in the West during its earlier period of industrialisation (Kasarda and Crenshaw 1991, 481–482). This leads to explanations of urbanisation that consider earlier urbanisation in the West and later urbanisation in the developing world as continuities of the single historical process of capitalist expansion (Kasarda and Crenshaw 1991, 483). Dependency or world systems interpretations, on the one hand, consider underdevelopment as the outcome of "plunder and exploitation of peripheral economies by … core areas", whereas interdependency theories regard urbanisation as the result of capitalism, which encourages the concentration of resources, infrastructure and production (Clark 1998, 88). Alternative explanations of urbanisation include modernisation theories, which consider industrialisation rather than capitalism to be the main driver of urbanisation in the developing world, and urban bias theories, which consider powerful political elites to be reliant on urban resources, leading them to implement policies that promote cities and neglect rural areas (Kasarda and Crenshaw 1991, 484). Whatever the explanation, this urbanisation has also seen a concentration of poor people in informal settlements, often called slums.

Although the terminology of "informal settlement" is new, academic concern with the phenomenon is not. Slums have been mentioned in the literature for as long as urbanisation has been a focus of sociological analyses. In his seminal 1845 rendition of *The Condition of the Working Class in England*, Engels (1845, 28) describes a settlement of makeshift dwellings, which in physical terms corresponds to a layman's understanding of contemporary informal settlements:

> Passing along a rough bank, among stakes and washing-lines, one penetrates into this chaos of small one-storied, one-roomed huts, in most of which there is no artificial floor; kitchen, living and sleeping-room all in one. In such a hole, scarcely five feet long by six broad, I found two beds – and such bedsteads and beds! – which, with a staircase and chimney-place, exactly filled the room. In several others I found absolutely nothing, while the door stood open, and the inhabitants leaned against it. Everywhere before the doors refuse and offal; that any sort of pavement lay underneath could not be seen but only felt, here and there, with the feet. This whole collection of cattle-sheds for human beings was surrounded on two sides by houses and a factory, and on the third by the river, and besides the narrow stair up the bank, a narrow doorway alone led out into another almost equally ill-built, ill-kept labyrinth of dwellings. … The whole side of the Irk is built in this way, a planless, knotted chaos of houses, more or less on the verge of uninhabitableness, whose unclean interiors fully correspond with their filthy external

> surroundings. … Privies are so rare here that they are either filled up every day, or are too remote for most of the inhabitants to use (Engels 1845, 28).

Engels (1845, 34) criticises the slum-clearing response of the local state for failing to provide a solution, but appears unconcerned about painting working class areas as areas of dirt, crime, disease, and early death. His description represents an early instance of the tendency to understand informal settlement from the perspective of its physical structures, social shortcomings, and deviance from the mainstream norm. It should be noted that even during these earliest recorded cases of urbanisation linked to capitalist industrialisation, informal settlement emerges as a salient concern closely associated with access to the city and to state-society relations or citizenship.

By half a century later, Simmel (2009 [1908]), who considers a lack of shelter to represent the most extreme kind of poverty, argues that the homeless *Penner* who find shelter for the night in seasonal haystacks in the Berlin area are pushed into hiding because their original communities cannot bear the sight of poverty, so that these individuals become a new community bound together primarily by poverty.

It is clear, then, that neither informal settlement nor repressive state responses are new, or particular to the Global South, although contemporary informal settlement is concentrated in those parts of the world that have high levels of inequality, is most prevalent in sub-Saharan Africa as compared to other regions (UN-Habitat 2003), and is manifested in the visible concentration of poverty in informal settlements. Existing theory relies heavily on evidence gathered in the North. In this regard, urban Africa is under-explored. More inclusive considerations of informality are therefore critical for increasing our current understanding.

Public policy and the production of informality

Despite broad similarities between contemporary urbanisation in the developing world and the urbanisation of the West from the mid-nineteenth century, important differences have also been identified. Greater degrees of development, access to more natural resources, and a context of far less competitive economic production had eased the difficulties associated with urbanisation at the time of industrialisation in the North (Kasarda and Crenshaw 1991, 468). The exponential increase of the urban population has resulted in the attainment of megacity status by some cities in the developing world (Kasarda and Crenshaw 1991, 469). Two factors contributing to the developing world's average urban growth rate of approximately double that experienced during European industrialisation, are its inability to "export its surplus population" to the colonies as Europe did, coupled

with the higher natural population increase, which was estimated during the 1990s at roughly double the rate experienced by industrialising European cities (Kasarda and Crenshaw 1991, 468).

Cities or countries that have been occupied by foreign powers count the cost in the loss of human life, the decimation of indigenous architecture and culture, the repression of indigenous language and education, and trauma, all with crippling consequences for human capital and economic development. The legacy of over three hundred years of European colonial occupation and extraction – from the mid-seventeenth century until the late twentieth century – has left cities of southern Africa with severe backlogs in the most basic infrastructure development.

City growth in the developing world has contributed to the dilemma that the demand for state services has grown beyond what the local state has the capacity to provide (Curtis 1999; Smith 2000; Qomfo 2005). Economic changes have also informed the rationalisation of urban subsidies or grants, and the resulting inadequacy of state-provided services has contributed to conflict between citizens and the state (Roberts 1989, 673). Since "city-space remains the node where multiple identities and modernities emerge, are contested and refashioned in context to the way citizenship has been defined and organized" in Patel's (2006, 34) conception, informality can be understood as a particular articulation of modernity.

While local government in South Africa is required to consult communities, the ability of individuals or communities to participate in such formal consultation fora has proved to be particularly constrained by informality. The questionable legal status of informal settlements often means that the people who live there have access only to "clientelist politicians and bribe-seeking public employees" (Mohamed 2006, 36).

With regard to participation in formal local consultation processes, some writers argue that poor and voiceless people are excluded from being able to provide input into local policies by inadequate systems. The constitution obliges municipalities to consult their constituent communities, but not to establish ward committees (Steytler and Mettler 2001, 2). Even where ward committees are established, they may reinforce exclusion or fail to serve the interests of the excluded. Social movements that operate across ward boundaries may be represented on ward committees. But, based on a study conducted in Western Cape towns, Bekker and Leildé (2003, 144) show that it is largely middle-income people who maintain both loyal and critical local participation, to the extent that "the affluent as well as the poor had withdrawn from local civil society". This concern is echoed by Mohamed (2006, 45), who concludes that in South African cities, including Johannesburg, "disadvantaged sectors of the urban population,

especially the informal settlement communities, are isolated from the processes of policy-making" due to their exclusion from ward committees.

The obstacles to the participation of informal settlement residents in ward committees include the sectoral constitution of these committees, and the lack of ward committees' capacity to function effectively and regularly meet with communities (Mohamed 2006, 39–40). This lack of capacity is illustrated by a Rustenburg case in which, on the one hand, ward councillors who chaired ward committees were ultimately able to control the agenda of ward committee meetings, and, on the other hand, politicians and residents in poor areas shared an inability due to limited education to deal meaningfully with technical aspects of development plans (Putu 2006, 29–30). Residents of informal settlements not only suffer from a lack of basic services, such as water, sanitation and electricity, but in most cases also from a lack of essential social services such as health centres, roads, drainage, schools, and market places (Mohamed 2006). In the absence of these facilities, life may consist of a daily drudgery in pursuit of bare necessities, and regular meeting attendance may simply be impossible. A broad range of factors thus contributes to the limited impact of the residents of informal settlements on local government.

On the one hand, public participation has been institutionalised as part of formal political processes, but on the other hand, citizens of the developing world have also played an active role "in shaping urban space" as they secure amenities by means of self-help and reciprocity rather than to rely on the state (Roberts 1989, 686–687, 672–673). Informal work and informal settlement are two significant self-help strategies that are employed by poor city residents. In the face of exponential population growth, informal work has generated substantial interest due to its potential role in labour absorption and job creation (Kasarda and Crenshaw 1991, 477). The considerable contribution of informal settlement in meeting the need for shelter has also been recognised (Kasarda and Crenshaw 1991, 480). A substantial difficulty in studying the informal sector has been the challenge of defining informality and drawing the boundaries of the informal sector (Kasarda and Crenshaw 1991, 494). Common mistakes have been to assume a concentration of recent migrants in informal work or in informal settlements and to assume an overlap between those who make a living by means of informal economic activity and those who live in informal settlements (Castells 1983; Kasarda and Crenshaw 1991, 478). For UN-Habitat, it will take time and concerted effort to turn the tide of informal settlement in sub-Saharan Africa (UN-Habitat 2010). For many academics and analysts, if population and urbanisation projections are anywhere near correct, then the growth of informal settlement is inescapable (Kasarda and Crenshaw 1991, 480; UN-Habitat 2008).

It has become clear that informal settlements represent different things to their residents and to those who look in on them from the outside. Rather than viewing informal settlement as a "last resort", residents gain privacy, autonomy, informal ownership, and integration into "vital, if oftentimes poor, communities" by moving from "squalid rental quarters or alternative living arrangements" to informal settlements even though their access to public health facilities, transport, and security of tenure remains limited (Kasarda and Crenshaw 1991, 480). A significant portion of urban residents rely on informal housing because they are unable to afford formal residential stock (Bredenoord and van Lindert 2010). As a result, only remedial schemes such as site-and-service programmes are likely to ameliorate the shortage of shelter (Kasarda and Crenshaw 1991).

Public policy responses have often seemed oblivious to this aspect of informal settlement. Based on a comparison of state responses to informal settlement in Brazil and South Africa, Huchzermeyer (2002, 98) identifies two possible founding interpretations that drive state responses to informal settlement. The first sees informal settlement as a result of class relations and seeks to support mobilisation, participatory intervention and pressure for broad-ranging policy changes, while the second sees informal settlement as a threat to conservative, middle-class interests and pursues relocation of informal settlement residents to segregated developments.

Apart from their lack of affordability for the poor, another problem with large-scale formal housing projects is their location at the periphery of urban areas where development is most affordable for states, thereby exacerbating residents' struggles to access employment, public transport and social services. Alongside residents, states also experienced problems with the peripheral concentration of low-cost housing: the cost of providing basic services increased with distance from the centre; states were obliged to include core housing units from where residents could begin the construction of their dwellings; and infrastructure development was associated with an increase in self-help informal housing at the urban periphery (Bredenoord and van Lindert 2010).

Even outside the global South, the insecure position of informal settlements in comparison to the residents and government of the formal, planned city has caused Yiftachel (2009, 90) to name these power relations "colonial", arguing that the term can be used to characterise city management that enables confiscation and annexation, and institutionalises in the urban political economy a code for expanding dominant spatial and other interests, exploiting marginalised groups, essentialising identities as "different and unequal", and for involuntary, hierarchical segregation. Despite the difficulties that contested definitions, the questionable legal status of slum dwellers and the fluidity and vulnerability of poor

livelihoods present to states, social workers, researchers, and activists, it is clear that the high profile of the Millennium Development Goals and the target of improving the lives of 100 million slum dwellers have helped informality to emerge as a key consideration with regard to inclusion in citizenship and access to its benefits.

Contested definitions of informal settlement

The broad spectrum of theoretical approaches to the state and informal settlement provide no easy solutions to achieving the ideals of inclusive citizenship. Based on a variable-sum concept of power, consensus theories have interpreted the democratic state as a mediator of the various interests in society that ultimately promotes social cohesion in the common interest. Government, in this view, is based on consent. Consensus theories fly in the face of the plight endured by the impoverished majority of the urban population of present-day sub-Saharan Africa. Cities in Africa achieve the highest Gini coefficients on the planet (UN-Habitat 2008), indicating vulgar contrasts in standard of living. The gradual policy and power fluctuations of a pluralist democratic system offer only a crassly inadequate response to the welfare needs experienced urgently and constantly by the poorest residents of these cities.

Despite the inadequate attention that the functionalist perspective pays to conflicts of interest, its distinction between the functional and dysfunctional outcomes of a single event exposes a need to understand the continuities between everyday practices and oppressive or violent actions, an insight that is critical for effecting social change (Johnson 2000). This is helpful in the case of informality, where the constant iteration of the formal ideal arguably reproduces the precariousness of informality and thereby contributes to the reproduction of informality.

In contrast, conflict theorists have defined the state as a coercive institution that protects positions of privilege. Although a Weberian conception of the state as relying on the bureaucracy as well as a monopoly on the legitimate use of violence has been popular, more recent work indicates that the means by which the state controls the population has multiplied (Foucault 1975). The collusion between structures and agents confirms the need, identified by feminist and postcolonial theorists, to discover ways of escaping imposed taxonomies and ways of reading the world, also with regard to formality and informality.

In pursuit of more inclusive incarnations of citizenship, contemporary authors seek alternatives to those definitions of informality that pathologise informal settlements and their residents. These settlements often represent something

very different to residents compared to what it represents to outsiders. While the phrase "informal settlement" is often used by authors in Africa and Latin America, the term "slums" is more common in the literature from the North. The two do not overlap exactly, and both are plagued by conceptual difficulties. Earlier scholarship commonly referred to freestanding informal settlements as "shantytowns", as in the work of Crankshaw (1993, 31, 50), who considers this form of housing to be one manifestation of homelessness. Such an interpretation may be sympathetic to the desperate plight of residents of informal settlements, but raises problems because it obscures the gains that these settlements represent to residents, including a foothold that gives them access to cities and which can easily be ripped out from under them by insensitive government policies. This problem persists in the definition of the term "slum" under the Millennium Development Goals in 2005 as "any area that met the following six criteria: lack of basic services, inadequate building structures, overcrowding, unhealthy and hazardous conditions, insecure tenure, and poverty and exclusion" (Huchzermeyer and Karam 2006, 2). Given these shortcomings of common-sense and dominant definitions, Huchzermeyer and Karam (2006) argue that the central, defining characteristic of informal settlements is that of tenure insecurity, even as they acknowledge that this insecurity may be exacerbated by a range of other hazards.

A central concern that arises with regard to the definition of informality is the question of whether informality can be understood as decoupled or separate from the formal sector. In this regard, critical scholars have argued that it is important *not* to understand the informal sector as a decoupled underclass of housing, work or politics. On the messy continuum from formal to informal, different instances of informality rather appear to be differentially entangled with the formal economy. Leaning towards the formal side of this continuum are those informal strategies that people use to access or manage formal services such as the way in which *Štela*, a local interpretation of social capital, is used to access services in Herzegovina (Koutkova 2013) or when judges informally present barriers to public access to courtrooms (Burdziej and Pilitowski 2013), while on the informal side one finds the collective savings organisations of poor communities (Tshoose 2009). In these intermediate or grey areas, it is not difficult to demonstrate that informality and formality are entangled. The most devastating implications for social justice have, however, emerged from definitions that crudely decouple the informal from the formal by pathologising informality as deviant based on descriptions of a physical or other inadequacy. An example of this occurs when dwellings in informal settlements are bulldozed by the state because they contradict the ideal of neat, formal homes, even when

such homes are not available. It is critical, therefore, to consider the entanglement of formality and informality precisely where they occur further removed from each other on the extremes of this continuum. The description of global institutions and the formal, state response to informal settlement in cities of southern Africa present such an opportunity. The state response to informality betrays a hegemonic definition of carefully controlled formality as the superior option. This conception does not take adequate account of the experiences of ordinary people whose circumstances have led them to seek recourse in informal strategies.

The difficulties of living in informal settlements are substantial, but recent empirical work in five southern African cities indicates that the residents of informal settlements populate these homes and communities not only out of a need for shelter, but also to secure certain advantages. Rather, informal settlement residents are aware of contradictory dimensions of their home communities, including many different "deficiencies, gains, and aspirations" (Groenewald et al. 2013, 107). While the deficiencies are familiar and have been emphasised repeatedly in the hegemonic literature, the gains and aspirations include a place in the city versus no access to city life, the close proximity to jobs, and freedom of movement (Groenewald et al. 2013). This work therefore presents substantial challenges to hegemonic definitions of informality and the normative assumptions that they accompany. Such judgments contribute to precariousness and thereby reproduce informality, but they also ignore the conceptually distinct articulations of ordinary people about their own involvement in informality. This approach resonates with work emerging from the Latin American context, for example the concept of the kinetic city conceived by Hernández et al. (2010, xiii–19), which is characterised as spontaneous, dynamic, productive, and interlinked and responding to the biases of the formal economy. Like their southern African contemporaries, Hernández et al. (2010, xiii) recognise that it is far more complex to delimit informality than to identify the shortcomings of hegemonic definitions.

Emphasising agency and spontaneity as key traits of informal settlement successfully avoids the pathologising tendencies of other hegemonic discourses about informality, but carries an inherent risk in such an approach, which is that of obscuring class structure and conflict of interest, while romanticising informality. Recent empirical work on informal settlements in southern Africa demonstrates that residents seek better services and greater security, with their primary concern being their acute vulnerability to state-sanctioned evictions. In Luanda, the capital city of Angola, residents of the most central informal settlements indicated that they were the most vulnerable to violent eviction

projects implemented by the state in order to make way for private development (Raposo 2008, 4–5). In interviews conducted in Cape Town, South Africa, residents described informal settlements as lacking a future, since they "do not know where they will live and how they will live wherever they will be" (Tredoux 2008, 3–4). Residents told Tredoux (2009) that they urgently needed essentials such as water, electricity and toilets. In the Gauteng province of South Africa, where the legacy of colonialism and apartheid includes an acute lack of adequate shelter for generations of families trapped in chronic poverty, residents of various informal settlements expressed a "process of frustration over many decades" (Huchzermeyer 2008, 3). This includes the tendency that the social and economic vulnerability of residents of informal settlements are worsened by being relocated to developments far from the urban centre (Huchzermeyer 2008, 5). Residents of informal settlements lack the means to access the formal rental or property market; but while the informal strategies they use to secure shelter serve to strengthen their own sense of security within their communities, they are not recognised by the state (Rubin 2008, 6). While residents of informal settlements therefore require services and other forms of support, the primary concern shaping their strategies and fears is that of their vulnerability to eviction. This self-reflective conceptualisation of the residents of informal settlements contributes to the argument that the key characteristic of informal settlements that researchers should recognise, is that of tenure insecurity (Huchzermeyer and Karam 2006, 2). Risk and insecurity are contributed primarily by the state inclination to protect the property market and private development opportunities at the expense of security for the poor, whose agency and innovation open up opportunities within the gap left by various regimes of state austerity or welfare.

While a conceptual binary between formality and informality is limiting, an analytical approach that obscures class similarly lacks rigour. The growing group of authors who work within this framework criticise the dominant construction of the formal and informal sectors as a binary, but avoid the fallacy of universalising or generalising across distinct interest groups who are in competition with one another by recognising both the acute vulnerability of people in informal settlements and their agency with regard to forging a place for themselves in the city despite a hostile social structure. The interconnections and interdependency of the formal and informal sectors must be foregrounded in an adequate account of contemporary cities, since an analytical approach and distinct policy formulations are required for understanding and responding to people whose lives are constantly exposed to risk and those whose livelihoods are more stable and secure.

Conclusions

This paper set out to demonstrate that attention to the experiences of ordinary, poor people living in informal settlements in the global South and in particular in southern Africa, where informality is concentrated, can strengthen both the conceptual rigour and the broader legitimacy of social science conducted in the urban spaces of the twenty-first century. The paper showed that urban experiences vary widely, and that theorising that draws on the global North alone inherently runs the risk of erroneously generalising parochial findings. The pathologising effect of dominant policy responses further demonstrated the potential for knowledge and legitimacy gaps within contemporary analyses of informality. Despite significant differences in the context and texture of urban life across the globe, the recent global economic recession has created conditions that increase the relevance of the informality literature based on empirical work in the global South for the global North as well. It has been argued that the empirical work emerging from southern Africa and elsewhere in the global South provides a foundation for a conceptual shift with regard to informality.

Informality is a broad idea that can be difficult to pin down. Together with a growing international interest in slums, the growth of the South African informal sector in the last decade of the twentieth century has given rise to an extended literature on informal housing and land tenure, informal trade and labour, and informal politics. Partly because informal settlement occurs in plural forms across the world, it is a hotly contested and questioned concept. Recent research from southern Africa, however, opens up the possibility of integrating ordinary people's conceptions of informality into academic definitions, with the promise of gains both for the residents of informal settlements and for scholars. Specifically, a shift of definition to recognise the particular precariousness contributed primarily by the state, and to balance this challenge with the gains and aspirations of those who resort to informality, creates conceptual problems for a purely repressive state response. Such a shift not only facilitates scholarship oriented to the interests of marginalised, informal communities, but is also more comprehensive than hegemonic and pathologising definitions, which has the benefit of not only strengthening the conceptual rigour and accuracy of social research, but also the broad legitimacy of social science in the international context of austerity and high levels of unemployment.

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Stef Adriaenssens, Dieter Verhaest and Jef Hendrickx

Lineland and the Underground Economy: The Multidimensionality of Informal Work by Secondary Education Students

> His subjects […] were all alike confined in motion and eye-sight to that single Straight Line, which was their World. It need scarcely be added that the whole of their horizon was limited to a Point; nor could anyone ever see anything but a Point. Man, woman, child, thing – each was a Point to the eye of a Linelander (Abbott 1884, 55).

Whenever states impose formal rules on people in a territory, noncompliance will occur. There is no empty set of underground activities in any given modern society. This is not to say that underground activities have a comparable frequency in different societies. The width and breadth of informal activities depends upon a number of socio-economic and personal characteristics. Apart from their *pure* sociological relevance, underground activities have a number of economic, political and social effects. For all these reasons, it is essential that the phenomenon is researched in a conceptually consistent and valid way.

This text primarily aims to contribute to the methodological knowledge of informal activities. It attempts to do justice to the true nature of informal activities by taking their multidimensional and gradual nature into account. The analysis of this phenomenon is applied to the part-time paid work often performed by students. The evidence shows a substantial activity rate of students in labour markets in virtually every country. As is the case in every other category of employment, not all of this work is declared to the proper authorities, is regulated by the formal institutions of society or is protected by government regulations and enforcement. In short, a substantial part of the paid work carried out by students takes place within the informal economy.

However, the existing literature does not excel in a careful dissection of the informal nature of student work. The basis of informality may lie in the violation of different types of rules: taxes, social security regulation, permits, health and safety legislation, labour law and so forth. One should therefore not speak of *informality*, but rather of *informalities*. At the same time, the transgression of most rules is not of a binary nature either: in reality, transgression is an ordered feature. Indeed, the central task of this paper is to show that different dimensions, measures and categorizations of informal work may have a significant impact on the outcome of any study.

In the first part we build our case starting from a careful definition of what "informal activities" entail. This phenomenon then is connected to the world of student work. The second section introduces the data collection from the Belgian *Student Employment Survey* and how these data will be put to use. The third section then presents the results of the analyses.

Problem: Student work and the informal economy

The introductory section explains the theoretical rationale of this contribution. Therefore we begin by building upon our understanding of the literature regarding informal activities in the first two subsections. We start by developing the agreement that seems to exist about the concept and the main paths into informal work and consumption. Most informal economy studies reduce the subject to a one-dimensional and binary phenomenon.

In reality it is multidimensional and ordered. The problem is *not* that this is introduced as a stylized fact in order to make measurement possible; that is wholly understandable and a legitimate approach. The problem is that most commentators do not acknowledge that a form of reductionism is taking place. The second subsection develops this general critique.

The final subsection introduces the specific problem of informal work by students. Students are among what might be called the "usual suspects" of informal work. In the third subsection we briefly look into the literature on part-time work done by adolescents during their education.

What "informality" refers to

In this subsection we explore the concept of informality in the literature on underground and informal activities. Our focus is mainly on work, although the general discussion is also applicable to underground aspects of consumption. One of the general problems of this literature is its conceptual disarray. Nevertheless, underneath the apparent lack of agreement, some conceptual consensus exists. We build upon this latent concurrence to propose a definition of informal activities in relation to formal, underground, criminal and self-provisioning activities. Within the informal sector, some agreement exists regarding the main paths into informal activities. This general model is also explained.

As in other uses of the word "informal", its meaning can only be understood in relation to those things that are defined as "formal". In the economic realm of work and consumption, formality and informality primarily refer to the control and protection, as well as the meddling in, of activities by the polity. This starting point excludes from the world of the formal economy all activities that escape in

one way or another from the supervision, regulation, taxation, enforcement and interference of the government at large. Feige (1990) used the phrase "underground economy" for this largest set of non-formal activities and transactions. The problem is, however, that the drug baron, the housewife, the beggar, the street vendor and the citizen paying the plumber in cash for the heating repair, are in this way all in the same "underground" boat. It requires little imagination and even less social-scientific rigidity to see that such a diverse company and set of activities is difficult to describe or analyse. Nevertheless, this is the starting point of most conceptualisations of the economy that is deemed not to be formal.

One of the problems with research into the underground economy is that many of its subdivisions are used with slightly different meanings, and there is no agreement as to which type of activity refers to which concept. However, underneath the Babel-like confusion of words and meanings (a good overview is given in Gërxhani 2004), there is considerable conceptual agreement about a further distinction of underground activities into three relevant subtypes. The agreement goes as far as the distinction between three types of activities that somehow elude government involvement (or attempt to do so). Most conceptual explorations distinguish between the non-monetary, the criminal, and the informal area in underground economic life (Feige 1990; Schneider and Enste 2002; Portes and Haller 2005). In some cases, these activities are hardly regulated by the state at large, and no exchange of money in return for commodities is involved. This is the world of self-provisioning in the household or other primary groups, neighbourhood reciprocal relationships and voluntary engagement. The "underground" nature is mainly due to the fact that the formal registration of the economy, as captured, for example, in national accounts or labour market statistics, does not count the added value or activities comprised in this non-market sphere (Chadeau 1985). The second domain of underground activities involves the production, distribution and consumption of commodities for the marketplace, where these commodities are illegal in nature (Losby et al. 2002, 6). This of course depends on the regulation applicable to the territory at hand. Illicit drugs are more or less forbidden commodities in all countries of the world, but in some countries the ban also applies to diverse things such as the purchase of physical sexual services, alcohol, some sorts of meat for consumption (e.g. pork or dog) or the use of certain additives. This second economy of illicit commodities is usually defined as the criminal or illegal economy. This contribution, however, also deals with a third type of underground activities, which we define as "informal economic activities" (following Feige 1990, 992; Portes 2010, 134). The informal economy comprises those activities that are legal by law, but some regulation is transgressed in the process of producing or distributing the commodity.

This may refer to the transgression of rules such as labour regulations, migration status, taxation, licensing or credit. For the remainder of this contribution, we will confine ourselves to these informal economic activities.

Within the informal sector there is one more distinction between two possible motivators of informal activities that seems to have considerable support from different students of the informal economy (in the sense defined above). There is some agreement regarding the way people are motivated or pushed into informal activities (see e.g. Portes and Haller 2005; Williams and Round 2008; Oviedo, Thomas and Karakurum-Özdemir 2009), although, once again, the criterion and ensuing types get different names. For reasons of clarity and concision, we will make use of the binary distinction developed by Perry et al. (2007). This typology distinguishes between two ideal typical paths that lead to engagement in the informal economy: exclusion and exit.

The first logic of *exclusion* refers to people without access to formal employment (or also: consumption) due to a number of pressures or barriers. Their lack of entry opportunities into the official job market, leads to segmented labour markets with little mobility between the official job market and the informal. The relative inaccessibility of formal labour markets pushes workers to engage in informal activities, often forced by the sheer drive for survival. Some have argued that the emergence of a dual labour market follows from the increased (international) competition between large formal firms, pushing them towards informal employment through subcontracting or direct hiring at a lower cost (Portes, Castells and Benton 1989). Notwithstanding the relevance of increased competition, the entry barriers to the formal labour market are all too often of a regulatory or fiscal nature. For instance, when the polity is not able to effectively enforce its immigration regulation, a relevant number of inhabitants may be forced to provide for themselves through informal income. High tax levels and social security contributions may also lead to the exclusion of a part of the labour supply from the labour market of formal jobs, pushing them into the second sector of informal employment.

The second lens for highlighting, or approach to, informal activities, *exit*, prioritizes the positive choice workers or consumers may make for the informal option. The basic logic here is that, for instance, workers have a choice between formal and informal employment, and that their preferences and the given supply of jobs makes them better-off in the informal sector. Possible advantages are the exemption from cost-increasing taxation, the reduction of administrative burdens and flexibility. At the same time, the possible advantages of formal employment may be insignificant, depending on the relative quality of the institutional architecture of the polity (compared to the cost of compulsory contributions, that is). Indeed,

the empirical evidence indicates that the quality of the institutions and the legitimacy of the government predict the level of engagement in informal activities quite well, both at the individual and the societal level (Kus 2010; Adriaenssens and Hendrickx 2012).

The multiple dimensions and gradations of informality

The empirical literature dealing with informal economic activities often presumes that there is a clear boundary between work that is deemed formal and work that is not. Also, many studies deal with only one aspect of informality, in particular some sort of tax evasion. Both these versions have a different rationale, but at the very least they are stylized facts. Two elements should be brought into the equation: there are many forms of informal transactions, and most of them are in reality multi-categorical, and maybe even ordered or continuous phenomena. We will briefly go into both issues, and indicate how we will test the relevance of both arguments in the empirical part of this contribution.

First of all, the informal sector is not confined to one type of regulation. The possible set of transgressions indeed depends on the proliferation of rules by the polity. As most contributions define informal activities as noncompliant behaviour occurring outside of the formal institutions of society and neither adhering to nor comprised in formal regulation (compare Feige 1990, 990; 1999, 17), the foundations of informality are manifold. The set of possible informal activities is a function of the formal institutions imposing and enforcing rules: "the formal economy creates its own informality" (Lomnitz 1988, 54). To be clear, Lomnitz' citation takes a short-cut that is rightly criticized (e.g. Ruhs and Anderson 2010). It is not formal rules *producing* informal activities; they merely create the opportunity to transgress. Regulation thus provides the base of an opportunity set of feasible actions. The behavioural outcome from rules therefore is not linearly associated to the extent of regulation.

Comparatively and historically speaking, the extent of regulation varies hugely. It is the breadth of regulation within a state or other polity that defines the number of possible transgressions, and hence the scope of the informal economy (Portes 2010). In this contribution, we will focus on two forms of possible informal transactions in student work. Students and their employers in Belgium have the legal obligation to enter into an employment contract and employers have to set up a pay slip documenting the total wage paid and send that to the employee and the tax administration. Of course, distinguishing only two dimensions is only slightly less of a reduction of the multidimensional world of informal work. It will nevertheless allow us to illustrate the conjecture that dimensions of informality

do not necessarily overlap, and therefore adding well-chosen dimensions will reveal non-redundant information.

A second problem is that many studies depict the informal sector as an all-or-nothing choice: either persons or activities are in or they are out. Especially in empirical studies, one usually dichotomizes between formal and informal. This is fairly clear in country studies, where each activity is supposed to be either informal or formal (e.g. Loayza, Oviedo and Serven 2006; D'Hernoncourt and Méon 2012). Individual-level quantitative studies directly measuring informal activities are not particularly numerous. Nevertheless, the examples tend to dichotomize between those in the informal world and those in the formal, e.g. in consumption (Lindström 2008) or tax evasion (an overview in Alm and Torgler 2011).

The way the exclusion literature conceptualizes informality is strongly conducive to this binary depiction of the informal sector. The strongest objection to this binary depiction is, of course, that careful observation of informal activities shows that the pathways into, and the logic and effects of, informal activities may differ according to the level of engagement (see also Davidov 2006). Another problem is that in reality many informal exchanges are only partly so, and many workers engaging in the informal sector also have a formal job in the labour market. Hence families depend on income from both informal and formal markets. Part of the informal activities are somewhere in a grey area between the formal and the underground. Take for instance the well-known problem of multiple jobholding or moonlighting (Dickey, Watson and Zangelidis 2011). Many moonlighters hold one job in the formal sector, and have another informal part-time occupation. Another illustration of the thesis that the distinction between formal and informal practices is a continuum rather than a boundary lies in the existence of envelope wages. This means that part of the wage of formal employees consists of an undeclared envelope wage, a practice that has been documented to exist frequently (Williams 2009).

Are these reductions a problem? There may be good empirical, methodological and efficiency reasons to reduce informality to one decision with a binary distinction. For one thing, it is already hard to measure one aspect in a valid and reliable way. Doing justice to the multidimensional nature of informal activities may very well be an exaggerated expectation. In survey research, nonresponse and social desirability bias probably increase in longer questionnaires and when more items are devoted to sensitive matters (Tourangeau and Yan 2007). Also, the distribution of, for instance, the frequency of transgressions tends to be extremely skewed, so that a dichotomization may be a defensible strategy (as in Adriaenssens and Hendrickx 2009). Finally, in comparative research it is already hard to obtain equivalent data for one dimension of informality. Doing so for

more dimensions may become a sheer impossibility. In short, methodologically it may be defensible to measure informal activities as just one binary variable. The cost in terms of higher non-response and loss of comparative possibilities may outweigh the benefits. The problem is that *not* researching the feasibility and the possible costs of a multidimensional approach makes it hard to assess the appropriateness of these possible objections. Theoretical laziness may be more than a peccadillo here. One of the problems is that we do not know whether dichotomizing captures the most important aspects of the phenomenon.

Students as the "usual suspects" of participation in informal work

Students are usually defined as mainly young people whose daily task is attending school and studying. Overall, a significant proportion of school-aged adolescents is involved in part-time work (e.g. Canny 2002; Warren and Forrest Cataldi 2006; Wolbers 2008; Staff and Schulenberg 2010). Adolescents in Belgium are in compulsory education until 18, and are legally allowed to work on the side starting at 15. There is only scarce direct research into student work in Belgium. The existing statistics, based on the Eurostat Labour Force Survey (Eurostat 2014), seem to suggest that student work in Belgium happens less than in comparable countries (Tielens and Vermandere 2007). However, there is reason to believe that underreporting is affected by the prevalence of underground and informal work (see further). In the case that there is significant informal employment, the comparison thus may be flawed. Also the data collection through peer response leads to underreporting (Freeman and Medoff 1982). Estimates of the proportion of Belgian students that work regularly strongly depends on the source: between one in twenty according to the Labour Force Survey (Tielens and Vermandere 2007) to around two-thirds according to another survey-based estimate (Randstad 2012). One study in the French speaking part of the country estimates that one in five students are at work (Demeulemeester and Rochat 2000).

People attending education are probably the only category among the economically inactive population that have a relatively high chance of working in an underground job. The evidence shows that the labour market of student employment, indeed, has an exceptionally high prevalence of informal employment. Being a working student often implies being an off-the-books worker. For instance, in a Eurobarometer survey in 2007, 9% of the questioned students admitted to having carried out undeclared activities during the past year (European Commission 2007). That is almost twice as high as the overall average (5%). The study therefore concluded that informal work among students scores at a comparable level to often-cited groups strongly prevalent in the informal sector such as the

unemployed (9%) and self-employed (8%) (European Commission 2007, 25). Pedersen's (2003) research in Germany, Great Britain and several Scandinavian countries concludes that students are at the top of all the studied groups where informal work is concerned. This conclusion is in line with a recent Russian survey, where students seem to be "the most involved in informal employment" (Gorisov 2005, 9), and with a set of older surveys in the Netherlands (Van Eck and Kazemier 1988).

What are the probable reasons for this high prevalence of informality among student jobs? Certain incentives to go informal seem to exist in the demand and supply characteristics of this market. From the perspective of the demand side, student employment is a price competitive and flexible means to meet sudden increases in demand or gaps in production capacity. This function is strongly reinforced by the advantageous fiscal and social regulation for student work in Belgium. Students (in Belgium) enjoy a quite favourable legal position with regard to taxation and social security. If they do not work too many days, they are exempted from most of the fiscal and social security contributions due for adult workers. In itself, this exemption would be expected to lead to low levels of informality. However, labour market rigidities might explain the high prevalence of informal work. Students have little experience and are expected to be less productive than mainstream workers. If, as in Belgium, there are compulsory minimum wages, employers will be inclined to offer informal jobs with lower wages to students. This makes it possible to pay students according to their productivity. Renooy (2004, 26, 120), working on the tradition of informal work as a result of labour market segmentation, rephrases the argument: students, together with women and the unemployed, have to take the less favourable positions in the informal labour market, as opposed to skilled men between 25 and 45. The demand for such less attractive tasks may also imply that students are often driven to jobs without legal commitments such as a written labour contract or the compulsory reporting of working hours to the labour inspectorate, for example.

There are probably also supply side factors fuelling the undeclared employment of students. Some students may prefer off-the-books jobs because of the legal constraints of paid student employment. If students perform more work than the limit, this may lead to the loss of benefits, for instance the child benefits for the parents, and advantages, for instance the exemption from income and social security taxation. Another factor is the legal minimum age of 15, pushing under-age workers into informal jobs.

The central question of this contribution is: will distinct phenomena be revealed when one makes use of multiple measures of informality that also take the gradual nature of unofficial employment into account? Starting from the exit

and exclusion perspectives on informal work, we expect that the transgression of rules regarding tax records and pay slips benefits both parties. Employers save administrative costs and some taxation and win flexibility; the latter two advantages also apply to the student. The absence of a written labour contract on the other hand, may be closer to an exclusionary logic. Once again employers save administrative costs and win flexibility. Conversely, a lack of knowledge about their legal position may increase the student's enforcement costs in the case of a breach of the agreement with the employer. The benefits for the students, on the other hand, are unclear here.

Data

Data collection

The analysis is based on data collected in a large scale data survey in secondary schools in the Dutch-speaking northern part of Belgium: the Student Employment Survey (SES). The *SES* aims for a representative picture of the work done by adolescent students who are in the second and third grade of secondary education (i.e. year 3 to 6) and attending school full-time. Most of these pupils are between 14 and 18 years old (except for some who repeated a class). Students in part-time education thus fall outside the sample. Adolescents in special needs programmes or in the very small Arts track (2.2% of the school population) have not been included in the sampling frame.

In line with most educational research, respondents were indirectly sampled through their school. Practically and economically, it is more feasible to follow an indirect sampling strategy. An extra quality of indirect samples in schools is that unit non-response (of the higher unit) is not dependent on the characteristics of the respondent. The definite disadvantage is that respondents are clustered in schools. This problem becomes more serious when schools are larger than average (Lavallée 2007). We reduced clustering by decreasing the basic unit size in the sampling frame by dividing schools into smaller parts and making those the elementary units for sampling. The sampling frame was provided by the Flemish educational administration, and is based on data from the 2009–10 school year. Initially 60 units and 60 replacements were selected with a "probability proportional per size" sampling. The odds of a unit being selected thus depend on the number of students, so that every student has the same chance of being sampled. Of the sample, 26 initial units and 10 replacements agreed to participate.

The data were collected through written questionnaires from November 2010 to January 2011. Usually, the questionnaires were filled out in the classroom under the supervision of a school teacher, but some schools chose to assemble all

the students in one place. Eventually 4,018 respondents filled out the questionnaire. Because the distribution of this response does not entirely reflect the population, a weighting was carried out on the two central variables of class year and educational track (for more information about these matters, see Adriaenssens et al. 2014).

Measures

Those respondents who indicated that they had worked in a position that provided financial compensation at some point since the previous summer received a distinct questionnaire. This inquired into

(1) aspects of the job carried out during the past summer holiday, and
(2) during the school year, both the job performed on a fixed schedule and work without a fixed day or regularity,
(3) personal characteristics, study experience and study results, and
(4) personal and family background.

The questions looking into the nature of the job relevant to informality inquired whether a contract was signed, whether a pay slip (a legally compulsory tax record) was handed over, and whether the contract and the tax record covered all of the work carried out. A job is classified as "white" when the signed contract regulated all the work carried out, or when the pay slip mentioned the total wage earned. When no contract was signed or no pay slip was handed over at all, the job was classified as black. The intermediate "grey" jobs did have a contract or tax record, but part of the work or wage was not included in them (envelope wage or non-contracted extra hours). Because we are mainly interested in the formal-informal distinction in the firms and firm-like organizations, all descriptive data and analyses only refer to work performed for organizations and firms, and not for households. All in all, work for households is virtually always informal work according to the definitions used here. Contracts and tax records are hardly ever used in household work by students. In a way, this type of work represents its own form of informality, or at least of underground economic activities, one that is close to self-provisioning.

Results

In the results section, three types of results are presented. In the first subsection, descriptive and bivariate output regarding the prevalence of informal work is discussed. "Informal" is measured according to both labour contract and pay slip regulation. These data are represented per student, but also in terms of wage and

weekly hours worked. Finally, we give an estimate of the integral socio-economic weight of each type of work. This first subsection concludes by discussing the association between both dimensions of informal activities: the absence of a written contracting and non-declared wages.

In the second subsection we test whether a model explaining the engagement in informal work differs according to the dimension used. The independent variables introduced in the model have been shown to be relevant antecedents for access to work and the intensity of work. Because of the strong indications that the relation between some of the independent variables and informality may be U-shaped (see the next section), we have chosen not to estimate these models with the help of an ordinal technique, but with techniques for unordered categorical variables.

Prevalence and consistency

In the *Student Employment Survey,* the respondents were asked to give information about three types of jobs: the job they held during the past summer holiday, the job they perform regularly during the school year, and a possible odd job they work on an occasional basis. The last job type was documented in a limited way, so that we can only report whether a full pay slip was handed over for the wage paid. Therefore we will only report the prevalence of informal work in these odd jobs in *tables 1* and *2* reporting specific aspects (participants, wages and hours worked).

Table 1: Distribution of respondents engaging in informal activities per job type (weighted)

	Holiday job		Regular job		Irregular job
	Contract	Record	Contract	Record	Record
Formal (white)	50.5%	47.2%	41.5%	37.3%	22.2%
Informal					77.8%
Grey	22.8%	13.2%	17.9%	9.0%	
Black	26.7%	39.6%	40.6%	53.3%	
N	1594	1529	686	649	190

Data source: SES, weighted data, own calculations.

We begin by showing the distribution of informal activities according to the particular law which has been broken or ignored: the labour law imposing a written contract on the one hand (*Table* **1**, columns "Contract"), and the fiscal obligation to hand over a pay slip with all the wages paid (as a written record) on the other (*Table* **1**, columns "Record"). These descriptive results may already give

an indication as to whether contract or record informality differs in prevalence. Formal summer jobs count for around half of the total employment reported in the study. The share of formal jobs during the school year is smaller. Overall, the prevalence of grey jobs is higher in the labour contract measure than in the tax record measure. Paying envelope wages on top of the official wage is thus a less prevalent practice than working extra hours on top of the work schedule agreed upon in the contract.

These results represent the proportion of students engaged in one type of informal activity or another. More precisely, it is a count of jobs. If these jobs differ in terms of wages earned or working hours, this could lead to a biased estimation of the social, economic and also personal relevance of informal work. Therefore we also documented the average working time and hourly wages (*Table 2*)[2]. All averages are based on geometric means, so that distortion from remaining outliers remains limited. This seems appropriate in the light of the skewed distribution of wages and working hours.

In summer there is a wage differential between white and grey jobs on the one hand, and black jobs on the other. The lowest pay is reserved for black summer jobs. This wage difference between black and grey jobs does not occur during the school year, however. The relevance of a three-tier distinction between white, grey and black is hereby illustrated. It is also clear that they are more than just higher dimensions of informality. The dividing line in the wage category lies between black and the others, not between formal (white) and informal (black and grey). That conclusion is consistent with the fact that evasion of the minimum wage is effected through tax evasion, which does not necessitate contract informality. It is striking that the best paid jobs are grey summer jobs (in tax records).

The differences in working time are even more pronounced. In most instances the working time in grey jobs is higher than in white and black jobs. The latter two have approximately the same levels of working time. Here too the binary distinction between informal and formal would have concealed a lot. The real distinction in working times runs between grey jobs and the others (white and black).

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2 Summer job wages were surveyed in several ways (e.g. wage per hour and total wage for the whole job), so a composite has been computed. Priority has been given to the direct measure, unless this was an extreme or missing value.
Extreme positive outliers in the wages have been omitted, with the help of an analysis of a histogram based on a logarithm. For the working hours, a maximum of 16 hours per day has been assumed.

Table 2: Average hourly wages and weekly hours (geometric means)

	Holiday job		Regular job		Irregular job (record)
	Contract	Record	Contract	Record	
Hourly wages					
Formal (white)	€ 7.80	€ 7.69	€ 7.92	€ 7.82	€ 7.78
Informal	€ 6.67	€ 6.77	€ 7.66	€ 7.73	€ 7.57
Grey	€ 7.39	€ 8.38	€ 7.82	€ 7.77	
Black	€ 6.11	€ 6.30	€ 7.58	€ 7.72	
F-test formal-informal	30.60***	19.47***	0.830	0.089	0.091
F-test 3 categories	26.96***	29.77***	0.601	0.049	
Weekly hours worked					
Formal (white)	11h36	12h30	7h14	7h50	4h44
Informal	12h40	11h41	6h53	6h42	3h54
Grey	15h54	14h43	8h36	8h42	
Black	10h27	10h48	6h15	6h26	
F-test formal-informal	3.85**	2.22	0.847	8.145***	1.15
F-test 3 categories	24.46***	10.37***	10.14***	9.11***	
N	1722	1658	716	677	608
*p < 0.1 **p < 0.05 ***p <0.01					

Data source: SES, weighted data, own calculations.

Finally we estimated the aggregated share of the different forms of work. This means that we weighed summer jobs and work during the year, taking the number of workers, the total hours worked and the wages (for total income) into account. This results in an estimate of the share of informal work in the total hours worked and the total income throughout the year (*Table 3*). This estimate takes into account the length of the summer holiday and of the school year. The conclusion does not change – namely that more than half of the work performed and the wages earned come from informal activities. In considering tax evasion, the black market represents by far the largest share in the informal market segment. From the perspective of contract informality, however, both markets are more or less evenly important.

Table 3: Aggregated share of informal activities by work time and income

	White	Grey	Black
Work time			
Contract	44.8%	25.3%	29.8%
Record	44.7%	13.2%	42.1%
Total income			
Contract	46.6%	25.5%	27.9%
Record	45.8%	14.2%	40.0%

Data source: SES, weighted data, own calculations.

In order to conclude this first exploration, we look for the relationship between both measures of informality (*Table 4*). This means that we test whether a job characterized as being black, white or grey in one dimension (tax or contract) is a good predictor of whether the job is also performed in the same status in the other dimension. Because the first results gave us no clear indication of an ordered structure in the white, grey and black types of work, we present both nominal and ordinal measures of association. All measures suggest that there is quite a strong association between both measures, but that it is far from perfect. The strength of the measure is more or less similar between the holiday job category and that of the work performed during the school year. The measurement of both concepts thus overlaps, but at the same time each measure provides considerable information that the other measure does not provide.

Table 4: Association between contract and tax record informality (weighted)[3]

	Holiday job	Regular job
Nominal		
Chi^2	594.7***	155.0***
Goodman & Kruskal's τ		
Contract dependent	0.200***	0.241***
Record dependent	0.244***	0.241***
Ordinal		
Kendall's τ_b	0.489***	0.539***
* p < 0.10, ** p < 0.05, *** p < 0.01		

3 All presented measures have a significance under 0.001.

Predicting informality

In this section, we test a model aiming to account for the choice between white, grey or black work. The variables entered in the model are adopted from earlier research into the determinants of access to student work, the intensity and the level of the job held (Adriaenssens et al. 2014). The individual-level factors introduced are gender, age and migration background. The job characteristics are the type, skill level and sector of the job performed. We briefly explicate these factors and their measurement.

In terms of general participation, some studies see a higher (Hirschman and Voloshin 2007; Howieson et al. 2012) or equal level of participation of girls in student work (Lucas 1997; Wolbers 2008). For informal work, the literature generally asserts that informal markets are strongly gendered, with higher levels of participation by women (Nelson 1999; International Labour Office 2002, 12–14).

For adolescents at school, age has a strong positive impact on participation (Hodgson and Spours 2000; Howieson et al. 2012). For participation in informal work, though, we expect a negative relation for two reasons. On the one hand, the legal limit of 15 years forces younger students to work off-the-books. Also, productivity is expected to grow with age. Due to this expectation as well as minimum wages, younger workers may be pushed into informal work.

Studies consistently show that students with an ethnic minority background, and in particular those from minorities with a precarious economic position, participate less in part-time work (Porterfield and Winkler 2007; Howieson et al. 2012). Migration background has been measured through the nationality of the grandmothers. We distinguish between three groups: respondents with two Belgian grandmothers, those with at least one grandmother of a Turkish or Moroccan nationality (individuals with these backgrounds together represent a group in Belgium with a well-documented overall precarious socio-economic background) and those with a non-Belgian background of other nationalities. In our own study we found both a lower participation rate as well as participation in jobs at a lower skill level for students with a Moroccan or Turkish migration background (Adriaenssens et al. 2014).

In terms of skill level, informal jobs are often depicted as low-level jobs (e.g. Rinehart 2004; Katungi, Neal and Barbour 2006). We thus expect that lower-skilled jobs tend to be informal more often. The job level in our study was coded by the research team on the basis of the Dutch occupational SBC-classification (the Standaard Beroepen Classificatie, see Centraal Bureau voor de Statistiek 2010). In the questionnaire, the respondents stated their employer, job and tasks performed in three open questions. These open variables were coded into

occupational categories. This resulted in a variable of the occupational category according to the SBC-classification, a job level code of five ordered categories, that is. They refer to the (theorized) educational level needed to perform the job, starting from "elementary" up to "scientific" jobs. As almost all student jobs are of the lowest levels (elementary), we recoded the higher levels (intermediate level and up) into one group.

As for the sector, most research indicates that student jobs are strongly clustered in retail, the food service industry (usually bars and restaurants) as well as in households (van der Meer and Wielers 2001; Staff, Messersmith and Schulenberg 2009; Staff and Schulenberg 2010). As paid work in households has been omitted from this study, we entered three sectorial categories into the equation: retail, bars and restaurants, and other sectors. It so happens that the sectors of bars and restaurants and retail are often cited as hotbeds of informal activities as well, and are particularly targeted by social inspections services (SIOD 2013, 28). The same information that was used to code the job level provided the information to code the economic sector as well. This coding is based on the Belgian NACE-classification (Algemene Directie Statistiek 2011)[4].

Finally we also make use of the distinction between summer jobs and work throughout the school year. Although most studies on student work only document one type of work, there are good reasons to expect that there are strong seasonal variations in the demand for student work. For example, if one looks at the first years of the 21st century in the US, one longitudinal study found stable adolescent participation in jobs during the school year (Staff, Messersmith and Schulenberg 2009), while another one measured declining employment in summer jobs (Morisi 2010). In summer jobs, students often substitute for semi- and unskilled workers taking a holiday; jobs during the school year more often serve to meet with needs of a flexible work organisation (Canny 2002).

Our data have a two-level hierarchical structure, as up to two jobs are performed by each student (a holiday job and a job during the school year). In such a case a multilevel model is required. The problem at hand is usually referred to as a *choice model*. Whether a job is official, black or grey is a mutually exclusive matter. The standard set of methods studying this type of problem is multinomial logit and tobit models (Borooah 2001). The former is more popular due to its more economical modelling, so it has been chosen here too. A possible problem with multinomial logit analysis may be the "independence of irrelevant

4 The Belgian NACE is derived from the European NACE, which in turn is based on the global ISIC classification of economic sectors.

alternatives" assumption (IIA) – the problem that (quasi-)perfect substitutes preclude choice. However, more recent work shows that multinomial logit is robust against the breach of the IIA assumption (Hedeker 2008).

We first estimated the multilevel multinomial logit model with a first order marginal quasi-likelihood (MQL) algorithm. However, MQL estimates may be strongly biased downwards (Browne and Draper 2006; Rodriguez 2008). This is expected to be the case especially when level 1 (the jobs in our case) only consists of one or two observations per unit of level 2 (students). In order to remedy this potential bias, we also estimated the same parameters with the help of two techniques that should be more reliable in this case: Bayesian and Gauss-quadrature estimations. We applied the Bayesian estimation method with a diffuse prior (in MLwiN, Rasbash et al. 2009), using a Markov Chain Monte Carlo (MCMC) procedure with a burn-in length of 50,000 iterations and 2,000,000 simulations, with a thinning factor of 10 (so only every 10^{th} simulation is kept). The Gauss-quadrature estimation (with 20 quadrature points) was estimated with the help of the GLLAMM-routine in Stata (Rabe-Hesketh, Skrondal and Pickles 2005). Overall the comparison between the Gauss-quadrature and the MCMC models shows a quite consistent estimation of parameters. In short, the GLLAMM-procedure and the Bayesian estimation lead more or less to the same conclusions. All the estimations are presented in the appendix (*Table 6* and *Table 7*), and show the changes over the different estimation techniques. In the text we confine ourselves to the final Bayesian model (*Table 5*). We should warn the readers that comparison between the estimates is to be confined to significance levels. In logit models the estimators are rescaled, so that comparison between the estimates in order to assess their relative strength makes no sense (Karlson, Holm and Breen 2012).

Table 5: Bayesian MCMC multilevel multinomial logit on contract and record (reference: white)

		Informal contract		Informal record	
		b	SE	b	SE
Grey	Constant	4.972	3.665	8.447	5.781
	Gender (male)	1.110**	0.287	1.690**	0.536
	Age	–0.490**	0.213	–0.884**	0.334
	Moroccan or Turkish descent[13]	–0.652	0.686	–2.287*	1.321
	Other migration background	1.085**	0.326	0.115	0.551
	Job during school year[14]	–0.357	0.236	–0.961**	0.409
	Elementary level[15]	–0.532	0.616	0.243	1.439
	Lower level	0.352	0.599	1.468	1.419
	Retail[16]	0.599**	0.313	0.405	0.557
	Bars & restaurants	2.040**	0.381	2.569**	0.677
Black	Constant	29.833**	4.204	34.875**	5.698
	Gender (male)	1.067**	0.325	0.746*	0.404
	Age	–1.951**	0.262	–2.035**	0.336
	Moroccan or Turkish descent	0.200	0.736	–1.065	0.965
	Other migration background	0.787**	0.374	0.316	0.463
	Job during school year	1.411**	0.266	1.315**	0.297
	Elementary level	–1.657**	0.668	–3.751**	0.938
	Lower level	–0.703	0.627	–2.422**	0.866
	Retail	–1.321**	0.385	–1.532**	0.453
	Bars & restaurants	2.283**	0.420	2.210**	0.526
Random part	s^2_{const1}	10.206**	2.850	30.697**	11.737
	s^2_{const2}	15.272**	3.991	30.989**	8.135
	$s_{const1,const2}$	4.986**	2.428	17.691**	6.684
* p < 0.10, ** p < 0.05					

5 Reference: no migration background.
6 Reference: job during summer holiday.
7 Reference: intermediate level or higher.
8 Reference: all other sectors.

The personal characteristics of age and gender have fairly consistent effects on both forms of informality. Boys and younger adolescents work more often in grey and black jobs. That gender effect is contrary to the general expectation in the literature.

The effects of migration background depend on the group and the type and level of informality. Considering contract informality, students with a migratory background that is not Moroccan or Turkish are more often in informal jobs (both grey and black). This effect is absent if one consults tax records. Students with a Moroccan or Turkish background, on the other hand, seem to be less prevalent in tax evasion, at least as far as grey jobs go. The effect, however, is only significant at the 10% level.

However, factors such as the skill level of a job as well as the sector in which it is classified show a stronger effect on one's choice for informal work when compared to the effects of a worker's personal characteristics.

First of all, compared to jobs held during summer holidays, the school year jobs are more often black, while grey employment is less prevalent in tax records during the same time frame. This contrasting trend illustrates the relevance of the distinction between grey and black jobs.

With regard to skill levels, there seems to be little discrimination between white and grey jobs. The effect is quite different for black jobs. Overall there is less black employment in elementary jobs, both for contract and record informality. This is a surprising finding, contradicting the overall expectation that low skilled workers would be sought for black jobs.

With reference to sector, restaurants and bars consistently employ more students in grey and black jobs. Restaurants and bars thus specialize both in contract and tax record noncompliance. The evidence regarding the retail sector is paradoxical. Black jobs are consistently *less* prevalent in the retail sector. At first sight the retail sector thus complies very well with both tax record and labour contract regulation. The strange conclusion, however, is that the retail sector seems to specialize in grey contracts. This means that, while shops and other retail firms generally set up a labour contract more often than other sectors, they are quite flexible and not very compliant when it comes to working overtime outside of the contracted work schedule.

Conclusion and discussion

Informal work is defined as those economic activities that are legal in themselves, but at the same time they evade some regulation in the transaction. Quite often this transgression refers to rules regarding labour regulation or

taxation. The central question of this contribution is whether it is relevant to measure multiple dimensions and the gradual nature of informality. The central question is answered through the analysis of empirical data that allow for the measurement of informal work in two dimensions (tax record and labour contract evasion) divided into three categories (formal or *white*, totally informal or *black*, and partially informal work, called *grey*). The data contain information about a representative sample of students between 14 and 18 years in secondary education in Flanders, Belgium. This group is particularly suited for this type of research, because the evidence shows that students are quite active in the informal sector.

This contribution attempts to investigate whether a multidimensional analysis of informality is a feasible and rewarding strategy. The problem thus falls into two questions: is it feasible; is it opportune? The answer to the first question follows quite straightforwardly from the analyses. The answer to the latter question is dealt with in the subsequent paragraph.

So what about the question of feasibility? The simple answer would be: yes, it is feasible. Both measurements of more than a binary distinction between informal and formal, and of more than one dimension of informality have proven to be possible.

Measuring more than one dimension of informality was exemplified by focusing on two forms of informal engagement. On the one hand we measured the levels of noncompliance with tax rules in the form of the compulsory pay slip: either no pay slip was set up at all (black), or part of the wage was paid on the side as an envelope wage (grey). The dimension of the labour contract was measured by the question of whether a labour contract had been set up (black), or extra hours were worked that were not in the contractually agreed work schedule (grey). Both dimensions correlate quite well, but in a far from perfect manner. In the regressions the effects usually point in the same direction, but different factors have an effect on both dimensions. In particular this is the case for migration background. Students with a Moroccan or Turkish background evade *fewer* taxes, while students with another migration background comply *less often* with the labour contract rules.

In abandoning the binary distinction between formal and informal and making a more subtle three-category framework, this division between white, black and grey jobs proved particularly instructive. The relevance of this distinction is documented in more than one way. For one thing, grey jobs are more work-intensive than both white and black jobs. If one just compared formal with (black and grey) informal jobs, one would totally overlook this difference. Also, there

is a marked seasonal difference: for jobs during the school year there is more tax evasion through black, and less tax evasion through grey jobs, compared to jobs employment during the summer holidays. In the retail sector there is a lower level of the absence of labour contracts (black), but at the same time this sector specializes in noncompliance with the working schedule stipulated in the contract (grey).

If feasibility indeed poses no fundamental problem, the second question is what is gained and what is lost when one uses a multidimensional and ordered measurement of informality. That which may be gained is exemplified by some of the empirical conclusions. Accounting for six possible positions vis-à-vis the informal economy (2*3) shows which polymorphic causal priors informality can have. For local studies, this should be a strong argument in favour of multidimensional strategies. The possible objection is that equivalence and comparability become more difficult in comparative research. As in all matters regarding governance, policy and the law, the problems of equivalence and comparability are real. Because theoretical possibilities of transgressions depend on the prevailing rules, every survey into informality will have to check whether the type of transgression investigated exists, and which levels exist in these transgressions. For multidimensional surveys of informality, the complexity of documenting equivalence increases quickly. Whether it is worthwhile, depends on the research goals at hand. Notwithstanding the possible problems, documenting multidimensionality in comparative research may prove even more relevant, as it allows for the differential impact of institutional arrangements on different dimensions of informality.

In short, this contribution shows strong evidence that simple binary and one-dimensional measures of informal work may hide real differences between types and grades of informality. Without a doubt, the extra cost and complexity of collecting data about informal transactions with multiple categories and more than one dimension is considerable. This is all the more the case in comparative research. Notwithstanding this objection, it would prove useful and rewarding to consider a broader approach in data collection and the analysis of informal work.

Annex: full tables from the multinomial logit regressions

Table 6: Multilevel multinomial logit regressions on informal labour contracts (reference: white)

		Without multilevel ML		Multilevel MQL		Multilevel Gauss–quadrature		Multilevel MCMC			
		b	SE	b	SE	b	SE	b	SE	95% credible interval	
										Lower	Upper
Grey	Constant	1.968	1.481	2.074	1.393	4.452	3.373	4.972	3.665	−2.116	12.232
	Gender (male)	0.544**	.121	0.508**	0.122	1.018**	0.259	1.110**	0.287	0.572	1.702
	Age	−0.210**	.088	−0.216**	0.082	−0.442**	0.197	−0.490**	0.213	−0.919	−0.082
	Moroccan or Turkish descent[17]	−0.276	.321	−0.252	0.319	−0.569	0.619	−0.652	0.686	−2.052	0.660
	Other migration background[17]	0.520**	.136	0.470**	0.137	0.997**	0.296	1.085**	0.326	0.472	1.752
	Job during school year[18]	−0.099	.137	−0.183	0.131	−0.320	0.223	−0.357	0.236	−0.828	0.097
	Elementary level[19]	−0.242	.317	−0.163	0.316	−0.514	0.570	−0.532	0.616	−1.726	0.685
	Lower level[19]	0.174	.308	0.193	0.307	0.289	0.554	0.352	0.599	−0.783	1.558
	Retail[20]	0.290**	.144	0.302**	0.148	0.551*	0.286	0.599**	0.313	0.001	1.233
	Bars & restaurants[20]	1.016**	.156	0.944**	0.151	1.878**	0.346	2.040**	0.381	1.332	2.826
Black	Constant	12.134**	1.284	12.257**	1.231	26.980**	3.897	29.833**	4.204	21.840	38.452
	Gender (male)	0.457**	.121	0.435**	0.122	0.969**	0.292	1.067**	0.325	0.455	1.735
	Age	−0.793**	.077	−0.800**	0.073	−1.765**	0.242	−1.951**	0.262	−2.494	−1.457
	Moroccan or Turkish descent[17]	0.115	.283	0.066	0.289	0.201	0.662	0.200	0.736	−1.257	1.644
	Other migration background[17]	0.314**	.140	0.260*	0.140	0.715**	0.334	0.787**	0.374	0.074	1.542
	Job during school year[18]	0.739**	.127	0.667**	0.121	1.321**	0.249	1.411**	0.266	0.909	1.953
	Elementary level[19]	−0.645**	.267	−0.568**	0.271	−1.496**	−2.450	−1.657**	0.668	−3.000	−0.381
	Lower level[19]	−0.213	.257	−0.199	0.261	−0.626	0.276	−0.703	0.627	−1.952	0.508
	Retail[20]	−0.717**	.162	−0.689**	0.164	−1.241**	0.000	−1.321**	0.385	−2.097	−0.584
	Bars & restaurants[20]	0.992**	.147	0.914**	0.143	2.093**	0.379	2.283**	0.420	1.505	3.151
Random part		s^2_{const1}		0.746	0.183	7.931	2.157	10.206	2.850	5.629	16.689
		s^2_{const2}		0.765	0.177	11.732	2.961	15.272	3.991	8.874	24.428
		$s_{const1,const2}$		−0.296	0.138	3.807	1.863	4.986	2.428	0.752	10.311

* < 0.1 ** < 0.05 ***<0.01

9 Reference: no migration background.
10 Reference: job during summer holiday.
11 Reference: intermediate level or higher.
12 Reference: all other sectors.

Table 7: Multilevel multinomial logit regressions on informal tax records (pay slip) (reference: white)

		Without multilevel ML		Multilevel MQL		Multilevel Gauss–quadrature		Multilevel MCMC			
		b	SE	b	SE	b	SE	b	SE	95% credible interval	
										Lower	Upper
Grey	Constant	1.598	1.832	1.504	1.783	7.762	4.984	8.447	5.781	−2.436	20.422
	Gender (male)	0.568**	0.153	0.549**	0.155	1.313**	0.408	1.690**	0.536	0.735	2.851
	Age	−0.241**	0.106	−0.234**	0.103	−0.737**	0.283	−0.884**	0.334	−1.604	−0.279
	Moroccan or Turkish descent[21]	−0.723	0.447	−0.761*	0.453	−1.671*	0.986	−2.287*	1.321	−5.123	0.088
	Other migration background[21]	0.002	0.176	−0.044	0.180	0.089	0.421	0.115	0.551	−0.978	1.207
	Job during school year[22]	−0.430**	0.184	−0.456**	0.178	−0.739**	0.351	−0.961**	0.409	−1.813	−0.202
	Elementary level[2319]	0.366	0.551	0.393	0.546	0.005	1.079	0.243	1.439	−2.361	3.318
	Lower level[23]	0.839	0.543	0.835	0.538	1.023	1.059	1.468	1.419	−1.033	4.552
	Retail[24]	0.012	0.181	0.046	0.185	0.164	0.438	0.405	0.557	−0.619	1.577
	Bars & restaurants[24]	0.756**	0.189	0.763**	0.188	2.024**	0.519	2.569**	0.677	1.367	4.017
Black	Constant	10.107**	1.194	10.289**	1.200	29.635**	4.784	34.875**	5.698	24.700	47.127
	Gender (male)	0.212**	0.104	0.206*	0.110	0.618*	0.340	0.746*	0.404	−0.023	1.569
	Age	−0.592**	0.071	−0.603**	0.071	−1.732**	0.282	−2.035**	0.336	−2.758	−1.435
	Moroccan or Turkish descent[21]	−0.222	0.254	−0.308	0.272	−0.863	0.816	−1.065	0.965	−3.017	0.790
	Other migration background[21]	−0.011	0.123	−0.019	0.129	0.260	0.394	0.316	0.463	−0.585	1.246
	Job during school year[22]	0.473**	0.113	0.456**	0.111	1.179**	0.271	1.315**	0.297	0.755	1.918
	Elementary level[23]	−1.023**	0.241	−1.026**	0.253	−3.161**	0.792	−3.751**	0.938	−5.733	−2.039
	Lower level[23]	−0.583**	0.233	−0.592**	0.245	−2.000**	0.734	−2.422**	0.866	−4.225	−0.813
	Retail[24]	−0.673**	0.132	−0.650**	0.138	−1.415**	0.397	−1.532**	0.453	−2.444	−0.665
	Bars & restaurants[24]	0.564**	0.132	0.588**	0.134	1.860**	0.441	2.210**	0.526	1.244	3.308
Random part		s^2_{const1}		1.046	0.289	16.399**	5.703	30.697**	11.737	13.982	59.218
		s^2_{const2}		0.747	0.150	21.354**	5.395	30.989**	8.135	18.182	49.935
		$s_{const1,const2}$		−0.207	0.156	11.479**	3.879	17.691**	6.684	7.055	33.280

* < 0.1 ** < 0.05 ***<0.01

13 Reference: no migration background.
14 Reference: job during summer holiday.
15 Reference: intermediate level or higher.
16 Reference: all other sectors.

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Part III: The Sociology of the Interaction between Formality and Informality

Barbara A. Misztal

Configurations of Informality and Formality in Contemporary Society

Introduction: The relevance of informality

In contrast to many social scientists' prediction that forces of globalisation, by imposing legal forms of regulations on the world, would eliminate or undermine the significance of informality, the reliance on informality remains universally practised to facilitate the formal processes of business, politics and society. However, the first two decades of the new century's trends and new technologies have not only sustained the informality, they have also, at the same time, changed the scope of informality and its relations with formality. On the one hand, the expanding access to information and the process of globalisation, together with the growing level of complexity of the global system are seen as creating favourable conditions for less formal social encounters. Hence, with the loosening of formal hierarchies and the de-conventionalisation of organized practices, we observe the new importance of informality. On the other hand, in the context of the widespread unpredictability, deregulation and the complexity of the global economic system, there is an increase in the perception of informality being associated with corruption, nepotism and other malpractices, which prompts many to question the relevance of informality for democracy (Lauth 2000). Taken together, these two possible roles of informality, in the context of modern democracies becoming increasingly shaped by various types of "personalized governance and the profusion of modes of online provision" (Eriksson and Vogt 2012, 154), suggest the emergence of a new configuration of informality and formality in today's societies. Since we do not fully understand the implications of this configuration, there is a clear need to re-open a debate on the role and consequences of the new relationships between informality and formality in the contemporary setting. To develop a new analytical approach, we should first scrutinize the processes that are behind this configuration, especially, the impact of the growing complexity of the world and our increasing reliance on digital technologies, on ways in which we interact and make decisions. These two trends, as they alter the boundaries between private and public life and conditions of cooperation, influence the scope and function of informality in this new context. Thus, the aim of this article is to re-think these issues in the context of the new century's developments. After discussing trends that increase our hopes for informality's

capacity to enhance cooperation and debating processes that lead to the misplacement of informality and to its use as a form of control strategy, I will revise the definition of informality developed in my book on informality more than a decade ago (Misztal 2000).

The concept of informality is rather complex, unclear and ambiguous. It tends to be used in various ways: from descriptions of face-to-face, intimate, private, less rigid, less controlled interactions, and, through references to the informal economy, to descriptions of non-hierarchal or bureaucratic exchange, nepotism, old boys' networks and avoidance of formal rules. Unsurprisingly, there are always some misunderstandings and confusion surrounding this notion. Following Goffman, I have developed an understanding of informality as referring to situations with a wider scope of choices of behaviour where, in order to make the most of the possibilities in given circumstances or to reach "a working understanding" (Goffman 1983, 9), people employ various forms of action that are not pre-made (Misztal 2000, 41). In this perspective, informality is defined as a form of interaction among partners engaging in dialogue, the rules of which are not pre-designed, and enjoying relative freedom in the interpretation of their roles' requirements (Misztal 2000, 46). Such an understanding allows us to see both informality and formality as the essential and changing aspects of many processes underlined by new modes of social control, new institutions and new means of communication. To fully comprehend the new shape of their configuration, we should also include into our consideration analyses of previous forms of their mutual interdependence.

It is not surprising that the significance of informality has been always recognized. We know many historical accounts of the role of informality on the world stage. For example, Mann (2012) in his discussion of sources of power argues that WWI destroyed the regime of informal international cooperation that existed prior to that war. Furthermore, he argues that one of the consequences of WWI was America's imperial dominance, which unlike its European predecessors, was informal and which, without much formality, was able to bend the course of events in the direction of its interests. Although political scientists in general tend to put central emphasis on the status of formal institutions, for the last couple of decades they have also been raising questions about the importance of informal institutions in the process of political transformation and their relevance for democracy. Noticing the varieties of informal institutions, and their different impacts on the transparency of political processes and public communication, they propose that in order to evaluate informality's relevance for democracy we need to develop the typology of informal arrangements (Lauth 2000; Cormack 2013).

On the bases of many empirical social studies, we also know that any significant social changes require face-to-face informal efforts of strategically positioned actors within any field, organisation or system (Walker 2012). Informality is the universal element of relationships in every society, although its importance and the intensity of its application differ from country to country. The shift in emphasis reflects broader social transformations, having moved from being predominantly directed toward the intensive reliance on informality for access to resources through a focus on informality as a means of control, to a total concentration solely on formal structures. Many of the relaxations of restrictions on relations and conduct constitute instances of a "controlled decontrolling of emotional control" (Wouters 1986, 3) and lead to "a shift from relational and emotional management through command to a management through negotiation" (de Swann 1990, 270). As the process of the relaxation of restrictions on ways we behave in public has spread to increasing numbers of people, this informalisation has simultaneously been accompanied by the process of formalisation.

The interplay of both processes (formality and informality) has always been visible in many spheres of life, although strong informality, which thrives locally and is used as a means for control in familiar communities, seems to belong to the past. For example, social order in 1950s Britain, in the "era of trust", "self-restraint" and "carefully calibrated politeness", was helped by the informal control of public spaces "by bus conductors, by park keepers, by lavatory attendance and by a police force that was largely admired" (Kynaston 2009, 542). The reliance on informality not only reflects local communities' cohesion, but also can reflect the limits of state regulation or legal devices (Farrell 2004). A weak central government provides the ground for the flourishing of various types of informal deals, exchanges and bargaining, which – although not necessarily illegal – are often outside of the law (Hart 1988). However, in reality the picture is even more complex as much evidence suggests that also under strong, centralized governments, informality can play a significant role in modifying the rigid and direct state control in the economy (Misztal 2000). More generally, it can be said that although there is a tendency to perceive informality as some form of favouritism and nepotism and as associated with corruption, bribery and malpractice, in fact impropriety is not an inherent characteristic of informality. This can happen under any type of government when there is no adequate system of laws and regulations. Where there are "tight rules and regulations, and their strict enforcement", like in Singapore, they prevent "widespread corrupt practices" (Chan and Ng 2006, 56).

Although discussions of informality often focus on its role in business, where informality plays a silent role in many agreements and contracts, the role of

informality extends to all areas of socio-economic life. Informality is used as an effective strategy for many social purposes, for instance to sells products, as illustrated by the trend of "personalized" products, from coffee shops to airlines. Furthermore, its impact has always been acknowledged in the financial sector where, since its foundation in 1801, the London Stock Exchange's motto has been "My word, my bond", suggesting that bargaining and deals can be made in an informal way, with no contracts or documents. It has continually been present in the legal system where, even during the period in which legal formalism was dominant, the role of informality was recognized. "We are under a Constitution, but the Constitution is what the judges say it is" (Charles Evans Hughes Justice of the US Supreme Court quoted in Unah 2009, 154).

The growing informalisation of many spheres of public life, which started in the 1960s, also saw the development of "informal" or "popular" justice (van Krieken 2001). This new wave of informal justice is defined as:

> encompassing legal institutions which are non-bureaucratic in structure and relatively undifferentiated from the larger society, minimize the use of professionals, and eschew official law in favor of substantive and procedural norms that are vague, unwritten, commonsensical, flexible, ad hoc, and particularistic (Richard Abel quoted in van Krieken 2001, 7)

spread from the 1970s onwards. The foundations for the shift to legal informalism were laid down by the growing critiques of legal formalism and efforts "to bridge and link the realm of formalized legal ideas and procedures with extralegal forms of social ordering, often within a framework of attempting to modify the workings of power relations" (van Krieken 2001, 6). Behind legal informalism in a range of fields including family, criminal, administrative, commercial, discrimination and equal opportunity law was both the development of the welfare state and critical attitudes towards the state in the 1960s (van Krieken 2001, 7).

To sum up so far, each society permits some space for informality that is socially, culturally, and economically determined. All societal sub-systems strive to find their own mixture of rule-bound formality and rule-independent informality. In every case, informality of conduct and formality of rules are joined together notwithstanding their opposition and tensions. Their relationship is far from immutable and their dynamism results in the evolution of styles of interaction. Thus, our question is: What are the nature and dynamics of the relations between informality and formality today? How stable is such a configuration and what role does it play in shaping the quality of social life? In order to answer these questions, we need to take a closer look at our capacities for interpersonal concordance and our opportunities for informality in today's circumstances. Since

the private-public shift and the erosion of conditions facilitating cooperation are seen as affecting the scope and role of informality, in the following section we will analyse the impact of these processes on the configuration of informality and formality.

Informality and the private-public shift

The relationship between informality and formality, and its perception as orderly – and thus acceptable – are historically and culturally contingent. If the sixties were about the processes of the informalisation and liberalisation of society, the twenty-first century is about the digitalisation and the growing complexity of the globalized world. These two processes have been making a profound impact on the transformation of the relationship between public and private life. Thus, the demarcation between private and public, which has been continuously eroded for several decades "as the two realms indeed constantly flow into each other" (Arendt 1958, 33), is now further undermined and complicated. The shift in the relationship between the public and the private that has accompanied and shaped the development of today's societies alters the relationship between formality and informality. In other words, the new media and the complex nature of the globalised world, by blurring the boundaries between the private and public, further increase the scope for a more informal, not role-bound and role-obedient, conduct.

The productive and effective functioning of intricate societies within the complexity of the global system, defined by networks of dense, non-linear interactions that change over time, requires finding solutions to many new uncertainties and unpredictabilities.

> We do not live in a governed world so much as a world traversed by the "will to govern", fuelled by the constant registration of "failure", the discrepancy between ambition and outcome, and the constant injunction to do better next time (Rose and Miller 1992, 191).

The modern labyrinthine international order, with its sets of possibilities and constraints, together with the system's open boundaries and plays of force inside of the system, means that today's main challenge is to maintain the coherence of the system itself (Human and Cilliers 2013). Responses to this challenge in the context of unpredictability and "the permanent suspicion of the authority of authorities" (Rose and Miller 1992, 191), are not only "a matter for government regulations but a concern of individuals as the key decision makers" (Chandler 2013, 4). The problems of complexity mean that leaders need to be able to respond in a more reflexive way, optimize their chances and "chart their way through the

choppy waters of a globalised economy" (Grist 2009, 16). In other words, with the increase in the complexity of the socio-economic system, we tend to rely on informality as a less rigid, more flexible means of overcoming the sheer size and density of global institutional arrangements and regulations, be they economic, financial or political in nature. However, there are some unintended consequences of such developments.

The first unintended consequence of the reliance on informality in transactions or dealings with others, which normally is prompted by increases in uncertainty, risk and the absence of pertinent knowledge, refers to the use of informality as an example of a governance mechanism, which results in collusions, breaching rules and contributes to the malfunctioning of the whole system. This can be illustrated by the recent failures of the UK financial system to govern its own complexity, which was brought about by deregulation and globalisation. This complexity has been addressed by the growing reliance on informal managerial estimates and valuations (Lanchester 2013a, 3–9), as it was assumed that the reliance on informality tends to lower transaction costs and reduce uncertainty in the market environment as well as helping to deal with the contingencies of maladaptation or failure. Thus, this inflated financial sector, entrenched in its cartel-like culture, is more than ever amenable to illicit quid pro quo deals, insider trading, informal bargaining and scandals such as the Libor (the London Interbank Offered Rate) fixings scandal (Luyendijk 2013). As "the big banks have simply become too complex and too big to manage" and their market-based information becomes more managerialized and informalised, even their employees do not believe that "their top people know what's going on" (Luyendijk 2013). Although informality has always been part of legitimate international financial and commercial markets, the extent to which today's global complex economy increases opportunities for informal trading, false contracts, bribery and the manipulation of prizes leads some to argue that the globalisation and complexity of the global economic system have vastly increased the scope of informal actions that are not necessary illegal, but nonetheless are not in the best interest of the public (Cockcroft 2013).

The second unintended consequence of the reliance on informality in the context of the multifaceted system refers to the reliance on informality as a strategy of control.

As the boundaries between markets and organisations and between external and internal reporting are being blurred, there are new initiatives to control a new interplay of formality and informality. Presently many organisations, in their attempt to adjust to these new conditions, are adopting a broad scale of measures to informalise their structure and practices. For example, they opt for flatter, more flexible, organisational structures, decentralisation of decision making, less

formal relations between superiors and subordinates, informal, more colloquial speech, shifting boundaries between work and private time and they cultivate "informal Fridays" within their workplaces (Misztal 2000, 63).

> But this apparent "relaxing" of controls, this opening of emotional exchange to greater variety, individual nuance, and the growth of emotional alternatives, also involves at one level an *intensification* of demands on affect economy (Hughes 2010, 44 – emphasis in original).

In the relative absence of explicit and formal rules governing behaviour, as Archer (2010) argued, people are expected to be more reflexive, responsible, self-controlled and to practice self-regulation and self-monitoring in order to negotiate changing networks of loosely coupled social relationships. For example, although "informal Fridays", when employees can *disregard formal dress codes*, rather than offering "a simple relaxation of pressures on how to dress", presented people "with another set of demands, and these might be even more intensely felt than those arising from the company dress code" as people need to reflect and decide what it means to dress appropriately for such non-scripted occasions (Hughes 2010, 45 – emphasis in original). This new expectation to dress informally but correctly, "according to a blend and balance of unstated »internalized« and explicit «external» standards and concerns" (Hughes 2010, 45) can be seen as a shift in the character of social constraints towards the informalisation of standards of socially sanctioned behaviour. Yet at the same time this push towards employees' self-constraint and self-control also illustrates the use of informality as a strategy of control on the part of companies. Under the guise of the workers' liberation from formal control, we observe the usage of informalisation tactics to ensure or even intensify control. In short, the use of formalized informality as the strategy of control reflects the institutionalised power relationships.

Today's relationship between rule-bound formality and rule-independent informality is more than ever vulnerable to shifting not only because of the increase in the complexity of the socio-economic system but also because of effects of the digital revolution, which moves traditional boundaries between public and private domains while also promising to set us free.

> Today, when an individual sits in the space of his or her home or bedroom and goes online, disclosing information about himself or herself to thousands or millions of others, in what sense is this individual situated in a private sphere? (Thompson 2011, 63).

The changing relations between the public and private arenas, as a result of the internet and new social media, affect the visibility and functionality of informality. As the spread of new digital media alters the public-private relationship, it creates a new scope for informality and increases its "mediated publicness" as it

sets the stage for "the flourishing of a new kind of intimacy in the public sphere" (Thompson 2011, 57). Thus, the changing role and visibility of informality is symptomatic of the development of new means of communication. With novel forms of social media giving rise to new virtual informal relations that are free from the constraints of co-presence, the public sphere becomes a complex space of information streams over which the individual does not necessarily exercise control. As the hectic informality of modern life and digital technology joined forces, the shifting boundaries between public and private life have become "a new battleground in modern societies, a contested terrain where established relations of power can be challenged and disrupted, lives damaged and reputations sometimes lost" (Thompson 2011, 49).

The access to and reliance on digital social networks can increase people's power and social experience. New social media, such as Twitter, are increasing the capacity to make people's voices immediately heard and turn "ordinary" people into broadcasters (Gitlin 2013). Some major recent events, such as the Occupy movement and the Arab Spring, were possible because of such digital social networks. Moreover, smaller scale events, which nonetheless increase people's input into the functioning of social systems, are results of the new technology. Although not every online campaign has an impact, digitally-rooted activism cannot be dismissed, as we are "moving from a vision of civics that's party-based and partisan to one that's personal and pointillist" (Zuckerman 2013, 9). Political digital activism, which shifts the boundaries between private and public, is "civics in flux", and changes with the people who practise it (Zuckerman 2013, 9). As "digital natives" participate in civic life often by "personalizing issues", they also reconfigure the relation between informality and formality (Zuckerman 2013, 9). For example, in Latvia, a country with one of the lowest levels of political engagement and trust in governmental institutions in the EU, a website called "My Voice", created by its citizens, offers an informal forum for debates and petitions, and thus contributes to rebuilding trust between people and the government (McGrane 2013, 5). With many other countries, such as Finland and Iceland as well as the European Commission, also developing online platforms for citizens' initiatives (McGrane 2013, 5), these types of informal actions have been slowly achieving legitimacy throughout the states, indicating that here again we are observing the process of the formalisation of informality. This process of formalisation is also enhanced by Google, Facebook and Twitter's solutions to problems caused by free speech. They all struggle to rule on what is permissible, as illustrated by cases including those of a man being prosecuted for his "twitter joke" about blowing up one of the British airports (Bowcott 2012, 3) as well as the tweetstorms of aggression directed against women. These and other cases have

led to demands for the companies to regulate what passes through their servers, which, together with the spread of "netiquette", can be seen as the beginning of the process of the formalisation of informality in social media (McVeigh 2013).

With misplaced informality and abuses of freedom of speech leading to more and more emphasis on developing guidelines of conduct on the Internet, or "netiquette", and the introduction of "abuse" or "report" buttons, questions arise regarding not only if these developments signal the process of formalisation, but also with regard to what role this new formalized informality is taking. Although it is possible to use electronic media, as people in many countries do, as a source of informal power to increase citizens' input to the political process, we also need to be aware that, on the other hand, the social networking services, which offer real-time tracking of the public, exercise an enormous power to direct and influence public opinion. For instance, the Russian media have created Putin's image as that of a man of action and allowed him, through the personalisation and informalisation of his relations with the public, to increase his control and power (Knight 2013, 54–57). Yet this strategy of informalisation at the top is confronted with informalisation at the bottom. Thus, despite the sophisticated use of media to increase Putin's popularity, his ratings are actually declining due to the stories of the corruption, incompetence and irresponsibility of the government now circulating widely on the Web and reaching the growing number of Russians who are using the Internet as a source of news (Knight 2013, 54–57).

A new type of debate about the scope of the state surveillance of its citizens' private lives has been initiated with the publication of Snowden's files, the secrets documents about a US National Security Agency program, PRISM, which is said to tap into the customer data accumulated by corporations such as Google, Apple and Microsoft (Greenwald and MacAskill 2013, 1). Snowden's revelation seems to suggest that we are moving towards a society without privacy: "where the people with accesses to our secrets, hear, intercept and monitor everything" (Lanchester 2013b). The disclosed files show that the Internet could expand the reach of the state and the state's permanent vigilance, activity and intervention. Now not only the public but also the Web's giant corporate entities realize that the Internet is under a vast surveillance plan invisible to those being observed. During this present period of digital revolution that promised to set us free, the expanding electronic mass surveillance has raised major questions about the control of the Internet and the balance between the private and public in modern democracy.

The growing reliance on social media for information and communication is also seen as having a negative impact on various social skills directly or indirectly connected with informality. Research confirms that the preoccupation with technology hurts the social skills of young employees, affecting their ability to

build relationships with others, and narrowing people's vision, empathy and understanding (McVeigh 2013). Living on the Web could not only result in inflated expectations, but it also leads us to living "within our own, restricted cocoon of information and experiences, with insufficient knowledge of the experiences of others" (Samuel Becker in Billig 2013, 29). While relying on new social media we "must make a special effort to encounter variety" as these media allow us to "have what we want and we can avoid what we don't want" (Billig 2013, 29). The reliance on digital means of communication can erode our capacity for interpersonal concordance, which is an essential element for cooperation. As such a critical component, it "comes directly not so much from a propensity to identify with others as from an ability and readiness to assume their point of view and interpret their intentions" (Burns 1992, 74). Thus, one of the most destructive consequences of the fact that we are targets of selective information gathering, together with the increasing power of social networks to regulate the expression of the individuals' views and the question of privacy, is the inflation of our skills for cooperation, seen as striving on informality.

Informality and cooperation

Sennett (2012) makes a similar point by suggesting that in order to secure cooperation, we need to respond to others on their own terms and cultivate informality regardless of the uncertainties associated with it. Stressing that contemporary societies deskill people from many of the competences they need to cooperate, Sennett (2012, 5) brings to our attention that today's more complicated world requires a new, more difficult cooperation, which he defines as "an exchange in which the participants benefit from the encounter". Arguing that the new capitalism erodes our capacity to live together, Sennett points to other than only the digitalisation causes for the recent decline of cooperation. He further stipulates that cooperation is weakened by inequality, changes in modern labour and by cultural homogenisation which produces a new type of person: "This is the sort of person bent on reducing the anxieties which differences can inspire, whether these be political, racial, religious, ethnic or erotic in character" (Sennett 2012, 8). All of these processes erode people's skills for cooperation as they undermine the scope of informality in social relations.

Sennett takes his idea of informality from Montaigne who observed that:

> in whatever position they are placed, men pile up and arrange themselves by moving and shuffling about, just as group of objects thrown into a bag find their way to join and fit together, often better than they could have been arranged deliberately (Montaigne quoted in Sennett 2012, 277).

Such a definition of informality leads Sennett to view cooperation as open, non-scripted, free exchange between "people who have separate or conflicting interests, who do not feel good about each other, who are unequal, or who simply do not understand one another" (Sennett 2012, 6). This "win-win exchange" is quite demanding in contrast to destructive cooperation, which is "cooperation of the us-against-you sort, or about cooperation degraded into collusion" (Sennett 2012, 6). Sennett believes that such responsiveness to others on their terms "emerges from practical activity" and that the most important fact about hard cooperation is that it requires "dialogic skills" (Sennett 2012, 6). In the course of the skilled dialogue practices both informal and empathic people gain a measure of self-respect and autonomy without becoming either winners or losers. In short, since cooperation means engaging in dialogue without predesigned rules, it requires informality, which contemporary economic forms and cultural influences and forces continuously undermine.

Sennett attributes the decline in the space for and role of informality and thus, the erosion of our skills for cooperation, mainly to the nature of today's work place, which enhances momentary transitions, the ethos of transaction and fosters a culture that explicitly devaluates informality. In the past "manual labourers forged strong informal bonds at work which took people out of their niches. These informal relations consisted of three elements composing a social triangle" (Sennett 2012, 148). They are "earned authority, mutual respect and operation during a crisis" (Sennett 2012, 148). These three sides of the social triangle were essential for any organisation that wanted to encourage informal bonds of these sorts to cohere socially. However, in the new global capitalism, power diverges from authority, distrust increases and the elites live detached from responsibilities, and hence, informality declines.

The contemporary workplace is in total contrast to its past, in which cooperation rewarded all participants since each gained a measure of self-respect and autonomy. Nowadays, we are faced in the workplace with shallow, distrustful, superficial, short term relationships with colleagues, where informality is repressed by the duties and rules of the formal contract. The domination of "superficial relations and short institutional bonds together function to recycle »superficial« informality", which is often used as a tool by management to enhance their control (Sennett 2012, 8). These short-term projects, with their feigned solidarity, the superficial familiarity with others and forced informality represent the very opposite of cooperation. At the end of the day, such arrangements "reinforce the silo effect: people keep to themselves" (Sennett 2012, 8). The more cooperation declines, the more people are exhorted to perform their roles as "team players", which illustrates how the managerial imperative empties informality of any substance. While

developing the argument that without institutional stability and long-term prospects, there will be no opportunity for mutual obligations, respect and trust to flourish, Sennett (2012) brings the idea of informality closer to the Chinese idea of *Guanxi*, which is seen an important element of cooperative relationships. Defining *Guanxi* as informal interdependence networks in which trust is achieved, Sennett (2012, 136) stresses that informal Guanxi networks are meant to be sustainable, and that people in "*Guanxi* networks are not ashamed of dependency". However, today's short-termism and rhetoric of self-responsibility distort our capacity to cooperate by undermining the conditions in which it flourishes and draining informality of any meaning through its formalisation.

The importance of cooperation is also recognized by other scholars, although they do not necessarily conceptualize its links with informality in the same way as Sennett does. Generally, it is assumed that social order is fundamentally dependent on cooperative relationships and that the efficiency of society is improved by cooperation. Thus, several approaches search for what sustains such cooperative relationships. Among them, the most prominent are middle-range theories about trust and closely related topics, such as social capital. Since the 1990s there has been an impressive proliferation of theories of trust and social capital that stress that features of social organisation such as norms and networks can facilitate coordinated action (Elias 1978, Gambetta 1988; Coleman 1990; Putnam 1993; Misztal 1996; Sztompka 1996; Edwards and Foley 1998; Woolcock 1998).

Similarities between these two concepts – trust and social capital – have led to the indirect incorporation of these notions into the stream of more general sociological discussions about the connection between cooperation and quality of life. While there are many differences between various studies addressing these issues, they all seem to adopt ad hoc claims about the capacity of informal interaction to bridge the gap between individuals and, thus, to facilitate cooperative behaviour. The majority of writers focus their attention primarily on how one may go about creating and fostering trust in order to increase social capital and thus cooperative relations. Usually in such an approach social capital is defined as a form of trust based on commonly shared norms, therefore, social cohesion is explained in terms of people's capacity to create networks of informal, reciprocal relationships. Hence, both social capital and trust are seen as linked to, and interchangeably used with, the concept of informality. To trust others is to accept the risks associated with the type and depth of the interdependence inherent in a given relationship (Shepard and Sherman 1998, 423). This is accepted by approaches seeing social capital as a public good produced by civic associations (Putnam 1993), as moral resources such as trust (Fukuyama 1995) and as the effective norm that ensures that people work together for common purposes in

groups and organisations (Coleman 1990). The representatives of these perspectives argue that the nature of social ties, or "mediating structures", is essential for cooperation through which a higher quality of life is achieved. In other words, social trust, which mutually reinforces expectations about reciprocity, is seen as a lubricant for cooperation (Misztal 1996).

Fukuyama (1995, 27), who sees trust as the key to cooperation and the fixed ingredient in economic success, argues that trust is critical to economic performance since "people who do not trust one another will end up cooperating only under the system of formal rules and regulations". In high-trust countries (the USA, Japan and Germany) the existence of a supportive culture of "spontaneous sociability", that is, a readiness to cooperate with others in an economically productive way, results in the flourishing of numerous institutions and associations, seen as a good in and of themselves. Informality and sociability, viewed as constituting "a subset of social capital" or a useful kind of social capital with "the capacity to form new associations and to cooperate within the terms of reference they establish" (Fukuyama 1995, 27), sustain trust, which offers a cheaper solution than depending on extensive regulations to prevent others from cheating.

Putnam, who believes that trust produced by secondary associations facilitates democratic efficiency and cooperation, also takes trust to be virtually defining proof of social capital. A high level of social capital, or trust, within a given community is the basis of cooperation and, by the same token, for a more efficient functioning of democracy and a more innovative economy. Putnam (1993) argues that the basic problem of a democratic society is the creation of voluntary associations because only their dense networks of interpersonal trust and cooperation can overcome the free-rider dilemma. However, this approach leaves out some of the most important questions to be asked. Since a decent good society depends on trust as well as on distrust (Misztal 1996), we always need to look beyond trust and check the accountability, transparency and goals of reciprocal networks. Furthermore, the main difference in the amounts of social capital may reflect the different levels of the centralisation of networks, not necessarily a higher level of social integration, since centralisation can overcome the free-rider problem.

Assuming that the main problem faced by the USA today is a deficit of social capital, Putnam (1993, 171) promotes "norms of reciprocity and networks of civic engagement" as two related sources of trust in complex modern settings. Democratic systems can be animated by civic virtues rooted in an old tradition of civic culture, which teaches people to regard "the public domain as more than a battleground «for pursuing personal interest»" (Putnam 1993, 88). Such a reformulation of the question of civic culture assumes that a society is indifferent

to government action, whereas Fukuyama's faith in inherited cultural dispositions confuses trust with familiarity. The former theorist overlooks the role of the state in generating trust relations, while the latter theorist's identification of trust with backwards looking confidence cannot be assumed to be the foundation for modern democratic interaction. Hence, both Putnam and Fukuyama, while arguing that trust is linked with stable democracy and cooperation, fail to answer more specific questions about the nature and reasons for this linkage, as well as how trust relations can be generated under today's conditions.

With recent empirical research showing the decline of trust in many modern democracies, come the realisations that not only do today's societies not provide a natural environment for trust, they also substitute trust or social capital with formal rules. Cook, Hardin and Levi in their edited book, *Cooperation without Trust* (2005), argue that the actual role of trust relations has relatively declined and that trust, although important in many interpersonal contexts, cannot any longer "carry the weight of making complex societies function productively and effectively" (Cook, Hardin and Levi 2005, 1). According to these scholars, modern democracies implemented their solution to the problem of cooperation by setting their foundations in formal procedural democracy and rational universal administration. At present, we witness a continuous shift from "a customary regulation of daily life to the growing resort to codes – explicit sets of rules" (Harre 1999, 262). The growing process of formalisation, that is, the increasing reliance on the formal rules and rights to regulate interaction, means that modern institutions, like law, provide mechanisms that mediate exchange between people. The expansion of formalism, bureaucratisation, institutionalisation and legalism replaces trust developed under the conditions of familiarity with formal rules that provide a formal source of information as to how much an individual can be trusted. Under such conditions cooperation is mediated by formal rules, expert knowledge and legal systems. Cook, Hardin and Levi (2005) seem to follow Weber's idea that increasing formality and impersonality, standardisation and regulation are justified as a means expanding the general welfare.

> Bureaucracy develops the more perfectly, the more it is "dehumanised", the more completely it succeeds in eliminating from official business love, hatred, and all purely personal, irrational and emotional elements which escape calculation (Weber 1968, 975).

According to Cook, Hardin and Levy, in modern societies we do not rely on informal social organisational mechanisms to give potentially useful partners the incentive to be cooperative. Hence, some organisations and institutions serve us well just because they are substitutes for trust relations. Their main assumption is that we cooperate not because "we have come to trust each other, but because of

the incentives in place that make cooperation safe and productive for us" (Cook, Hardin and Levi 2005, 15). Worried that informalisation could lead to clientelism and corruption, that is, exchange relationships in which extrinsic or instrumental benefits or motivation dominates, they claim that some kinds of trust and informal relations, because of their exclusionary – thus undemocratic – character, should rather be avoided. They investigate what kind of informality or trust is desirable in social, economic and political life and reject informal relations that violate ethical and legal norms. However, they overlook the fact that cases of political and administrative malpractice can also occur in the bureaucratic type of exchange where impersonal control is the most significant factor. They also do not pay attention to the shift to more flexible, less formal, network-based type of organisations in the modern world.

From Cook, Hardin and Levy's (2005) perspective, formal rules and institutions are supposed to be the embodiment of the rationality and efficiency of bureaucratic exchange, which is a practise in compliance with the formalized norms of rationality, specialisation and conformity. Cooperation is not a matter of personal relations but depends upon the observation of abstract impersonal rules and routines. This approach reminds us of Weber's idea of the "spirit" of rational formalism, which bureaucracy embraces since otherwise "the door would be open to arbitrariness" (Weber 1968, 985). Such bureaucracy is "the most rational known means of exercising authority over human beings" (Weber 1968, 223). It stresses the depersonalisation of relationships, impersonal power and the detailed rigidity of some prescribed behaviour, all of which make the initiation of change very difficult. The ideal of bureaucracy eliminates the need to trust relationship and personal dependencies and is "a world where people are bound by impersonal rules and not by personal influence and arbitrary command" (Crozier 1967, 107). All members of organisations are dependent and controlled by formal rules and this lowers personal dependency and alleviates the tensions created by subordination. Human behaviour is made predictable, conformist, disciplined, rigid and oriented towards formal groups designed to perform according to abstract, universal criteria.

Yet, the bureaucratic system can never be so closely conforming to its idealised model and in real life the bureaucratic system has many dysfunctions and unintended consequences. Much research shows the routine and oppressive aspects of bureaucracy as well as its "vicious circle" and the role of human relations (Crozier 1967, 177). The informalisation of formal organisation is seen as a normal response to bureaucratisation, which testifies to the "limits of rationalization" of this type of institution (Stark 1989, 644). Not only does the standardisation of behaviour often result in a displacement of goals, but bureaucratic

universal abstract rules also tend to produce conflict because the peculiarities of individual cases are frequently ignored. Therefore, the functioning of bureaucracy can never be totally explained by the combination of impersonality, expertness and the hierarchy of the ideal type. Furthermore, the claimed universalism of bureaucratic impersonal rules is often a rhetorical tool used by bureaucrats when they want to ignore particularistic claims that they do not wish to acknowledge. Finally, with the development of the network society, as argued by Castells (1996), we observe the transformation of bureaucratic structures into dynamic open-ended, flexible, expansive, transnational networks.

According to Castells (1996), the development of dense organisational relationships that cut across various inter- and intra-organisational networks, in contrast to traditional networks which were formal, hierarchical and based on central control, is based on the transmission of information, digitalised communication and technology and is more complex, less hierarchical, less formal, multi-dimensional and without a core centre of power. Their open structures are able to expand beyond pre-existing limits as long as new modes can share the same communication codes (values or performance goals).

> The convergence of social evolution and information technologies has created a new material basis for the performance of activities throughout the social structure. This material basis, built in networks, earmarks dominant social processes, thus shaping social structure itself (Castells 1996, 471).

The emergence of more fluid and flexible boundaries means that the industrial era's institutions and organisations have become "empty shells, decreasingly able to relate to people's lives and values" (Castells 1997, 355). Arguing that a network-based social structure is a highly dynamic, open system, suiting the capitalist economy based on innovation, globalisation, the mobility of capital and the de-aggregation of labour, Castells (1996, 278) notes that what is new about the network society is that there are "few rules about how to win and how to lose". The erosion of the social contract between capital, labour and the state, "sends everyone home to fight for their individual interests, counting exclusively on their own force" (Castells 1997, 367–368). Thus, as labour becomes more dependent on individual bargaining conditions in an unpredictable labour market, neither formal rules nor trust are bases for cooperative relations between the partners. In other words, this shift to more instrumental dealings between major groups of the global economy brings to our attention a new figuration of formal and informal, with the new vulnerability, uncertainty, instability and unpredictability of such relations.

So far, we established that there are multiple sources of cooperation, with some arguing that cooperation relies on trust tied to ascriptive characteristics

or familiarity (Fukuyama 1995) or on legal regulations (Cook, Hardin and Levy 2005) or that it can only be animated by civic virtues (Putnam 1993). In contrast to these approaches, Castells' (1998) notion of network society focuses on the shift to more instrumental dealings between the major groups in the global economic system and allows one to view a new type of social relation, rooted in formalised and instrumentalised informality, as responsible for the production of cooperation in all spheres of modern economic life. The chance of sustaining cooperation in such a way is overlooked by Sennett, who, while embracing the notion of *Guanxi*, does not notice that in today's world *Guanxi* is not confined to moral obligations and emotional attachments. While Sennett rightly emphasises the fact that *Guanxi* remains an important element of relationships in modern societies, he ignores the trend that in the last decades there has been a significant increase in the importance of the instrumental, or rent-seeking, type of *Guanxi*. This type of *Guanxi*, in contrast to expressive or favour-seeking *Guanxi*, refers to "a strategy for forming advantageous relations" (Qi 2013, 310). This interdependent, privileged network, despite the instrumentalisation of informality, functions as an informal institution of assurance, which allows it to fulfil its role in sustaining cooperation in modern world, and therefore its role needs to be acknowledged.

All of the above approaches have failed to notice the shift in the dynamics of formal-informal relationships, which reflects changes in broader social transformations. Fukuyama and Putnam, like Sennett, neglect the contemporary role of instrumental *Guanxi* in gaining and maintaining trust, and thus also fail to grasp its role in providing transaction cost advantages and offering mutual support to those who share reciprocal relations. Cook, Hardin and Levy (2005) tend to be more ready to forget the positive sides of informality and they rather easily associate informality with corruption or bribery, seeing it as providing particular access to resources through personal relations rather than operating through formal structures. Although it is true that in order to avoid favouritism and nepotism there is a need for an adequate system of law and regulation that is able to ensure control, it does not mean that informality itself is a cause of any kind of malpractice. Yet, even though informality is not itself a cause of corruption, if corruption does occur, informality is likely to be one of its mechanisms. Thus, in order to avoid reaching the point when such actions become socially harmful and illegal, we need to ask what the difference is "between a dinner and a bribe" (Cormack 2013, 25), or what kind of configuration of informality and formality can produce public good and which can serve only particularistic interests.

Paraphrasing Michel Foucault's argument that power should be seen as productive as well as repressive, we can emphasise that informality can be constructive

and that it enhances cooperation and achievements of public goods as well as being destructive in that it can facilitate access to material gain through inappropriate means. Furthermore, without going into a detailed discussion of Foucault's (1982) notion of power, and referring only to his arguments that power extends beyond the state and that power is exercised as much through what is permitted as through what is forbidden, we can say that both informality and formality are used to control and construct conditions for cooperation.

> A stupid despot may constrain his slaves with iron chains; but a true politician binds them even more with the chain of their own ideas [which is] all the stronger if we do not know of what it is made and we believe it to be our own work (Foucault, quoted in Hughes 2010, 47).

In short, cooperation can be reinforced through the synchronisation of formal and informal interactional practices – a situation that reflects broader socio-economic circumstances.

Concluding remarks

Following Goffman (1983), I view both informality and formality as the crucial and dynamic aspects of many processes that depend upon the piecing-together of new modes of social control, new institutions and new means of communication. To comprehend ongoing informal and formal contributions made by people to the constitution of today's social institutions, including new configurations of informality and formality, it is useful to employ Elias' (1978; 1992) notion of figuration. The reliance on Elias' concept of figuration and "figurational change" means that our objects of analysis are the changing figurations, or continuously re-patterned configurations of informality and formality. Such an approach allows us to explore a "continuum of changes" (Elias 1992, 46), or changes in informality's relations with formality, and to grasp the complexities, dynamics, interdependencies and heterogeneity of both informality and formality.

While arguing that formality and informality should not be conceptualized as dichotomous or contradictory concepts, the paper asserts that the interdependent and dualist structure of formal/informal, defined by the notion of configuration, allows for an understanding of how changes in their relations translate into the penetration of social life and the widening net of social control. By focusing on their dualistic span, we have demonstrated that the institutional conditions typically involve both informal and formal constraints. In the first part of this paper, we established that the shift in the private and public arenas often expands the scope for informality, changes its role and leads to the informalisation as well

as to the formalisation of informality. In the second part, we discussed how the instrumentalisation of informality becomes a new source of cooperation.

The formalisation and instrumentalisation of informality, in the context of when trust is produced neither by generalized morality nor by institutional arrangements, are important strategies for sustaining cooperation and exercising control. The instrumental type of informality, on the one hand, can uphold the stability of transactions between individuals of known reputations, while on the other hand, the formalized informality can be used to as a strategy to control and to guard against troubles.

When taking into account that in these new socio-economic conditions, the usage of informality as the controlling device and as the new co-figuration of formal and informal processes, we come to realize that the notion of informality needs to be grounded in a theory of power. While my original approach was rooted in Goffman's and Elias' theories, in order to better comprehend today's features and functions of informality, there is also a need to reach for Foucault's notion of power and his concept of the technology of domination. While the process of informalisation refers to Elias' (1978; 1992) ideas about the shifting character of social restraint towards self-restraint, adopting Foucault's (1982) theories reduces our hope that practices of informality can operate outside power relations. Following Foucault's ideas, we can say that relations of power characterise all practices of informality and we can view the process of the formalisation of informality as a technology of domination.

Taken together then, the analytical possibilities presented in the work of Goffman, Elias and Foucault provide us with complementary insights into the changing configuration of informality and formality in the contemporary world. Since the nature of the configuration of formal and informal is detrimental to the levels of cooperation, and thus to quality of life, our understanding of the relationships between formal and informal is of enormous social importance.

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Mikko Lagerspetz

When Formal and Informal Rules Meet: The Four Sets of Rules of the Estonian Language and Minority Regime

Introduction

For the social sciences, the post-communist countries of Central and Eastern Europe (CEE) and the former Soviet Union (FSU) are of interest for two principal reasons. First, they are interesting as a region, the development of which will in many senses determine the future face of greater Europe. And second, the rapid change makes post-communist countries a testing ground for more general theories and models on social development.

One of the specificities of that development lies in what Elster, Offe and Preuss (1998) describe as "re-building a ship at sea", i.e., a need during a rapid change of the whole society to create and re-create the very social institutions that are supposed to manage that change. Research on post-communist development began in the early 1990s with a focus on "transition", or the way in which the institutions of liberal democracy and capitalism could be established along the models known from the West. The later paradigm of "consolidation" lays more stress on the environment in which they function (Beyme 1999). At the same time, there of course exists no consensus about which aspects of the environment are crucial for successful consolidation; likewise, there is also no consensus about the criteria for success. As for democracy, for example, one can stress either stability or representation and either the legitimacy of output or input (Risse 2006, 185). Among the factors influencing whether consolidation will be successful is not only the design of the new institutions, but also their relationship with other institutions and the rest of society, geography more generally as well as long-term historical processes.

Within sociology and political science, New Institutionalism pays attention to the structural context within which individual interests and group norms emerge, and their role in institutional change (Nee and Brinton 1998, xv). In this usage of the term, "an institution" is a collection of rules and organized practices that creates continuity and stability in society, relatively immune to changes in external circumstances and in the participators' individual preferences. They are embedded in a functioning environment that provides them with resources, expectations and frameworks within which rules and goals are interpreted (March and Olsen 2005).

Whereas formal rules are explicit and rely on formal mechanisms of reinforcement and control, informal ones may or may not be explicitly stated and will rely on informal mechanisms of monitoring (Nee and Ingram 1998, 19). Differences between the two different types easily lead to a decoupling between official norms and actual practices, when rules remain unimplemented or routinely violated (Bromley and Powell 2012, 7). At the same time, decoupling does not necessarily need to be seen only as impairing the institution's efficiency. In some situations, disregarding the formal framework of rules can indeed better serve its normatively desired goals (Helmke and Levitsky 2003, 15). Because of New Institutionalism's effort to integrate the analysis of institutions with that of their practical functioning environment, the broadening of the approach it calls for seems like the right step to take in post-communist studies also. I will apply these ideas for an analysis of the language and minority regime of Estonia, one of the countries that restored their independence in 1991, during the fall of the Soviet Union and the Real Socialist political systems in CEE.

The relevance of informal rules and practices for the analysis of countries that have undergone democratic transition has been noted by several scholars (Helmke and Levitsky 2003, 4, 15; Tilcsik 2010; Đurić 2011). In such countries, new norms have been introduced, often from outside, in an environment where the legacy of the former authoritarian rule is incompatible with the new norms' underlying principles of, e.g., civil society, rule of law and protection of minorities. This easily leads to decoupling – the new norms are not implemented or become modified in ways that contradict their original intention. To these insights one should add, that the very decoupling between norms and practices is one of the powerful legacies of the Real Socialist regimes. This phenomenon, called *doublethink* in George Orwell's famous novel, *1984*, meant that officially-declared values and norms did not necessarily guide the day-to-day activities of individuals and institutions. It characterised the highest political leadership and the government and Communist party bureaucracy, as well as the population at large. A common accusation by the "dissidents" was that the state leadership in fact did not "*uphold its own constitution or the laws* which guarantee freedom of thought, speech, the press, and political activity, and the right to public trial" (*Lisandusi mõtete ja uudiste vabale levikule Eestis. I köide. Kogud I–VII*. 1984, 169, cited in Lagerspetz 1996, 113). At the same time, an important skill for a local administrator, a party boss, or the manager of a production unit was the ability to find protection and additional resources for his or her workers or constituencies. This often required disregarding or modifying official regulations and officially-stated goals. Activities verging on the criminal, such as stealing from the employer (a state-owned production unit or a collective farm) were tacitly accepted as economic survival strategies, and this

continues to affect patterns of norm compliance and norm enforcement in post-socialist societies also (see Allaste and Lagerspetz 2005).

The possibilities for monitoring and assessing different elements of the new political order vary greatly. As for elements of language and minority regimes, for instance, some of them are easily accessible for outside observers, while others can be difficult to grasp even by those thoroughly cognisant of the overall context (see *table 1*). The accessibility of different types of information of course varies between countries and between policy fields, but in general, it correlates with the degree of formality or informality of the various policy elements. As a result, observers will be faced with discrepancies between policy measures and outcomes that are difficult to explain without knowledge about the informal rules at stake. So, for instance, all new CEE member states of the EU have adopted constitutions that include guarantees for the protection of and respect for national minorities (Agarin and Regelmann 2011, 82), while at the same time, minorities are more often than not shown to be disadvantaged as to their socioeconomic position or access to political power. On the other hand, there are examples of legislation that verge on ethnic discrimination (such as the Estonian and Latvian citizenship laws), but have not led either to radical marginalization or to large-scale permanent political protest and mobilization among the minorities.

Table 1: Elements of language and minority regimes, and possibilities for monitoring them

Type of element	**Example**	**Ease of monitoring**	**Sources of information**
Constitutional guarantees for minorities	Guarantees for minority representation	Easy	Constitutions
Legislation on language and minority protection	Right for education in minority language	Easy	Laws
Institutions for minority representation and protection	Minority ombudsman	Easy	Laws, government decrees, state programs
Resources used for minority protection	Financing of an agency	Moderate	State and municipal budgets
Enforcement of language and minority protection laws	Provision of public services in minority language	Moderate to difficult	Evaluative reports, administrative and court decisions
Actual functioning of agencies for minority representation and protection	Activity and influence of an agency	Moderate to difficult	Evaluative reports
Values and attitudes	Existence of hidden discrimination	Difficult	Population surveys, media analyses, case studies
Policy outcomes	Labour market position of different ethnic groups	Easy	Statistics, population surveys

In this chapter, I will discuss the Estonian language and minority regime as it has emerged as a result of the development that began shortly before Estonia restored her independence in August, 1991. The country's policies have been met with mixed responses, both from international organizations and from researchers. In the 1990s, the high number of stateless persons among its ethnic minorities caused some observers to draw parallels with the "ethnic democracy" of Israel (Järve 2000; Pettai and Hallik 2002). Estonian social scientists are concerned about widening socio-economic differences between the country's Estonian and Russian speakers (Vetik and Helemäe 2011) and about the latter's diminishing trust in governmental institutions (Kivirähk and Lauristin 2013, 96 f.). On the other hand, Estonia's secession from the Soviet Union took place without ethnic violence; even later, ethnic protest has been virtually (even if not completely – see below) absent. Organizations such as the Council of Europe (CoE) and the EU have regarded Estonia's minority legislation and policies as consistent with their own requirements, and the prevailing view is that Estonia's democracy is among the most successfully consolidated in the CEE region and the FSU (e.g., Pettai and Mölder 2013).

The chapter's aim is to analyse the policy outcomes as a result of the interplay between formal and informal rules and practices. In other words, I will not be looking for explanatory factors in the minority nationals' individual resources and attitudes, nor in the dynamics of ethnic identity and mobilization. First, I will identify four key sets of rules underlying the Estonian language and minority regime, both formal and informal; and second, I will illustrate their way of functioning with the help of a specific case – the government-induced change of the tuition language of those upper-secondary schools that previously utilised Russian. The analysis will show how the outcome is produced and also highlight some of the potential shortcomings of the resulting regime.

Four key sets of rules of the Estonian language and minority regime

Throughout post-socialist and post-Soviet Europe, new or thoroughly re-written constitutions were adopted in the early 1990s. Not unlike those of other countries in the region, the Estonian Constitution of 1992 defined the state as the protector and expression of one "nation" with a distinct language and culture (Agarin and Regelmann 2011, 82). From the outset, the state administration and all the mainstream Estonian political parties have strongly committed themselves ideologically to the idea of a monolingual nation state. This, however, has been a factor in the country's continually strained relationship with the Russian Federation.

On several occasions, Russia has accused Estonia of discriminating against its Russian-speaking minority, a view with which both the Estonian government and many international organizations disagree (see, e.g., Smith 2002, 11–14). This means, however, that all issues concerned with language or with minorities carry a heavy political and symbolical meaning. Despite Estonia's official monolingualism, the actual composition of the population is ethnically diverse, with some 30% of all inhabitants (and close to 20% of the citizens) speaking Russian as their first language. Estonia's language and minority policies of the past twenty years can be read as efforts for coping with this discrepancy.

It should be kept in mind that Estonia's (and neighbouring Latvia's) Russian-speaking population is not just any ordinary minority; it is one that in scholarly language could be called post-colonial. Until Estonia's annexation by the Soviet Union in 1940, the share of Russian speakers in the population was around 8%. The Soviet industrialization policies brought to Estonia large numbers of mainly Russian-speaking workers and administrative personnel from the other Soviet republics, especially in the 1960s and 1970s. Most of Estonia's present Russian-speakers were either themselves settlers, or their parents or grandparents were among the settlers. In the eyes of ethnic Estonians, the very presence of Russian speakers in Estonia is a reminder of the country's five-decade history as a Soviet Republic. "Civil Occupation" was the term for this presence, coined in 1994 by a politician of the then Prime Minister's party, *Pro Patria* (*Isamaa;* literally, "Fatherland") (Riigikogu 1994). Even if references to the Russian-speakers as former occupiers cannot be found in any legal texts or policy documents, and even if such language nowadays would be avoided by all politicians except a handful of nationalist hardliners, a tacit assumption still held by many Estonians is that the Russian speakers' loyalty to the Estonian state is in one way or another compromised by their loyalty to their ethnic kin.

To make a long story short, I suggest that Estonia's minority regime forms a pattern with four distinct sets of rules, with varying degrees of formality. One of them is based on the idea of re-nationalising the society, i.e., securing the Estonian language and ethnicity's leading position in the state. Another consists of the different constitutional and legal provisions designed to guard the minorities and to balance the dominance of the Estonian language with the privileges given to minority languages. The implementation of such protections is, however, mostly dependent on the political will of the government. A third rule set that is crucial for the regime's practical functioning is the actual pragmatism shown by the state and local governments in language-related issues; and the fourth is the absence of institutionalised channels for minority representation. Obviously, this combination is compatible with the Estonians' prevailing view of the Russians,

as discussed above: they are othered from the core nationality, both as an ethnic group and as citizens. But it also acknowledges the practical need for a *de facto* multicultural society, and the lack of the resources that would be needed for any strict implementation of the language laws (e.g., for replacing large segments of health care personnel or the police forces). Together, the four sets of rules form the foundation on which the Estonian society has so far been able to combine official monolingualism with only a minimal degree of ethnic unrest – with the obvious exception of the "Bronze Soldier" riots of April, 2007. On 26–28 April, 2007, street rioting and looting mainly by Russian-speaking youth in Tallinn was triggered by the Government's decision to remove a Soviet-era war monument from the city centre. Around 1,300 people were detained by the police during the two nights. The events have received considerable scholarly attention as well (see, e.g., several articles in 2008's last issue of *Journal of Baltic Studies*; Petersoo and Tamm 2008; Berg and Ehin 2009).

(Re-)nationalising policies

In the wake of the events of the 1990's, Estonia and most other countries of CEE and the FSU opted for what Brubaker (1996) has termed "nationalising policies". They thus consist of laws, regulations and practices securing the dominance of the ethnic majority's language and cultural heritage in public life. Maybe the example with the most profound influence on further developments was the *Citizenship Act* (enacted in September 1992 and enforced beginning in July, 1993), which gave the automatic right of citizenship only to people who were citizens of Estonia in 1940 and their descendants. As a result, a majority of the country's more than 400,000 Russian speakers were transformed into aliens (Jurado 2003, 399). (At present, some of the Russian speakers have left Estonia, some have gone through the naturalization procedure or opted instead for Russian citizenship; the number of stateless persons in Estonia is still around 85,000. For details, see Lagerspetz 2014b). Another example is the *Language Act,* the present version of which was adopted in 2011. Among other things, it specifies the degree of proficiency in the state language that is required for different categories of employees (in the relevant Government Decree specified for both public and private employees), and the punishments for not complying with the regulations (Riigi Teataja I 1995, 23, 334; Riigi Teataja I, 18.03.2011, 1; Riigi Teataja I, 29.12.2011, 169). These laws are also important as symbolic gestures and are seldom publicly challenged by mainstream politicians (even in cases when they might not correspond to an individual politician's private opinion). Throughout the period of renewed independence the government coalitions have virtually been dominated

by rightist-conservative and rightist-neoliberal parties, who in their programs and campaigning routinely appeal to nationalist ideas and sentiments.

Guarantees for minorities

Another set of rules with sometimes symbolic, sometimes real substance consists of several legal provisions safeguarding minority rights. The Constitution states, among other things, the minority nationals' right to create institutions of non-territorial cultural self-government, "according to the conditions and regulations stated in the law on the cultural autonomy of national minorities" (§ 50); other paragraphs guarantee the right of national minorities' educational institutions to decide upon their language of tuition (§ 37), and everybody's right to preserve his or her ethnic belonging (§ 49) (*Eesti Vabariigi Põhiseadus* 1992). However, efforts at establishing bodies for the purpose of implementing cultural autonomy have in practice come to be blocked by bureaucratic obstacles (to be discussed further on). Likewise the language of tuition in upper-secondary education (also to be discussed below) has, during the past few years, become the hottest issue of controversy between the government and the Russian speakers. The *Law on Local Government* allows resident non-citizens to vote in local elections, which has endowed Russian speakers with a channel of political influence in Tallinn and a few other cities. A paragraph (§ 11) in the Language Act indeed also allows municipalities with a non-Estonian linguistic majority to use the other language in its administration – but only if the Government of the Republic grants the relevant permission. Up to now, this provision has never been implemented, despite reoccurring requests by municipalities with large Russophone majorities. Thus, a characteristic element of this and many other laws, and of the relevant paragraphs of the Constitution, is that their actual implementation is dependent on the Government of the Republic, which has hitherto not shown the political will necessary.

Unofficial bilingualism

However, neither has the implementation of nationalistic legislation been stringent. Reflecting this, the Council of Europe's Advisory Committee monitoring the Framework Convention for the Protection of National Minorities was pleased to note in its opinion of 2001 that the use of Russian was widely accepted in contacts with authorities, despite a lack of legislation that would guarantee that right (Council of Europe 2002, 10). As a solution to practical problems in a city, where the great majority of both the population and the members of the municipal council are Russian speakers, the municipal counsellors of the city of Narva in

north-eastern Estonia have been reported to organise preliminary meetings, in which the agenda is first discussed in Russian, followed by short regular meetings conducted in Estonian, in which the decisions are officially made (a practice that by some is considered legally suspect – see Riigikogu 2005). In child care and education, which are administered by the local governments, systems working in Estonian and Russian exist in parallel. Basic health and social services are easily available in Russian, and private businesses serve their clients in both Estonian and Russian as a matter of course. These are just some examples of the actual pragmatism and flexibility with which language issues are treated in everyday life. They form the third crucial element of the language regime.

While the society in general seems to have adopted unofficial bilingualism, this tolerance has no formally codified basis and does not imply any easy recognition of formal language rights or bodies of minority representation. The creation of such protections dates back to the early 1990s, but they have by now become increasingly imperceptible in politics and publicity.

Blocking interest representation

An early example of a semi-official consulting body on minority issues was the *President of the Republic's Roundtable of Non-Citizens and National Minorities,* set up by President Lennart Meri in the midst of a political crisis on 25 June 1993, at the suggestion by CSCE's (now OSCE) High Commissioner on National Minorities (HCNM), Max van der Stoel (Kemp 2001, 135). However, after years of declining visibility, the Roundtable was finally in 2010 transformed into a commission within a state-financed private foundation (*Vabariigi President Eesti Koostöö Kogu rahvuste ümarlaua kokkukutsumise puhul*, 26.05.2010). Another agency, originally influential in bringing minority issues to the political agenda, was the *Minister Without Portfolio of Population Issues* and his or her bureau, that existed first in 1990–1992 (as the *Minister of Ethnic Relations*), then in 1997–2005 and again in 2007–2009. The Bureau was in charge of integration, citizenship, refugee and population policies and initiated Estonia's first policy documents on minority integration strategies in 1998, but was finally disbanded and its tasks divided between different ministries.

The Constitution's provision for the establishment of bodies of non-territorial cultural autonomy found expression in the enactment of the relevant law on the *Cultural Autonomy of National Minorities* on 26 October 1993, by a solid parliamentary majority. Following the example of a similar law from 1925 (see, e.g., Alenius 2007), it grants groups of Estonian citizens with a distinct cultural heritage and reaching a minimum number of 3,000 registered members, the right

of establishing through an election procedure Cultural Councils that are given the task of coordinating the minority's cultural and educational activities and of forming relevant public bodies (National Minorities Cultural Autonomy Act 1993). However, the reality has turned out rather differently from that which was originally promised. The law requires that in order to establish cultural autonomy, a roll of citizens belonging to the national minority should be created. The government decree regulating the procedure was issued in October, 1996 (Riigi Teataja I 1996, 72, 1272). Further, the decree that specified the election procedure of the Cultural Councils was issued only in 2003, ten years after the adoption of the law itself (Riigi Teataja I 2003, 40, 275). As of today, Cultural Councils have only been elected by two tiny minorities – the Ingrian Finns in 2004 and the Estonian Swedes in 2007. They have not received the status of legal persons and both groups have had to establish parallel NGOs in order to run their activities. Applications on behalf of the far more numerous Russians have been filed four times – in 1996, 2006, 2009 and 2011, but have not led to any positive decision by the Ministry of Culture despite years of administrative processing, and thus the applying organizations have questioned the legality of their treatment (see Lagerspetz 2014a). By the time the first application was filed, none of the necessary by-laws had yet been decreed. As to the application filed in 2006, the Ministry of Culture started processing it only in 2009, after an administrative court decision obliged it to do so, and finally dismissed it with the justification that the initiating organization was not sufficiently representative of the whole Russian minority community (a requirement not to be found in the law or its acts of implementation). The Ministry also stated that the establishment of Russian cultural autonomy might complicate the pending change of tuition language in hitherto Russian secondary education (see below). The Ministry has not, as of January 2015, made any decision on the two later applications either, with the rationale that the existence of several parallel applications makes the decision process legally complicated.

The legislation on political parties includes no obstacles for the formation of parties representing ethnic minorities; some do exist, but none of them managed to win a seat either in the 2003, 2007 or 2011 parliamentary elections (in 1999, the Russian-speakers' United People's Party won 6 seats out of 101). However, the Centre Party in particular – now the largest opposition party – has been successful in appealing to Russian-speaking voters.

In the next section, I will illustrate the four sets of rules of the Estonian language and minority regime with the help of a topical controversy: the debate over the tuition language of upper secondary education. The plan for introducing Estonian as the main language of tuition in the hitherto Russian Gymnasiums

has received surprisingly little scholarly attention. It has been met with cautious criticism by Estonian educational scientists, who base their opinions on surveys and interviews with Russian speaking teachers, students, their parents and education experts (Kello, Masso and Jakobson 2009; Masso, Kello and Jakobson 2013; Masso and Soll 2014). The related political processes during the 1990s and early 2000s have been discussed by Jurado (2003) and Galbreath (2005, 170–172).

The issue of the Russian gymnasiums

The present controversy over the language of tuition in upper-secondary schools is a case in point, showing the working of all the sets of rules discussed above: the ideologically motivated decisions and the difficulties in actually carrying them out; legal, political and pragmatic ways of overcoming the difficulties; the existence of formal guarantees for minorities and the dependence of their implementation on political will; and finally, the limits that exist for the participation of the minority citizens themselves. Even if the Constitution (§ 37) gives the "national minorities' educational institutions" the right to decide upon the language of tuition themselves, and the Law on the Cultural Autonomy of National Minorities (§ 4) gives persons belonging to a national minority the right to "form and support" such institutions, a legal definition for them is nonetheless nowhere else to be found. As long as the latter law is not fully implemented in practice, there cannot exist any such educational institutions that would be entitled to use this constitutionally guaranteed right; the state or municipal schools are not legally recognised to belong to the category of "national minorities' educational institutions", whatever the language of tuition or the mother tongue of the students.

The *Law on Gymnasiums and Primary Schools* was originally passed on 16 July 1993 and slightly amended on 15 September of the same year after an intervention by President Lennart Meri. The law defined Estonian as the sole language of tuition in all public upper-secondary schools (gymnasiums) and ordered a shift to Estonian to be carried out in Russian gymnasiums by the year 2000 (Riigi Teataja I 1993, 63, 892). In the parliamentary discussion of the law, Estonia's Russian-speaking population was referred to as representing the former occupiers, and the law as essential for securing the Estonian language's future survival (Riigikogu 1993a; Jurado 2003, 412f.). It was finally signed by the President, despite quick and alerted responses from both the Council of Europe and the OSCE and its HCNM (Jurado 2003, 411f.). The President's remarks to the *Riigikogu* justifying his initial intervention were not at all about issues of minority protection, but about how the general compulsoriness of secondary education was formulated in the law (Riigikogu 1993b). However, already during the parliamentary discussion, the

Minister of Culture and Education, Paul-Eerik Rummo, expressed serious doubts about the time frame:

> What we need to accomplish is that a pupil graduating from a Russian-language basic school will in fact be capable of continuing his or her studies in an Estonian-language gymnasium or vocational school. To reach that by the year 2000 is virtually impossible; in order for that, the whole process should have been started already two years ago. To speed up the process now would first of all require much larger resources and secondly, that a part of the students of Russian schools would be prepared to enrol in the new, much more demanding Estonian-language curricula. That would in turn require talent above the average, very strong study motivation and large numbers of very well-qualified teachers. All these components we are lacking now (Riigikogu 1993a).

According to Rummo, the hurried timetable did at first sight seem "beautiful, nice, ideologically correct and patriotic", but would in practice prove to be a short-sighted decision that would never bring about "the noble results intended" (Riigikogu 1993a). The necessary preparations in fact did not start until several years later. A Language Strategy Centre designed to train Russian-speaking teachers in Estonian and to provide teaching materials was officially set up in 1995, but it worked with limited finances and did not produce an action plan to assist the transition sooner than 1998 (Jurado 2003, 414). In 1997, the law's implementation was indeed postponed from 2000 to 2007 (Jurado 2003, 415), and even that deadline later came to be postponed again. A new version of the Law from 9 June, 2010 (Riigi Teataja I 2010, 41, 240) states the academic year 2012/2013 as the time of implementation.

However, a more principal change to the law was made by an amendment in June 2000. It defined "the language of tuition" as the language in which at least 60% of the teaching of the curriculum is performed. This allows schools to continue teaching some subjects in Russian. Jurado (2003) attributes this new approach to attitude changes among the politicians, who had been increasingly socialised into the more "ethical" and minority-friendly way of thinking represented by the Council of Europe. This may be one part of the story; however, the preservation of 40% of the tuition in Russian also certainly makes the transition cheaper and more realistic. Moreover, it made explicit that a merger of the then Russian gymnasiums with the Estonian ones was not what was intended – despite frequent talk about integration. The resulting pedagogical problems will be experienced by the Russian students and their teachers, but remain irrelevant for the Estonian schools and for most of the Estonian-speaking electorate.

Despite the amendment, the reform still seems difficult to carry out without considerable losses in teaching quality, which is a major reason for the opposition from the Russian-speaking teachers as well as students and their parents

(Kello, Masso and Jakobson 2009, 5). A survey of Russian Gymnasium teachers showed that in 2009, a mere 25% had received any supplementary training in the methods of teaching their Russian-speaking pupils in another language (including those teachers who were already doing so) (Masso and Kello 2010, 24). The Estonian Language Inspectorate's regular assessments of 2012 revealed that 49.5% of the assessed teachers in Russian-speaking schools did not fulfil the requirements for fluency in the state language (*Keeleinspektsioon* 2012). The Ministry of Education has given no clear instructions about how much Russian may be used in a supporting role in a lesson supposedly taught in Estonian (Kello, Masso and Jakobson 2011, 6), and, according to some newspaper reports, the teachers seem to be developing their own *ad hoc* pedagogies that include a rather liberal use of Russian, while the Ministry of Education is turning a blind eye. At least until very recently (see Afterword), the formerly Russian gymnasiums' pedagogical problems have had a low priority within Estonia's education policies.

According to the letter of the law, the change of tuition language is in fact not obligatory – something that the Estonian government did not forget to mention in its 2010 report to the Council of Europe on the protection of national minorities (Council of Europe: Secretariat of the Framework Convention for the Protection of National Minorities 2010, 44). In the law's present, 2010 version, one paragraph (§21 (3)) indeed gives the option of using a language of tuition other than Estonian. The applications for doing such are to be forwarded to the Government of the Republic by the local government upon the request of the gymnasiums' school councils. However, the Government's Decree of 6 January, 2011 on gymnasium curricula ignored this option; only after an intervention by the Chancellor of Justice did the Government amend its decree so as to correspond with the law (Chancellor of Justice 2011). The Government has hitherto – January 2015 – rejected all such applications made by municipalities on behalf of Russian schools (out of a total of 18 applications that the Government has made a decision on, the only exceptions were made in August 2011 for two adults gymnasiums in Tallinn and Narva, and none have been made for ordinary secondary education). The Minister of Education and Science of the previous cabinet (until March 2014) did also state publicly that he intended to continue doing so. In September 2010, the NGO *Vene kool Eestis* [Russian School in Estonia] was founded in order to represent and inform the parents of Russian school children, but the Minister of Education, Mr. Tõnis Lukas, immediately declared that the organization was involved in politicking in a manner hostile to the Estonian state (Raiste 2010; Lobov 2011). The 2011 *Annual Review* of the Estonian Security Police [*Kaitsepolitsei*] suggested that the NGO in question was in fact an example of the Russian Foreign Ministry's efforts of using NGOs as means to "influence

the sovereign decisions of other countries and to divert attention away from its own problems through the manipulation of these groups [of Russian speakers]" (Security Police of the Republic of Estonia 2012, 10). Because of their activities within the organization, two Russian-speaking politicians were branded as serving the interests of Russia. As the Security Police summarises its stance in the matter,

> [t]he Russian-language educational system and the special status of the Russian language were established as part of the Soviet Union's Russification policy. Preserving them is a priority of Russian influence operations. The Russian Embassy in Estonia supports these activities […]. It is regrettable that the Russian Federation attempts to use young people as instruments in its influence operations as the future of young Russians in Estonia and Europe depends, above all, on them receiving a competitive education (Security Police of the Republic of Estonia 2012, 11).

Obviously, the Security Police's opinion is that "competitive education" equals tuition in Estonian, irrespective of the teachers' and students' prior fluency in that language. The NGO's and the two politicians' activities that the Security Police condemned were of course fully legal as such: informing the school councils of Russian gymnasiums about the possibility of applying for the continuous use of Russian as the language of tuition – information that the Ministry of Education itself is not announcing. The two politicians sued the Security Police for libel, and one of them has already won her court case. Clearly, much of the future of the Russian upper-secondary education in Estonia will be decided in courtrooms.

Conclusions

Of the four sets of rules underlying Estonia's language and minority regime, two belong to the sphere of legislation: (1) the laws intended to secure the Estonian language and ethnicity's leading position in the state and (2) the legal provisions designed to guard the minorities, which are usually made dependent on the Government's consent. These two are balanced by the informal practices of (3) less than stringent implementation of the language laws, often resulting in solutions that are essentially bilingual; and of (4) blocking and discouraging potential channels for the Russian speakers' collective interest representation. In one sense, these rules do indeed counteract each other; however, they can also be seen as functionally complementary. In the way suggested by Nee and Ingram (1998, 35), the formal rules serve to "satisfy external constituents that provide the organization with legitimacy", while the informal ones "guide [its] day-to-day business". It was argued earlier that taken as a whole, the resulting regime

is in harmony with the views, or the "institutionalised myths", about Russians prevailing in the public opinion. But taken individually, each set of rules also corresponds to the expectations of important external constituencies: the part of the electorate guided by nationalist sentiments, the international and European organizations concerned with minority issues (cf. Smith 2002), and the municipalities and state agencies implementing the policies.

The expectations of these external constituencies are different. Expressing pride for the newly won independence and nostalgia for the more ethnically homogeneous country of the 1920s and 1930s have shown to be important for a large segment of voters. At the same time, Estonia's "Return to the Western World", i.e., the country's accession to the EU and NATO in 2004 was dependent on its reputation as a democratic country that respects its minorities and human rights. It was, however, clear from the outset that one of those two constituencies – the voters – would always be there, while the attention from the other one – the international and European organizations – was likely to disappear after successful accession negotiations. The EU accession also meant the end of external pressure for minority rights. The lack of minority organization and representation minimises domestic pressure; at the same time, the need to run everyday business in a society with a large linguistic minority makes it impossible to implement nationalising policies without exceptions and modifications. In sum, the answer to one external constituency was promises without strict legal commitment, and to the other, commitment without strict implementation. A question is how much strain between formal and informal rules can be tolerated without endangering the precarious balance between them; how sustainable is the settlement thus reached?

In the process of changing the Russian gymnasiums' language of tuition, all the four sets of rules discussed previously are present. The original law of 1993 was adopted much as a symbolic gesture, ignoring the doubts that were expressed already at that time about its possibilities for practical implementation. The first experiences after the language change suggest that the actual use of Russian and Estonian as tuition languages is not being strictly monitored. Instead of allowing the use of existing legal and constitutional guarantees for education in minority languages, the legislators and the government have opted for a softening of both the legal and the unofficial language requirements. On the other hand, both the school boards and the Russian-speaking parents' organization have been denied the possibility of influencing this aspect of their children's education. Also, the present practice leaves the Russian teachers and school directors in a potentially vulnerable position when trying to cope with the resulting pedagogical problems, with them thus possibly operating in a legal grey zone.

Together, the formal and informal practices now prevailing in Estonia contribute to a minority incorporation regime that has usually shown itself able to guarantee a smooth functioning of society and to prevent the surfacing of ethnic strife. However, the regime's heavy reliance on informal practices also makes it dependent on political goodwill and on a balance of power between different actors. That balance means not only a relative equity between more nationalist and more liberal-minded parties but also a balance between the more ideologically committed central authorities and the municipal governments favouring a more pragmatic, down-to-earth approach (and with constituencies consisting of both Estonian citizens and non-citizens). During all political election campaigns, an effort to change that power balance is likely to be made. The lack of acknowledged interest representation means that the Russian-speaking minority itself has little say on the future continuation or discontinuation of these practices; the Estonian minority and language regime remains a strictly top-down enterprise controlled by the majority. It also weakens the possibilities for moderating between the opinions of Estonian nationalists and the more militant among the minority activists. The riots of 2007 showed the dangers inherent in such a situation.

The events that led to the "Bronze Nights'" riots gained momentum during the campaign before the March 2007 parliamentary elections, when Prime Minister Andrus Ansip's neoliberal *Reform Party* vied for the nationalist vote with its coalition partner, the conservative nationalist *Union of Pro Patria and Res Publica* (see Lagerspetz and Vogt 2013, 57). As reported by correspondence from the U.S. Embassy in Tallinn, Res Publica's general secretary said "off the record" in September 2006 that an ethnically motivated incident "would be extremely good for Res Publica's campaign and they would make good use of the publicity" (PLUS D 2006). It is not difficult, either, to see a connection between the March 2011 elections and the Government's sudden determinacy in January 2011 to enforce the change of the Russian gymnasiums' tuition language. Many of Estonia's political parties will be tempted in the future to mobilise Estonian nationalist sentiments not only because the number of Russian-speaking voters is smaller, but also because of the recent economic slowdown. As Offe (1996, 63) notes, during economic hardship, appeals to (national) "pride" often are more effective in gaining votes than appeals to (economic) "hope".

The rule of law is an important precondition for democratic consolidation. However, both the élites and the populations of the formerly Real Socialist societies have profound experience with a political system in which the distance between officially stated norms and the rules guiding everyday life was larger than usual. A decoupling between norms and practices was essential both for the survival of the system and for individuals to accommodate to it. Finding

ways to disregard regulations coming from central authorities could even be seen as a patriotic act of passive resistance. To apply a common Soviet phrase, it is "not incidental" that minority issues have become the field of policy where decoupling now is most easily visible (Đurić 2011). They have, at least formally, ranked highly on the agendas of the EU, the OSCE and the CoE. Now, as before, a perceived situation has emerged in which formal rules are being set by a power centre outside the control of local constituencies. Legislators and the people supposed to implement the laws respond with a mixture of both formal and informal modes of compliance and resistance. In Estonia, the resulting minority and language regime has not been without success, but from the point of view of the minorities, it includes a great deal of arbitrariness and insecurity. This is not to say that all aspects of a society's functioning should be regulated by formal law; on the other hand, if formal and informal practices stand in obvious contradiction to each other, the resulting balance will remain fragile – an easy target for both legal and political criticism.

Afterword

Soon after this chapter was first finished in March 2014, important changes took place in Estonian politics. The Prime Minister Andrus Ansip resigned his position in order to become a member of the EU Commission. The new prime minister's Cabinet that was installed on 26 March was formed on the basis of a new coalition between the neo-liberal Reform Party and the Social Democrats, who thus replaced the nationalist-conservative Union of Pro Patria and Res Publica. Importantly, the position of Minister of Education and Science was given to a Social Democrat, the 28-year-old Jevgeni Ossinovski with an education in Political Science from the London School of Economics and Political Science. He was the first ethnic Russian ever to make it to the Cabinet after the reestablishment of Estonian independence. In June 2014, he appointed a commission in order to assess the process by which the tuition language was changed in formerly Russian Gymnasiums. The Commission's report, delivered in September, confirmed many of the findings of previous studies by educational researchers, effectively stating that there was a lack of suitable teaching material, and that the language fluency of both the teachers and the students was in many cases insufficient in order for the reform to be successful. Among other recommendations, the report called for more flexibility with regard to the requirement that a minimum of 60% of tuition be in Estonian (Haridus- ja Teadusministeerium 2014). No political consequences have been drawn from these conclusions yet, nor has any secondary school

yet been granted the permission to continue using Russian as the main medium of instruction. However, the developments hitherto show that there exist chances for overcoming the ideological obstacles rooted in nationalist policies and thus, for bringing the framework of formal rules closer to the demands of actual day-to-day practices.

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Hans-Joachim Lauth

Rule of Law and Informal Institutions

Introduction

Over the course of the widespread third wave of democratization, a key observation has been made frequently: The introduction of elections alone does not guarantee a functioning democracy. The main indicators used in this determination are weak rule of law and a lack of checks and balances due to an unsatisfactory level of institutionalized, horizontal accountability (O'Donnell 1998; Schedler, Diamond and Plattner 1999). Additional criteria, which are present in modern, Western constitutional states, must be met. Unsurprisingly, O'Donnell (1999; 2004) explicitly urges that the existing foundations of democracy in the West and the implicit requirements of democracy should be identified and analyzed. He considers the concepts of *Rechtsstaat*, rule of law, and the constitutional state (or constitutionalism) to be essential to the analysis. For this reason, the fundamental constitutional order, rather than system of government, is addressed. This applies to the legal form or the judicial system, the basis for governance, in which state activity manifests itself. The analysis of systems of law is relevant not only to democracies, but also to authoritarian regimes, because it sheds light on their dynamics and stability. Investigating both kinds of regimes leads us to the following questions: Do legal systems always have characteristics of the rule *of* law, or in some regimes, do they possess only an instrumental nature ("rule *by* law")?

Passing references to missing or limited rule of law are not sufficient to gather differentiated empirical findings. In order to appropriately integrate the legal level into the analysis of young democracies, as well as authoritarian regimes, this article employs a dual perspective. First and foremost, it allows different characteristics of formal legal structures to be examined. Moreover, by employing the neo-institutionalist understanding of informal institutions (Lauth 2000; Merkel and Croissant 2000), strong emphasis can be placed not only on legally codified institutions, but, at the same time, existing informal structures can be taken into account. Both are relevant to the analysis and have to be considered, as not all judicial systems are regarded in the analysis of official legal systems. Informal law and systems of rules are not systematically included in the analysis of rule of law up to today. The connection between formal and informal legal systems has not been appropriately addressed in the current literature on the topic of democratization; even comparative research on the development of rule of

law is rare (Fukuyama 2010). There are numerous case studies, however, which investigate special forms of informal systems (such as indigenous and religious law or corruption and violence in the research area of rule systems; Brinks 2012).

The analysis of formal and informal law structures allows the empirical findings to be differentiated and assessed. In using this approach, the following questions emerge and allow this article to be structured into corresponding chapters:

- What is the nature of law and legal systems? What distinguishes them from rules and informal judicial systems?
- What are the core principles of *Rechtsstaat* and of related concepts (rule of law and constitutional state, or constitutionalism)?
- In the empirical analysis, attention will subsequently be given to legal systems that exist outside of the outlined forms of constitutional order. The discussion focuses on the parallel existence of *Rechtsstaat* and informal legal systems and includes thoughts about a connection between *Rechtsstaat* and alternative systems of rules based on a factual and a normative level. In order to make these considerations conducive to empirical use, the findings about rule of law will be integrated into a proposal for the creation of a typological differentiation of legal systems.

Law and legal systems

Firstly, the term "law" has to be distinguished from the term "rights." Rights, in the sense of fundamental, human rights, draw their validity in the traditional jurisprudential thinking from their jusnaturalistic status. During the Age of the Enlightenment, this justification strategy became based on rationality. Thus, the jusnaturalistic argument was replaced by a rational law justification (Kant 1982). Accordingly, rights have validity, even if they are not preceded by laws, because they are generally tied to the dignity and freedom of the individual. Rights can become positive law. However, does the law gain its legal status only through the inclusion of rights?

A look at the evolution of law in different cultural backgrounds shows that rights are incorporated in varying degrees. First of all, this implies that the nature of law does not necessarily require the inclusion of rights into the official legal system. However, a common feature of all empirical legal systems is the authoritatively binding nature of rules. In this way, legal systems are binding systems of rules; law is, therefore, always set through government power and authority, whose effectiveness can be enforced through coercion if needed (Alexy 2011). This understanding of law finds its expression in laws that are understood in the

tradition of legal philosopher John Austin as "the generalized commands of a sovereign" (Campbell 1993, 186).

The separation of law and rights or, in other words, of law and morality, is a hallmark of the traditions of the positivist theory of state law and the positivist philosophy of law (Kelsen 1960 [1934]; Hart 1961). However, this position has not gone unchallenged (Dworkin 1977); even in Hart's (1961) writings, the question arises whether his "formal" acceptance criteria for "valid law" already set legal standards that are difficult to reconcile with positive law in totalitarian regimes. Due to the comprehensive political subordination of law in these kinds of regimes, it seems less convincing that this idea of law – in terms of Hart's understanding – is tenable. Here, the discussion should shift to a perversion of the law. This interpretation would be emphasized if relevant considerations of legal theory were followed according to an understanding of law as a defense against political despotism.

In using the term legal or judicial system, however, we will refer back to a basic concept of the term, which includes any (positive) law written by the state, regardless of how fair it is; this definition, however, does not include perversions of the law. This decision is based simply on the empirical facts; regardless of a regime's status, a legal system is attributed to almost all states. Were the legal term tied to certain normative standards, this classification would have to be revoked from some states, and another term would have to be used. Indeed, it is preferable to consider the legal system, which is characterized by certain normative standards, as a *Rechtsstaat* or analogous as the rule of law[1].

In considering different constitutional traditions, it becomes obvious that binding the law to rights has largely prevailed in the wake of the emergence of rule of law in its different forms. In liberal and democratic societies, the law virtually draws its legitimacy from this fact. For this reason, it is appropriate to use the term "rule of law" or "*Rechtsstaat*" in order to make it clear that legal systems are not inherently bound to rights, although legal systems are barely viable without a minimal reference to them. Without this connection, the possibility of legal systems being legitimized is lower, and they must be increasingly based on coercion. It is assumed, however, that legal systems in other cultures also include rights. The understanding of these rights has to be examined, however, to determine to what extent these interpretations differ from those of constitutional traditions in the West.

1 It is possible, of course, to discuss the legal nature of specific autocratic regimes. Doing so, however, entails a cultural bias, which could tempt one to deny legal status to legal systems of other cultures if they do not meet the normative standards of a preferred legal sphere. Therefore, it is appropriate to employ a basic concept of this legal term.

The concept of rule of law (*Rechtsstaat*)

If the discussion of *Rechtsstaat* or rule of law from a continental European and Anglo-Saxon point of view is condensed, the following core idea can be recognized (Raz 1979; Lauth 2004; Becker and Zimmerling 2006; Waldron 2008; Schulze-Fielitz 2011; Enzmann 2012; Shapiro 2012). A *Rechtsstaat* or rule of law is based on a functioning state and the commonality of law, which prohibits any law specific to one single individual, as well as retroactive laws. The principle of the rule of law requires equality before the law and the general application of the law, regardless of the social status of the people involved (i.e., fairness). This includes state institutions specifically. The legal bond of the state refers to the conformity of the constitution and legislation. Actions by the government and the administration ("legality of administration") have to comply with the laws. In addition, state intervention is limited by the proportionality principle.

Thus, there is a connection between formal justiciable guarantees (legal procedures) and individual citizens, who can exercise their constitutionally-granted rights against the government (court protection). For this purpose, laws must be transparent, well-defined, and consistent. At the same time, the legal guarantees require the public to be aware of them. A certain stability in the laws is also necessary to gain a familiarity with them and allow rational calculations (legal certainty). An essential prerequisite for litigation is a qualified procedural law, in addition to many other features, including the existence of an independent and professional judiciary that is accessible to all citizens and has ultimate control over the actions of the executive. The various criteria culminate in a realization of legal thought, which includes a prohibition on state despotism and can be understood as a fundamental contribution to justice.

The separation of powers among the judiciary and the other branches of government is a central criterion for determining the validity of rule of law (Böckenförde 1976; Grimm 1994). In understanding the separation of powers, the precedence of democratic legislation in comparison to other forces is assumed. Neither the judiciary, nor the executive, nor the administration, can create its own law. Administrative decrees are subject to the law. By providing institutions, standards, and procedures, the rule of law demonstrates a most striking expression of horizontal accountability, which can be differentiated into various institutional forms (Lauth 2007). The legally-secured design of public space and the political sphere means protection not only from state arbitrariness, but also from social actors who either disregard laws or try to manipulate them unconstitutionally (e.g., by means of corruption). The quality of

the rule of law is restricted to the extent where it fails to curb these actors. In this regard, the rule of law outlines rights and responsibilities for the state and citizens while limiting both of them.

All previously introduced characteristics of the rule of law apply to the formal rule of law. The assertion of fundamental rights, however, appears logically necessary to ensure that the institution of legal due process has meaning. Such an assertion is also imperative if the goal of limiting state action – an idea intrinsically linked to the legal process – is to be taken seriously. Relating this limitation solely with binding government actions on laws would ultimately mean accepting only a low threshold for future actions taken by the majority, because law-making could change accordingly.

For these reasons, it is quite plausible to conceive of fundamental rights as a material component that is – in addition to other formal procedural guarantees of the rule of law – a constituent component of rule of law (Zippelius 1991, 281); nevertheless, there is considerable room for interpretation when it comes to defining and applying abstract rights. With the essential aspects of the *Rechtsstaat* substantiated, the questions remain: What fundamental rights should be included in the understanding of rule of law, and how should they be interpreted?

The outlined understanding of a *Rechtsstaat* should not simply be separated from the thoughts about a constitutional state, because the latter has various meanings. There are positions which consider the constitutional state to be nearly identical to the substantive concept of a *Rechtsstaat*, while others understand it in the context of a positivist perspective – a position which is closely connected with the principle of "absolute" parliamentary sovereignty in Great Britain. However, key features of the *Rechtsstaat* (fundamental rights and procedural rights) are also often found in the constitutional state (constitutionalism). With this in mind, a constitutional state is not necessarily identical to a state that, while possessing a written constitution, does not demonstrate the required normative conditions. Nevertheless, compared to a *Rechtsstaat*, a constitutional state could have other additional features, particularly with regard to the political order, which given its institutional rigidity expressed by oversized majorities, is difficult to change. In this sense, Article 20 of the German *Grundgesetz* (constitution – *Grundgesetz für die Bundesrepublik Deutschland* 1949) crosses into the realm of the constitutional state, because it not only establishes the substantive aspects of the *Rechtsstaat*, but also the federal political order.

Table 1: Principles of the (formal) Rechtsstaat

(1)	The universality of the law (framing laws while being unaware of the specific cases in which they will be applied, not *ad personam*).
(2)	The knowledge of the law among those concerned.
(3)	The prohibition of retroactive laws.
(4)	The clear and comprehensible formulation of laws.
(5)	The absence of contradictory laws (in and of themselves, with regard to other laws, and with regard to the constitutional norms).
(6)	The absence of behavioral requirements which are impossible to meet (unfair laws).
(7)	Relative stability of the laws (changes not made too often – legal certainty).
(8)	The prohibition of excesses (proportionality of ends and means).
(9)	Equality before the law, general application of the law, i.e., applied independently of the social status of those concerned (fairness imperative, impartiality of the law).
(10)	The application of the law to the state and all its institutions (legal liability of the government, all are subject to the law, an explanation of the areas of legal basis for action, primacy of the law, caveats).
(11)	Independence and effective controlling ability of the courts (effective legal protection from the state, protection of the courts).
(12)	Adequate procedure and due process of law (no sentencing or imprisonment without a trial, time limits for processes, accessibility for all, legal counsel, professional judges, penalties that fit the crime, the chance to appeal, fairness, transparency and public nature of the process, equal treatment of equal cases).
(13)	Right to payment for damages to the extent applicable; government liability.
(14)	Realization of the principle of justice (relinquishing of arbitrariness and contributing to justice).

Informal institutions

If we understand law in the sense of norms and binding systems of rules, we are referring to institutions. This understanding of institutions, which is common in classical institutional theory, will be explicitly focused on in the neo-institutionalist debate. There will be frequent references to the definition by North (1990, 3), who regards an "institution as a norm or set of norms that have a significant impact on the behavior of individuals" (concerned by or included in the institution). Thus, institutions constrain the actions of individuals. Although North did not emphasize the role of sanctions, in the neo-institutional debate, one can find different interpretations of constraints that are linked with them.

General agreement exists that institutions restrict individual behavior to some extent (Peters 1999). The extent and the mechanisms through which this occurs vary. Some authors (March and Olsen 1989) highlight the internalization of norms

during processes of primary or secondary socialization (family, kinship – school, military, companies, etc.). In this case, those who do not follow the rules have a guilty conscience, and deviations from the rules are sanctioned by an internal mechanism. External sanctioning mechanisms also exist (social discrimination or exclusion, loss of status, arrest, etc.). Rational choice perspectives include the latter, as rational choice approaches imply the possibility of suffering from disadvantages when rules are not followed. In this case, actors violating the institutions will not benefit from incentives linked to the institution.

In all types of enforcement mechanisms, defecting from the rules set by informal institutions implies losses for rule-breaking individuals. To avoid a catch-all category, which includes all sorts of inconveniences (caused by a particular sanctioning mechanism), it seems appropriate to consider institutions to be institutions only when they maintain (their own) external sanction mechanisms (which can be introduced by third parties). This obviously applies to formal institutions, such as legal systems[2].

Even if sanctions are a defining feature of institutions, they are not the only reason why actors comply with institutions. Actors conform to institutions, because they regard them as given or "natural". Actors also respect institutions, because they display a legal character or because they regard them as legitimate. In accordance with North, these reflections on sanctions and the reasons why actors follow rules relate to the main purpose of institutions: "Within an institutional perspective, a core assumption is that institutions create elements of order and predictability" (March and Olsen 2006, 4).

To summarize these reflections, institutions are defined as follows: Institutions constitute a set of rules, which implies rights and responsibilities. A set of rules also creates and shapes a social order in such a way that the behavior of all actors involved in that social order is predictable. Institutions affect an individual's performance by his/her voluntarily following the rules or being motivated by the threat of sanctions.

By definition, systems of law can be compulsorily enforced by state actors. For this reason, they will be labeled as formal institutions. This term already indicates the existence of informal institutions. Indeed, a diversified and widespread set of informal rules exists, which partially has a considerable influence on the workings of rule of law.

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2 This does not mean that internal sanctions have to be absent. They can also exist in the case of formal institutions (not obeying the rule of law can create such internal mechanisms). The meaning here is simple: Internal sanctions create no defining characteristic of an informal institution.

To differentiate between formal and informal institutions, the following serves as a useful starting point: *Informal institutions* are institutions that are *not formally codified* in official documents (in constitutions or laws). *Formal institutions* are officially codified in written documents. Thus, not only are regulations that have the status of constitutional clauses and laws included, private contracts and norms that have legal consequences also fit in this category. According to this line of thought, all private contracts or rules of association that are protected by the state are formal institutions.

Formal institutions are guaranteed by state agencies, and deviations from these institutions are sanctioned by the state. In contrast, the existence of informal institutions is the result of the emergence of social or political practices and the effectiveness of these practices. Informal institutions are known and recognized publicly; however, they are often not codified. Informal institutions also have sanctions in place. These sanctions either include mechanisms of social exclusion or mechanisms that restrict access to much needed goods and services. Under the special conditions of communist rule, we can speak of "tertiary social control", as Podgórecki and Łoś illustrate:

> If behind the given legal system (which is rejected by the population at large as unjust, undemocratic, etc.) there operates a complicated infrastructure of mutually interdependent interests, then this legal system may become accepted, not on the basis of its own merits, but because it creates a convenient cover-system for the flourishing phenomenon of "dirty togetherness" (Podgórecki and Łoś 1979, 203).

The authority of informal institutions stems from various sources. Firstly, informal institutions are socially accepted, which provides them with a basic degree of legitimacy. The fact that these informal institutions are socially acceptable also serves as a major source of motivation for actors when they follow these patterns of social conduct prescribed by these informal institutions. Actors pursue different purposes when they enter these patterns of conduct; purposes can be defined either narrowly or broadly. These purposes can be linked to results, as well as to certain patterns of behavior. Institutions facilitate interaction between individuals and groups. They foster stability by creating known and accepted behavioral structures that cannot be changed by individual people. Even if actors disagree with these structures, they obey them because, in accordance with rational calculation, the costs involved in rejecting them can only be offset when behavioral alternatives are available. These considerations correspond with the definition proposed by Helmke and Levitsky (2004, 727): "We define informal institutions as *socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels*."

Informal systems of law and informal systems of rules

If law systems are conceived of as a set of formal institutions, it becomes necessary to clarify in which sense we speak of informal law systems or informal legal systems. Does it make sense to speak of "alternative" or "informal" systems of law inside a country if the status of legal systems is linked to formal institutions? If we take up this line of argumentation, we would always have to speak not only of competing judicial systems, but also of competing states inside a national territory. This is quite conceivable if we use the monopoly on force as the main indicator to identify a state. Thus, areas occupied by armed units (e.g., as is the case in guerrilla warfare) could be regarded as states and, likewise, the sphere of influence of organizations which are able to enforce their rules and assert their authority through violence (e.g., mafia)[3].

However, the sharp contrast in the area of stateness can be mitigated if we take a nuanced look at the functionality and the motives behind legal compliance. Thus, it is possible that legally analogous systems of rules or informal judicial systems – the systems of rules which make legal claims without being codified by the state – exist and are only limited by coercion. Compliance with these legal systems can occur "voluntarily" if they are based on accepted social traditions or arrangements[4]. In this case, the systems establish themselves on the basis of internal, not external, ties. In the case that "voluntary" acceptance fails, however, social sanctions can be put in place. The strength of "living law" can be observed not only in traditional or transformational countries, but also in Western countries which have experienced massive migration, for instance, the legal behavior of Kurds in London (Tas 2014).

From a functional viewpoint, informal legal systems can be distinguished from each other. Legal spheres, such family law, property law, or criminal law, which can work according to their own rules, are worthy of consideration. These kinds of rules can be based on traditions of indigenous systems of rules (common law, clan law, and tribal law)[5] or come from larger legal systems, as mentioned, for

3 Almond (1960) uses the term "political system" in the same way.

4 That does not mean that formal systems of law are based only on the threat of violence. Also, in constitutional legal systems, there is a high level of voluntary observance of the law.

5 Custom law does include all non-codified rules and behavioral patterns that prove to be enforceable in state or private tribunals. An important area has developed in the field of economic relations – especially at the international level – where private bodies conduct conflict resolution according to the self-created right of the economy. Customary law also includes folk traditions, which cannot be completely (but only partially, as in they are actually permitted) brought before state tribunals.

instance, in the legal thought of certain legal traditions that are regionally bound (Bryde and Luchterhandt 1997). Examples include Islamic law, Hindu law, and Far Eastern law, among others. We can speak of informal law systems or legally analogous systems of rules if, and only if, they develop social effectiveness, and the typical characteristics of the law can be observed. This includes a recognizable, coherent system of legal norms, which are fixed and known.

In addition, these norms are associated with a procedural law, in which the state jurisdiction is regulated by the analogous enforceability of the law. Furthermore, there must be authoritative bodies that adjudicate the application of the law and whose decisions are normally followed. An understanding of norm systems such as law can be justified by comparing it to the analogous functionality of international law vis-à-vis state law. This kind of law does not necessarily have to be established and authorized (and enforced) by the state. Even international law cannot be enforced by any one state and is still referred to as law. A key feature of the validity of international law corresponds to custom law or, more generally, informal law[6]. In addition to the element of behavioral development, the subjective belief in a legally binding relationship for the parties involved – the group of people that fit into the law system – must be present.

Informal constitutional rules form a specific variant of informal law. Schulze-Fielitz (1984, 20) defines it in the following manner: "informal constitutional rules constitute the totality of those unwritten rules for the behavior of leading officials in the highest governing bodies of the state, but also for the political parties and publically significant social groups, whose compliance is considered an essential prerequisite for long-term orderly constitutional life, according to the prevailing beliefs." Examples of these kinds of informal constitutional rules are proportional representation rules (gender, region, factions), which can be observed in the composition of committees, as well as coalition agreements, that establish the principles of intergovernmental cooperation. Significantly, these rules cannot be brought before and examined by general jurisdiction courts. They create customs, however, that cannot be changed without protests or political sanctions.

This definition sends a clear message: Informal constitutional rules are compatible with the existing constitutional norms and are closely associated with them. They are considered to be a necessary condition for an orderly constitutional life,

6 In international law, customary law denotes a continuous practice of behavioral patterns, and the states believe that they have a legal obligation to this behavior. Accordingly, the custom-law standard is composed of an objective (the practice) and a subjective (the recognition) element (Raustiala and Slaughter 2002); without the latter, the behavior is still considered a custom.

because they help formal rules function or even enable their use. In this sense, they form part of the constitutional culture, which refers to the totality of individual attitudes towards the constitution and the law, which, in turn, is correlated to corresponding action by individuals and corporate actors.

Furthermore, there are *informal rule systems* that can be distinguished from informal legal systems. These informal rule systems can also be effective institutions and are connected to further sanctions[7]. Examples of such informal institutions are corruption and clientelism or specific forms of networks. These systems, however, are not legal in nature and exhibit little or no analogous legal functions (Lauth 2000; Nuijten and Anders 2007). Unlike formal systems of rules in the official legal system, these informal institutions are not classified into a clearly defined category of informal legal systems. An essential part of a legal system (i.e., court proceedings) is missing. Even so, relationships exist. For example, the rule system of "clientelism" and legal system of "tribal law" are closely connected with one another. In addition to "clientelism," corruption – in its different forms – can be associated with clan structure. As shown by the remarks by Waldmann (2001), the boundaries between an informal system of rules and an informal legal system can be fluid. Likewise, together they can create complex informal patterns, which are condensed nearly into a second "proper" informal constitution (Ledeneva 2001, 9f) or "delegative code" (O'Donnell 1994, 55ff)[8]. In this case, they have a significant impact on the workings of the official legal system (Meyer 2006).

Relationship between rule of law and informal institutions: Hybrid legal systems and deficient rule of law

Rule of law has been found to be lacking not only in authoritarian regimes, but also in many young democracies (Zakaria 1997; O'Donnell 1999). Significant deficiencies have been observed, such as incoherent, non-transparent judicial systems that are not accessible to all citizens, inadequate respect for laws – also by the state actors, who act without a sufficient legal basis for action, little presence of court protection, and unfair litigation practices and procedural law. Although

7 If there are no sanctions in these systems, they are considered to be practices or conventions.

8 The scholarly concept of the neo-patrimonial state (Erdmann and Engel 2007) is relevant to this issue, although here, there tends to be only a slight predominance of informal rules. The formal institutions are not only manipulated, but also have intrinsic value.

more criteria could be added to the list, the more interesting question is: What factors lead to these kinds of findings? Do their causes lie in an incompetent application of the law, and would better instruction of judicial representatives lead to stricter, better enforcement of the rule of law?

There is reason to suspect that the state of affairs is often organized in a more complicated fashion. The weakness of the rule of law is not only limited to the fact that it was not fully implemented or not used to control lawless areas. The problem is also that, in the same country, preexisting, informal systems of laws or rules exist and compete and come into conflict with the rule of law. This can occur on a functional and/or a territorial level.

It has already been pointed out that, in different states, some areas of law (family law, property law, or criminal law) can work according to rules that are based on traditions of indigenous systems (clan and tribal law) or originate from larger legal systems (Islamic law, Hindu Law and Far Eastern law)[9]. In these kinds of cases, the official law could be neglected or merely considered a potential competing alternative. Nevertheless, it makes sense to assume that competing legal systems produce a problem if, and only if, the informal legal status exists and the different legal systems are not compatible with constitutional principles. While the first criterion can be verified via its empirical characteristics and its impact, clarifying the compatibility proves to be more difficult, because it requires an additional comparison to the formal and material principles of the rule of law. Besides clear contradictions, the findings can reveal partial inconsistencies, which do not correspond to complete incompatibility. It is also possible to identify functional equivalents, as seen with customary law in an Anglo-Saxon context. Moreover, private law, which develops through international trade relations, can be compatible with principles of the rule of law; the same is true for the kind of law that is created by contractual arrangements in self-help organizations (Eckert 2004). These examples refer to other legal sources, whose constitutional codification is fundamentally possible. In the above examples, informal law forms a functional equivalent to constitutional practices and can, theoretically, be transformed into formal law. This, of course, also applies to the aforementioned informal rules of the constitution.

Although it would make sense at this point, having a normative discussion about the character of different sources of law is not appropriate, on account of the complexity of the subject matter. Contradictory findings exist in the current state of research within this comprehensive and complex field. Such a discussion

9 Compare Glenn (2008) to comparative law families and comparative legal traditions.

should also focus on the empirical findings in individual cases, because informal legal traditions often exist in specific forms and thus, are not totally conducive to a deductive approach (Zips and Weilenmann 2011).

However, at first glance, present findings (KAF 2006) give evidence that human rights and civil liberties are not protected analogously to the rule of law in all informal legal systems. Doubts about the compatibility with the rule of law grow significantly when other forcibly established legal systems, ones not based on established legal traditions, are considered. Informal legal institutions, in which regulation based on private power occurs, are addressed. Local political bosses (*caciques*) – be they in the country or in urban slums, or gentry or warlords on the regional level – who regulate, monitor, and enforce their own rules, should be considered. Such systems also include mafia organizations in their different forms, or guerrilla organizations, which govern their conquered territory. These examples allow the territorial component to be addressed. Many of these phenomena can be bundled into the concept of "brown areas", which focuses on areas in which state control is mostly absent (O'Donnell 1993, 1359f.). The explosive nature of informal legal systems becomes apparent if – as illustrated – competing incompatible informal systems of laws and rules exist. The following remarks are based on this issue.

If the competing and contradictory systems of laws or rules, which are not compatible with rule of law traditions, are dominant, the rule of law is, in fact, undermined or nullified. This rare constellation, however, will not be closely examined in what follows. A closer look will be taken at cases where the interference due to incompatible systems of laws or rules is weaker even though serious consequences are possible. Two possibilities can be distinguished: (a) equilibrium, in which the rule of law and competing legal and rule systems are in relative balance and (b) domination, where the rule of law dominates the competing law and rule systems, although it cannot completely eliminate them. The first case can be seen as a *hybrid legal system*; the second as a *deficient rule of law* (Lauth and Sehring 2009)[10].

Competing legal systems can exist and persist in different ways. (1) On the one hand, they can exist in the shadow of formal law. Classic examples are indigenous traditions, which have survived the introduction of modern legal systems. These traditional systems persist due to their social acceptance. They are partially

10 A hybrid legal system is not totally the same as "legal hybridity" as proposed by Myint (2014). In that proposal, the rule by law – as a formal construction which is *individually* and informally manipulated by the rulers – is combined with elements of rule of law (especially, an almost completely independent judiciary).

compatible with rule of law. Serious tensions arise, however, when we are confronted with legal systems that are enforced by social actors. Several examples, which will be addressed later, come to mind: oligarchies, which use private "security forces" to protect their privileges; militant groups, which reserve the right to make illegal interventions when they see their interests – i.e., their understanding of the law – threatened; mafia cartels, which act analogously; and guerrilla organizations, which enforce their own rules in the territory they control.

(2) On the other hand, formal and informal legal systems can be interwoven in various forms. The possibility exists that competing areas of the law can be completely or partially adopted in the official legal system and be authorized to regulate certain functional areas (e.g., as in the Bolivian Constitution, which regulates the areas of family and criminal law). In this way, the competing legal system loses its informal status, but still remains in conflict with the principles of rule of law. The disparity is simply codified and incorporated into the legal system. From the perspective of the rule of law, the presence of these kinds of solutions does not seem very likely; even so, there is sufficient empirical evidence that substantiates their existence under certain conditions (Benda-Beckmann 2002; Beyer 2006). For example, the rules of land distribution and usage in several African countries are guided by tribal law, which is difficult to reconcile with the guarantee to property which is provided by the existing constitutions. Another example concerns the inclusion of religious traditions in family law, which curtails civil rights and liberties, often those of women[11]. With respect to the rule of law, such a practice is unacceptable. Another pertinent example would be the incorporation of Sharia in criminal law, which does not comply with all of the principles of the rule of law (Possamai, Richardson and Turner 2013). These kinds of legal adoptions can be in force at the national level (as in Egypt) or apply only to certain states in a country (as in Nigeria).

While in the first case, two legal systems – the rule of law and an incompatible informal one – separately oppose each other, in the second case, they are intertwined, and the competing legal system has an official character. The latter case has the advantage that the state's monopoly on force remains intact; the disadvantage is that the resulting system of law is incoherent. The situation is complicated when multiple systems of law compete with the rule of law and, in doing so, overlap with each other. This variant can be empirically confirmed simply by looking at African legal systems (Ruppel and Winter 2011). In parts of

11 Such a constellation could be observed in India regarding personal law (Rudolph and Rudolph 2001).

Africa, remnants of colonial law, indigenous tribal law, and religious courts exist parallel to the official, constitutionally-based law system.

With these thoughts in mind we have to decide how to classify the findings. When, for example, is a legal system considered a hybrid one, and when does a deficient rule of law exist? According to the above definition, the classification depends on the strength of the competing legal system. Despite their unwieldy character, incorporated legal practices hardly ever challenge the dominance of the rule of law unless important functional areas of law, like the criminal justice system, are substantially affected; thus, a hybrid legal system is denoted by the separation of the two systems. However, a deficient rule of law can be present in both cases if the precedence of the rule of law persists. Although a hybrid legal system is no longer considered a *Rechtsstaat*, it still possesses features that are common to rule of law. The remaining constitutional element, however, is only one part of the total legal system. In order to be identified as a hybrid legal system, empirical evidence of a competing legal system, which is largely incompatible with the rule of law, has to be provided. The rival system has to be stronger than the deficiencies observed in "brown areas". This constellation is true in only some cases. Despite the existence of one or more competing legal systems, and provided that the precedence of the rule of law is not called into question, a deficient rule of law is far more likely.

When the rule of law is deficient, it is assumed that the legal system in question is predominantly a *Rechtsstaat* and that the state's ability to function is impaired only in smaller areas, which, in turn, significantly exceed the level of deviations in functioning constitutional states. In the case of the existence of separate and competing legal systems, a deficiency in the rule of law is present if these deviations generate only a low level of activity ("enclave right"), or the validity of constitutional decision making is only slightly affected.

The rule of law can also deteriorate when confronted with *systems of rules* that alter constitutional logic. This change can happen through the persistence of clientelistic structures and/or corruption. Clientelistic structures, in their various forms, can infringe on equality before the law in different ways; in general, corruption undermines the law[12]. These types of deficiencies can also be found in functioning constitutional states. However, they appear there rather sporadically and do not indicate any established patterns of action. In states with a deficient

12 In the empirical research, these kinds of systems of rules can appear in different combinations and create specific patterns. They acquire special effectiveness in connection with informal legal systems.

rule of law, the systems of rules, however, have acquired an institutional status, which leads to a permanent connection with the formal legal system (as "parasitic" institutions).

It is exactly this argument of the institutional status of deficiencies that separates a functioning *Rechtsstaat* from a deficient one. A far-reaching impact is associated with the respective functional logic of both types. For example, the elimination of defects in a functioning *Rechtsstaat* is easier – as it just involves the correction of individual acts – than in the case of deficit rule of law, which requires institutional changes.

Thus, the existence of competing rule systems is a sufficient condition for a deficient rule of law. It is evident that a massive accumulation of these kinds of informal interventions could ultimately undermine the rule of law. This particular case would no longer be considered deficient rule of law, but a state of lawlessness. Unlike hybrid legal systems, a deficient rule of law does not necessarily exist in tandem with competing and incompatible legal systems.

In addition to the threat to the rule of law by competing rule systems and informal parasitic institutions, a further risk arises vis-à-vis poor handling of the rule of law itself. This potential risk stems from limited sensitivity to problems on the basis of a traditional perception filter and/or the inadequate suitability and competence of institutional actors (Garzón Valdés 1999). The social "blindness" that is found in the realm of legal protection is also worth mentioning. Socially marginalized groups usually lack sufficient access to the legal system. Because they lack access, these groups cannot appropriately make use of the law and, in administration of justice, frequently find themselves disadvantaged in comparison to socially privileged actors (O'Donnell 1999). In this regard, the judicial system is often in a precarious condition, which is characterized by its poorly-staffed personnel facilities, drawn-out legal proceedings, and poor prison conditions. Moreover, there is also a lack of transparency in the body of law itself, which arises from excessive, unchecked legislation. This legislation is fraught with inconsistencies, which makes it difficult even for "judicial staff" to work with it[13]. This discrepancy, however, is not identical with the addressed incompatibility of different legal systems, as it is, in principle, immanently revocable.

13 These discrepancies or tensions can occur within the same area of law or among different areas of law (e.g., fundamental rights, criminal law, and civil law). This non-transparency can be fostered by the lack of coherent bodies of law. In this case – which is not unlikely – legal knowledge becomes exclusive expert knowledge, which can gravely undermine the exercise of rights.

As a result of our considerations we can adhere the following. A lack of rule of law leads to the differentiation between two legal systems: a *hybrid legal system* and a *deficient rule of law* or *Rechtsstaat*. While a hybrid legal system is characterized by the existence of competing and largely incompatible legal systems – and can no longer be understood as rule of law – in a deficient rule of law, central principles of the rule of law remain intact, despite significant defects. These principles can be endangered in three ways: by competing legal systems, by incompatible informal systems of rules, and by the actors inside the legal arena. The deficient character of the rule of law is largely reflected in the institutional status of the threats, which, in turn, are not allowed to exceed a certain amount. Once this point is reached, a deficient rule of law becomes a hybrid legal system.

The relevance of regime types

The relationship between rule of law and informal legal systems is similar as between the latter and democracy because of the inherent connection between democracy and rule of law. The relationship between rule of law and autocracies is more complex. Because each application of rule of law limits political power and incorporates this limitation constitutionally, there are very few examples (such as Singapore) of authoritarian regimes with respect for rule of law. Typically, authoritarian regimes use the formal judicial system for their interests or limit it via informal systems of law[14]. Therefore, the concepts of a "deficient rule of law" and a "hybrid legal system" are compatible with autocracies. However, the formal legal systems in these kinds of regimes could be undermined in two ways: by informal systems of laws, as well as by a system of rules. Either these informal legal systems exhibit legally analogous characteristics to rule of law (e.g., as with customary law) and contradict formal authoritarian law (as could be observed in the former USSR), or they arise out of conflict between two informal systems, like clan structures vs. Sharia. The latter phenomenon can be observed in some North African countries (Kemper and Reinkowski 2005).

Scholars examining the relationship between formal and informal institutions should note that these relationships differ in regards to the regime type. In democracies, informal institutions such as clientelism and corruption constitute the conflictive type. In autocracies, they can be classified as complementary, as the study of neopatrimonial and sultanistic regimes demonstrates. In totalitarian regimes, however, clientelism and corruption oppose formal institutions, because

14 One example of this kind of unfair behavior is the establishment of neo-patrimonial rule with appropriate "rent-seeking" mechanisms.

they challenge the control of the ruling class over the political system. The same reasoning applies once we create subtypes of clientelism and corruption, and we relate them to different subtypes of democracy and autocracy. It is important to note that the relationship between formal and informal institutions is not always the same, but depends on the regime type in place. The same informal institution can lead to very different outcomes in different government systems. These considerations also shed light on the change of formal institutions in transformation processes. These kinds of informal institutions, which were practiced and received a high acceptance in authoritarian times, also shape the emergence and application of the new formal institutions to a significant degree. Grzymala-Busse (2010) demonstrates this idea by emphasizing the importance of democratic competition in the change of informal institutions.

To better understand the stability and dynamics of authoritarian regimes, it is appropriate to more closely analyze their legal condition. In conducting empirical research, there are two integral perspectives on the rule of law, which can be underscored by two questions: (1) To what extent have the characteristics of the rule of law developed? (2) To what extent do competing systems of laws and rules, which affect the functioning of the substantive rule of law – in a positive or negative way – exist?

If we look at the empirical findings (such as the assessment of civil liberties in Freedom House surveys) with regard to the rule of law, not only in autocracies, but also in many democracies, it seems that various forms of deficiencies are the Achilles' heel of the regimes in which such deficiencies exist. The question of how to fix this shortcoming certainly has the same relevance as the question concerning possibilities to improve economic development. For this reason, it would be appropriate to discuss what perspectives appear to be viable for further research.

Conclusion and reform perspectives

In the discussion of law and the rule of law, the concept of a formal and a substantial rule of law was introduced and specifically defined. Because rule of law has not been fully implemented in autocracies or many young democracies yet, its relation with competing informal legal systems and systems of rules was more closely examined. Two concepts – a *deficient rule of law* and a *hybrid legal system* – were introduced and explained in the typological discussion, which should improve the classification and analysis of the empirical findings. While a functioning rule of law is compatible with democracy and is considered to be a central basis for it, this applies only limitedly to a deficient rule of law and

cannot be said of a hybrid legal system. In fact, the latter undermines central elements of democratic rule.

The limited results of promoting rule of law through external actors are known through empirical studies (Carothers 2006). What reform strategies then have potential? Reform efforts that seek to strengthen the rule of law should be related to the causes of defects in the rule of law. Thus a priority is preventing disturbances in the rule of law, which are based on private violence (mafia, etc.). Likewise, problematic systems of rules (e.g., corruption) have to be confronted head-on. The situation becomes more ambiguous if competing legal systems are based on autochthonous and socially-entrenched traditions. Because complete incompatibility with traditions of the rule of law cannot be assumed in these cases, a gradual integration of both legal systems – not an outright merger – should be considered as a solution strategy. In the process of association, certain elements would be emphasized, elements which could be successfully connected with the rule of law (Kaneko 2008; van Rooij 2009). The advantage of this kind of gradual integration is that it does extend access to judicial systems and does not entail damaging the sense of justice of the parties involved, and, if the system is transformed over long enough periods of time, the changes remain manageable in practice, as well as in the minds of the people who are affected. In this way, both the cognitive and the affective dimension of human actions can be respected. Nevertheless, in this development, social conditions also have to be created, conditions which ensure the effectiveness of the rule of law procedures for those who, up to that point, have had only an uncertain guarantee of the rule of law.

This goal can be realized through two concrete strategies: (1) Competing legal systems are allowed in specific, clearly defined functional areas, while, at the same time, the official legal channels are still available. In this way, conflicts can be dealt with and solved on a voluntary basis and through traditional means[15]. (2) Competing legal systems are connected with each other, but are functionally or territorially integrated into the existing official legal system. Here, it should be noted that the disparity between the two cannot be too great; in addition, an approximation of laws and a streamlining of legislation should follow in due

15 These kinds of possibilities can be considered as analogous to the rule of law if the state has expressly authorized these entities and delegated competencies to them (compare to courts of arbitration) or accepts them (e.g., mediation procedures), because it considers them to be functional equivalents. This arrangement has the advantage of having functioning legal structures in place. Due to insufficient development, the official channels of the rule of law may not always be accessible in the same way that these structures are.

time[16]. This strategy is not possible, however, if fundamental principles or rights blatantly contradict each other. These comments highlight only initial thoughts vis-à-vis overcoming verified deficiencies in the rule of law, whose strengthening requires greater research efforts in the field of comparative research on the rule of law.

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16 It is possible, however, that the developments do not follow legal universalism, but legal pluralism (Rudolph and Rudolph 2001, 55f).

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Part IV: The Sociology of the Emergence and Transformation of Formality and Informality

Timothy Eccles

Identifying a Formality Hinterland: Trans-informality and Meta-formality Within UK "Better Regulation" Discourses

Introduction

There is an obvious conceptual distinction between formal and informal social actions in both the sociology literature and in common usage. This is evident from the earliest classical sociology literature: in Tönnies' *Gemeinschaft* and *Gestellschaft*, in Durkheim's "mechanical" and "organic" solidarity and Weber's "traditional" and "legal-rational" modes of authority. Since then the interaction between the two has been a central focus of empirical work and the duality remains the dominant form of analysis.

In the business world, formalisation through standardisation, managerialism, legitimacy functions, benchmarking of best practices, codification, performance measurement and bureaucracy are pitted against the vagaries of adhocracy and deviancy. These contrasts make formality, the way in which formal meaning is generated and transmitted, and, more recently, the acceptance of informalised equivalents through heuristics, a useful conception for examining and describing issues within regulatory frameworks.

This paper falls into three distinct parts. Firstly, an overview of regulation is provided within a UK context. Secondly, an analysis of formality and informality as a means of explaining the regulatory process, especially its evolution into a system of "better regulation" is then developed. These two parts are deliberately integrated since this paper is intentionally concerned with the sociology of formality and informality rather than a technical paper on regulation. Thirdly, two case studies are then undertaken to apply this analysis and draw out the themes of meta-formality and trans-informality that are being proposed. Methodologically, the two cases are selected through personal bias, and are not intended to provide a representative sample of regulatory systems. Therefore, whilst it is not intended to argue that the conclusions are generalizable, these specific cases offer a typology of the stages of development of "smart regulation" that are presented in the concluding section as a grounded theory. The research established a systematic set of procedures to develop this inductively derived general framework with the intention that it will also be relevant outside its smart regulation setting.

What is regulation?

Regulation involves a framework that establishes the appropriate standards that should be met by a business when carrying out its activities and an enforcement regime with powers of inspection and punishment.

> In an era of globalisation, in which barriers to movement of goods, services and people are falling, citizens expect their governments to ensure their safety and welfare. Businesses expect public authorities to ensure a level playing field and boost innovation and competitiveness.
>
> Regulation is key to meeting these challenges. It serves many purposes – to protect health by ensuring food safety, to protect the environment by setting air and water quality standards, to set rules for companies competing in the marketplace to create a level playing field. Regulation is a necessary and accepted aspect of modern society (European Commission 2013).

For the purposes of sociological analysis, regulation involves, or has traditionally involved, a number of themes. Notwithstanding any potential difficulties with a precise definition of the term, regulation is a formal process. Most immediately, it is a visible process with clear guidelines that have a concrete and "measurable" reality. There is an inspection regime that can check that these standards are achieved. If not actually desired by all parties, it is universally recognised as necessary and forms part of a legal and behavioural code of business conduct. The process has also certain symbolic value.

All of this requires a single point of control, a determining authority. This is usually the state, of course, which is seen as a fair arbiter of what is and is not acceptable practice. To the point of this work, this provides a formal system of "command and control" regulation.

The starting point for this analysis follows the fall of this idealised situation. Giddens (1990; 1991; 1994) points to the inevitable decline of the state within Modernity. His description of Late Modern scepticism features a widespread lack of trust and confidence in the probity of institutions and scepticism regarding the competence of governments and state regulators to put in place effective systems of control. This generates a loss of authority, a refusal by parties to accept external regulation, and even disagreement over the technical competency of those approving procedures. Thus the preconditions of formality fall, leaving "command and control" increasingly untenable. The dialogue of regulation becomes that of deregulation, allowing individual firms to best judge how to carry out their business. This provides for informality as a creator of regulated goods and services.

Of course, Giddens also includes all institutions within his idea of the Late Modern decline in authority. Informal systems developed by self-interested

companies are regarded as equally invalid, especially in the wake of the 2007–08 financial collapse. Deregulation has fared no better than state regulation in recent years (see, for example, Eccles and Pointing 2013 for a fuller analysis of this historical evolution).

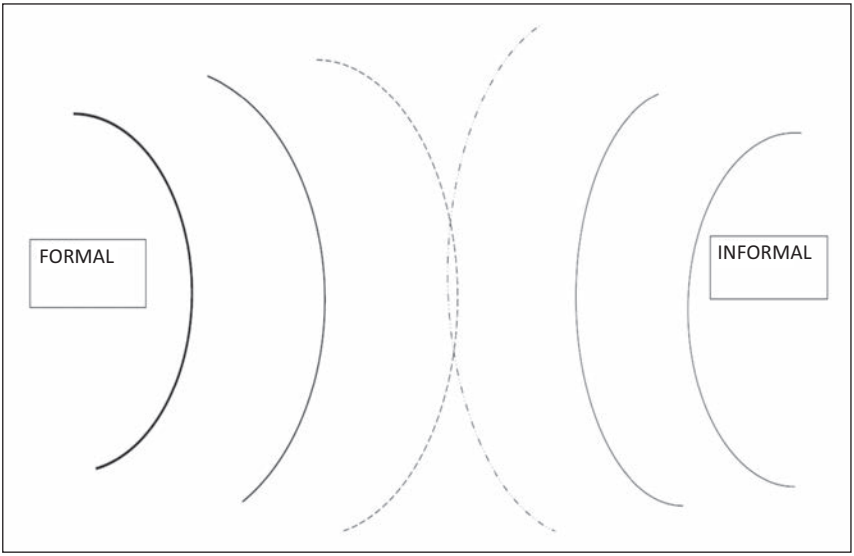
Where formality and informality offer an interesting avenue of examination is in how these two extremes of regulation are being drawn together by practitioners seeking to gain the advantages of both in what is being described as "smart regulation". This paper utilises formality and informality to examine this UK regulatory evolution.

My conception of the formality hinterland

The introduction above leads to the first problem – that of defining what formality and informality mean in the context of regulation. Tönnies, Durkheim and Weber all provided idealised (if not ideal) types in their analyses, and all draw on a dual typology. Duality, through two extremes, mirrors the regulatory paradigm – command and control versus deregulation. The concept of formality provides an ideological simile for the two contending philosophies towards regulation. Formality allows for measurable benchmarking to a universal standard, whilst informality reflects the authority of expertise and knowledge embedded within individual experiences. Formality provides a clear form, and the likes of Stinchcombe (2001) can provide concrete examples to round out a definition – rules, blueprints, and citation practices, for example. Formality is perhaps partly symbolic, but offers a certainty through its visibility in regulatory action. Informality is a fuzzy, potentially deviant, formless will o' wisp.

From this contention, I generated my first simple model (*figure 1*) of how the formality of command and control interacted with the informality of deregulation. This was a competition wherein the former was trying to dominate; however, its "voice" was becoming less dominating the further from the source it went. Equally, informal responses (complaints to members of Parliament, compliance variances, breaches of regulations, etc.) resound back to the regulator, though with less force.

Figure 1: Formality vs. informality



I immediately complicated this (*figure 2*) by contemplating the communicative "ripples" of *figure 1* as various forms of communication and interference. In this figure, I was considering the way that regulations might be related to distance; some businesses feel the demands upon them with more or less intensity than others. Responses would also be irregular, as befits the informal nature of ad hoc replies and reactions. The informal lacks a clear form, whilst the single determinant authority of formality provides a clear point of regulatory potency.

Figure 2: Formality, clarity and the strength of the need to respond to regulatory requirements

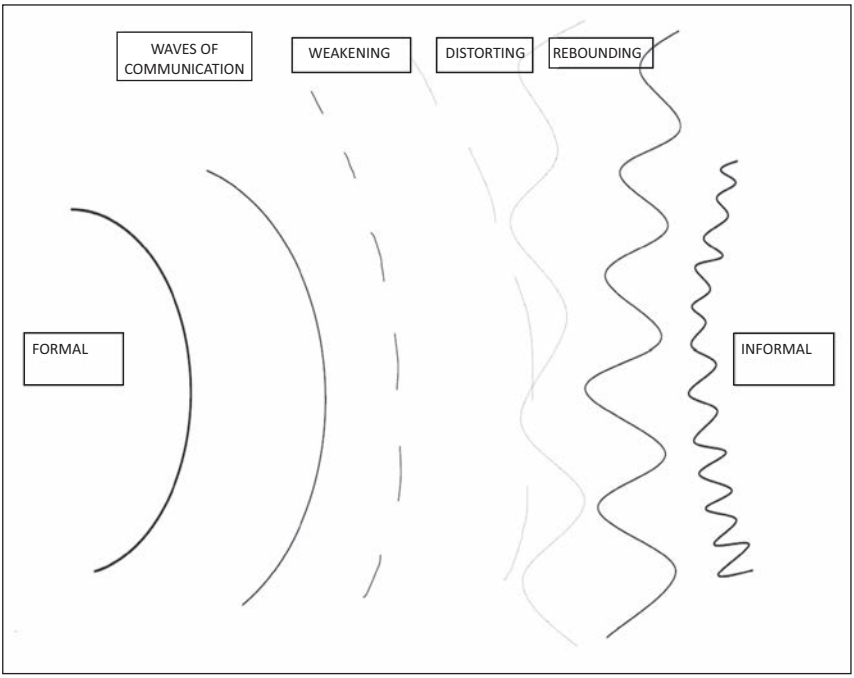
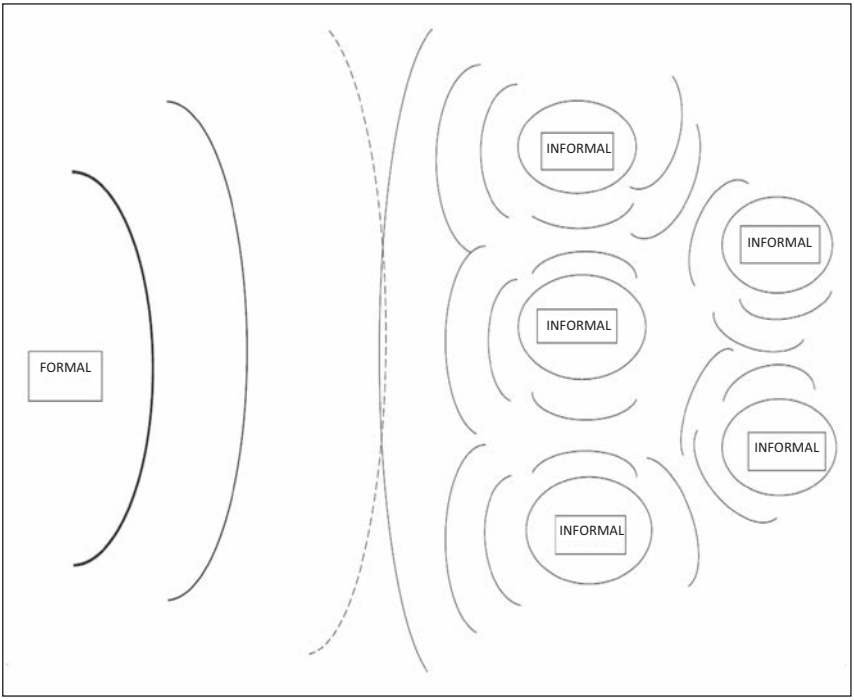


Figure 3 represents the final part of my original thinking, namely that a central premise of informal responses to regulation is that they are based in the individual business, and that there are many competing responses to a single point of formality. Hence, we find that there is a veritable orchestra of ad hoc responses of different strengths, opinions and direction with informal responses being targeted not only at the regulator, but also between businesses. At times, some of these might combine to return a unified response.

Figure 3: Formality versus multi-informality



From these ideas, I was drawn to the notion of a formality "hinterland", where neither of these pure forms existed. Rather, regulators and the regulated established protocols and interacted in the real world to achieve profitable businesses operating within established legal norms.

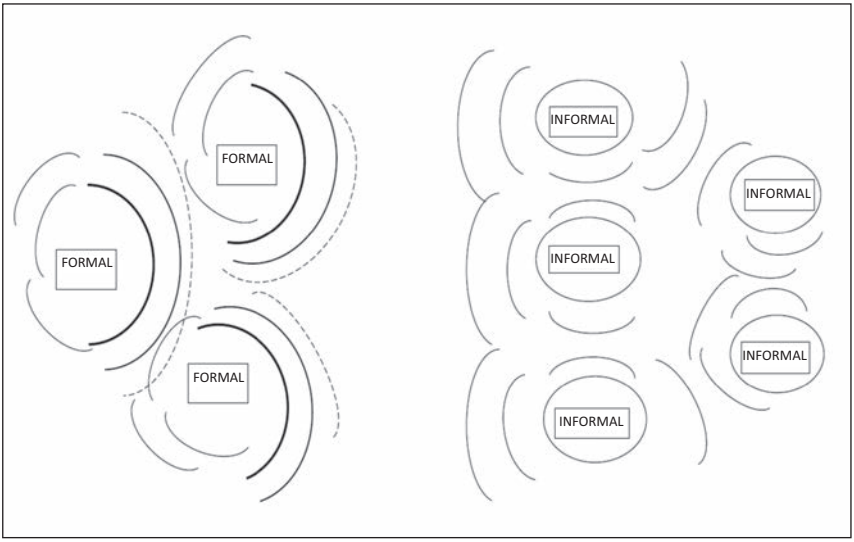
Conceptually, my approach in this paper is drawn to that of Weber. His description of the "official" is quite evidently appropriate to that of "the regulator". Similarly, the bureaucratic requirements of "methodical provision" and of "jurisdictional competency" resonate when analysing the process of regulation. In the same way, his views on formality and informality in the working of rational-legal social systems will be seen mirrored in much of the following arguments. Finally, Weber's analysis on the role of knowledge in society and his (interchangeable) use of the terms "expert" and "specialist" remain potentially useful tools to analyse the practical implementation and supervision of such knowledge in the sphere of business.

However, this typology fails to recognise the fragmentation of the role of the regulator in this process. For me, the above shows that regulation is associated

with formality because of the place of a single, determining authority. Formality derives from a determinant authority. Within the timeframe considered by this paper, which is placed within Giddens' (1990; 1991) Late Modernity, this no longer exists. He refers to competing, transient dominant authorities that have replaced the single, determinant authority. Within the field of regulation, this transformation away from a single authority has been characterised by *deregulation*. In an idealised form, this involves the removal of all authority, as part of a wider "small government" movement associated with economic liberalism. This lack of authority is associated with informality since there is no single meaning, no measurement and no approved method for a firm carrying out its business practices. Hence, informality is associated with a fragmenting of authority.

Figure 4 illustrates this fragmentation of authority. It also places the concept of authority at the centre of any study of formality in regulation. Like each separate field of study that is being called upon in this work, there is a well-respected tradition of examining the concept of authority (see, for example, Raz 1990). In regard to "command and control" regulation, however, the regulator performs exactly those functions of Hobbes' Law Giver. Further, traditional regulation worked on the principle that the lack of such a figure would render the same "nasty, brutish and short" life as Hobbes' anarchic state of nature that exists without a law giver to provide order (Hobbes 1968 [1651]; Peters 1956). Of course, such an authority raises questions of governance and therein lays a topic for further literature. Within the field of regulation, Black (2009) certainly regards problems of legitimacy as central to problems of regulation. Where there is no determining authority, then generating and maintaining legitimacy becomes a primary motive for each competing authority. Whilst legitimacy management becomes an aspect of regulation, the duality of formality – informality is offered here as a better overarching focus for study.

Figure 4: Competing dominant authorities attempt command and control



Formality in regulation: Command and control

An ideal, "pure" form of regulation is the "command and control" system of regulation. In this system, standards are set by a single, determining authority and disseminated through a formal system of statutory legislation, codes of practice and the like. This formality derives from three social preconditions, which are:

(1) A general (that is, political) will to concede authority to the regulator;
(2) A legal right to regulate, enforce and penalise;
(3) Technical competence to determine what the standard ought to be, and how to measure performance.

One of the evolving social themes within the process of regulation is the erosion of these preconditions. For example, we can derive from Giddens (1990; 1991; 1994) the following schemata:

(1) Ideological opposition to a single, determining authority is endemic.
(2) Without a political will, the legal right to regulate is increasingly constrained.
(3) Similarly, questions concerning the competence of the regulator are not only ideological, but based upon continual empirical evidence of failings in regulatory processes.

Regulation is therefore moving away from the "command and control" model, because it is seen as ideologically unsound, but also impractical and expensive. The place of the formal in this is quite interesting, because practical issues of how to manage regulation through a formalised system are central to criticisms of the command and control model. Considering Black's (2009) concept of legitimacy, the danger is that competing authorities are simply rebuilding the rejected "command and control" model in an inferior form. These dominant, but not determinant, authorities seeking to mirror a Hobbesian law giver, I will later label with the term meta-formality. There is, however, an omission in this analysis, since it overlooks regulatory evolution prior to the 2007 financial collapse, and outside financial markets. In financial markets there remains a dialogue concerning corruption against which the need for a strong authority endures. In other regulatory spheres, this is either absent or less powerful.

Under "command and control", regulators have tended to see the informal as a deviancy to be stamped down upon, favouring approved procedures, systematic inspection and adherence to pre-determined standards. Stinchcombe (2001) argues that these work, though he is open to criticisms of a selective sampling. However, businessmen have long criticised that this is not how firms operate, and it is simply not a practical method of regulation. One of the first management theorists, Chester Barnard, in analysing his own business experiences as a business executive, described the management process as informal, intuitive, non-routinized and involving primarily oral, two-way communication. Barnard (1938) refers to management as an art and not a science, emphasising the need to empathise the whole organisation rather than focus upon context-less objectives. The terms that he utilises are "feeling", "judgement", "sense", "proportion", "balance", and "appropriateness". Regulation ought to reflect the way businesses actually operate, so the argument runs.

Outside of the ideological arguments, then, "command and control" regulators face problems within three archetypes:

(1) Generating a formal system that is understandable. This involves the use of language.
(2) Actual enforcement in the real world, when many individuals respond to the same requirements in their own ways. These might be influenced culturally, ideologically and by other factors.
(3) Lack of expertise in technical competence by regulators, compared with those being regulated, leading to disagreement on the "best" way to regulate.

The question faced by society is how to best deal with these three technical problems. The first case study, which follows below, shows that the response was

to determine the challenges as insurmountable, and approach regulation from another direction, that is, to place emphasis on Barnard's managers to act in a balanced and proportionate manner. The answer, therefore, was self-regulation.

Study 1: Building control

It is, of course, dangerous to ascribe movements and tendencies to an individual or a particular date. At the same time, I think it is useful in this analysis of regulation and its relationship with the formal and the informal to do precisely this. In 1979, the British world changed. Not only was a Conservative government elected under Margaret Thatcher, but with it there was an acceptance and an admission that the future could not continue as the past. Not everyone realised what this might mean at the time, and many of those who supported these changes would later be discarded or become enemies, but I do think that there was an acceptance that change had to take place.

From the perspective of this paper, the primary change in regulatory frameworks was their removal. The language was of deregulation, and the regulatory discourses concerned minimising external intervention. Formal systems of regulatory control were removed, and there was an agreement that informal systems could prove equally as effective. Regulation as a means – through formality – was replaced by regulation of ends, and this was seen as measured by a number of voices rather than just that of the regulator, to now include the market, the consumer, the professions, one's peers. Regulation had been seen as requiring formality, and this could only be generated by a single, determining, authority. The Thatcherite ideology overthrew this, and replaced it with competing formalities, with the ultimate aim of discarding any authority. This creates what I refer to as trans-informality. In essence, individual experts are allowed to resolve the questions of how best to regulate themselves, and their industries. Informal systems are given primacy as ad hoc systems, previous experience and heuristics are all accorded the authority to determine what form regulation should take. What were previously regarded as personal, informal ways of working, of solving problems, of doing a job were accorded recognition.

There is still a clear regulatory outcome required, and this demands a formal statement of expectations. There is still methodical provision and there is jurisdictional competence. However, there is no singular formality of process by firms in how they achieve this, and, ultimately, there is no uniform formality in how their achievement might be measured – or at least by whom this might be measured.

This conceptualisation is derived from a number of studies on regulatory processes. For the purpose of this paper, my practical example of this theme concerns

the deregulation of building control. Building control was one of the first areas of professional work to be privatised in the 1980s. Its role is the examination and, if compliant, approval of new buildings to confirm that they have been built in accordance with the appropriate Building Regulations. Traditionally, local authorities exercised control through a monopoly of the service in order to guarantee quality. Its removal from state control to that of private businesses generated two distinct themes. First, the original intention was to allow private individuals to undertake building control work. Ideologically, the presumption was that "the market" would determine those competent to do so. Therefore, informal systems of what might be regarded as no regulation were envisaged as acceptable. It was very quickly realised that the potential dangers required a second theme, that of non-centralised regulation of competence. Formal rational-legal systems of approval were required, but under a different model of control than the "command and control" system. The result was to endorse professional self-regulation, since professional associations were identified as a priori competent to regulate building control work in the final legislation. Thus, regulation of building control was to be carried out by co-operation between a statutory authority and a professional association with the emphasis on the latter's self-regulation guarantees. This was deregulation in that it allowed competition, but restricted the market to members of professional associations.

Building control was the very first profession to face this new regulatory regime. The 1984 Building Act and the statements set out within the Building (Approved Inspectors etc.) Regulations 1985 proved to be key pieces of legislation in developing the deregulation agenda within the building industry. It removed building control from the exclusive domain of public sector Building Control Officers and replaced this with a market-orientated competition between public and private sector provision.

The primary driver within building control – and the enforcement of Building Regulations generally since the Building Act 1984 came into force – has been to minimise the need for (and expense of) inspecting building work. This led to the search for so called "competent persons", whose work is of a high quality such that it does not need checking and may be self-certified (DETR 1997). The Department of the Environment, Transport and Regions (DETR) emphasised the importance of costs, that "building control must also be efficient, to minimise cost and delay for those carrying out the building work" (DETR 1999a, 3). The result was that membership of a professional body was deemed essential to qualify in terms of expertise and to regulate the competence of building control service providers (DETR 1999a; 1999b). Of course, this returns to the notion of professions as regulators: not exactly self-regulation, but close enough at the

time to appease the wider profession, whose private sector members saw business opportunities at the expense of their public sector colleagues. Similarly, the Royal Institution of Chartered Surveyors (RICS) saw fresh opportunities for itself and for its members in becoming the dominant professional authority under this new regulatory paradigm (see, for example, Finn 2007).

Building control is important primarily as it was the first example of modern privatisation, of deregulating independent, local authority inspection within the UK construction industry. A single superstructure of formality was deliberately dismantled, and replaced. Economic efficiency through market competition was the primary driver. What it achieved was the transfer of expertise from the local authority to professional associations, whose own standards of membership and regulation were deemed to be a suitable replacement.

The "ideal type" of deregulation perceived by the government was one of heuristics and informality. All that actually matters is that buildings do not fall down. Placing further restrictions on the regulatory process incurs unnecessary costs. Experts should simply be allowed to "get on with it" and there was political hyperbole supporting this extreme.

However, implementation of this ideal type was more pragmatic. Government recognised the need to have transparency in the deregulated process, and this, inevitably, required some degree of formality to allow comparison between suppliers and to protect against building control carried out ineffectively, on the cheap or not at all. In this pragmatic form, deregulation generated building control that was fractured from a formal hegemony, but competing suppliers of building control retained formal processes for dealing with their customers, the government and the wider public. The primary difference was that these were not the same, not standardised and sometimes not even comparable. This generates what I refer to as a formality hinterland, where formality remains seen as a requirement of regulation and there is a tension between the needs for transparency and comparison versus the prime motivator of the deregulation, which is a reduction in the economic cost and sweeping away inefficient "red tape".

The search for the "competent persons" described above followed a formal procedure of checking credentials. The focus, though, shifted away from a single, formalised procedure to formally recognising the importance of less formal qualifications, such as statements of competence. It sought to regularise the informal, to take working knowledge and practical experience and accord them recognition. That said, building control has drifted back towards a unified formality inasmuch as specified professional qualifications are seen as providing the proof of competence sought. Where the informal has been transformed is that professional associations have endorsed such previously unacceptable indicators

of competence and given them status and a degree of formality. In Weberian terminology, traditional forms of occupational activity have been accorded legal equivalence.

Conceptually, building control provides empirical evidence of a number of phases in the deformalisation process.

(1) Removal of a single, formal "voice" on regulation; and
(2) Concentration on measuring "ends" rather than "means";
(3) Whilst accepting that different parties might have different "ends" and measure them in non-similar ways;
(4) Which requires either multiple formalities, or trans-informal interpretations, such that each can be regarded as acceptable. Previously, informal regulatory procedures would be regarded as inadequate, deviant or both. Now, these can be accepted as valid because they are based upon the experiences of those who know the work best.

Trans-informality is used where informality begins to deviate from its traditional definition, i.e. when informality is transformed towards formality. Here, informal, ad hoc, heuristic modes of an occupation are given precedence. The dialogue behind this comes in two different forms. Cost is a major driver; formal systems are expensive. However, it is also recognised that occupational control is best exercised by those who actually carry through the work. Their "rules of thumb" are empirically tested methods of carrying out tasks to a standard accepted by customers. Within this paradigm, such market-led discourses are very powerful.

All that said, there remained the question as to how to then provide proof for the efficacy of these informal regulatory systems, and whether some degree of formalisation was required to achieve that. To those like Black (2009), this is an issue of legitimacy. Outside of financial regulation, I see this as more straightforward pragmatism: how does one create a working system in which informal systems derived by many sources of occupational authority were to be the drivers of building control competency systems? There is no need to generate legitimacy, because Late Modernity is typified by a lack of legitimacy, period. To the extent that legitimacy might remain a useful concept, legitimacy is simply the result of building control work being successfully carried out.

Where the issue of trans-informality becomes especially interesting is how the regulation of building control was actually developed. As discussed above, the emphasis was placed on individual practitioners (the informal). However, it rapidly became clear that some (formal) system of generating a process for regulating those "competent persons" in whom public trust was placed would

be required. Whilst this was still centred upon the individual, a practical system of organisation was required, and one that was cost effective. Government concentrated on the professional associations of whom building control officers were likely members. Later, they were required to become members since the formal system of regulation that developed was embedded in the professional regulation of these associations. Professional associations thus became dominant authorities in the field of building control. However, the reason why I develop the *trans-informal* theme is that this entire process was still driven from the bottom up, by the individual members of the association, and not by the formal authoritative processes of the associations themselves. However, as the deregulation agenda was developed, professional associations did take greater control, installing authoritative command-and-control-lite regulatory systems. This is what I describe as meta-formal, and my second case study illustrates this evolution in regulatory formality.

Professional regulation and the creation of meta-formality

When regulating the manufacture of products, it is relatively easy to set standards – assuming that regulators possess technical competence and knowledge of the product. For example, in my building control case study, when building a house, foundations should be of a certain specification of concrete, laid in trenches of a certain depth and in weather conditions that do not disrupt the natural setting of the concrete. However, when dealing with services, there is no similar degree of certainty. Services are esoteric and the finished result is nebulous, immaterial and without a concrete presence. And, of course, it is this characteristic that provides a (arguably, "the") defining characteristic of a profession within the sociology literature. In the context of this paper, it is of less relevance whether this is seen as social distance (Johnson 1972) or control through generating difference (Larson 1977) inter alia. Where it features in this analysis of formality is in its role as a professional project (Larson 1977), a system (Abbott 1988) or as an institutional isomorphism (DiMaggio and Powell 1983). The question for regulators, then, is how to regulate in these circumstances. The result has been to look at process.

Within regulation, regulators are able to regulate

(1) The production process;
(2) The finished product;
(3) Both process and product.

In terms of services, regulatinc fg the finished product is problematic precisely because the service is the commodity that professions use to exercise occupational

control. Clear – external – regulation is one function that they are actively engaged in stymieing. At the same time, professional associations do seek to gain ever-greater control of their own membership. Associations themselves are transforming from peer-controlled membership clubs to dominant command-and-control authorities. It is these dual processes that generate meta-formality: command-and-control, but within a number of competing authorities, in this case professional associations.

Within the regulation of services, therefore, the focus has been on creating (the "command and control", again) a standardised system of producing this service (process). The argument goes that if the process of delivering the service is correct, then the finished result will automatically be satisfactory. This regulation of the "means" of service provision involves three stages:

(1) Generate a regulated provision mechanism;
(2) Regulate the person carrying out the process;
(3) Provide a concrete agreement on what the service actually is.

Again, the importance of formality is central. Any deviancy risks destroying the service being provided, rendering it unsatisfactory, illegal and unproven. These three parts all require a formalised system of generation and monitoring, but the responsibility for generating this formality is placed with a self-regulating authority, the professional association. The "deregulatory agenda" dialogue is maintained because there are a number of such authorities in competition with each other – competing for members and for clients to recognise the value of both their members and the association itself, and for a wider legitimacy within government and supra-government circles. Because professional associations are collections of experts in esoteric services, they have traditionally been allowed to regulate their own members and set service quality benchmarks. Ironically, deregulation has focused upon breaking up these monopolies on the basis that they, too, are anti-competitive. Meta-formality offers professions a partial return of their power, and they are keen to engage. My own work has drawn upon a number of others to ponder the question as to whether individual professionals might regret this transformation of their membership associations (Fournier 1999; Eccles 2009). Whilst not directly relevant here, it does move me to postulate that my meta-formality will always triumph over trans-informality. Within regulatory processes, the need for certainty is too ingrained to allow individual freedom to determine means without a dominant authority seizing control with the promise that formality guarantees certainty and safety. Hopefully, the second case study will flesh out these generalities with specifics.

At the practitioner level, professionalisation can be seen as a formalisation of occupational norms in order to develop a benchmark of competency. Formalisation achieves a particular end, desirous of all professional associations. To the ordinary professional, this takes the form of, for example, a Code of Practice. This Code provides the "best" approach to a job and offers some legal protection as Courts usually accept that following a Code precludes any potential case of negligence. Sociologically, a Code of Practice gives concrete evidence to the generation of "difference". It generates a particular form of "professional" service that is given a distinct social meaning that distinguishes it from "non-professional" service, from the charlatan, from the quack. The concept of formality is useful here since it illustrates how this "difference" can be given form: the measurement and validation of competence. What follows is a case study that extends across Europe, concerning the nature of the regulation of the process of providing property valuation.

Formalising meaning in a professional context – The issue of "value"

I first considered the theme of what is meant by the concept of "value" in 1993 (Eccles 1993a; 1993b) and left the issue two years later (Eccles 1995) as a discrete subject. At that time, I saw the concept as one of "culture", rather than the more focused interpretation that I am outlining here.

To the surveying profession, the central question is how one provides a commercial valuation to a non-financial asset (a building) when it has not actually been placed into a market of buyers and sellers, who, as economic actors, would be expected to determine this by agreeing upon a price for which one party is prepared to pay, and likewise for which the owner is prepared to sell. Obviously, where a sale actually takes place, there is brought into existence a clear formal value. However, assets still need to be valued for many purposes even when not actually being sold – evaluating loans, insurance, calculating the net worth of a company etc. RICS refer to these as Regulated Purpose Valuations (RPVs), those

> that are relied on by third parties and include those undertaken for the purpose of statutory financial reporting within the public accounts of listed companies. As well as financial statements, third parties rely on these valuations for takeovers, mergers, stock exchange listings and published information (RICS 2009, 5).

Because of their purpose, these are regarded by RICS as occurring "within a public interest framework" (RICS 2009, 5). These values are then accorded a formality, because they are accepted as "accurate". At the same time, they are what might be described as professional estimates of what price they would command

if sold. Hence, the professional valuer follows a series of formalised procedures to achieve this value. It is the creation of such a formal value by an individual that I am going to consider as an example of the transformation of what might be seen as an informal, heuristic process into a formal, concrete value in which the professional association serves as a dominant authority, and directs expertise, rather than allow its members to each utilise their judgement. This is the meta-formal, where "command-and-control" regulation is utilised, but between different, competing, associations.

Within the case study's subject of valuation, there are two variable parameters to keep in mind when considering the valuation of assets:

(1) The need to produce a definite price that *would* be achieved if the asset were to be sold. This is considered a formal and concrete statement of reality by those utilising the value (e.g. investors, tax authorities, lenders etc.).
(2) That this value is not an actual price, since the asset has not been sold. Rather, it is an estimate, a professional opinion, of what that price *would* be.

It is self-evident that there are a series of potential differences between the reality of such a valuation and the actual market price. The concern has been how to create an accurate method to generate this estimate, and then how to monitor its function. Since valuers are experts in their field, one might expect that they be allowed to each determine the best way to carry through this work. Within a deregulatory dialogue, the trans-informalisation process described in the first case study might have been seen as apt. However, in this case, a very different approach has evolved. First, a "top-down" process has been introduced, reminiscent of the "command-and-control" regulatory system. Second, this has focussed upon regulation of the process through a very formal system, which consists of two parts: a very precise language of definition has been established; and, systems for the accreditation of the judgement of the individual have been introduced. A key feature of this case study, though, is one of fragmentary authority. Many professional associations within and between nations compete to establish the dominance of their own approach. Hence, the meta-formal, in which we see centralised systems of control, but without a single overarching determining authority. This is what makes the case of interest to sociology. Whilst there are interesting technical issues behind creating a valuation, the study transcends the particular profession ("the valuer") because all of this takes place within an international context – hence, there are international and national regulators, different languages, international and national codes of law and various cultural systems for social action in valuing assets. Thus, valuation is faced with multiple systems of formality, competing and cooperating to

achieve the required valuation accuracy and consistency. Again, hopefully these generalisations will take form in the specifics to follow.

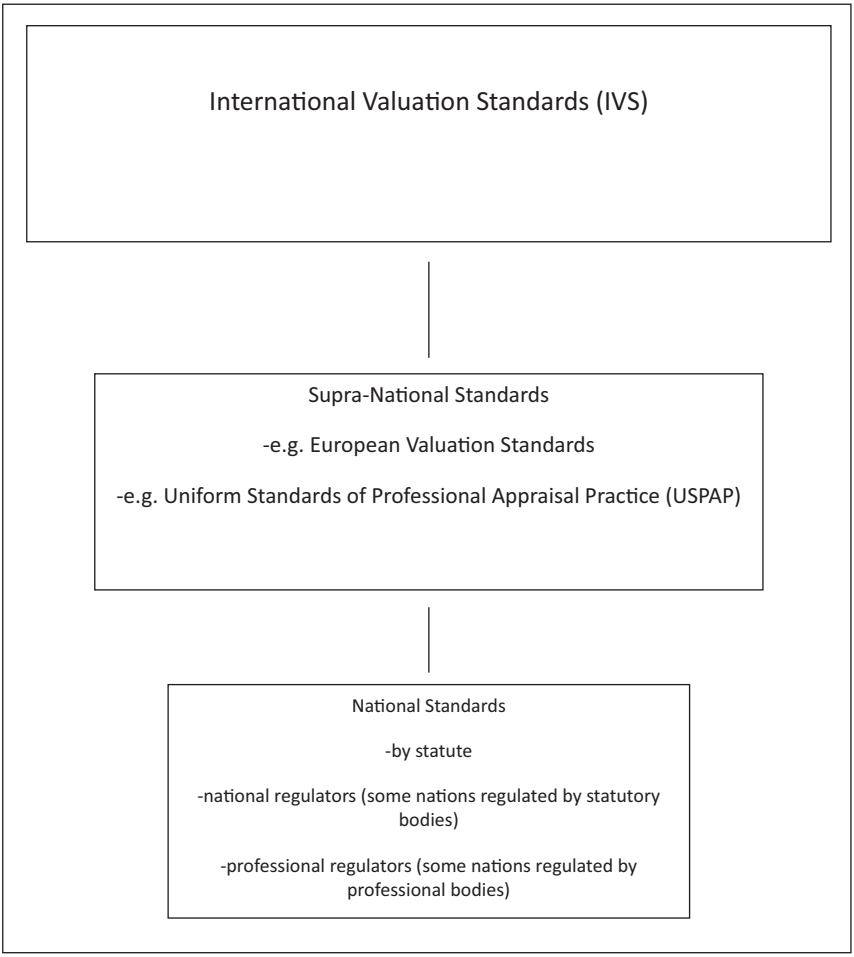
One final point that is worth noting is that the regulation of valuation does not arise out of a reaction to any particular regulatory failing. The occupational issue for practitioners concerns accuracy and how close valuations are to the market price. In practice, this can only be tested once a valued asset is actually sold, of course. However, there are continual concerns as to whether valuers might be pressured into higher valuations, for example for the purpose of security against a loan. Dishonesty aside, accuracy is a constant concern – especially at times of deflation and/or recession when asset values are likely to be in decline. Where a company suddenly finds its assets are worth less than they believed, litigation against the valuer is a frequent response. For the record, research suggests that valuation accuracy and honesty is not a particular cause, at this time, for regulatory concern (see, for example, Baum et al. 2000; RICS 2002; RICS Valuation Faculty 2003). There is no external specific driver of change that might render the case unrepresentative.

Regulating value

Regulation takes place in two different spheres. First, there is the issue of the regulating body, and, second, there is the matter of the formalised codes of procedure in carrying through the valuation.

This case study is a good example of the fracturing of controlling authority power. In terms of regulatory bodies, there is an International Valuation Standards Board (IVSB) at the EU level. There are then national standard setters, including the Royal Institution of Chartered Surveyors (RICS, in the UK) and the Polish Federation of Valuers' Associations (PFVA, in Poland). However, the UK also has a second, competing, professional body, the Institute of Revenues Rating and Valuation (IRRV). Additionally, this second body is recognised by the EU in a different manner than RICS. National professional associations are responsible for exercising occupational control over their members, unless there is a national statutory regulator. These are represented at the IVSB. The result is a series of different practice codes. *Figure 5* illustrates the hierarchy of these (competing) levels of authority. It is agreed that International Valuation Standards (IVS) are dominant internationally, European Valuation Standards within an EU framework, and that each nation state then develops its own framework within these. This is important because it emphasises the restricted nature of authority and the contested dialogue that occurs within and between these groups. It also suggests that such competition between authorities in itself is a driver of the formalisation of practices.

Figure 5: Hierarchy of valuation standards



Within valuation, regulators have focussed upon the meaning of "value". Since it is an artificial construct, not an actual market price, what exactly is being measured, under what market conditions, is seen as central to determining accuracy. This is because a practice can develop from this for giving a particular asset a value as defined within that meaning. However, this is by no means simple. First, there is the problem of language. In English, the professional term adopted currently is that of "market value", but there is a second, wider, interpretation, that of "fair value" as will be discussed below. The second problem is, even if the

formalisation of meaning allows for a common understanding (not guaranteed), there is the issue of how in practice this is carried through to the actual process of performing asset valuation, and how this can guarantee accuracy in the value calculated.

In both cases, the issue of the lack of a single, determinant authority generates disparate approaches. The UK provides a good example, since it has two competing systems of regulation. RICS has introduced a system of licensing professional valuers within its own membership. This introduced the term "RICS Accredited Valuer" (RICS 2009) in 2010. However, other bodies in the EU have adopted a system of "Recognised European Valuer" (REV) status. Whilst RICS has not adopted this, IRRV has. Therefore, within the UK, there are two different regulatory processes for endorsing the competence of those carrying out the same activity. Hence, we find not one, but two, competing formal structures for identifying and licensing competence. Where they are similar is in centralising the regulation of professional activity, and to illustrate this I will focus upon the differences in meaning given to the measurement of value. Whilst these might appear obtuse to the lay person, hopefully the two principles will become clear. Formality in meaning is the total focus, but there is no uniformity because there is no determining authority to enforce a universal accord. Because of this latter problem, formality is given even greater importance since there is no socialisation across occupational and national boundaries that can foster professional understanding. Individuals must fall back on the exact specificity of their practitioner definitions. Whilst Wikipedia (undated) regards the terms discussed below as "interchangeable", and, from a lay person's perspective, all these are attempting to agree to the same thing – the true value of an asset (Wikipedia undated) – this is a fundamental misreading of why these definitions exist, and in such a precise form.

The terms that the case study will examine are: open market value, market value, fair value, and mortgage lending value.

RICS developed the concept of "open market value", and it was the operational term within the UK profession until its replacement by "market value". Interestingly, the previous terminology used in the UK had also been market value, though its formal meaning differed slightly. So, between 1996 and 2003 UK valuers were faced with dealing in "open market value" in the UK and "market value" (see below) within the rest of Europe. In 2003, RICS adopted the IVS definition and abolished its use of "open market value". Market value is

> an opinion of the best price at which the sale of an interest in an asset would have been completed unconditionally for cash consideration on the date of valuation, assuming
>
> (a) a willing seller;

(b) that, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the asset and state of the market) for the proper marketing of the interest, for the agreement of price and terms and for the completion of the sale;
(c) that the state of the market, level of values and other circumstances were, on any earlier assumed date of exchange of contracts, the same as on the date of valuation;
(d) that no account is taken of any additional bid by a purchaser with a special interest; and
(e) that both parties to the transaction had acted knowledgeably, prudently and without compulsion (RICS 2010, PS 3.2 2010).

This definition is found in the RICS manual, *RICS Valuation – Professional Standards* (known as the *Red Book*, RICS 2010), a mandatory practice handbook for RICS values. Only members of RICS *must* follow its guidance, because there is no statutory requirement to be a member of any particular body in order to be qualified to carry out valuations.

The IVSC (2005) first adopted the term "market value" in 1992. This is defined as

> the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion (RICS 2014, 30).

Note that today, whilst RICS recognises the need to work to market value, they retain their own formal meaning of the term. Two formal terms; two competing authorities.

Next we consider "fair value". IVS defines fair value as "usually" being the same as market value, but allows for one of a number of specified non-market valuations to be used if the situation requires. One might question why the need for this second definition, since market value could be subsumed within fair value. However, valuers are not the only group interested in the valuation of an asset. The point of particular interest within fair value is that a second group of competing authorities appear here – other professional groups. In this case, the accounting profession has produced International Financial Reporting Standard 13 (IFRS 13). IFRS 13 defines fair value as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date" (IASB 2011, 6). Again, we have formality, but competing forms.

Mortgage lending value is also adopted by IVS as yet another precisely defined concept, and, again, the interesting point is that its rationale arises from another, competing, centralised authority. In this case, the concept originates within another generator of formality, the European Union. The term is contained within

Directive 98/32/EC of the European Parliament and of the Council of 22 June 1998. It is defined as:

> The value of the property as determined by the Valuer making a prudent assessment of the future marketability of the property by taking into account long-term sustainable aspects of the property, the normal and local market conditions, and the current use and alternative appropriate uses of the property. Speculative elements may not be taken into account in the assessment of mortgage lending value. The mortgage lending value shall be documented in a transparent and clear manner (Directive 98/32/EC of the European Parliament and of the Council of 22 June 1998).

Note the importance specifically attached to the requirement of formal practices to generate it.

The UK situation is mirrored by other countries. For example, in the case of mortgage lending value, Poland has introduced its own KSWS 3, Valuation for Loan Security Purposes. The Polish Federation of Valuers' Associations (PFVA) successfully negotiated its passage through the Ministry of Infrastructure and it became binding in 2010. It at first appears to copy the principles of market value discussed above, but does add one further twist in that the valuer is also required to take a view on predicted future changes in the market that might affect the valuation.

In restating these definitions, I am attempting to show the very narrow differences at stake and the contested authorities involved in establishing the meaning of the activity of generating a "value". What is very clear is that there is no room for informal judgement here, no trust in individual professional experience. In regulating accuracy in the calculated sum, weight is very evidently placed upon the formality of the very specific. It is generated by an authority that commands and controls. But each authority is only powerful within a small region, occupation or group of individuals. It is regulated formality, but it is meta-formality since it is a weaker authoritative form.

It is also worth repeating that there has never been what one might call a failure of the valuation profession. The profession is regarded as generally honest and the values generated have been viewed as generally accurate. RICS has instigated two independent reviews of the profession and its accuracy – the Mallinson Report (RICS 1994) and the Carsberg Report (RICS 2002) – and both gave a clean bill of health. Obviously, there have been individual failings and at times of financial distress, the spotlight has fallen onto the profession. For example, the collapse in 1993 of Queens Moat Houses, a hotel chain, involved, in part, the valuation profession since "wildly" (Stevenson 1993) different values had been placed on its assets (the hotels). This caused a lot of self-analysis and self-doubt within the profession and, undoubtedly, triggered some of the response that has

left the profession in the current respected position described above. However, distressed companies in financial crises are specifically excluded from the definitions stated above, and it is unclear how the likes of Queens Moat Houses can be blamed on the valuation profession. Where values might be questioned, they are simply the visible representation of a more fundamental financial malaise – or worse. Indeed, to a lay person, the profession might seem to be highly inaccurate at times. For example, Eade (1999) offers the example of a surveyor who valued a café and maisonette at £100,000 for a loan of £80,000, which later sold for £26,000. The defendants' surveyor offered a valuation based upon comparable properties of £70,000, apparently "close enough to support the £100,000 valuation" (Eade 1999, 41) and similar properties reaching £90,000 at auction, whilst the plaintiff's surveyor calculated its value at £65,000. The defendant won, because the judge accepted the logic of his methodology in reaching the valuation.

Thus, we have:

> Original surveyor values at £100,000
>
> Defendant's surveyor values at £70,000 (claimed as close enough)
>
> Plaintiff's surveyor values at £65,000 (the £5,000 difference apparently being enough to argue a case of professional negligence)
>
> Ultimate selling price (i.e. market price) is £26,000 (though, I assume that this was a distressed sale from an unwilling seller)

It is the formality of *process* that saves the defendant from losing the case, and not the actual end that he came up with. His regulatory body, RICS, has developed a proven "best practice" model of carrying out a valuation. This conforms to the meta-formal process discussed above. A number of different standard-setters are engaged in establishing competing systems of formality and I find the removal of a single source to be very instructive when considering the nature of formality. In the UK, two professional associations each claim occupational jurisdiction. One relies on its own premier status and its Royal Charter, whilst the other points to its accolade as a joint member of the EU's Recognised European Valuer system of recognising competence. But, in the case of valuation, there has been no rush to accept the primacy of informal expert-led practical solutions. Whether it is informality, heuristics or valuers using their professional judgement to derive a value for an asset, none of these are seen as a legitimate option.

Smart regulation

Regulation concerns competence, and this is found in the occupational expertise of those engaged in the work. Thus, taking advantage of this expertise to

draw upon empirical heuristics allows that informal procedures can be accorded greater weight in ensuring safe and competent outputs. This encourages trans-informal regulation, where the adhocracy of the individual drives forward occupational practice within some loosely coupled framework to provide the expected trappings of a regulatory regime.

It is concern about the efficacy of these trappings that drives meta-formal regulation. Here, the drive is to rebuild a "command and control" authority within some boundaries, and generate occupation-led practices. However, greater emphasis is placed on the role of the professional association (or similar authoritative body) to generate an "agree and monitor" cooperative model rather than that of a determining authority or Hobbesian "Law-giver".

This work originated in the empirical study of regulatory activities, which is published elsewhere (Eccles and Pointing 2013). However, from this analysis of a formality hinterland we can draw out a typology of the parties subject to regulation.

Smart regulation seeks to recreate what its advocates refer to as a "primary authority", which is a determinant authority within a locale or profession. However, this geographical or functional limit restricts its power. Additionally, the authority is only generated by the agreement that it recognises where expertise lies, and the regulation is a cooperative activity rather than a coercive one. This lends a great deal of emphasis to the generation of both trans-informal and meta-formal systems. Since a lot of small businesses regulation takes place where there is no obvious self-regulatory authority available, then smart regulation must work with individuals operating in disparate ways. Where associations are available, then meta-formal self-regulation allows for autonomous regulation because there is a formality in the practices adopted and approved, but it is one that flows out of occupational expertise.

Self-regulation remains the policy of the UK government, and its executive authority lies with the Better Regulation Executive (BRE), an arm of the Department for Business, Innovation and Skills (BIS), whose mission is to lead the regulatory reform agenda across the government as a whole; "better regulation" is the declared objective. Besides the aim of reducing the "regulatory burden to business and civil society organisations", the governing coalition's strategy is designed to "bring about a steady change of culture across government so that regulation is seen as the last resort and alternatives to regulation are first considered" (BIS 2011).

Smart regulation has grown out of the broader principles of deregulation, risk analysis and no-cost regulation – a process that has been exhaustively examined by a number of writers over the years (Fisher 2007). It is a somewhat broad concept:

> used to refer to an emerging form of wide-angled regulation that seeks to harness not just governments but also business and third parties to provide policy alternatives that include, but also go beyond, direct regulation (Gunningham 2009, 200).

Smart regulation in the UK is typified by the "Primary Authority scheme", which has been promoted by central government through the setting up of the Local Better Regulation Office (LBRO) and its successor: the Better Regulation Delivery Office (BRDO). The essential objectives of the Primary Authority scheme are to reduce the costs of regulation incurred by local authorities, whilst enabling businesses to operate in a simpler and less intrusive regulatory climate and bear an increasing proportion of the costs of regulation themselves. The more effective self-regulation becomes, the less the need for intrusive and expensive regulation. Consumers will be better protected because of the willingness and capability of businesses to self-regulate. As a consequence of the bringing together of these "win-win" artefacts, local authority regulators can adopt a more removed, supervisory approach to regulating businesses – "smart regulation". By adopting better regulation policies, competently run businesses having outlets in several or many locations will thus be in a position to be regulated at arm's length by a single, primary authority rather than by different local authorities depending on where each outlet is located.

Eccles and Pointing (2013) have created an "architectural triptych" model illustrating how smart regulation might be seen to work. It comprises the following three stages.

Neophyte

When businesses come into existence, they have many important considerations – finance, customers, controlling costs, obtaining premises etc. Regulation is not likely to be at the head of the list of factors. However, they will recognise the need to satisfy their legal responsibilities. They might not understand exactly what these are, and how they may be satisfied. Therefore, neophytes need encouragement rather than penalisation, and will often seek guidance, advice and help from the regulator. Neophytes may be enthusiastic, but often lack confidence and skills. The approach of the smart regulator is to provide neophytes with assistance to establish themselves, and then offer a path to the next level.

Neophytes make mistakes, but regulators will focus on preventing their continuing in error, rather than on punishing them. At the same time, the regulatory system needs to distinguish between genuine error, and those businesses that seek to evade their legal duties. Others will simply not be culturally able to engage in voluntary regulation. Small subcontractors in the construction industry,

for example, have been known to prefer directive "command and control" regulation to something "smarter" (Loosemore and Adonakis 2007). Some operators will be incompetent, dishonest, or even running businesses that are actually criminal, such as commercial fly-tipping.

Regulators are thus developing both formal and informal systems of regulation here. There is an acceptance that businesses have not had the time or resources to adopt formal regulatory systems. There is also an admission that entrepreneurs' informal experience might carry through regulatory requirements, and regulators must be prepared to accept novel responses to regulatory requirements. Equally, regulation needs formality in order to establish benchmarks and inspect, penalise and prosecute those who are unable or unwilling to generate acceptable responses to regulation. Thus, trans-informal regulatory processes are condoned, but there is a desire to pursue dominant-authority centred meta-formal systems.

Self-improvers

The second stage recognises that firms will learn and develop if given appropriate support, guidance and help from the regulator. Recourse to intrusive types of enforcement – disciplinary action, serving of formal notices or prosecution – should not be necessary and smart regulators will use their powers sparingly and as a last resort. This is a transitionary stage, not an end result. Businesses are assumed to be striving towards the next stage.

I would suggest that informal-based experience and expertise are encouraged at this point to provide practical and individual responses to a required regulatory regime. The emphasis is upon the "ends" – satisfying regulatory outcomes – rather than on the means. At the same time, individualised responses offer a very fragmentary response and one that is going to be repeated many thousands of times. One would expect there to be "learning from experience" either through an informal diffusion of ideas between practitioners or through a formal system of generating "best practices". Both the Primary Authority and the professional association are organisations able to formalise many informal approaches into the "best" one. Hence, we see the informal experiences translated into more formal "best" ones. This is where I see the meta-formal regulation, because it is a dominant authority that drives this process and not the individual expert, though the latter might help create this. The exact process by which dissemination of best practice ideas is achieved has been well discussed within the professionalisation literature. DiMaggio and Powell (1983), revisited by Beckert (2010), illustrate how institutions generate safe processes to deal with

events such as regulatory requirements. In this context, these take the form of meta-formal processes.

Champions

The steady-state stage of the model is reached when businesses seek to establish themselves as self-regulating paragons based on high levels of transparency, trust and reputation. This is the ultimate end to the regulatory process, that which is aspired to by the Better Regulation Delivery Office.

To reach this stage, the costs of regulation should largely be met by the body being regulated; the regulator can adopt a removed, supervisory relationship that is only rarely visible. Again, formality and informality offer an interesting perspective on this process. We return to the duality of regulatory process: transparency requires formal systems and structures that are open to inspection by the regulator; at the same time, these will be based upon the experiences and dialogue of individual business operators, driven by informal practices. The question for further analysis is whether trans-informal systems based upon individual expertise can ever be formal enough, can achieve transparency and legitimacy, can be cost effective to generate and police, and, ultimately, whether occupational experts actually are as competent as they might claim. Whilst building control (case study 1) developed out of individual expertise, it was a quite specific case, and professional associations undoubtedly have taken over control even if they still accept individual solutions. Case study 2 suggests that associations regard self-regulation as an important source of authority for themselves, and that governments, when pushed, prefer the perceived safety of a validating authority over trust in an individual.

Conclusions

Regulation requires the methodical provision of benchmarks that those being regulated are expected to achieve, of systems to measure this and of jurisdictional competence to carry out the regulatory process. Since the latter quarter of the last century, serious questions have been raised about the efficacy of such "command and control" regulatory processes. They are seen as expensive, cumbersome and no guarantee of an acceptable level of compliance. Whilst it is tempting to regard this deregulation as either an informalisation of the process or an entangling of the formal and the informal, the removal of a single determining regulatory authority should not be seen as informalising the process; the same basic principles are still being carried forward. I prefer to view the process as one of "trans-informality",

in which the same rational-legal approach is adopted into certain informal systems that are deemed appropriate to the requirements of regulating competence in terms of skills (means) and output (ends). In the short-run at least, these informal heuristic systems are simply re-analysed rather than actually transformed. Even the ideology behind the deregulation of building control did not go so far as to promote purely ad hoc provision of service, but it was keen to allow for many interpretations of how to achieve the finished result of a safe building. Over time, these informal systems were either discarded or increasingly formalised into competing systems for assuring competency. However, I think there are conceptual differences, too. These systems are not, or do not start out, as rational-legal within a Weberian tradition, rather they rely on what might be viewed as "traditional" forms of occupational control and provision. They are also not transparent or visible to others, and are not externally measured. Instead, the regulation of process gives way to the regulation of ends. Socially constructed norms based upon empiricism, pragmatism and "rule of thumb" expertise replace scientifically rationalised ones. But, these are then given permanence and are held up to scrutiny by other experts and (especially) clients and customers. Hence, the "trans-informality" process.

I adopt the term "meta-formality" to distinguish where competing dominating authorities are given agency to regulate using quasi-command and control procedures. The most obvious area for this is where professional associations are allowed to determine regulatory protocols. Here, professional associations rely upon the same formalised characteristics of the state, but are accorded less control. In my example of the provision of valuation services, there is an insistence on the methodical provision of a single approach (the means) and of an agreed universal accord on meaning. However, competition between two UK institutions, and also across Europe, leaves different terms, different indicators of competency and only a weakly coupled mutual recognition of other, equally methodical, positions. It is this looseness of the coupling between independent systems that generates "meta-formality" since it removes the universality of meaning and recognition by creating competing and different constructions of jurisdictional competence and its provision. The loss of a determining authority and its replacement with competing authorities is central to this idea of generating very strong formality, but at the same time, it is also somewhat incomplete.

The use of the term "meta" in this case reflects both conceptions of the term. First, my concept of meta-formality is very much adjacent to formality. In some ways, it is a regression to a more adolescent, weaker, form. In others, it may be an evolutionary one. Either way, the one follows the other. At the same time, epistemologically, I adopt the prefix meta- in referring to the idea that what I am studying concerns who has produced the formality, when, why, in what format etc.

Whether either "meta-formality" or "trans-informality" will remain as valid labels is another area of work-in-progress, just as my examination of smart regulation will continue through observing additional systems and spheres of regulation. However, whilst these particulars will undoubtedly evolve, I think the construction and destruction of formality remains a useful approach to analysing the issue of regulation.

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Aleksandra Herman

The Reconfiguration of Power as a Legitimization of Informal Political Actions in Local-Level Politics in Contemporary Poland

Introduction: Objectives and analytical assumptions

This paper considers local politics viewed from the angle of self-governance in contemporary Poland, based on the concept of the reconfiguration of state power against the backdrop of Polish historical and social conditions. Within this perspective, it presents separate social institutions operating on the bottom level of self-governance and considers their political potential in the local environment.

The assumed key hypothesis is that in the conditions of power reconfiguration and self-governance, the range of local politics broadens to include the previously non-politicized, new areas of the public sphere. At the same time, broadening the range of politics within the system of reconfigured power leads to mechanisms arising that work to merge the informal and formal political influences, as well as to formalize informal influences. As a consequence of this, informal political actors and initiatives are pulled into the area of local politics through legal instruments. The broad perspective on local politics in developed countries in this text is analyzed using theoretical models that come from literature on classic political anthropology. Such an approach is rendered possible by the fact that a broad range of politics in the local environment, according to concepts of reconfiguration, matches its scope in the primitive communities. Thus, the paper attempts to compare the applicability of two separate theoretical frameworks in contemporary anthropological research: the classic political anthropology models, and contemporary models of power reconfiguration.

The core analysis conducted in this text covers selected informal mechanisms of local politics within the conditions of the reconfiguration of power in contemporary Poland. However, as this analysis is not a monograph on a specific, defined local community, it also includes historical and cultural determinants of the wider national (Polish) arena. Within this perspective, specific institutions that are common throughout Poland (villages and FWAs) are analyzed as potentially useful tools in local politics. Both of these types of solutions have a bottom-top nature, balancing on the borderline between formality and informality.

Auxiliary research questions emerge from both the assumed hypothesis and from the reasons behind the employment of the classic analytical model. Does the division between formal and informal political influences become blurred as a result of the reconfiguration of power at the local level? Can informality be locally empowered as an important factor of bottom-top political influence? Is the politicization of the private domain, connected with public participation, a phenomenon working to open the local communities to activity and self-governance, or is it working to close it?

The final objective of the analysis is to attempt an evaluation of realistic possibilities for the attainment and use of informal influence on local power through local communities in contemporary Poland, and to evaluate informality in local politics under conditions of the reconfiguration of power.

Classic models of local-level politics in cultural anthropology and the question of informality

The development of political anthropology could only begin after the breakdown in ethnocentrism, previously manifested through the fusion of the theory of politics with the theory of state. The first ventures into anthropological fieldwork that focused on politics took place in Africa during the beginning of decolonization (Lewellen 2003, 7–8). In studying what constituted "politics" in segmentary societies, researchers focused on the systems of kinship and what influenced them, because these systems of kinship gave rise to political decisions. Thus, already in its early days, political anthropology identified the specificity of the political sub-system, which, in fact, rests on other sub-systems from which it is inseparable. As such, it may be classified as both formal and informal. The separation of politics from the state has led to the conclusion that each community shapes politics as a sphere of the realization of power. This conclusion also applies to societies with minimum power.

At the same time, the issue of the "inseparability" of the political sub-system caused problems with both the operationalization of the scope of research and with the theoretical assumptions. The problems occurred whenever attempts were made to transfer the cognitive grid, elaborated through research on simple societies, onto state systems that had already built a structure of formal power, administration and coercion mechanisms within the processes of Weber's (2003 [1905]) rationalization.

An accurate definition of politics in anthropological fieldwork has been provided by Turner, Swartz and Tuden (2006, 7): politics refers to "the processes involved in determining and implementing public goals, and in the differential

achievement and use of power by the members of the group concerned with these goals"[1]. Therefore, the adjective "political" will apply to everything that is at once public and goal-oriented, and that involves a differential of power (in the sense of control) among the individuals of the group in question (Turner 2006, 7). An approximate method for the inclusion of informality into politics was proposed by Swartz (1969, 8–10) through concentrating on political actors (political field) and influences by varied local conditions (arena).

The inseparability of the public and the private in anthropological research, and so of the formal and informal, is also noticeable whenever we attempt to find a definition of "informality" in cultural anthropology literature. It is absent from both the *Encyclopedia of Social and Cultural Anthropology* (Barnard and Spencer 2007) and from the back-of-the-book index in Lewellen's monograph, *Political Anthropology: An Introduction* (2003). It is not even defined in *Political Anthropology* (2006) by Swartz, Turner and Tuden.

However, for the purposes of the proposed approach to research on local politics, the definition of informality formulated by Misztal (2002, 8) might be of help: "a form of interaction among partners enjoying relative freedom in interpretation of their roles' requirements". In this, she makes a reference to Gluckman's (1955, 19; 1965, 256–257) concept of multiplex ties between actors. This is characteristic of both primary and contemporary small-size communities where the same actors partake in multiple interactions in striving for multiple objectives, because the same people play various roles in different subsystems. We find an analogous phenomenon in modern societies, where the significance of the dominant role decreases and society allows actors to be more "multi-role" performers (Misztal 2002, 43). The contemporary overlapping of the public and private domains or realms results in an increasing role for social networks. These networks encompass the general structure of informal relationships within defined associational structures, connected with the increasing variation of acceptance for departing from the rigid scheme of one's role (Misztal 2002, 22).

1 At first thought, the term "politics" brings up many associations suggested by the English language that differentiate between *polity*, *policy* and *politics*. In order to not mix them up, it is best to clarify to what they refer: (a) a form of organization of power in human societies; (b) types of activities taken up to deal with public issues; (c) strategies resulting from rivalry between people and groups (see, *inter alia*, Balandier 1967, 32).

Reconfiguration as the new framework in the anthropological research of contemporary local-level politics

Research on contemporary national political processes, that is, those not restricted to local communities, leads to the conclusion that fundamental changes in power structures, induced by globalization, are under way. The main point of reference in research on the local level has been the concept of the reconfiguration of power and state responsibility, introduced by Banaszak, Beckwith and Rucht (2003). These authors have constructed a typology of independent power relocation forced by structural shifts within the state system in the EU[2]. Reconfigured power is subject to radical and diffused transformations of which the society is not aware. The process takes place through the multifaceted delegation of the traditional tasks of state power and of state responsibilities. The authors distinguish four directions of the reconfiguration:

(1) uploading – the transfer of certain entitlements of state power to the level of supra-state bodies and treaties;
(2) downloading – the transfer of certain entitlements of state power to the lower level of self-governance of the local entity;
(3) lateral loading – the transfer of certain entitlements of the elected power to unelected bodies (like courts, quasi-NGOs, etc.);
(4) off-loading – the transfer of responsibility for care and related services to NGOs or businesses.

Pursuant to this division, the scope of politics remains identical to that defined by Turner, Swartz and Tuden (2006), but reconfiguration brings on the empowerment of new subjects and relationships of power, and the legitimization of their political influence. In reference to the above, it is important to note that the scope of reconfigured power is dynamically staked out by various actors exerting different types of influence on public goals[3]. The empowerment of informal initiatives and the opening up of formal authorities to the influences exerted by "second-line" actors is an additional, presumed feature of local politics in a reconfigured state, where informal institutions that have a significant impact on

2 However, it is also possible to apply this concept to the analysis of state or political systems of other countries or larger regions of the world.

3 One characteristic example is the striving to influence power devoid of any intention to take it over, which is a distinct feature of not only the so-called "new social movements" (della Porta and Diani Mario 2006, 36–37), but also of numerous local social initiatives.

the shaping of political objectives receive the possibility of legalization. Cooperation between the key realms – private and public – renders it possible to translate informality into formality, based on the process of informality encompassing formal structures.

In this article, I intend to focus on the downloading and off-loading directions of reconfiguration, as they are directly present and implemented in the political field of local communities. Quite unlike uploading and lateral loading, they rest on mobilisation and bottom-up political participation, and on the strengthening of self-governance of local authorities. In local communities we are dealing with the multiplexity of ties, a highly dynamic political field, a fluidity of delineations between the private and the public and, consequently, greater opportunities for influencing public goals by local actors. Therefore, in accordance with the main hypothesis, two factors lead to the broadening of the political field onto previously non-political areas: on the one hand, the formal and systemic reconfiguration of power, and on the other hand, the theoretically identified determinants of the local community. What is more, these new areas will not be pulled only into political processes (which is a well-known phenomenon); as a result of the tools available through the downloading and off-loading of power, even informal political influences will be integrated into the formal sphere through their being tied together with formal initiatives via legal solutions.

The noticeable liberalization of the EU "soft laws" contributes significantly to the strengthening of informal political mechanisms – it gives space for the temporary empowerment of so-called social initiatives, which may be used not only by grassroots movements striving to exert an influence on politics, but also by professional political actors in direct power struggles. However, the main idea behind such reinforcement of these initiatives is to support the grassroots informal organizations in making their activities more professional and to take a fuller presence on the power stage. This transposition, incidentally, fits right into the Polish conditions governing social participation presented in the next paragraph. However, the question remains whether this available mechanism is indeed employed.

Local-level self-organization in contemporary Poland: Cultural determinants of the global arena

The idea of a civil society calls for an appropriate balancing of not only the power that is exercised by democratically elected authorities, but also of the power that is held by citizens in the form of public participation. The assumption of cooperation imposes, upon both parties, certain models of functioning that are based

on mutual communication. The role of individuals in a civil society, then, calls for the transgression of the private sphere, and a certain transposition of private needs and expectations onto the public sphere. By doing this, individuals can communicate those needs and expectations to the authorities and strive for their realization in the public domain. Seligman (1995, 5) states that if the sense of a shared public is constitutive of civil society – that is, a free and equal citizenry – so is the very existence of the private. Therefore, in order to form a strong public sphere, a clearly defined private domain – the area for the shaping of citizenry – is necessary. The specific "missing link" in the cooperation between the authorities and citizens is the sector of non-governmental organizations. An analogous mechanism functions in the micro-scale of the local environment. The three vertices of the considered triangular model of local self-governance are: citizenry, NGO organizations and local authorities.

Contemporary patterns of self-organization in Poland largely differ from the assumptions of a civic society. As a result of historical and social determinants, they continue to resist attempts at transposing patterns of mature citizenship. Contrary to the stereotypes, self-organization in contemporary Poland does not suffer from limitations brought on by the lack of a proper social structure (or at least, this is not its sole shortcoming). Polish civic participation is in fact conditioned by the experience of almost two centuries of national conspiracy against colonial rule.

The perspective of post-colonialism, understood as a collection of methodological approaches (Said 1979, 23, 110), concentrates on researching the effects of the colonial period. The principal point of such argumentation is that emancipation from colonial domination has never caused an automatic restoration of the social balance in formerly colonized societies, and the period of subjugation often left a permanent mark on them, both in the material and the social infrastructure. Primarily, there are still strong and significant remnants of the absence of Polish statehood following the partitions perpetrated by Prussia, Russia and Austria, which lasted from 1772 until 1918. Secondly, the consequences of the 20th century occupations are also at play: aggression by Germany and the USSR in World War II, and the post-war subjugation to the Soviet Union – introduced by the 1945 Yalta Conference – were experienced jointly with other nations of Eastern and Central Europe.

Wedel (1986) sums up her research conducted in Poland during the 1980s and 1990s by describing it as a country that, during the days of the communist regime, was characterized by widespread distrust towards bureaucracy, information, economics and state officials. These attitudes stem from the Polish experiences, which were, simultaneously, the experiences of individual citizens

and their families. They form a specific family burden, imprinted in the patterns of everyday life and passed from one generation to the next, boiling down to the necessity of having to circumvent the law in order to survive. These hindrances may also be attributed to the post-colonial heritage of Soviet supremacy, which conditions both the absence of civic activity and the deficit of democracy in the decision-making processes in the public sphere. Therefore, a certain vein of "clientelism", the most basic patterns of which are still present in the society and in the system, was determined by the state's monopolization of each and every aspect of social life (activity) and of economic life (goods and services), while the state itself was suppressed by the domination and control of the USSR.

Present-day Polish local self-organization may have dwindled, but its intention is still to protect citizens from authorities by keeping them away from them. The organizations steer clear of formal power structures, rather than seeking access to them and therefore they do not exert influence by participating in these structures. The main problems of the non-governmental organizations are: insufficient social, financial and organizational potential,[4] absence of the perception of being able to influence the social environment; and the unwillingness of the organizations themselves to cooperate and participate (Bogacz-Wojtanowska, Dutkiewicz and Górniak 2011, 26–29).

To exemplify the tendencies described above: as many as 60% of commune offices have not kept registers of non-governmental organizations active in their territories, despite the fact that nearly 91% of them have appointed units or persons responsible for contacts with non-governmental organizations. This indicates that, even though the cooperation is limited, the authorities have recently started to appreciate the importance of the social sector (Sobiesiak-Penszko 2012, 138). An analysis of the structure of cooperation between the authorities and the NGO sector leads to the conclusions that in Poland, the role of non-governmental organizations as service providers has solidified, and that their operations concentrate mainly on the aspects of distributing public resources (Sobiesiak-Penszko 2012, 140–142). This, however, undermines the fundamental function of the NGO sector as a mediator in the dialogue between citizens and authorities.

With regard to the readiness of Polish society for taking up participation, most citizens are willing to participate as long as the activity is somehow connected to

4 Public resources continue to be the major source of funding for the sector (USAID 2012).

their personal interests, even if they have to bear certain burdens (the burden of, for example, changing plans). The current rate of involvement stands between 23.9% and 30.4% ("pragmatic participation"). 6.3% to 7.2% of people are willing to participate in matters not connected to their personal interests, but only as long as no burdens are generated for them as a result ("occasional participation"). And, finally, 22.3% to 27.1% of persons are willing to participate regardless of their own interests and burdens ("unconditional participation") (Olech and Kotnarowski 2012, 154).

Therefore, the "Polish paradox" might be based on the fact that in the same country in which a massive bottom-up movement like Solidarity had emerged in protest against the communist authorities, there is still an absence of awareness about self-governance as a grassroots activity, which may potentially prove a powerful political tool in the hands of citizens. It is, however, important to remember the historical context of the functioning of Solidarity, which unified numerous antagonistic movements in the overarching relation of "us versus them" (where "them" referred to the official authority structures). Currently, we are still observing a degree of distrust towards the authorities, although one much less pronounced, especially in the case of local authorities, to whom citizens feel "closer". However, the pluralism of values and ideologies fosters the dissipation of social activity, and not its unification in a fight against one common enemy. Contemporary self-governance, especially as an essential element of the reconfigured state, has as its objective its participation in power, rather than its combating against it.

Contemporarily it is emphasized that in Poland, provisions of law serve merely as a formal framework that enables the inclusion of inhabitants of self-governance units in the decision-making processes. The quality of this participation, however, is largely determined by factors which lie outside of the law itself (Krajewska 2011, 22, 42–43). The culture of cooperation remains far behind the legally regulated options, although it is continuously improving. Amendments made in 2010 to the Act of the 24th of April 2003 on Public Benefit Activity and Volunteer Work mandated some forms of cooperation between local authorities and CSOs, with the outcome that more representatives from the NGO sector now provide their opinions on laws and programs proposed by the government. Since 2003, individual citizens have been able to designate 1% of their tax liabilities to organizations with public benefit status. More organizations receive such status every year, while other organizations intensify their campaigns to also achieve the public benefit status. As a result, the percentage of citizens that designated 1% of their tax liabilities increased from less than 3% in 2004 to 38% in 2010 (USAID 2012, 153–154). Despite this, some difficulties

still exist. They include a lengthy, complicated and bureaucratic registration process for NGOs; the registration's dependence on the will, knowledge and attitudes (even political) of particular officials from the registration courts; and the fact that organizations that are not convenient for authorities might be excluded from receiving government support, especially at the local level (USAID 2012). The observed politicization of the non-governmental sector negatively affects the functioning of NGOs, both in the lateral dimension (cooperation between organizations and citizens), as well as in the vertical (cooperation with authorities).

It is commonplace for the data from national NGO databases regarding local associations (formal and informal) to diverge from the actual state of affairs – many such organizations have ceased to exist, but this fact is not recorded in the national databases (USAID 2012). At the same time, there are many new, often informal associations that are able to survive without public funding. Moreover, within the structure of non-governmental organizations in Poland, it is not uncommon for the authorities themselves to encourage organizations that are already deeply embedded in the local structure to formalize their activities in order to gain a broader spectrum of options due to receiving support. In certain cases, this may clash with the very functions of these organizations, which, although not holders of the appropriate mandate, should above all represent the public interest instead of providing services to the organs of public authority (Makowski 2011, 13). However, there are legal mechanisms in place that facilitate the solicitation of funding for the pro-social activities of informal entities. Advocates of informal activities emphasize that due to the very form of their undertakings, their energy serves to fuel real accomplishments instead of being wasted on bureaucracy and documentation. Informal leaders also point to the value of the trust vested in them by public opinion, as their projects – completed either on a cash-free basis or for small amounts of money – are visible to all. It is difficult to evaluate this phenomenon as a positive one, as this is an informality of an escapist nature.

In the following paragraphs, two areas of local self-governance in Poland are presented: *solectwo* (as a territorial community of the lowest administrative level, the equivalent of "village") and Farmers' Wives Association (FWA, as a commonplace, rural, organized form of civic engagement for women). The outline of the customary and legal determinants of the functioning of these institutions is illustrated with detailed examples from the research conducted. The presented examples show not only the inseparability of formality and informality in an organized grassroots activity in local communities, but also the specificity of Polish informality in the light of the discussed determinants.

Law versus structure: The case of the village *[solectwo]*

"Law versus structure" in the above subtitle indicates that the legal framework provides a certain scheme to be used by the structure for civic initiatives, as an element of self-governance in the process of the downloading of power.

While analyzing the issues connected with civic and political activities, it is important to pay attention to the legal conditions and practices relevant to the functioning of bottom-level self-governing bodies. A territorial self-government is the most important form of self-governance, construed as the shifting of certain competences within the framework of public administration directly to territorial communities. The institution of *solectwo* could be construed as a special type of participation mechanism, characteristic of rural communities (Makowski 2010). As the smallest territorial units operating below the level of communes, they have no legal personality[5]. At the same time, the legal structuring of village authorities lends them some potential space for self-governance based on direct democracy, as well as certain channels for its accomplishment through political lobbying in the commune authorities. The dual character of village organization within Polish law is also attested to by the fact that even though their authorities are appointed through democratic and direct elections, the National Electoral Commission (the highest electoral body in Poland) does not collect any data regarding these elections.

Villages, as units auxiliary to communes, may only manage their financial affairs within the limits of commune budgets. However, the rules governing these finances (the so-called village fund) must be enacted by the commune and written in the village statute. Unfortunately for villages, commune authorities are not always necessarily interested in grassroots activities nor are they open to such initiatives. In practice, however, neither the villages nor the communes have so far developed this sort of bottom-up activity, due to the low participation of the village inhabitants and the lack of funding in the communes. The law allows villages to manage financial means from various sources (e.g. revenues from administering communal property, revenues generated by their own activities, such as the organization of events, and national and EU funding or donations). However, village councils and commune representatives [*voyts*] often leave these affairs unattended, as they feel they are not important. Due to this neglect, commune statutes often lack appropriate provisions regulating

5 Territorial self-government in Poland is made up of regional territorial units [*województwa* – voivodeships], then *poviats* – a lower level, and finally of *gminy* or communes, the lowest level of territorial self-governing units.

this issue or, alternatively, there is a mere reference to the village statute, which points nowhere (Iwanicka 2013).

The village's resolution-passing body is the rural meeting – that is, an assembly of inhabitants that reaches all the way down the power-downloading ladder. The executive authority is held by the village mayor, who enjoys legal protection as a public functionary. The role of a village mayor [Polish *sołtys*, German *Schultheis* or Latin *sculdasius*] in Poland is that of a public post, historically and socially legitimized since the medieval times, connected with the German town law foundations. The village council is an auxiliary body: it fulfils an advisory and consultative function for the village mayor[6].

In 2005, research was conducted on village mayors in three communes (listed herein as commune C, commune S, and commune O) located in various regions of Poland[7]. Despite the fact that nine years have passed, this research remains probably the most complex and up-to-date work regarding village mayors and their work. Moreover, the results of this research were elaborated neither within the perspective suggested by the theory of the reconfiguration of power, nor as data to evidence the mechanisms of the lowest-level self-governing territorial communities. In the conducted research, however, a number of patterns of cooperation between village mayors and their councils were encountered. In each of the cases, respondents highlighted that they were built around family ties or personal connections. Two frequent models of interactions at the borderline of formal and informal are especially worth presenting. The first one is the model of an active married couple, where one of the spouses holds the function of the village mayor and the other is a member of the village council. The model is built around meetings in private homes or gardens for a cup of tea or coffee (women), or for a couple of beers or vodka (men)[8].

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6 Village authorities were approved by the Act of 8th March 1990 on Commune Self-Governments.

7 Jointly, I conducted 68 interviews, under the direction of Professor Małgorzata Fuszara, as part of the grant *Enlargement, Gender and Governance: The Civic and Political Participation and Representation of Women in the EU Candidate Countries,* financed in the EU Fifth Framework Programme. An unpublished report on this research has been previously put to use in, among others, Fuszara (2006; 2013), Czech (2007) and Kurczewski (2009).

8 The role of alcohol in "getting things done", as the factor most associated with "breaking the ice" of formality and entering into an informal relationship, was described in detail by Wedel (1986), a long-time researcher of contemporary Polish customs in the mid-1980s and early 1990s.

> My council is great. There are only men in it; they are all members of the Voluntary Fire Brigade[9]. My husband is in the council too. Whatever I tell them should be done, they do it. They have never refused. Partly to show my gratitude, I have been trying to obtain funds to renovate the fire brigade's watchtower. Obviously, this watchtower serves the whole village, but since I'm dealing with firemen, they are concerned with this all the more. It's not difficult to work things out with them. We often meet informally, talk about what else could be done. Sometimes I have to buy them vodka for this social work and drink with them at the end of the day. So I buy and I drink. The council works a lot, it also shows initiative. I think they like and respect me. I figure this from the fact that they never say 'no' to me (mayor of commune C, female, 46 years old, married, farmer, 2005).

> My council is enviable. There are only young men there. They are always brimming with ideas, always up to things, and in private life they are all friends. They also show a lot of initiative – for example, recently they got junior high students to help in hay making on one of the meadows. Then there was a big bonfire for everyone. I had to buy drinks for the working youth with my own money, but the sausages for the bonfire were bought with the village funds that were left over after the last investment. It was great fun, the kids also enjoyed themselves (mayor of commune O, female, 49 years old, married, farmer, 2005).

A pattern of conflict (one case) also had informal relationships at its roots:

> All the members of my council are men, who don't listen to me. They often meet on their own, drink vodka – I can't be expected to drink with them. And then they defy me. They don't want to work with me. Sure, another woman in the council would probably help. Obviously, a woman sees many things differently. Still, I don't think that their defiance comes from the fact that I'm a woman. There had been all kinds of reactions to the man before me (mayor of commune O, female, 46 years old, married, housewife, 2005).

Unfortunately, most often the village mayors stressed that cooperation with their councils was less than satisfactory (35 of the pool of 65) or even non-existent (11 of 65), and they emphasized the absence of any civic activity:

> Councillors only advise rather than do anything themselves, but my demands on them are not high (mayor of commune S, female, 53 years old, widow, farmer, 2005).

> The council does nothing, no one has time for unpaid work (mayor of commune S, male, 40 years old, married, farmer, 2005).

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9 The history of Voluntary Fire Brigades in Poland goes back to the mid-19th century. Nowadays, the local units have the legal form of associations, but they operate also on the basis of the Act of 24 September 1991 on Fire Protection. Each commune, on whose territory Volunteer Fire Brigades exist, cooperates with these units to ensure safety, and the brigades additionally carry out the commune's tasks related to culture, education and sports.

> There are problems with the council; I usually act alone (mayor of commune S, male, 60 years old, divorced, pensioner, 2005).
>
> [The] council lacks its own ideas – it's passive (mayor of commune O, female, 46 years old, married, farmer, 2005).
>
> [The] council does absolutely nothing – we never meet, there is a lack of consultations and decisions (mayor of commune C, female, 55 years old, married, pensioner, 2005).
>
> The council doesn't even help me in communicating announcements to the Agricultural Market Agency. If there's something pressing going on, it's me who has to drive around the village (mayor of commune C, female, 54 years old, married, farmer, 2005).

The village mayors would also complain about the lack of interest of the inhabitants, which rendered it impossible to carry out any social initiatives:

> People don't care; they give it all a miss. My council is the same (mayor of commune C, female, 46 years old, married, ward nurse, 2005).
>
> There's no one to work with, people are just not up to it. And yet, everyone brings their problems to the village mayor (mayor of commune O, male, 32 years old, married, farmer, 2005).

The same reasons were identified as the basis for the malfunctioning of the rural meetings, which the village mayors also complained about.

The examples confirm the accuracy of the classic anthropological models, according to which it is impossible to separate formality and informality within broadly construed political activity, and likewise inconceivable to separate the private and public realms (the meetings of social actors in private homes, drinking vodka, etc.). At the same time, the presence of these mechanisms results in the activity of the local authority structures, in a way lending political empowerment to the local community and thus fitting into the model of reconfigured power. For this reason, the institution of villages, along with its separated authorities for political activity, constitutes a significant example of informal, but legitimized, practices of political activity in bottom-level local communities. What is more, this is an example not from the NGO sector but from self-government, which makes it an interesting hybrid of civic and political activity. In theory at least, it is capable of fulfilling the idea of direct democracy due to its social micro-scale.

However, it is still a body of self-governing administrative structure, and as such it is not particularly popular among the locals. Despite the availability of a sufficient legal framework, in practice it is the structural conditions that determine the low rates of social activity. Global determinants hamper self-governance, which is a necessary precondition for a well-functioning reconfigured state. Generally, however, informality in the discussed institution favours its effectiveness,

both with regard to models of cooperation and the use of multiplex ties. A certain blurring of the borders between the formal, informal, private and public realms is a factor conducive of social mobilization, both positive (examples of cooperation in the public sphere, which are based on personal connections) and negative (refusal to cooperate in the public sphere, based on personal connections).

Structure versus law: The case of the Farmers' Wives Association (FWA)

The second case illustrates an attitude that is structurally contrary to the case of village councils. It exemplifies a situation where active civic participation has been attained, but it refuses to be harnessed by legal regulations. It might sound like a paradox that such initiatives carried out without any public funding often become economically prosperous and successful, but they do. It is often due to the authentic human activity factor involved.

FWAs started to emerge in the second half of the 19th century. From the very beginning, their mission was to fulfil various social and organizational functions for women from rural areas. This approach has secured this form of local women's association a great deal of social legitimization and allowed them to exert a significant impact in the localized public sphere. Nowadays their activities focus on improving local social and health care facilities for children and families, and on strengthening female entrepreneurship. More recently, these associations have begun to put greater emphasis on promoting local culture, which has been very well received by young girls, thus resulting in a renewed bout of FWA's popularity.

Polish law reserves the name FWA for organizations with the status of social-professional associations of farmers (so-called agricultural co-operatives). However, the term is also commonly used by other rural and small-town female initiatives, such as associations (formal, commonly known as "registered") and spontaneous, informal social activities. Choosing an association's status is connected with the profile of activities and with the planned development perspectives, as well as with available options to raise funds. On the one hand, FWAs – functioning as agricultural co-operatives – may distribute any potential profits to their members, whereas an association is obliged to allocate any such profits to statutory objectives. At the same time, associations enjoy a greater wealth of options in raising funds for their activities from external sources. In both cases they may, however, apply to carry out tasks delegated by self-government authorities.

On a side note, agricultural co-operatives are voluntary organizations united within the National Union of Farmers, Co-operatives and Agricultural Organizations [*Krajowy Związek Rolników, Kółek I Organizacji Rolniczych, KZRKIOR*],

which is the only operating Polish farmers' union. This status is imposed on the FWAs by the Act of October 8th 1982 on Socio-Occupational Organizations of Farmers. The inclusion of social activity into the framework of one federative-structure organization had an ideological background: it was used as a tool of state politics against non-partisan farmers. Nowadays, some registry courts refuse to register farmers' wives' associations, basing this decision on the provisions of the Act of 1982.

However, some of the FWAs are not aware of the formal and legal aspects of their functioning. The reason for this, among others, is that the FWAs are connected with a specific farmers' union that has always taken care of these matters for them. In the 1990s, many of these agricultural co-operatives ceased their operations, which also put a formal end to the functioning of FWAs. In the same period, FWAs themselves also became less active. At the same time, these organizations were not formally stricken from the register of co-operatives, a fact of which the current members of FWAs are not aware. It is not always clear who is keeping the registration information, nor is it clear where it is kept. In certain cases it is easier to simply form a new organization. Mass reactivation of FWAs (reactivation, not establishment of new ones) has been taking place over the last decade in step with the development of various initiatives in rural areas. However, self-governments and the animators of Regional Centres of European Social Funds [*Regionalne Ośrodki Europejskiego Funduszu Społecznego, ROEFS*] or NGO advisors usually lack knowledge regarding the laws regulating the functioning of agricultural co-operatives or FWAs[10].

But, in practice, voluntary and mass cooperation between *voyts* (commune representatives) and FWAs is as widespread as it is thanks to the informal ties between the two. FWAs are active leaders, traditionally interested in local affairs and thus are trustworthy. For example, some female FWA leaders from one Mazovian commune (commune C) emphasized the informal character of their activities despite the pressure exerted on them by the *voyt* to register. They refused because – as they were explaining – their activity would become just an obligation and not something to enjoy anymore. This argumentation clearly highlights the differentiation between the informal, identified as grassroots and spontaneous, and the formal, which is viewed as limiting and laborious. Despite the informal status, their activity has received financing from the *voyt* on numerous occasions: village

10 This information was obtained through e-mail interviews with Iwona Raszeja-Ossowska (2013), an independent expert on the development of organizations operating in rural areas.

fairs, folk costumes, renovation of premises in a municipal building, congresses and even a sightseeing tour. During the celebrations of the 70th anniversary of their establishment, the most active leaders received commemorative medals. The FWA reciprocates by, for example, helping to organize harvest festivals, during which they sing a song about the *voyt*. They have also won a culinary contest for the best local dish, which made the village famous in the region. Moreover, the FWAs cooperate with other organizations traditionally present in the Polish countryside that also enjoy high levels of social legitimacy, such as the Voluntary Fire Brigades or parishes. Therefore, they have managed to exert a relatively strong political impact by being deeply embedded in the local structure, whether formal or otherwise.

The analysis shows that informality does not lock local organizations out of political influence – it is quite the opposite, in fact. In the described examples, political influence is more a result of the deep-rootedness and multiplexity of ties in the local community, rather than of the legalization of operations in the form provided by the national legislation. Perhaps this also leads to the shaping of another feature of informality, i.e. the tendency to operate informally due to the greater possibility for flexibility and to obviate bureaucracy, which is an inherent burden of formalization. Based on the presented examples, it is possible to conclude that, as a result of the effective operations of informal organizations and of the influence they exert on the local authorities, the borderline between the formal and the informal becomes blurred – as also perceived by the local community – but this inference refers to the discussed examples only.

Summary: Informal political actions in local-level politics within the framework of power reconfiguration

The introduction of this article puts forward the hypothesis that under conditions of power reconfiguration and the development of self-governance, the local political field expands to include the previously non-political public sphere, extending over new actors, resources and values. As such, the broad definition of modern local politics in the perspective of power reconfiguration converges with the now-classic approaches to research from the first half of the 20th century. This expanded conception employs a particular emphasis on both anthropological political models (the classic political anthropology model and the contemporary model of downloading of reconfigurated power) for eliminating the dichotomy between the formal and informal spheres. Thus the broad definition of politics applied in cultural anthropology is further reinforced by the processes of seeking power and exercising power in contemporary local communities.

The examples presented in the article, although selected on the basis of subjective judgment, show the self-governance of local communities from two perspectives: territorial self-governance, and social self-organization. Moreover, the examples of institutions were purposefully chosen due to the significance of informality in their operations. The analysis has confirmed that both types of considered institutions exert political influence and, as such, are included in the local politics through defined legal mechanisms. The main determinant of this influence and of the potential inclusion is not the feature of formality or informality. Rather, it is the extent to which these institutions are deep-seated in the local community, and the strength of the multiple ties between the actors involved. Reconfiguration (in the directions of the downloading and off-loading of power), then, leads to the expansion of the political sphere, and thereby also to the politicization of resources that were previously non-political. Power reconfiguration creates opportunities for real self-governance through grassroots activities.

Interestingly, the Polish escapism reflected in the tendency to cling to informal action – i.e. in circumstances where the law is getting "softer" and bottom-up structures gain power – may actually become a valuable socio-political resource. The historical and social determinants of the wider national (Polish) arena have a hampering effect on civic activity. However, the already "classical" anthropological determinants of the local arena (multiplexity of ties, acceptance of informality) may positively influence the self-governance initiatives of local residents, as these factors help to break through the inhibiting restraints of the national cultural legacy. Informal initiatives still exhibit a strong proclivity towards maintaining their independence, which unveils the the local's perception of the formal power (even the local-level governance) as being alien and unfriendly. Moreover, supporters of such actions emphasize that informality is a way for them not to waste energy on bureaucratic documentation. It might sound like a paradox that such initiatives carried out without any public funding often become economically prosperous and successful, thanks precisely to the authentic human activity factor involved. For this reason, villages are able to control their direct authorities and to lobby for their interests, while FWAs are strong local actors with an important mission of promoting their villages, which often brings them tangible profits. Naturally, the presence and the significance of informal influences on power may occur regardless of the degree of state power reconfiguration. It is, however, noteworthy that in the traditional analytical approach to state power (e.g. according to the categories offered by political science) informality is omitted and does not constitute a significant factor subject to systemic inclusion, and is not acknowledged as politically substantial. Meanwhile, from the anthropological

perspective, informal mechanisms are an integral – and potentially empowered – element of the local structures of power, regardless of the framework of analysis.

Regarding the auxiliary research questions that stemmed from the hypothesis put forward, it is possible – based on the analyzed examples – to draw the conclusion that the reconfiguration of power on the local level, and especially the legal instruments for including informal political forces, favour the blurring of boundaries between the formal and the informal in the political field. This is attested to by the models of cooperation (or lack thereof) seen between village councils and village mayors, as well as the patterns of intersection of different social ties between the same actors. As the civil society shapes and solidifies, the borderlines between the private and public realms also become increasingly hazy – that is, members of the local communities more frequently step into the public sphere in order to voice their private interests in an organized manner. Due to the observed effectiveness of the informal activities, and also thanks to their real political clout, informality may be locally acknowledged as a substantial factor of bottom-top political influence. The respect enjoyed by the FWAs in their respective local communities is an example of this. This respect is manifested by locals supporting their initiatives, and by participating in what they do (attending the events they organize; taking part in charitable actions, whether by giving or receiving; speaking of them proudly, presenting them as "local achievements"). Finally, the politicization of the private realm, construed as public participation and the empowerment of the local community, seems to be a phenomenon that may potentially work to open the local communities to civic activity. This is evidenced by the tendency to evaluate informal activity in a positive way, as spontaneous and unrestricted by bureaucracy.

In these final words, besides indicating the possibilities opening up for informal initiatives under a system of reconfigured power, it is also worthwhile to point out their shortcomings. One shortcoming is the very limited capacity to absorb financial resources, and the consequent dependence on financing by local authorities. The second shortcoming is the lack of the professionalization of the informal NGO operations in Poland, as well as problems with maintaining the continuity of their activities resulting from insufficient financing options. These make it difficult also for the formal organizations to keep up their professional activities. Moreover, lingering in informality does not contribute to overcoming the negative historical conditions, but rather conserves them. While the liberalization of the Polish law on associations seems inevitable (Krajewska 2011, 26), subsequent amendment drafts are being rejected. Perhaps this is because the process of power and responsibility reconfiguration also has a feedback aspect to it: most importantly, it significantly curtails the range of state competence. All

the while, large central power structures must ensure their own legitimacy and they do so by imposing limits on self-governance in their territories. The process of power reconfiguration, then, has one more aspect – that of an internal conflict consuming the state administration. Therefore, even if the specific appreciation of informality is an inherent element of contemporary institutional and custom-related transformations, and even if it is manifested through a distrustful attitude towards bureaucracy, its local impact might, with time, become a subject of bureaucratic control by the central authorities.

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Francisco Linares

Social Networks, Social Norms and Workers' Resistance: A Computational Simulation Analysis

Introduction

The aim of this chapter is to account for certain consequences of the embeddedness of workers' behavior in informal social relations which are developed within a firm's formal organization, thus extending Granovetter's (1985) famous thesis of the embeddedness of economic actors in social structure. Granovetter (1985, 495) himself recognized in his seminal paper that "it seems plausible […] that the network of social relations within the firm might be more dense and more long-standing on the average than that existing between". A nice empirical example of this issue is provided by Leon's (2011) game theoretical analysis of informal norms of resistance, which emerged within teams working in a firm of the automotive sector located in Barcelona's industrial area. The goal of these norms was to lower the production quota, that is, the number of pieces to be produced per day established by the firm's managers. According to Leon (2011, 78–79) the set of informal norms ruling the behavior of workers included: (a) the duty to hide skills while being timed, (b) the duty to work at the same rhythm set by other colleagues on the production line, and (c) the duty to hide from management the means of resistance and tricks that colleagues employ in managing the production rhythm. Leon convincingly shows how the incentive system among team mates works to back these prescriptions.

The topic of Leon's empirical research has a long tradition in sociology, going back at least to the famous Hawthorne experiments conducted by Mayo (1945), who opened new venues of research in social psychology, the science of management, and the sociology of organizations. From a theoretical point of view, Leon's approach is in debt to Coleman's (1990) theory of the corporate actor. Coleman's (1990, 423) theory made a strong criticism of Weber's conception of organizations, "where only the central authority is treated as a purposive actor" and "the fact that the persons who are employed to fill the positions in the organization are purposive actors as well is overlooked".

Following these guidelines, my goal is to show how different network topologies of informal relations (links which run parallel to the firm's formal positions)

can foster, or not, the emergence of social norms of resistance (in the sense of Leon's article). In doing so, I will use a relatively infrequent tool of analysis among sociologists: an agent-based simulation model, which attempts to capture some of the main features of workers' social interactions.

Recent revisions to the literature of organizations, social networks and worker resistance (Vaughan 1999; Brass et al. 2004; Roscigno and Hodson 2004) show that this topic has been largely overlooked by scholars. While literature on networks and organizations, as well as on organization and worker resistance, is quite large, I have been unable to find evidence related to the effect of network topology on worker resistance within organizations. It seems as if it is just assumed that, quite obviously, some social relations among peers must exist if workers are to produce any resistance action; but the details of how network topology should be to promote these relations are largely unexplored. For instance, in their rigorous examination of 82 workplace organizational ethnographies, Roscigno and Hodson (2004) conclude that strike action and other individual resistance strategies (such as work avoidance or absenteeism) are more likely to occur in workplaces characterized by systematic and ongoing interpersonal conflict with management, union presence and, sometimes, bureaucratic structure. Adding that "social relations on the shop floor play a meaningful role in prompting both collective and individual manifestations of class resistance" (Roscigno and Hodson 2004, 33). However, with the term, "social relations," they are mainly referring to conflict (or the absence of conflict) between managers and workers. In a previous work (Dixon and Roscigno 2003), the authors specifically attempted to show the impact of social networks on strike behavior. But, again, the details of the network topology are missing since what is measured is the amount of union activity with variables such as the number of card-carrying individuals.

The chapter will proceed as follows: First, because these resistance norms cannot be taken as a given (that is, they emerge at some point as a product of agents' interactions) and because there is not yet a widely accepted sociological theory of the emergence of norms, a comprehensive definition of social norms and an account of how they are supposed to emerge are provided in this paper. Secondly, some basic notions of "complex adaptive systems" and the "new science of networks" are introduced. These notions are required to understand the agent-based simulation model and how it works. A brief exposition of the model is then provided, but details are left to the appendix. Next, the main results of the model are elucidated. The chapter ends with a concluding section, which discusses the results on which the simulations shed light.

The puzzle of social norms

In the analytical tradition, norms are thought of as devices that allow social dilemmas to be overcome (Ullmann-Margalit 1977; Coleman 1990). A social dilemma exists when the behavior of individuals, even if rational, may produce an undesired, suboptimal social outcome. Rousseau's parable of the stag hunt, where two men must cooperate to hunt a stag, but either of them may be easily tempted to trap a hare, is the classical illustration. Extending this reasoning to the topic of this chapter, all workers of a production plant may have an incentive to follow some norm of resistance; however, workers may be tempted to defect from this common interest either to avoid possible punishments from a supervisor or to fulfill upward mobility expectations.

In order to preclude these temptations, at least three possible mechanisms could operate in real societies. First, individuals may hold moral preferences towards the collective good; meaning that "moral norms" guide their behaviors. Second, individuals may be frightened by an external authority (the state), which holds the capacity to punish them if they do not pursue the collective good; meaning that individuals are ruled through "legal norms". Third, individuals may mutually encourage or discourage each other's behavior by promoting the collective good; meaning that they are ruled by a "social norm". Of course, these three mechanisms actually operate concurrently, making it difficult to empirically ascertain whether the observed behavior is due to one, two or all three of them. Nevertheless, by analytically isolating one of them, we can better understand how it works. Obviously, it is impossible to do so in an empirical setting (you cannot, for instance, "switch morality off" in real individuals), but it can be done (clearly, under simplifying assumptions) in an artificial society (see below).

The first task to accomplish is to answer a simple, but not easy, question: what exactly is a social norm? The question is not an obvious one because, turning to sociological literature, we find definitions of social norms with very different implications: punishment-based definitions, expectation-based definitions and emotion-based definitions.

Thus, for the political scientist Axelrod (1986, 1097 – emphasis added): "A norm exists in a given social setting to the extent that individuals usually act in a certain way and are often *punished* when seen not to be acting in this way". This definition assumes that the existence of a certain norm can be empirically tested because it involves two kinds of behavior: the usual behavior performed by individuals, and the sanctioning behavior also performed by them. On other grounds, for the analytical philosopher Bicchieri (2006, 2 – emphasis added), "the existence of a social norm depends on a sufficient number of people *believing* that it exists and

pertains to a given situation, and *expecting* that enough other people are following it in those kind of situations". Like the preceding definition, this one assumes that a social norm is something shared by a number of people, but stresses a component which is more difficult to test empirically: beliefs and expectations. For Bicchieri, sanctions may or may not be a component of "social norms," which is to say that they are not a necessary condition for them to exist. Finally, for the economist, Ostrom (2005, 121–122 – emphasis added), "Norms are prescriptions held by an individual that an action or outcome in a situation must, must not, or may be permitted […] The changes may occur as a result of *intrinsic motivation* such as pride when keeping a norm or guilt when breaking a norm". In this case, as in Axelrod's definition, the emphasis is placed on sanctions; but the nature of the sanctioning process is somehow different, since it is assumed to be an internal (and emotional) one. Of course this process may be triggered (and usually will be triggered) by the awareness of not fulfilling others' expectations, and therefore implies that the behavior is performed under the possible scrutiny of others (Elster 2009).

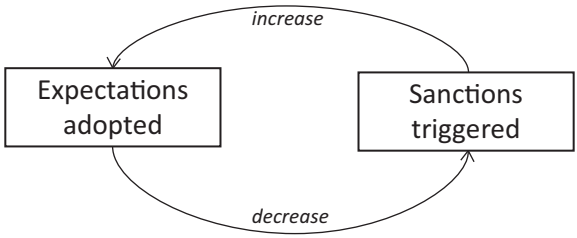
What of these components (external sanctions, expectations, internal emotions), if any, are necessary conditions to account for the existence of a social norm? In this chapter I will support a "combined definition" (Opp 2001; see also Horne 2001), and assume that:

(1) A social norm is a non-intended process, whose outcome is the emergence of a certain pattern of behavior held by a large part of a population,
(2) where the behavior of individuals is controlled in a decentralized way (meaning, by other individuals),
(3) by means of an influence process based on the progressive spreading of the belief of what is expected in that population, and
(4) where that process is backed by informal sanctions which may (but not necessarily) produce certain emotions such as pride or guilt.

For most sociologists, the existence of "informal sanctions" is a necessary condition for a social norm to exist. Other kinds of regular behavior, such as conventions or social routines produced by mutual expectations are not, in fact, social norms because they do not require social sanctions in order to be maintained over time. The role played by sanctions is, however, mainly as a deterrent. Both in case studies (Ostrom 2005) and experimental settings (Fehr and Gätcher 2000), it is a well-established empirical fact that sanctions are rarely performed. Any understanding of social norms must therefore account for this fact, and provide an explanation for why so little sanctioning behavior is required to maintain prosocial behavior. I will assume (Linares 2012) that the mechanisms which produce this fact work as shown in *diagram 1*, which represents a cycle where:

(1) The initial triggering of sanctions pushes the generalization of beliefs about expected behavior (influence-spreading mechanism).
(2) The more generalized the expected behavior, the less triggering of sanctions is required (sanctioning-reduction mechanism).

Diagram 1: Mechanisms producing a social norm



Complex adaptive systems, social networks and agent-based models

"Complex Adaptive Systems" is the term which has been coined to refer to systems, whether social, biological, or of another kind, whose aggregate behavior is the result of actions performed by different individuals who continuously adapt to an environment, which itself is constituted by others individuals who also engage in an adaptive behavior (Miller and Page 2007). These multiple behaviors, which mutually adapt to each other, may combine in complex ways to produce self-reinforcing dynamics, which are difficult to understand. This is so because the behavior that emerges from individuals' mutual adaptations, *aggregate behavior*, may in fact be the product of a long chain of interactions and show patterns that are quite distant from individuals' initial motivations to act.

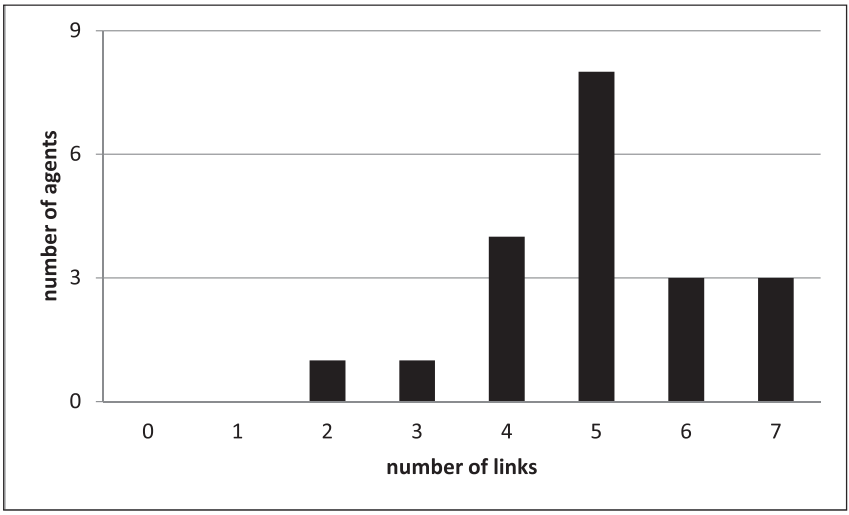
These individuals, as eruditely claimed by Granovetter (1986), interact neither in an infrasocialized state of nature nor in an oversocialized social structure. Rather they are sensitive to the particular network in which they are embedded, with a corollary of this argument being that different topologies of networks will produce different interaction patterns. The "science" of networks, to which Granovetter himself is a recognized contributor, however, was almost dormant until the late 1990s when new technological innovations made possible new progress, which has been called "the new science of networks" (Barabási 2003; Watts 2003). The central concepts of this "new" science are: "small-world" and scale-free networks. The term "small-world" refers to a fact known at least since Milgram's (1967) famous study showing that, on average, two stranger American

citizens are separated, on average, by just six intermediaries. Watts and Strogatz (1998) formally defined small-world networks as networks with high local clustering and short path lengths. In these networks, which are quite characteristic of social communities, every agent is just a few "handshakes" away from any other.

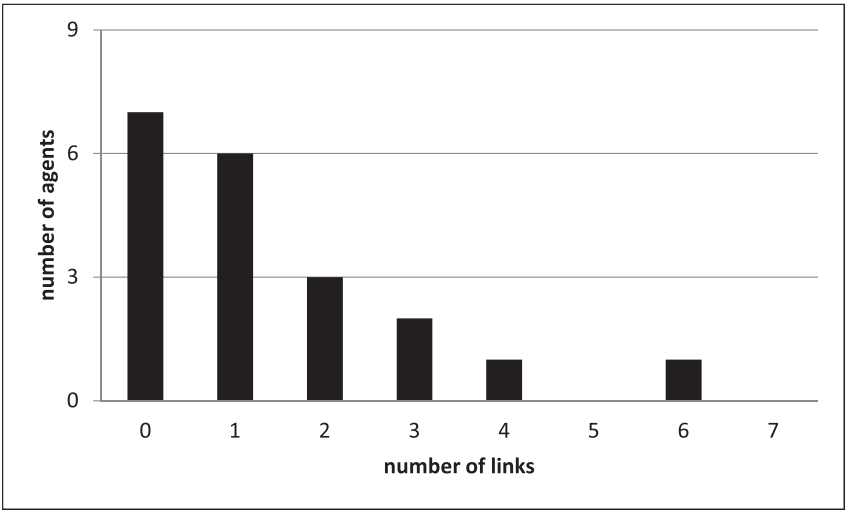
Not all social networks are like that, however. Hierarchical communities have a characteristic topology which has been called "scale-free" (Barabási and Albert 1999). This kind of network is assumed to be the product of a "preferential attachment" mechanism: a new agent who enters the community will have a strong incentive to create links with the most linked agents. As a result of this, a "rich get richer" or "Mathew effect" occurs so that a minority of agents holds the vast majority of links, becoming "hubs". In this kind of topology, the path between any two nodes is also short, but this is not so because of the more or less even distribution of links, but due to the opposite phenomenon: a highly skewed links distribution.

The difference between "small-world" and "scale-free" networks is clearly shown by comparing *bar graph 1.a*, which represents the distribution of ties typical of a "small-world" network, to *bar graph 1.b*, which represents a typical distribution of a scale-free network. In both cases the x-axis represents the number of ties and the y-axis represents the number of individuals in a network of 20 nodes holding 0, 1, 2 … n ties.

Bar Graph 1.a: Example of "small world" topology



Bar Graph 1.b: Example of scale-free topology



A group of workers that jointly produce a certain good while adjusting their behaviors under each other's monitoring is indeed an example of a complex adaptive social system. These individuals will likely differ in at least two parameters: their willingness to engage in resistance and their tolerance to social pressure. Will those more willing to resist be able to successfully establish a production rhythm below the formal target established by the firm's managers? As individuals interact and push new adjustments onto other individuals, one of the three following aggregate outcomes will emerge: (a) no individuals or just a few will cooperate in a resistance norm; (b) some individuals will cooperate; (c) most or all individuals will cooperate. The question is, which outcome will be reached? And, furthermore, what elements result in a certain outcome being reached? Is it a matter of the original number of highly motivated workers? Does it depend on the number of people displaying a low degree of tolerance toward social pressure? Or is it dependent on the properties of the network structure?

Of course these questions are not easy to answer in a rigorous, deductive way. Fortunately, there is a tool that may help: agent-based models (ABMs). An ABM is a formal and simple representation of the reality which, unlike other formal and simple representations (such as differential equations), can easily deal with heterogeneity in a population of individuals (that is, individuals may differ in many traits, such as "tolerance") as well as with decision rules other than rationality. ABMs are thus nicely suited for analyzing complex adaptive systems.

These models have several applications. By means of empirically calibrating their parameters, they have been used to explain actual data, such as fertility trends in France (González-Bailón and Murphy 2013), local youth unemployment rates in Stockholm (Hedström 2005), or educational achievement in France (Manzo 2013). Notwithstanding these empirical applications, in the realm of sociology ABMs are, at the moment, mainly a formal tool for developing and exploring the implications of middle-range theories (Gilbert 2008). According to this aim, which is also the aim of this paper, ABMs are mainly used to explore the logical consequences following from a set of assumptions about the characteristics of agents, their rules of interaction and the characteristics of the environment. The main theoretical and methodological implications of these kinds of models are bottom-up explanations, the analysis of cumulative systems and the production of artificial experiments.

Explanations, generative social science and mechanisms

As Epstein and Axtell (1996) nicely put it at the end of their path-breaking *Growing Artificial Societies*, where the now well-known Sugarscape model is analyzed:

> From an epistemological stand point, what "sort of science" are we doing when we build artificial societies like Sugarscape? Clearly, agent-based social science does not seem to be either deductive or inductive in the usual senses. But then what is it? We think generative is an appropriate term. The aim is to provide initial microspecifications (initial agents, environments and rules) that are sufficient to generate the macrostructure of interest. We consider a given macrostructure to be "explained" by a given microspecification when the latter's generative sufficiency has been established (Epstein and Axtell 1996, 177).

This "generative" approach, implying that a given social pattern is explained from the bottom-up, provides a sensible answer to the micro-macro problem, masterfully traced by Coleman (1986) ten years earlier:

> The major theoretical obstacle to social theory built on a theory of action is not the proper refinement of the action theory itself, but the means by which purposive actions of individuals *combine* to produce a social outcome" (1986, 1321 – emphasis in the original).

Epstein and Axtell's generative approach is also very close to Elster (1989) and others' (e.g., Hedström and Swedberg 1998) defense of "mechanisms" as the building blocks of sociological explanations. According to Hedström and Bearman (2009, 5), a mechanism "refers to a constellation of entities and activities that are organized such that they regularly bring about a particular type of outcome". Although a common unit of analysis in sociology is the individual, nothing in

the concept of "mechanism" precludes the unit either being a "supra-individual" entity, such as a collective, or a "sub-individual" entity, such as the components of an individual decision-making process (e.g. attitudes, values, emotions, etc.). The concept of "mechanism" does not exclude a rational conception of action either. What the concept of "mechanism" does imply, is that whatever the entities and their rules of behavior, it has to be shown that they must regularly produce the outcome that is to be explained. Artificial society modeling is a nicely suited tool to accomplish this task, and it is a key component of the analytical sociology agenda (Hedström and Bearman 2009).

Emergence and cumulative systems

One of the most intriguing characteristics of society is the strong stability of many social patterns. Despite the fact that we all have the experience of living in an era of change, certain characteristics of society seem either to change very slowly or not change at all. The distribution of wealth among different social classes, rules of domestic labor assignment and school achievement rates of students of different backgrounds are just a few examples. Assuming that all that happens in society is a result of individual actions, the question to answer is, how is it that individuals act in ways that produce such aggregate patterns, which are often unintended, undesired, and even detrimental to many of them?

The answer lies in the fact that the relations individuals produce when interacting with one other often produce a new reality that, so to speak, "traps" individuals. As in the case of undergraduate students living in a residence hall who develop a stable system of informal rules concerning the use of the common kitchen in a few days, once a given distribution of rights and resources is established in any realm of society it will likely show a self-perpetuating trend, since agents are now forced to mutually adjust their behavior under the new conditions, eventually reaching an equilibrium (though possibly "unfair"). These complex adaptive systems, where the emergent outcome feeds back on the original system of action, are known as "cumulative systems" (Boudon 1979) and are a common object of sociological analysis.

Research methods and simulation experiments

Sociologists do not deal with "real" as opposed to "artificial" agents. The numbers that statistical software analyzes (and the sociologist interprets) are real only in the sense that they have been collected and introduced in the computer by someone, as well as in the sense that they represent properties of "real" individuals. However, it is a basic assumption of science that we simply cannot know

what these individuals "are" in reality (whatever the "true" reality is). The same is equally true for the qualitative data produced by recording speech and action: we simply do not hear or see the records with the omniscient eyes of a divinity.

Both quantitative and qualitative data are essential to produce simulation models in so far as these models are not built to reflect someone's fantasies about society. The representation of reality – the model – has to be grounded in empirical knowledge of the world if it is to provide an explanation of that world at all. In any given theory (whatever the theoretical style), we will find concepts (e.g., properties of individuals such as "sensitivity to the influence of others") with difficult, or even impossible, empirical measure. When agent-based modelers are faced with this problem, some solution must be found in order to make the simulation run. The solution consists of substituting unknown empirical data for random numbers which are extracted from a theoretical distribution. This is why the results of ABMs must be accounted as averages of a sufficiently large number of simulation runs. While this procedure may be considered an artifact, notice that it is quite honest: the modeler explicitly recognizes the lack of knowledge that in a narrative style of theorizing often goes unnoticed (and sometimes hidden under a prose whose eventual literary beauty is not an essential element of a proper explanation).

This "artificial" way of proceeding has a further advantage, which is key for the analytical agenda in social sciences: the possibility of carrying out "artificial experiments". When conducting field social research, it is almost impossible to answer "what if" questions that may be relevant for increasing the understanding of a social phenomenon. When there are *competing theoretical understandings* of an issue, as in the case of "social norms," relevant questions arise, such as, "What if the topology of the social network were different?" "What if people were not sensitive to others' expectations?" However, by artificially manipulating parameters, it is possible to show whether a given prerequisite (e.g. network closure) is actually a necessary condition to "grow up" the social pattern.

A simple model of the emergence of resistance norms

Brief description

Briefly, the model used in this chapter (which is fully described in the appendix) represents a landscape where "patches" hold a certain reserve of a valuable resource that, for the sake of illustration, I will assume is grain. The population of 20 artificial agents represents workers who have the job collecting a certain amount of the valuable resource per minute (the quota formally established by the firm). Agents interact for a working period of 480 minutes. As suggested in

the introductory section, a social norm may prescribe a working rhythm lower than that formally established by the managers. However, for that social norm to emerge two conditions have to be met:

(a) Agents have to be sensitive to others' expectations. It is assumed that this happens through an "influence process": agents will change their behavior if it differs from the behavior displayed by a number of agents in their local environments (see details in the appendix).
(b) Agents have to be sensitive to social sanctions provided by peers. In the model, a number of "unconditional agents" (see details in the appendix) will be introduced. These agents are invested with the capacity to sanction, but no assumption is made about the nature of the sanction or the nature of the internal psychological process driving the behavior of the target of the sanction[1].

Unconditional agents are assumed to be the "leaders" of the resistance behavior. They are unconditional in the sense that, whatever the behavior of other agents, they always produce below the manager's quota. Other agents have a binary choice between collecting the quota or an amount below it (which, because of the exposition convenience, is fixed and the same for all agents). Thus, in the initial ("set up") stage these agents are programmed to meet the quota. However, as the simulation runs, their behaviors will evolve according to the interaction rules mentioned above; this is why they are "conditional" agents.

Because the central interest of the paper is on the emergence of social norms of resistance among peer workers, other important features of the firm's internal activity, such as the procedures for supervising workers' activity or the effects of workers' formal organization (i.e. unions) have been obviated in the model; which is not to say that they are not important at all in reality. Nonetheless, some conclusions related to unions' activity will be derived based on the realization of the simulation results.

Output variables, parameters and simulation experiments

The main output of the model is the amount of resources collected by agents at the end of the simulation run. Concerning the emergence of resistance norms,

1 Public goods experiments have shown that certain individuals have the capacity to impose sanctions regardless of the cost; a trait that has been called "strong reciprocity" (Gintis 2000). It has been estimated that roughly one-third of the population holds this trait.

three outputs will be recorded: the number of defectors (that is, the number of agents that produce the quota); the number of cooperators (that is, the number of agents that produce below the quota); and the number of sanctions performed during a day's work.

It is assumed that all these variables will change in accordance with two parameters:

(a) The number of "unconditional agents" initially introduced in the simulation.
(b) The distribution of links among agents.

The first parameter has an obvious effect: the larger the number of unconditional agents (i.e. agents which unconditionally produce an amount below the quota) the lower the total amount of resources collected. This does not necessarily imply, however, that a social norm of resistance will emerge, since the distribution of links among agents (either the "small-world" type or "scale-free" type) may facilitate, or preclude, the social influence process that is required for such a norm to exist.

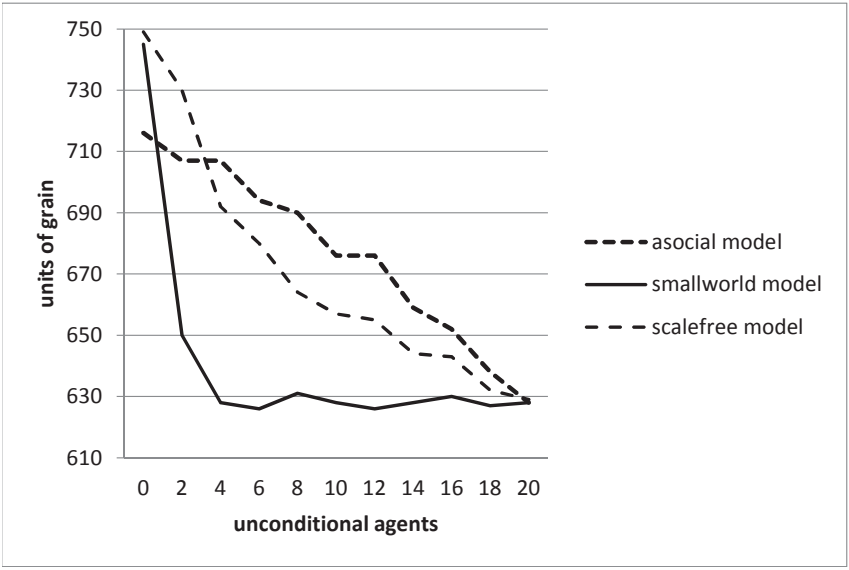
Since the solution to this puzzle is not straightforward, a number of "simulation experiments" have been conducted. In this way, while holding constant the type of network topology, the effect of increasing or decreasing the number of unconditional agents can be shown. And conversely, while holding constant the number of unconditional agents, the effect of changing the type of network topology can be shown. For every experimental condition, 50 repetitions were run. *Figures 1* to *3* (below) show the means of the results for every output.

Main results

Figure 1 shows the amount of grain collected at the end of the simulation as a function of the number of unconditional cooperators at the beginning of the simulation. The lines show an obvious decreasing trend, meaning that the larger the number of initial unconditional cooperators (i.e. agents who unconditionally follow the norm of resistance), the smaller the amount collected. There are, however, strong differences among *experimental conditions*. The baseline model (short-dashed line) shows the outcomes produced by a *random rule of behavior* for conditional cooperators, so these agents have a 50% chance of either cooperating or defecting, regardless of the behavior of other agents. Because of this feature (besides the fact that there are no links among actors), this experimental condition is called "asocial". Interesting enough, the outcomes produced by the *scale-free experimental condition* (long-dashed line) do not sharply differ from the asocial model. On the other hand, the outcome produced by the *small-world*

condition (continuous line) is initially higher than the baseline model; however, once a small critical mass of unconditional cooperators exists (4 agents), the collection of grain drops from 750 units to 630.

Figure 1: Production of grain



Figures 2.a and *2.b* show the number of agents cooperating and defecting, respectively, for every experimental condition. The resistance of conditional agents is increasingly fostered as the number of initial unconditional cooperators increases. But in the small-world condition cooperation grows much faster, so only four initial unconditional cooperators are able to induce the cooperation of almost all conditional cooperators. In the scale-free condition the same number of unconditional cooperators, however, induce the resistance of half of the conditional cooperators.

Figure 2.a. Amount of cooperation

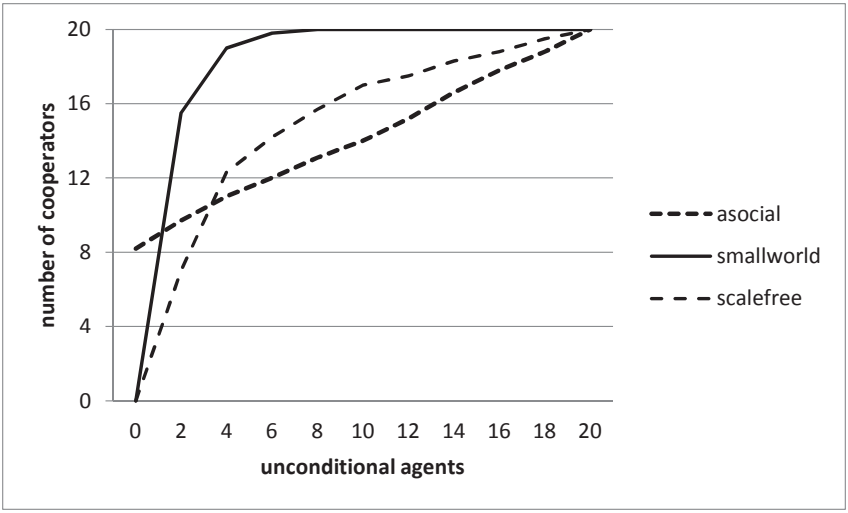
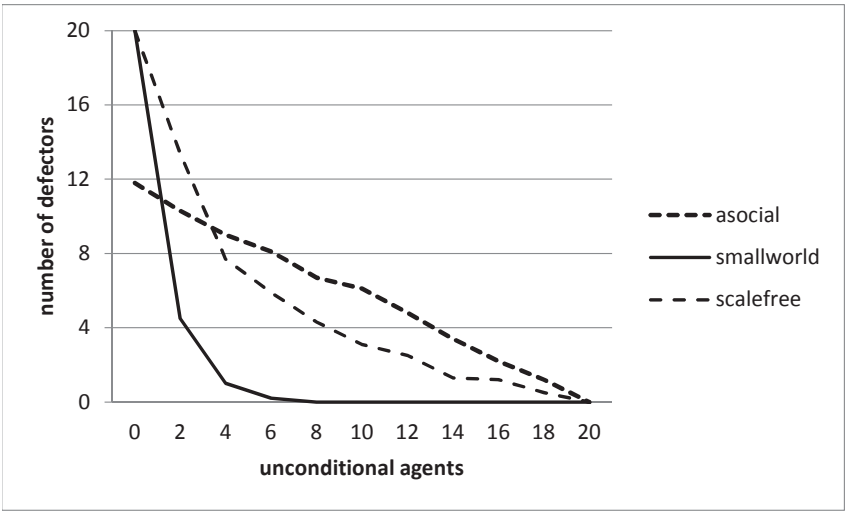


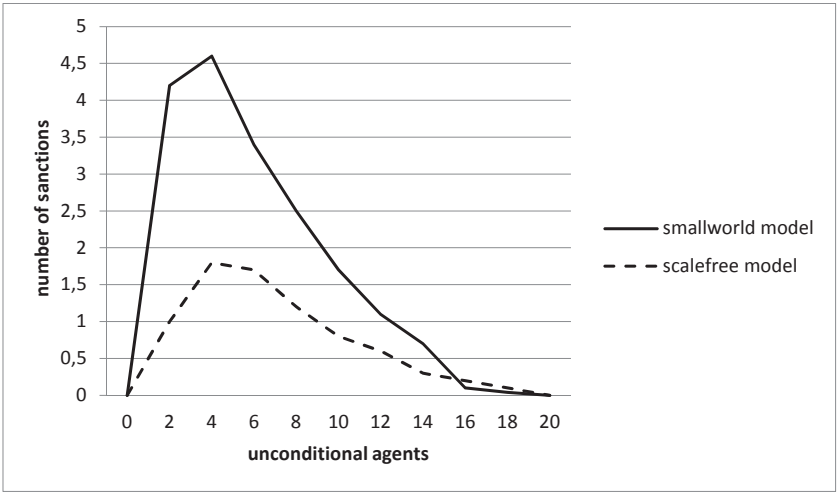
Figure 2.b: Amount of defection



Why should it be so? The evidence about the number of executed sanctions is shown in *Figure 3*, which displays the number of sanctions at the end of the simulation relative to the initial number of unconditional cooperators in both experimental settings. Even if sanctioning activity follows a similar pattern in both

experimental conditions (peaking when the number of unconditional agents equals four), it is clear that sanctioning activity is much larger in the small-world condition than in the scale-free; this variance being responsible for the above-mentioned difference in resistance behavior and, hence, collection of grain.

Figure 3: Sanctions at the end of the simulation run



Figures 4.a and *4.b* show the results of two typical simulation runs (hence, the numbers displayed on the y-axis are not mean values) comparing the evolution of both models as the time step progresses from 0 to 30 (afterwards the results are stable), when the initial number of unconditional cooperators is set at 4. *Figure 4.a* shows the accumulated number of sanctions. *Figure 4.b* shows the corresponding evolution of defecting behavior in these typical simulations. In both models all the sanctions are produced in the earliest steps of the simulation. However, it seems that an identical number of unconditional agents do not produce the same amount of sanctions under different topological conditions. It clearly suggests that "scale-free" networks preclude the execution of enough sanctions to control most of the agents, even though the required sanctioning activity to achieve this end is fairly low (on average, less than five).

Figure 4.a: Evolution of sanctions

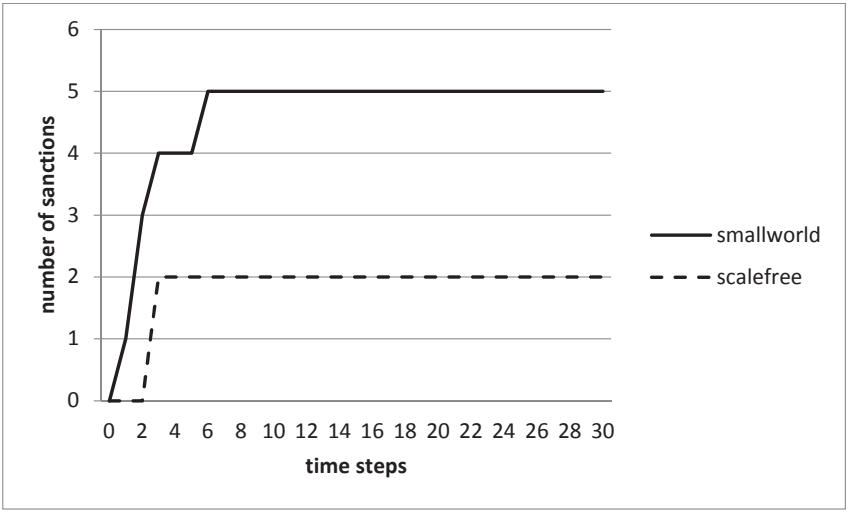
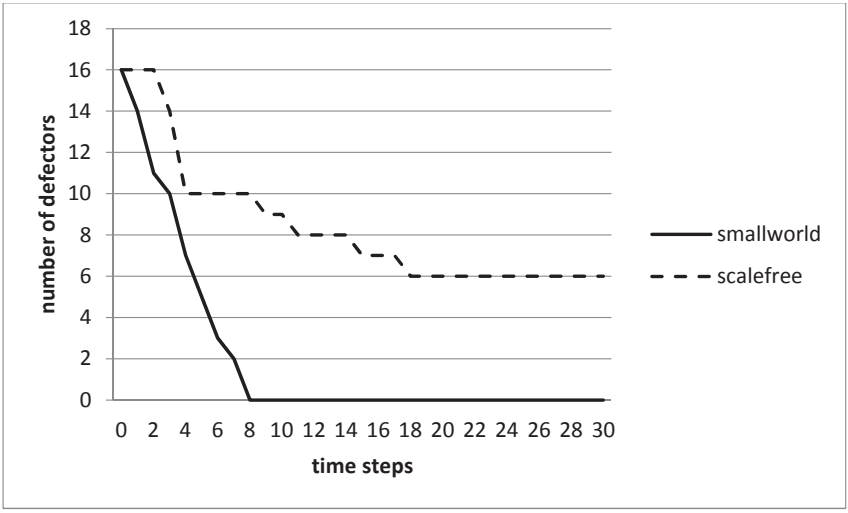


Figure 4.b: Evolution of defection



Discussion and conclusions

This chapter addresses the question of the emergence of resistance behavior among workers. This kind of behavior is assumed to be a "social norm of resistance" in so

far that it results in a decrease in the output produced (a very typical form of resistance) that totals an amount below the formal goal established by the firm's manager, by means of a social influence process backed by social sanctions.

The specific problem the paper focuses on is the effect of network topology on this social process. The so-called, "new science of networks" has pointed at two different topologies as typical of many social settings: small-world networks (networks where the distribution of ties resembles a bell curve) and scale-free networks (networks with a heavily uneven distribution of ties). Do they have a differential impact on the emergence of these informal norms of resistance? As far as the author knows there is no empirical research attempting to answer this problem.

The approach utilized in this chapter consists of the building of a computational model (specifically an agent-based model) that attempts to capture some essential features of the issue. In this model a population of 20 agents "works" for one working day. They "must" collect a certain amount of grain per minute. The simulation shows how, when a few "unconditional" agents produce below this target, the abovementioned social mechanisms foster a pattern of behavior that leads to a decline in the amount of grain collected.

However, results are not the same under different topological conditions: this informal norm of resistance is weaker when a scale-free topology is assumed, since it produces very little sanctioning activity. This is so because of two reasons: (a) in the scale-free model some agents have no ties at all, so they cannot be influenced in any way; (b) most important from a sociological point of view, in scale-free networks the production outcome is highly sensitive to the position of "unconditional" agents in the network. Thus, if unconditional agents were the ones to occupy the few positions with the largest number of links, the influence process will very likely spread to almost the whole population. However, in the model, nothing guarantees this outcome since positions are assigned randomly.

Some considerations on the role played by workers' formal organizations within firms can be derived from these results. The existence of union activity implies a scale-free topology, since union leaders become "hubs" (nodes with a disproportionately large number of ties). But unionization also guarantees that the more connected positions are occupied by the agents who are also more likely to initiate resistance actions. Nevertheless, if unions are not present, informal resistance in the workplace is still possible as long as, as shown by the simulation model, relations among peer workers have a small-world structure.

These conclusions push towards two directions: on the one hand, from a methodological point of view, agent-based models can be fruitfully used not only to replicate actual empirical patterns, but also to suggest venues of further

research when empirical information is missing. On the other hand, according to the conclusions obtained in this paper, more detailed information about network topologies is required if we are to improve our knowledge of worker resistance.

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Appendix: Description of the model

Concerning the explanation of the emergence of social norms, three families of models are of interest to this paper:

(1) "Social influence" models (e.g., Gould 1993; Axelrod 1997), which show how the behavior of agent *i* depends on the number of other agents in his environment displaying the same/opposite kind of behavior.
(2) "Decentralized sanctions" models (e.g., Axelrod 1986; Heckathorn 1989), which show how the behavior of agent *i* depends on the behavior of a number of other agents in his environment with the capability to provide punishments/rewards. A major achievement of these models was finding out that "hypocrisy" (encouraging others to do what one is not willing to do) is a good strategy to promote the public good.
(3) "Critical Mass" models (e.g., Marwell et al. 1988; Kim and Bearman 1997), which show how the generalization of a certain behavior depends on the existence of a certain (small) number of agents displaying that behavior, and the possibility of transmission (either by means of an influence mechanism or a sanctioning mechanism) of that behavior through social networks.

There is a number of models in the literature addressing similar issues (e.g. Bravo 2010; Gächter and Thöni 2011), with Kitts' (2006) simulation of "Norms Amid Ties of Amity and Enmity" bearing the closest resemblance to ours. In this model, agents are subject to a "mimetic influence" (which is the label Kitts uses to refer to the process of social influence) as well as to an "inductive influence" (which is the label used to refer to the sanctioning process). Some specific features that

characterize the model set forth in this chapter include: (a) agents are not embedded in a fixed network, but move around; (b) agents are not influenced by all other agents but only by those in their local environments; and (c) agents are not sanctioned by all other agents but only by those with the capacity to sanction in their local environments.

Several platforms are available for programming agent-based models. NetLogo, by Wilenski (1998), has proven to be a powerful tool which has a large community of users worldwide. It is the one used to develop the model presented in this chapter. Because computer programs can be difficult to understand (and because replication is a key component in the quest for scientific knowledge), a standardized protocol for describing models has been developed. The so-called "Overview, Design concepts and Details" (ODD) protocol (Railsback and Grimm 2012) contains the basic information required to understand the architecture of the model as well as how it works. Following this protocol, the main features of the model are presented below:

Overview

(1) *Purpose*: The main aim of the model is to improve our theoretical understanding of how social norms emerge. The specific problem the model addresses is: under what conditions will a pro-social behavior spread among a population of individuals in the absence of moral and/or legal enforcement? In the context of the model, the term pro-social behavior means for workers to follow a social norm of resistance which dictates to produce below the quota established by the firm.

(2) *Entities, state variables, and scales*: The model has three kinds of entities: the environment, agents and links among agents. The environment consists of a torus of 33x33 patches which have only one state variable: "grain-store" (numerical). All agents have the following state variables: "cooperated?" (boolean), "influence-sanction-threshold" (numerical), "vision-scope" (numerical), "degree" (numerical), "influence-rate" (numerical), "sanctioned?" (boolean), "initial-number-of-links" (numerical), "initial-links" (numerical) and, a key variable, "unconditional?" (boolean).
Global variables are: "number-of-sanctions" (numerical), "grain" (numerical), "population" (numerical), "number-of-unconditionals" (numerical), "average-node-degree" (numerical) and "small-world" (boolean).
There is no spatial scale, since real environment is not simulated.
Every tick simulates one minute of real time, but this convention is not grounded in any empirical data.

(3) *Process overview and scheduling:* The model includes the following actions executed every time step in the same order:
   (a) The variable "grain-store" of every patch is updated according to two processes that are independent from agents' behavior. These are called "get-rainfall" and "get-dry".
   (b) Agents are asked either to "take-grain" (if the patch's grain-store is large enough) or to "move" (in order to search for grain).
   (c) If the agent's characteristic of "unconditional?" is true, he takes grain cooperatively (i.e. he takes less grain than the target). If this condition is not met, he is asked to "being-influenced?", which may push the agent to take grain cooperatively.
   (d) If the influence process has not produced cooperation, the agent is asked to "be-sanctioned?", which may push the agent to take grain cooperatively.
   (e) If the agent defects, he meets the target established by the firm.
   (f) Outputs are displayed.
   (g) The simulations stop at the end of the "working day" (480 ticks).

Design concepts

(4) *Design concepts*
Basic Principles: The model attempts to capture three related theoretical propositions: (a) for a social norm to exist there must be a social influence process; (b) for a social norm to exist there must also be a decentralized sanctioning process; (c) social ties may foster its emergence. The model also attempts to capture two empirical facts: (a) sanctioning is rare; (b) some agents have an intrinsic motivation to execute sanctions. The model does not, however, specifically represent the psychological mechanism that drives changes in the behavior of sanctioned agents.
Emergence: The expected results are that, when "conditional cooperators" are subject to influence and sanctioning processes, a small number of "unconditional cooperators" will trigger the spreading of resistance behavior. Thus, as the model runs, it should be observed that: (a) cooperative behavior increases, and (b) the cumulative number of executed sanctions decreases.
Adaptation: The adaptive behavior of agents is not assumed to follow any empirical rule. All agents move around following a random path. Unconditional cooperators perform a non-social behavior in the sense that their behavior does not respond to the presence of other agents (that is why they are "unconditional"). Conditional cooperators perform a social

behavior in the sense that their behavior responds to the presence of other agents.

Objectives: Agents are not programmed to pursue any goal (although they behave as if they had the goal of collecting grain). They just implement a rule of taking either a "small amount" or a "large amount" of grain under certain conditions (in the case of unconditional cooperators they always take a small amount), but the behavior rules are not intended to reproduce rationality. There are neither prediction nor learning processes.

Sensing: All agents are assumed to know the "grain-store" of the patch they are on. Conditional cooperators are assumed to know the number of agents which are actually displaying a pro-social behavior in their local environments (that is, within a given radius) and calculate its rate to the total agents in their local environments. They are also assumed to know whether there is an unconditional cooperator in their Moore neighborhoods (the eight patches surrounding their own patch).

Interaction: Agents interact with patches, subtracting either a "small amount" or a "large amount" from the patches' "grain-store". Agents interact among themselves by means of two processes: influence and sanctioning (see details below).

Stochasticity: Stochastic processes are used in the initialization to set the patches' grain-store, agents' position and conditional cooperators' influence-sanction-threshold, as well as in the initialization of networks. Random numbers are also used in the "take grain" and sanctioning processes (see details below).

Collectives: There are no agent-sets, but a main distinction is traced between unconditional and conditional agents, since they behave in very different ways.

Observation: At the end of every simulation, the required outputs are: (a) the units of grain collected; (b) the number of cooperators (i.e. agents who followed the norm of resistance); (c) the number of defectors (i.e. agents who did not follow the norm of resistance); (d) the accumulated number of sanctions. The evolution of these indicators through the time steps is shown in plots.

Details

(5) *Initialization*: The "population" (i.e. number of agents) is set at 20, in order to resemble middle size teams. The number of initial "unconditional cooperators" is a parameter which can be manipulated in every simulation

(min=0 and max=20). When the global variable "small world" is set true, links among agents are randomly created to match the value of the average node degree, which is set at 5. When "small world" is set false the links are randomly created to fit a gamma distribution with parameters 1.2 and 0.5, in order to simulate a scale-free distribution of nodes.

For all agents, allocation is randomly assigned. For unconditional cooperators, the variable "cooperated?" is set as "true", while for conditional cooperators it is set as "false". For conditional cooperators, the "influence-sanction-threshold" is randomly assigned between 0.0 and 1.0 (uniform distribution), and "vision-scope" is set at 4. For unconditional cooperators, "degree" is calculated as the number of links to other agents.

Other global variables (grain and number-of-sanctions) are set at zero.

The value of the state variable of patches, grain-store, is randomly assigned between 0.0 and 6.0 (uniform distribution)

(6) *Input data*: No input data are required.

(7) *Submodels*:

Patch submodels: Every patch "gets rainfall" (that is, they increase their grain-store by +0.1) at every time step if a random number between 0 and 100 is below 3. Every patch "gets dry" (that is, they decrease their grain-store by –0.1) if a random-float number between 0 and 100 is below 0.1.

Agent submodels:

Influence: At every time step, the conditional agents calculate the rate of agents within their local environment with the attribute "cooperated?" set as "true" to the total agents within their scope of vision. If this number is larger than their influence-sanction-threshold, then the agents take-grain-cooperatively (which means they take a "small amount", subtracting 0.1 from the patch grain-store); otherwise the agents "take grain" (see details below). Local environments are determined either by the scope of vision (when the average node degree equals 0) or by linked neighbors (when the average node degree is larger than 0).

Sanctioning: At every time step, the conditional agents check if there is an unconditional cooperator in one of their eight neighboring patches (when the average node degree equals 0) or in their set of linked neighbors (when the average node degree is larger than 0). If this happens to be the case, it is assumed that the conditional cooperator is exposed to some external reward or punishment that will cause either pride or guilt if he cooperates or does not cooperate, respectively. As in the case of influence, it is assumed that all agents are not equally sensitive to this process. Therefore, if a random number between 0.0 and 1.0 is above the influence-sanction-threshold, the

agent is sensitive to this, and takes a small amount of grain. The reason for restating the local environment as the Moore neighborhood in this process (when the average node degree equals 0) is to reduce the chance of executing sanctions (since, as stated before, sanctions rarely occur).
Taking grain procedures: When an agent takes grain in a cooperative setting the grain-store of the patch is reduced –0.1, but when an agent "defects" it is reduced –0.2
Move: An agent remains in his patch as long as there is grain to be taken from it. When this condition is not met, the agent randomly moves until he finds a new patch with enough grain-store.

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