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The Laws of Finance For a Sociology of Finance and Law Entanglement

Abstract

In this special issue, we unpack law and finance entities and consider their co-construction, entanglement and interchanging relationship. Adopting a processual sociology lens, we aim to connect micro-technical devices and controversies to the macroscopic big picture of financialized capitalism. We combine analytical tools from pragmatic sociology, emphasizing how social reality and institutions are (re-)enacted through trials, with a dynamic and historicized sociology of the state and the juridical field. Four avenues illustrate our research program on the sociology of financial law. First, we focus on how this juridical space is co-produced by public and private forces, organizations and initiatives. Second, we look at how financial law displaces and endogenizes core regalian purposes traditionally associated with the state. Third, we show the forms of asymmetries that pervade law enforcement in financial cases. Fourth, we address how power intervenes in normal and exceptional times, such as financial crises. The legal and financial co-production of political regimes shapes economies and legitimate forms of social distribution.

Keywords: Financial law; Financialized Capitalism; Black Box; Public-Private; Jurisdiction

SOCIAL AND POLITICAL MOVEMENTS of the 21st century, such as Occupy Wall Street, have pointed out how rights in contemporary capitalist societies are indexed to the practices and ideals of the financial industry. While financial institutions have been called "too big" to fail or to jail, political activists have echoed slogans such as "rights for the people, not corporations". They called for the reappropriation of justice by the

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public sphere, its democratization and its disentanglement from financial private interests. But there remains a long way to go. This special issue builds on the idea, now widely accepted in the literature, that law and finance are inextricably linked.[1] On the one hand, law is constitutive of finance. Building on a legal institutionalism legacy [Commons 1924; Deakin *et al.* 2017], the "legal theory of finance" proposed by Katharina Pistor [2009; 2013b], and her subsequent work on *The Code of Capital* [2019], turned social scientists' attention to the legal foundations of financial activity and how financial capitalism actually stems from its legal underpinnings. Law is the framework that guarantees the value and validity of financial property rights, and enables large-scale commercial and financial transactions to be conducted by introducing a certain amount of security and predictability. When crisis or uncertain times loom, when any claim can be potentially challenged or undermined, having a financial contract "with teeth"—a "*legal module of capital*," as Pistor calls it—provides a comparative advantage over other social groups' claims.

On the other hand, financialization engineered the transformation of law itself. Yves Dezalay [1990] showed how the financial Big Bang, the reform of the world's major stock markets at the turn of the 1980s, was accompanied by a legal big bang, i.e. an increase in the role of the large American law firms and their legal techniques. Above and beyond the idea of deregulation, growth in the legal service industries implied a "great return to the law" and a proliferation of regulatory requirements for the financial sector. One sign of this transformation can be seen in the growing dependence of legal firms on their financial services clients and earnings.[2]

It is not possible, as prominent economists suggest [La Porta *et al.* 1998], to consider law *and* finance as two separate and entirely distinct entities with regular interactions, some of which considered as more attractive and efficient than others in terms of financial investment [World Bank (2001); Berkowitz (1999)]. From some points of view, law can be considered *as* finance, making financialization possible. From others, finance can be considered *as* law, when financialization is instrumental in imposing its own rules of the game and in reshaping legal institutions in its own image.[3]

[1] We thank the editors of the *European Journal of Sociology*, Sabine Montagne and Marcin Serafin, for their comments on a previous version of this introduction.

[2] In the United Kingdom, the financial services industry accounted for over 40% of the total value of the deals of the biggest legal firms [Pistor 2019: 178].

[3] On the move from "law and …" to "law as…" see Tomlins and Comaroff 2011.

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In this special issue, we take a step further and unpack law and finance considering their co-construction and entanglement, and their overlapping relationship. The legal and financial co-production of political regimes shapes our economies and our legitimate forms of social distribution. We propose a processual sociological analysis of the different, historicized legal-finance systems. Our research program aims at building methodological pathways from the social studies of finance, dealing with precise and micro-technical devices and controversies (I), to the reconstitution of the macroscopic big picture of financialized capitalism, its legal modes of regulation, and the role assigned to the state (II). We combine analytical tools from pragmatic sociology, emphasizing how social reality and institutions are (re-)enacted through trials, with a dynamic and historicized sociology of the state and the juridical field.

From black boxes to the legal making of financial regimes: The different waves of the sociology of finance

Emerging in the 1980s, the sociology of finance has developed and grown in many different directions. From an initial focus on the making of financial markets and relationships between their professional groups, scholars have since looked into the types of instruments used by financial actors and even the financial ordering of people's lives. Three waves can be broadly identified associated with specific scientific and intellectual traditions [Godechot 2013] and focusing different levels of attention on the legal aspect of financial activities.

A first wave of the sociology of finance, associated with the emergence of new economic sociology, has its roots in the North American context. It grew in the 1980s, by building especially on Granovetter to approach financial markets through their embeddedness in social networks and social ties [see, for instance, Baker 1984]. Social actors were conceived as guided by their own self-interest, albeit to a lesser extent than in neoclassical economics, rather than being driven by economics or legal devices. As most of these studies concentrated on the structure of specific markets or financial bubbles, law-making and regulatory processes were not the main focus, and were generally regarded as external forces intervening to settle a pre-existing conflict.

At the turn of the 2000s, a second wave of the sociology of finance emerged with much more diverse theoretical and geographical bases.

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Through their focus on the daily making of finance, these studies raised the political implications of financial activity by looking into such questions as the division between professionals on the trading floor [see, for instance, Godechot 2001], the consequences of the financial valuation of firms by the rise of shareholder value ideology [Lazonick and O'Sullivan 2000], or the thin line instituted by the development of financial markets between gambling and financial speculation [De Goede 2005]. The relative theoretical homogeneity of the first wave was succeeded by a whole host of conceptual heritages, from Bourdieu to Foucault, giving rise to critical views of financial capitalism. One important element of this second wave is usually referred to as the *social studies of finance*. This research trend, as its name suggests, imported research findings and methods from science studies to analyze material and theoretical practices in the financial industry [MacKenzie 2006]. This shift of science and technology studies' lenses from the laboratory to the trading floor came at a cost, as noted by Riles [2010]. Not only did these studies focus mainly on traders, paying little attention to other professional groups, but they saw financial actors as equivalent to scientists. One notable effect of this framing of finance in scientific terms was to legitimize the descriptive narrative that financiers like to present of themselves. It pictures financiers as engineers and professionals mastering a specific technique, skills and knowledge reserved for an elite, and not accessible to ordinary people. It endorses what could be called, to quote Karen Ho, Wall Street (auto-)"*biographies of hegemony*" [Ho 2009]. The "*culture of smartness*" [*Ibid*.] built by elitist recruitment and training is put forward to justify investment bankers' huge profits based on their merit and ability. Social studies of finance also focused mainly on the importance of one specific discipline in the construction of the practical and material reality of finance, economics, while the place of law and regulation was not as central. Finally, this research was built on an opposition—which we will come back to and contest—between using a comprehensive sociology to open the black boxes of finance, which "involves a certain blunting of opposition political passion" [MacKenzie 2005: 570], and a full-on critical sociology of finance, which loses the descriptive sense of financial activity.

A third, new wave of studies of finance can be identified, emerging in recent years and to which this special issue aims to contribute, which has reevaluated the role of law. This new trend can be seen from a number of academic initiatives such as the creation of the *Finance & Society* network [see Samman, Combs and Cameron 2015], of the *Law & Political Economy* project [see Britton-Purdy, Grewal and Kapczynski 2017],

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as well as the foundation of the *Law & Political Economy* journal [see Harris and Varrelas 2020]. As mentioned above, the groundbreaking proposal by Katharina Pistor for a "legal theory of finance" [2013b], and her subsequent work on the code of capital [2019], played a pivotal role here. Pistor showed how capital is directly related to its legal underpinnings: how an asset, to become capital, needs to be transmuted through law. She consequently demonstrated how both finance and law contribute to the production of inequalities. These different initiatives—among others—do not come from a single scientific tradition or even a single discipline, far from it. Some come from legal scholars, while others are led by sociologists. Some take more of a macro angle, while others verge on empirical studies. Yet, despite their differences, they bear a certain family resemblance. They share the same concern with the tremendous influence of economics on the study of finance and the desire to open it up to various disciplinary approaches. They stem, in one way or another, from the financial crisis of 2007-2008 and its major economic, political and social repercussions, which were instrumental in politicizing this field of study. And they share, precisely for that reason, a certain critical view of the predominant role of finance in contemporary capitalist societies.

This special issue is set in the context of this current renewal: its aim is to contribute to advancing *the study of finance in its interactions with law* drawing on understudied analytical frames and disregarded empirical settings. This articulation enables us to bring the sociology of the state and public institutions back into the analysis of financialization and to connect situated black box analyses to understanding the financial system's macro consequences and the conditions of its reproduction.

The study of finance in its interactions with law

The study of finance has often set aside the role played by law, especially in sociology. Despite a number of important studies in the past pointing to the legal underpinnings of financial activity [Dezalay 1990; Montagne 2005, 2007; Halliday and Carruthers 2009; Riles 2011], it remains an underdeveloped area of research. The calls made in recent decades to connect economic sociology with socio-legal studies [Swedberg 2003; Stryker 2003; Edelman and Stryker 2005] demonstrate this lack of articulation. Law and society studies have shown that "*law is all over*" [Sarat 1990; see also Ewick and Silbey 1998], that law is part of everyday social life and that it penetrates multiple dimensions of our experience. Yet studies of finance and financialization have also shown that *finance is all over*, that it pervades not only private

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companies, but also the public sector, and people's lives in multiple ways [Martin 2002; Sassen 2014; Desmond 2016]. Bridging these two statements is an important aim. By embodying the intermediaries and social profiles that populate these macro-configurations, our approach aims to make visible the historicity, contingency and reversibility of these legal-finance regimes.

To contribute to this new approach, we need to engage with the legacy of the social studies of finance. Although we retain from this field of study the need to conduct in-depth empirical studies on finance, we do dispute the opposition between a necessarily a-critical comprehensive sociology and an inevitably a-comprehensive critical sociology[4] underlying some social-studies-of-finance research [MacKenzie 2005]. We make a stand for fine-grained sociological studies in the financial field to be connected with the making of the financial order, and with mid- and long-term historical transformations such as financialization.

Defending a resolutely *processual sociology* approach to the intersections between law and finance means, first and foremost, paying special attention to how law and finance entanglements (re)produce a certain social and political order. This research agenda expands on, and in a way radicalizes, some of the postulates of the legal theory of finance, particularly in terms of macro social and political effects. It aims at capturing asymmetries of power and inequalities of resources as they occur and are reconstituted over the course of the constant trials of the social world. The social world is therefore not conceived as stable, but as something in constant movement which, dependent on certain conditions, generates reproduction [Abbott 2016]. The use of a processual and relational framework unpacks and disaggregates the objects of analysis (states, capital markets, sovereignty, corporations, investors, legal institutions, courts, norms, traditions, etc.) by revealing the controversies that structure them from within, and the shifts at work in the mandates of the legal institutions.[5]

Our processual approach implies, secondly, capturing financial law "in action," in its making and unmaking. This focus on *law in action* sets our proposal in a long pragmatist-inspired tradition which, from the American legal realism of the early 20th century [see Pound 1910] to

[4] See Boltanski 2011, on the relation between critical sociology and sociology of critique, and the need to connect these two research programs.

[5] For instance, John Commons' classical legal economic theory referred, with the concept of evolutionism, to the ability of institutions to adapt to the changing social environment [Gonce 1971]. On Commons' contribution to the sociology of law, see Coutu and Kirat 2011.

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more recent sociology of law research[6], sees law not as an overarching rational system of norms or a mere normative background, but as an institution daily produced in practice. Social scientists working on this premise look beyond an internal or external study of law to engage with its actual materiality and technicality, enter its ordinary making and focus due attention on the disputes it generates. This insistence on *law in action* itself has an explicit critical purpose: to show the contingency of financial law, to consider law as far from limited to a system of rules, and to show the social and political interests that are preserved and how these power relations are embedded and disputed in macro institutions (treasury departments, central banks, regulation agencies, stock markets, etc.) [Gayon and Lemoine 2018].

A third characteristic of our approach is that it usually starts with a micro-sociological angle, looking into the technological black boxes of law, investigating the struggling segments of both public and state bureaucracy as well as financial and private bureaucracy (within corporations and organizations in a niche market), studying specific cases and addressing actual practices by legal professionals. But this micro-sociological starting point lays the ground for the investigation of the macro consequences of these cases, devices and struggles. Fine-grained descriptions are not reduced to methodological art for art's sake, to the "*opening of the black boxes to find them empty*" [Winner 1993], normatively and politically, but rather they underpin the study of how particular arrangements of law and finance produce and legitimate social orders. This methodological approach calls for the researcher to not remain on the bench of technological innovation, but to circulate in a thorough, multi-site study to capture its uses and challenges. In short, it puts the innovation in its technically specific context but also in the macro-financial and political landscape that it structures. This allows to show the many contributions made by law in a financial context, considering how it can be used, evaded and enforced, and how the boundaries between law and finance can sometimes become almost indistinguishable. Law is not seen as an external sphere, entirely independent of the economic sphere and, by extension, of the financial sector. It is part of the daily

[6] Besides Latour's well-known work on the Conseil d'État [2009], a large number of French pragmatic sociology studies have engaged with this law-in-action perspective. For an overview of these developments, see Boltanski and Claverie 2007; Israël 2013. By pragmatic sociology, we refer to a diverse French school that emerged in the 1980s, following the theoretical framework on justifications advanced by Luc Boltanski and Laurent Thévenot [2006] on one hand, and Bruno Latour and Michel Callon's actor network theory on the other [see Latour, 2005]. For an overview of this movement, see Boltanski 2011.

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routine, it shapes behaviors and practices, and it reproduces, reinforces and displaces social hierarchies.

Finally, our proposal is not intended to be a simple descriptive exercise: it has a critical edge. It is designed to help re-politicize the social studies of finance [De Goede 2004] by driving research into the "operations of law" [Thomas 2011; Muniesa 2021]. By re-politicization, we mean drawing empirical-theoretical lines from technical black boxes to "assemblages". Re-politicizing the description consists in reconnecting the microscopic or meso devices of finance to the "big picture" and in particular to the studies of regulation, to the institutional studies of financialization and, more generally, to the analysis of the modes of production and reproduction of global finance. Our approach aims to put together the pieces of the jigsaw puzzle of black boxes to paint an overall picture of the legal-finance regimes.

Law, finance and the state: Investigating the continuum of social practices

In this section, we show how the articles in this special issue lay the ground for this program of empirical and theoretical research into the sociology of financial law. By financial law, we mean the vast array of legal, regulatory and private norms associated with financial activity. Financial law is therefore considered as a continuum of social practices running between law, finance and the state. The purpose here is to describe and capture the multifarious scope of possibilities—that is the space of real social practices—between two archetypal extremes: perfect application of the law, where no other rationale enters into a legal decision, and pure, raw and "naked" use of power, where law is completely undermined by non-legal reasoning. Between these two extremes —much like *legitimate tests* and *tests of strength* [Boltanski and Chiapello 2005]—stretches an expanse of practices, which we explore.

The specific role of the enforcement threat, as Pistor points out in her article on the elasticity of law, calls for mention here. What Pistor called "elasticity" is the irreducibly uncertain nature of law. Law has been often described as one of the main ways of reducing uncertainty: Max Weber noted that modern, rational capitalism requires calculability and legal predictability to be able to expand [Weber 1978]. Yet legal predictability is not legal certainty: there is always a residual part of law that cannot be fully resolved. The uncertainty in this residual part can take many forms: whether the state will enforce law and regulations, or whether the other

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party will sue me. This uncertainty is also key because in such elastic situations, there is leeway for power. The role of law in global finance is therefore generative and fundamental. As Pistor put it, "*It lends authority to public and private financial instruments or means of pay; delegates power to different regulators, public or private; and vindicates financial products rooted in private contracts if they are generally consistent with the law*" [Pistor 2013a: 13]. For these reasons, "*Law is not an add-on, but in finance*" [*Ibid.*: 13]. But what endorses and enables the power of the law? Pistor makes it clear that the strength of financial assets and legal arrangements lies in their being backed by the power of the state. The law itself could just be one statement among many, if it were not supported by the threat of coercive law enforcement to ensure that promises are kept.

The monopoly of enforcement and coercion that gives law its force is a battlefield: it is never secured, taken for granted or set in stone [Élias 1972; Genet 2014]. It is the object of competition, tensions, visible in such arenas as the boundary struggle between public organizations and the private financial industry over regulatory issues. A processual approach is fitted to unpacking macroscopic entities, but also to follow how actors re-construct them and represent them "as a whole," whether the state, national economies [see for instance Mitchell 2002; Angeletti 2021], regulatory institutions, financial markets or investors [Montagne and Ortiz 2013]. In order to do so, one needs to analyze the intersection between the "field of power"—to use Bourdieu's concept —and legal and financial practices at work at different times. Bourdieu's [1986] concept of "*juridical field*," seen as "*a site of a competition for the monopoly of the right to determine the law*" captures struggles to shape the characteristics of laws that may legitimately apply to finance, i.e. the nature of the actors, the public capacity to hinder private initiative and the kind of knowledge required. Bourdieu thus analyzes the construction of a relatively autonomous law, structured by knowledge that is costly to possess. This monopolization of law mastering—like financial lawyers in the case of swaps analysed by Pascale Cornut St-Pierre in her contribution[7]—implies dispossession and exclusion of those who are not part of the game.

But such autonomy is never absolute [Lemieux 2011]: the content of the legitimate knowledge, the boundaries of the field (its entry costs and forms of selection) and the identity of its gatekeepers are all subject to disputes and external pressures. The juridical field responded to the

[7] In this volume, *European Journal of Sociology*, 2021, vol. 62 (2).

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entrance and meteoric rise of the private finance coders. Rather than being seen as a factor of "heteronomy" in the legal field, this phenomenon should be conceived as redefining the field's internal rules, hierarchies, and forms of fabrication of the universal following competitive dynamics between social groups. Although pervaded by private financial law, the field retains its well-guarded borders, and its effects of closure.

We focus on four avenues to deploy and illustrate our research program on the sociology of financial law. First, we show how this juridical space is co-produced by public and private forces, organizations and initiatives. Second, we look into the conception of the state that emerges from such a situation: how law actually displaces and endogenizes important public aims traditionally associated with the state. Third, we show the forms of asymmetries that pervades law enforcement in financial cases and how, by focusing on financial disputes and controversies, we can challenge misleading views on enforcement and regulation. Fourth, we address how power intervenes in normal and exceptional times.

From public-private co-construction of financial law to encroachment by the private sector

There is a consensus in the literature that law-making is a product of co-production processes between the public and private sphere, where the state's role is closely connected with custom and tradition[8]: "*What are described as 'private legal systems' typically do not form spontaneously* […] *—through individual interactions, leading to the formation of conventional rules—*[…] *but require an institutional deus ex machina, such as the state or another strong prior institution*" [Deakin *et al.* 2017]. In the same vein, the private-public co-production of legitimate law [François and Lemercier 2021] is one of the main claims of legal institutionalism: "*Law necessarily involves the states (public ordering) and private or customary agents*; […] *any reduction of law to just one of these two aspects is mistaken*" [Deakin *et al.* 2017].

Neither entirely captured by private interest—a mere mirror of economic relations—nor a spontaneous product of custom, financial

[8] For John Commons, to be "*enforceable (at least in non-totalitarian societies) laws must be widely perceived as reasonable, appropriate and fair. The collective power of the state also lay behind all property rights and transactions within capitalism. Custom is important to sustain law, but law is much more than an epiphenomenal expression of custom*" [Deakin *et al.*, 2017: 190].

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law-making, however, is a strategic arena in which different social groups compete to (re)qualify, (re)classify and (re)interpret objects and entities. Private finance and trade organizations push back the barriers of public bureaucracies to appropriate their norms and practices, move the goal-posts of their mandates to provoke "institutional slippage" [Babb 2003], and sometimes recast them in their image of private financiers [Chiapello 2005]. Trade associations and private sector industry bodies increasingly dominate the transformation of "highly technical rules" by innovating, providing legal advice and "influencing public law and technocratic policymaking processes" [Wansleben 2020].

Pascale Cornut St-Pierre in this special issue seeks to "bridge the gap between social studies of finance's close examination of financial markets' socio-technical devices, and broader inquiries of political economy concerning the distribution of wealth and power in a financialized society". She tackles one of the main pieces of evidence of financialization and the reconfiguration of global banks since the 1980s: the emergence of swaps. Swaps are over-the-counter (OTC) derivatives between two parties that have become hugely popular with financial institutions, institutional investors and large corporations. Swaps developed as a way to take advantage of regulatory ambiguity and evade supervision by regulators. Yet Cornut St-Pierre's legal genealogy shows how this ambiguity did not appear out of thin air: it was actively constructed by financial lawyers arguing at length and most convincingly about the specificity of this financial instrument, purportedly above usual financial regulation. The use of swaps was somewhat limited until a universal standard was introduced to standardize relations between parties and deal swaps in bulk. Such is the role of the Master Agreement created in 1992 by a private association, The International Swaps and Derivatives Association (ISDA). This Master Agreement established English and New York law as the only legitimate jurisdictions for swaps contracts by making them the only options for settling swap disputes, effectively excluding parties' local legal systems.

The ISDA is dominated by the largest dealer banks, "*a financial 'who's who*'" [Carruthers 2013], and is typical of a financial actor that has become eminently political. The voices and moves of this organization have potentially destabilizing effects. But they also have the capacity to define a set of rules, standards and norms that the public authorities take into account to govern: "*Market actors used their influence over political institutions to enact laws that helped set the conditions for their own profit-seeking activities, sometimes through existing regulatory institutions, but sometimes by creating regulatory voids*" [*Ibid*.]. Cornut St-Pierre shows

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how the legal and financial coding of swaps—the formation of an incommensurable legal category outside the normal regulatory framework—produces a political effect of incontestability. It is a fundamental contribution to highlighting the political work of financial lawyers through the creation of a new class of financial object, shaping its regulation or, to be more precise, its lack of regulation. Swap legal documents "*have shown themselves to be formidable tools of deregulation, at once discreet and effective*," but also embodying a certain "*distribution of risk and wealth in industrial society*" [Cornut St-Pierre 2021, *infra*]. The analysis of the construction of this separate regime of swaps includes a fine-grained study of their legal characterization: swaps are considered as forwards rather than futures, in order to avoid commodity exchange regulations, and remain over-the-counter. The self-regulating nature of the markets (in the case of OTC) is never a given and a political work is required to legally shape such spaces and protect them against any external or public regulatory move. But the financial system actors continue to anchor their rules and organizations in public law and "*repeatedly seek the authority of the state to undergird and privilege their private arrangements*" [Carruthers 2020].

This private construction of financial innovation (the specificity of the swaps regime) is therefore justified [Wansleben 2020] as conducive to investment and liquidity, macroeconomic growth and what is considered to be the public interest. This entanglement of powers between the private and public spheres is not tantamount to public sphere corruption, deviation or misappropriation. It is a new form of public-private financial system where the agency, specific interests and actions of public technocracies and private finance are intertwined [Gabor 2016].[9] Wansleben [2020] conceives for instance the legal-financial field as shaped by forms of "neo-patrimonial relationship between public and private actors".

Hence, this financial-legal space gains autonomy thanks to its embodiment of a state monopoly. But the precise form of this monopoly should not be taken for granted or considered as stable and fixed for eternity. Just as the state is an "*x-to-be-defined*" [Bourdieu 2018], the legal-financial field features particular fractions of finance (retail banks, commercial and investment banks, hedge funds, mutual funds, pension funds, etc.) competing to define legitimate rules. Processual sociology is particularly

[9] This has been identified, for instance, in the literature on the central banks' role in the financialization process. See Braun 2020, on the ECB and the new forms of public-private "infrastructural power" and entanglement. More broadly, private finance is systematically publicly accepted, if not encouraged, in a context where public spending and direct state intervention are considered largely illegitimate or inefficient. The use of private credit, for example, constitutes a new form of public action [Quinn, 2019] where credit is used by public institutions as a substitute for public subsidies and indirect state intervention.

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well equipped to grasp how the public interest is reformulated based on confrontations between fractions of finance and sectors of the bureaucracy. It involves investigating the "many hands of the state" [Morgan and Orloff 2017] vying with one another in public bureaucracies, and how the political and public sphere scripts are redefined with private financiers.

Endogenized states' monopolies: Legal finance reshaping sovereignty

Sociologists of law have largely demonstrated the endogenous nature of law [Stryker 2003; Edelman 2016]: law is not external, or exogenous, to economic and social practices, but is produced from within. Edelman showed how the law also comes out of the law, and is integrated into and produced within companies, with their daily interpretations accepted by courts and jurisdictions [Edelman 2016]. Edelman clearly described this *managerialization of the law* that allows private organizations to twist its original meaning and intent to suit their interests and limit their exposure to legal risk.

Simon Bittmann's contribution to this special issue builds on Edelman's proposal to study the emergence of consumer credit laws. He shows that it is not enough to look at the law at state level. Understanding the development of these financial practices entails looking into local court struggles between regulators and lending companies, and how they enabled banks to turn wages into capital, and pave the way for consumer credit. Bittmann captures this through the battles over the right way to set wage collateral (technical devices, laws and rates) for credit institutions to assess and grant a loan. This therefore reveals the role of regulators and political action in legal coding via an alliance between the political class and regulated lenders.

This special issue shows the extent to which financial lawyers and jurists try to incorporate capacities for action spontaneously associated with the political sphere into their practices, texts and coding. Far from only opposing or avoiding law, financial actors seek to circumscribe it, to reshape it, for example, in the form of an agency independent of elected executive powers [Vauchez 2018; Bezes and Le Lidec 2016]. Financial and law industry lobbies are enlisting political representatives in order to stabilize a private framework for public policies and the making of the general interest.

This process goes so far as to reincorporate into the devices of financial law notions central to the hard concept of sovereignty, supposed to guarantee the legitimate exercise of the law. The coercive monopoly of

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law supposed to govern the financial order and its social hierarchies (priority groups served and protected) needs to be analyzed as splintered in each state, and divided among domestic and "extraterritorial" figures. One has to consider how these different bureaucratic fractions can become spokespersons for different social and political interests. Financialization has a tendency to create and shape the political forms that suit it [Chiapello 2017; Vauchez and France 2021]. Core state concepts such as sovereignty are the subject of speculation, material circumscription and financial control. Political and public activity either cannot be conceived as external to global finance. It is endogenized (or embedded) in the legal devices of global finance, which ensure that the appropriate scripts are stabilized: respect for the rule of law, respect for creditors, and protection for public policymakers whose capacity to intervene is now calculated as a quantifiable, controllable risk on which to speculate [Gilbert 2020; Sinclair 2014; Bruner and Abdelal 2005; Lemoine 2021]. Kristin Surak shows in her article for this special issue how one of the most classically state prerogatives, the granting of citizenship, is put on the market and financialized. Traditional state domains are therefore the object of speculation, monetary quantification and financial bets by private or public actors who throw themselves body and soul into a race for the attractiveness of global capital. The pioneering example of Saint Kitts investigated by Surak shows that, since 1984, the laws of the country have granted citizenship in return for investment in real estate or government bonds. Global consulting firms like *Henley & Partners* see Pacific Ocean microstates as typical targets, since these sovereign entities have limited income sources and are "*prompted to look beyond traditional revenue streams to secure foreign exchange and investment, and to reap significant economic benefits from such (investment citizenship) programs*" [Surak 2021, *infra*[10]].

In their own way, microstates act as private lobbyists in the political arena of international finance, seeking to convince Members of the European Parliament to grant Saint Kitts visa-free access to the Schengen area. In her paper, Surak presents an impressive case study of how the interests of the bureaucracy (treasury departments) are entangled with global law firms, financial investors and consulting firms that co-construct public policies of citizenship through investment.

Citizenship-granting bureaucracy is reforged in the interstice of the state and finance junction to fit investor needs and create a "*scalable*

[10] In this volume, *European Journal of Sociology*, 2021, vol. 62 (2).

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product": an extended application procedure, third-party oversight and the executive kept at a distance. This tweaking of public organization—distancing the executive to commodify citizenship—shows how sovereignty, by its abandonment (partial or total), can form the subject of transactions and speculation by governments themselves. Econometric framing of this existential question treats it as a cost-benefit calculation governing, in the people's or the rulers' minds, the representations of what should be decided. For instance, in the a-critical law and finance literature, Wellhausen [2017] depicts American Indians living in United States reservations as benefiting economically, particularly in terms of credit access, from relinquishing a sovereign right specific to their tribal community and preferring to adopt US state law.

Political risk, which is the finance sector's perception of the public capacity to endanger its profits, is in its own way a form of putting sovereignty on the market by giving it a price tag and holding issuing auctions instead of using administrative mechanisms [Livne and Yonay 2016; Lemoine 2016]. States that do not give away any form of monetary and economic sovereignty will consequently have to pay premiums on their sovereign debt issuance: for example, by not setting up a central bank independent of the executive or by assuming political control over finance, in short by not sending any signal of credible commitment to the investor community. Political risk language and metrics, at work mainly in the so-called developing countries constantly in search of capital flows (as in the case of the microstates' investment-for-citizenship programs), have ironically ricocheted to pervade states at the center of the monetary and financial hierarchy, to the point of encroaching on media and expert narratives during presidential campaigns as in France [Lemoine 2018].

Surak's piece issue paints a colorful scene whereby the prime minister of a small island acts as a ordinary traveling salesman, presenting a list of his state's legal and institutional qualities to win over investors. These interactions, where promises of a certain political future are exchanged in return for an immediate financial investment [Merlin, Laurent and Gunzburger 2021], take place in large luxury hotels during road shows for all states that participate (to varying extents) in the global capital market boiler room [Lemoine 2016]. More or less sophisticated technological law and finance devices are presented, used and highlighted: respect for the rule of law, emphasis on the country's legal tradition (common law), compliance with the free movement of capital, political refusal and institutional barriers to finance, respect for the independence of the central bank, state pledges of non-intervention in various domestic markets, and political and state abstinence from the

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management, control and exploitation of natural resources. Financial lawyers help technocrats develop road show pitches, document loan prospectuses, and advise on fine-tuned scripts regarding public institutional restructuring that will appeal to financial investment. Analyzing the mining industry, the anthropologist Paul Gilbert uses the soft term "technologies of the imagination" to present all the material equipment used in citizenship and sovereignty transactions aimed *"at reassuring potential investors about the stability of their future earnings"* [Gilbert 2020]. In order to do the jurisdictions' shopping and arbitrate between legal, fiscal and economic systems, financial investors use political risk rankings to evaluate and score jurisdictions. For instance, the Fraser Institute Policy Index criteria measure uncertainty over what will be designated as protected areas, environmental regulations, legal process, political stability and taxation.[11]

The self-presentations of states and policies do not leave the sovereign unaffected or a mere cynical user of this "promise engineering" [Merlin, Laurent and Gunzburger 2021]. They generally call for domestic discipline and institutional oversight in return. If it is no longer that easy for the states to get rid of all these intertwined commitments, however, these forms of public-private embodiment of the sovereign function are subject to internal, domestic contention. Surak shows that a part of the population is critical of this way of "*prostituting the nation*": "*Opposition parties often liken the programs to cash cows for the party in power*". Once again, our sociological aim is to investigate the conflicting processes that lead to the provisional victory of a definition of the public interest as the best way to embody sovereignty and the blackboxing of this conflictual, processual determination.

Sovereign debt markets provide a remarkable illustration and potential field of investigation in which to observe the general interest of the state in the making. For Pistor, hierarchies between countries at the apex and countries at the periphery of the international finance architecture represent a prime example of the "essential hybridity" of financial markets [Pistor 2013a]. When debt is issued by sovereign states that have the power to "*unilaterally determine its legal structure,*" it remains an idiosyncratic sovereign prerogative. But when debt is traded on international markets, issued under foreign law and "contracts contain more elaborate provisions on the parties' rights and obligations [...], it is treated as just

[11] "These issues are rated on a scale from 'Encourages exploration investment' to 'Would not pursue exploration investment in this region due to this factor' before the ratings are transmuted into hierarchical rankings" [Gilbert 2020].

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another fungible financial instrument" [*Ibid*.]. Sociological research describes the extent to which "peripheral" countries are caught up in tension between treasury departments—which consider it natural to include waivers of sovereign immunity and foreign governing-law clauses (mainly hegemonic US and UK laws) in their bond contracts [Potts 2016]—and alternative fractions of the elites or the population critical of these counterparts for their political cost (in terms of future prospects and long-term constraints) in excess of their economic gain [Lemoine and Deforge 2018]. Eric Helleiner [2008] thus speaks of a dilemma, if not schizophrenia, specific to state agency.

This special issue depicts how technico-legal global finance devices unpack the state and twist, delimit, and give flesh and legal materiality to a certain understanding of sovereignty. With legal devices of finance, investors and lawyers are able to manipulate it as a financial object, calculating, speculating and gambling on sovereignty. However, they also desperately need sovereignty, but a sovereignty that is tailored to the requirements of their practices.

Enforcement, elasticity and disputes regarding the responsibility of finance

Our processual approach involves looking into actual disputes over the role and repercussions of finance in the social world, and how law can intervene in the emergence, transformation, and sometimes invisibilization of such disputes. This focus on actual controversies, not taken as aggregated but looking at their internal dynamics, challenges three typical long-held views of the relationship between law, regulation and the financial industry, which we could call the *deregulation perspective*, the *enforcement obligation*, and the *abnormality of illegality*.

In the *deregulation perspective*, the main characteristic of the historical movement that started in the 1970s is the reduction of the legal and regulatory provisions that framed the financial industry [Carruthers 2020]. This phenomenon has been well documented, and the financialization of capitalism stems in some way from it [Krippner 2011, Van der Zwann 2014]. This view, however, implies that law and regulation can only be seen as obstacles to the daily making of financial activity, when we need to consider the multiple roles played by law, and to distinguish between the different stages at which law is used, discussed, debated and sometimes disputed by financial actors. These stages are unequally public: they range from a public trial to the signature of a contract between two private parties. They are, for that same reason, unequally accessible to the eyes and ears of social scientists. Law cannot be reduced to

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something that financial institutions and actors seek to bypass. Such behaviors are certainly important but they are just one part of the broad spectrum of possible behaviors adopted towards law. In many ways, their activity is built on legal foundations. In many situations, law is a resource for preventing or resolving a conflict.

A second and somewhat normative assumption is the *enforcement obligation*. It implies that law should be applied, that every law would be perfectly enforced in a fully functioning social world. Naturally, from the point of view of citizens, legal professionals and market actors, such a view can be defended as an ideal: law creates duties and obligations which, if not respected, can be enforced by a court of law. But we know that such an ideal is empirically far from being met, and we cannot start from the premise that it should be. We rather need to understand the logic behind actual enforcement. A binding contractual relation can also, in certain critical conditions, be renegotiated for both parties to find a suitable way out of a dispute: business partners can choose which battle they want to fight. In the same vein, some illegal practices, even when recognized as such by law enforcement institutions, can be unequally charged and tried. If prosecutors have clear discretion in their enforcement powers, where, when and for whom is this discretion actually used? How does one decide which case to enforce, and which contract to honor? These questions are of great interest, especially when considering that decisions not to prosecute are "legally authorized, but not legally regulated" [Sarat and Clarke 2008: 390].

Finally, a third and last common assumption is the *abnormality of illegality*: it starts from the premise that a social world should be able to get rid of all forms of transgression of the law. Such transgressions are seen as anomalies in a normal capitalist world, all things considered. This assumption also implies a clear-cut distinction between legal and illegal practices, whereas research finds in the case of individual taxation, for instance, a continuum of practices from tax avoidance to tax evasion [Spire 2011].

Here, we dispute these common assumptions. First, deregulation is just one possible relationship between law and finance. Second, actual enforcement of the law depends of social hierarchies and on prosecutors' priorities. Third, illegality and forms of transgression are legitimate parts of the social world, as much as legal practices. Looking at the actual place of law in financial disputes, we can rise above these persistent views. In his contribution, Simon Bittman aims at filling a gap in critical finance research by refusing to "overlook law and regulatory compliance as central mechanisms in shaping financial market". Law, in his approach,

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is far from restricted to statutory law. He studies growing conflicts in local courts to define the possible development of consumer finance in the United States in the first half of the 20th century. He shows how financial technologies are far from autonomous: they "interact with regulators and courts, striving to impose devices or metrics in order to build and exchange rates, giving rise to conflict which often plays out in legal terms".

The case of criminal law enforcement also illustrates how a focus on disputes can help: since the subprime crisis, the lack of cases ending in a criminal trial has been a recurrent and heated public issue. While many voices were raised by citizens, political and legal actors for criminal prosecution in response to the practices involved in the crisis, few individual prosecutions ensued, especially with respect to those holding higher positions in the financial industry. Such judicial treatment of financial fraud reveals, both here and elsewhere, that the elasticity of law—advanced by Katharina Pistor in her contribution—depends on the position in the social hierarchy of the financial industry. The higher the position in the hierarchy, the greater the chance of seeing a contract honored or legal proceedings succeed. This applies as much to legal action for fraud as it does to the relationship between creditors and debtors. In the financial scandals following the subprime crisis, individuals indicted and sometimes convicted were most often middle management, and very rarely senior executives or CEOs. Even in scandals like the Libor scandal involving responsibility at the top of financial institutions, and recognized as such by the regulatory and law enforcement institutions, the higher the rung on the bank's ladder, the harder it is to find indicted individuals [Angeletti 2019].

Prosecutors have full discretion with respect to the cases they actually prosecute and those they rule out for criminal proceedings. Yet not instigating proceedings does not mean that the practices in question were not criminal *per se*—as Edwin Sutherland noted in his seminal work [1983]—but that illegal practices can be categorized and coded in many different ways, and managed by different channels. Socio-legal academics noted early on that only a small proportion of disputes actually ends up in court [Felstiner, Abel and Sarat 1980-1981; Miller and Sarat 1980-1981]. Potential fraudulent activity in the financial sector is no exception: it is filtered by internal, professional, managerial, compliance, regulatory and legal devices. Fraud detection is, for instance, internalized by the banking sector using algorithms, as regulators do not have the resources to carry out this monitoring themselves [Amicelle 2021]. Such devices not only prevent many cases of fraud from being recognized as such, but they are instrumental in differentiating those practices which "really" call

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for indictment. Far from being systematically prosecuted, fraud in the financial sector is *differentially managed*: while some fraudulent activities result in legal proceedings, others are quietly tolerated or dealt with by alternative procedures [Angeletti 2019]. Elasticity of law therefore needs to be conceived and studied in its daily occurrences and multiple forms. Between full-on enforcement by prosecutors and complete escape from legal oversight, there are countless possibilities, which are actually more common than these two extremes [Sarat and Clarke 2008; Coslovsky, Pires and Silbey 2011; Dewey, Woll and Ronconi 2021]. Law-elasticity is a fine-grain phenomenon that calls for close examination and thorough empirical study. There is an entire continuum of possible law enforcement and non-enforcement strategies, within which political dynamics (electoral scenes, if not cycles) intervene. The variable will to enforce the law can be an active and conscious lever of action for states. Public authorities may rule out law enforcement for certain illegal practices as being against the public interest, or at least give that as the reason.

Such differential management of financial fraud is not always publicly visible: an important aspect of the lack of public debate on financial activity concerns the practical making of legal decisions. For instance, the rise in bank prosecutions in the US and Europe following the subprime crisis [Garrett 2016] did not take the form of public trials. Rather, there was a growing use of settlements allowing corporations to sidestep accountability and prevent the emergence of collective debate.[12] Such settlements iron over the many complex elements of financial scandals and blur the reasoning behind prosecution. In other words, the use of public law in finance can also take private forms of conflict resolution such as settlements—or international commercial arbitration [Dezalay and Garth 1996; John 2018]—and thereby contribute to public opacity. Such opacity can also result from discrete transformations of legal standards which appear limited at first [Montagne 2013].

Financial actors can claim this elasticity in the use and interpretation of the law: they regularly defend a right not to follow the law "to the letter," but to fully respect its "spirit" [Angeletti 2017; Boltanski 2011]. This relative view of rules shows that the law is seen as far from

[12] In scandals with identified victims, the use of one legal device (a criminal trial) rather than another (compensation fund) has huge implications for the compensation process, and victims can struggle with choosing the device they prefer to settle the conflict [Barbot and Dodier, 2020]. In financial scandals, where the legal conflict often does not involve a plaintiff, the difference between legal devices concerns mainly the extent to which the legal decision process is made public.

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binding, and implies that powerful actors take liberties in their interpretation of the legal and regulatory rules. Financial actors may call on internal or external regulatory and legal advice to influence the course of a case and prevent indictment often long before it is even a possibility. Asymmetrical enforcement—strict on the periphery and lax in the center—and socially differentiated blame distribution among individuals and organizations [Angeletti 2019; Galanter 1974] can preserve social order, serving popular vindictiveness while stifling systematic criticism.

In addition to these differential attitudes to circumventing the law (*differential illegalism*), the financialization of law performs imbalanced relations to financial legal codes and calls for research into the socially variable chances of winning a case and probability of law enforcement. Acting as law, finance performs an asymmetrical distribution of legal possibilities—what could be called *differential legalism*. Pascale Cornut St-Pierre analyzes the way in which the standardization of swaps derivatives omits a precise definition of the parties' obligations. Taking up the concept of "abstraction," she re-emphasizes the socially violent nature of the financialization of law: the initial social context of the swaps derivatives, the possible cognitive asymmetry between swap dealer and user, is not only set in the original contract, but also purged and cleansed to make way for the harsh, cold technical-financial device. The initial promise of lasting relations (banks' financial duties), and the informal and interactional character of the contract-making process are "extracted" and eliminated in an almost irreversible way at the moment of the deal. Cornut St-Pierre demonstrates the political effects of the financialization of justice: the social context is effectively locked and buried in a dedicated black box. What remains is the financial object purified and tamed by its coders in the form of a cognitive monopoly: "Legal documents were used to objectify swaps as a class of financial instruments, thanks to a contractual architecture geared to the clear-cut calculation of payable sums, extricated from a rich socioeconomic reality inevitably open to competing interpretations" [Cornut St-Pierre, *infra*].

Abstraction is also at play in trials, and (re)produces legalism differentiation when cases go through the courts. Trials are thus situations where plaintiffs seek, in vain and desperation, to re-establish these relationships, this "unwritten" contextual landscape. The stalled understanding and conceptualization of swaps "complicates the task of end-users, lawyers, and judges who might have been inclined to demand more stringent obligations from swaps dealers"[*Ibid*.]. The legal interpretation of contracts, including retrospectively in trials and litigation, backed by strong legal counsel resources is fairly impermeable to controversy. It is

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generally to the disadvantage of the plaintiffs and to the advantage of the swap dealing industry, with its command of the encryption of the code, and its macro management. For Cornut St-Pierre, this abstraction process[13] is "*intrinsic to finance*" and produced by a complex chain of links and intermediaries, concrete instruments, local practices, and operations of law. As Bourdieu explained, when the force of law is mastered by a particular social group, it helps to naturalize domination by establishing justice (although favorable to one group over another) as a neutral place that de-realizes and distances social antagonism in order to transform "*the direct confrontation of those concerned into a dialogue between mediators*" and professionals [Bourdieu 1986].

Financial law between ordinary and exceptional times

Lastly, the roles and uses of financial law are connected with how they are set in different historical situations. In the recent period, this role has come under growing scrutiny due to the emergence of a specific type of historical event distinctive of capitalism: economic and financial crises [Sewell 2008]. In her contribution for this special issue, Pistor addresses one of the most critical events of the 2007-2008 subprime financial crisis: the near collapse of insurance company AIG. The bailout of AIG, as other episodes have demonstrated, shows that bankruptcy is not a sort of economic justice that eliminates poor market participants. Depending on a corporation's place, size and connections in the financial system, the possibility of collapse and bankruptcy can range from a potent threat to something not given any consideration at all. The question is then how to end the crisis, how to limit its impacts on other spheres of social life— in other words, how to prevent the crisis from becoming multisectoral [Dobry (1986) 2009]. As Pistor argues, the law needs to be altered or suspended to protect the financial system as a whole. Through public debate, demonstrations, and sometimes even the social movements they generate [Ravelli 2021], systemic crises could provide a possibility to collectively unravel or percept their underlying mechanisms, including legal ones. But normally, such legal underpinnings often stay in the shadows and out of public sight.

The flip side of the use of law in exceptional contexts is a more routine and conventional exercise of law in regular times. In their study of the transformation of management and work in France, Boltanski and

[13] This abstraction is not entirely assimilable to a process of objectification, close to a reading of the operation in scientific terms. Therefore, it avoids naturalizing, by descriptive means, the claim of finance to be pure, detached from its laborious manufacturing process and endowed with its own coherence and autonomy.

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Chiapello [2005] identified two regimes to introduce change in social reality, supported by different uses of law. A *regime of categorization* usually comes about after a period of strong critiques such as May 1968, in order to reinforce institutions and to develop new moral justifications. Law, in that case, is conceived as one means to make such a change at a general level. A *regime of displacement*, conversely, involves fewer public actions and takes place on a more practical level. The strengths usually clearly defined and limited during tests and trials are then much more open: every possible power can be used to win a conflict and to succeed in a test. In this regime, law is one of the things that needs to be bypassed, at least marginally and for the benefit of powerful actors, to produce social change beyond public supervision. But categorization always occurs after the multiple displacements that social actors make.

Pistor's contribution shows that elasticity is where "law ends and power begins": when law is elastic, power becomes salient. During crises, the "*laissez-faire*" at the apex of the financial system, with the public authorities acting as guarantors of the risks incurred by the most capital-rich private actors [Gabor 2021] and rigid requirements for the periphery, re-legitimizes the system and its hierarchies, leaving the philosophy of merit intact.

While the role of law in ordinary and extraordinary times is contrasted between these two extremes there is a all range of possibles to explore. Capitalism is an eventful phenomenon [Sewell 2008]: it combines multiple temporalities that cannot be reduced to the sole opposition between emergency vs normality. This is even more true considering how crises have become an almost common state of affairs: the ruptures that each financial crisis is supposed to create, if we look at politicians' declarations, turn out to be quite limited. We rather need to consider forms of continuity between these situations [Dobry (1986) 2009]. In that respect, although power can be used in a particular way in crises, imbalanced and hierarchical relationships to law (hard for the weak and soft for the powerful] are far from absent in ordinary times. Global South sovereign states [Lemoine and Deforge 2021] experience structural power imbalances in both normal times and crisis due to the international financial system and legal architecture. As "peripheral countries," they have to comply with hegemonic US or UK domestic laws and are subject to domination by creditor countries which rule the inner sanctums of international and multilateral bodies (such as the International Monetary Fund or the Paris Club for bilateral lending). Similarly, distressed-debt portfolio managers see debt crises as a standard playing field, a regular state of affairs, with no particular beginning or end (as crises would have).

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Above all, they see it as a structural source of structural profit because the realistic probability of sovereign default is one of the elements objectified in a portfolio of financial investments. Anticipating default becomes an opportunity for hedge fund managers to generate income by taking extreme bets on high-yield investments. Vulture funds, after repurchasing and picking up underpriced shares, equities or bonds near bankruptcy on the secondary market, deploy legal actions and public lobbying in order to obtain contracted payouts or to pressure distressed debtors until settlement.

Private hedge funds claim that the rule of law should apply in regular times as much as hard times, at the risk of jeopardizing a fundamental principle of capital markets: respect for commitments that enables the avoidance of moral hazard and its contagion effects. Many regulators and public institutions half-heartedly admit that they see in these morally condemned funds an incarnation of market discipline—the threat of legal proceedings is seen as an incentive for good debtor behavior—but also a vehicle for economic efficiency: distressed-debt investors, vulture funds, are seen essentially as performing like their eponymous birds by cleaning up entities that have to die, rather than letting them survive indefinitely through public palliative care. The elasticity of the law between the center and the periphery, and the structures giving more power to core financial actors and organizations apply in normal mode as well as during crises.

Democratizing the financial-legal order

In this introduction and throughout this special issue, we argue for research to look back into the legal underpinnings of finance. We have shown that the role of law needs to be viewed in its plurality, between extremes that are often more ideal-types than actual empirical cases. Between crises and "normal" times, between center and periphery, between full law enforcement and no enforcement at all, the legal dimension of financial phenomena needs to be studied in its diversity and multiple forms. The elasticity of financial law—the plasticity to social and political forces and circumstances of this corpus of rules and certainties—operates in times of crisis as well as in "cruising" mode. Asymmetries of law enforcement at the apex and the periphery of the financial system are also at play in normal times, precisely because private actors and organizations have succeeded in pervading public technocracies, redefining the rules of the game and the public interest of the legal field.

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The purpose of our proposed processual approach to the lawmaking of finance is precisely to inhabit these different continuums, to open up the social entities involved, such as the state, finance and the law, which are not whole entities *per se*, but are processual constructions confirmed daily. Legal phenomena, whether the attribution of liability or the construction of specific financial products such as swaps, are studied in their making rather than in ex-post perspective.

By ruling out any set ontology, this is an invitation to focus on the reversibility of social life, on how law helps develop or displace the boundaries of social and political entities. We have shown that the production of law and legal norms cannot be conceived as an external phenomenon that the financial industry simply observes or suffers passively. Rather, financial actors and institutions organize their activity, promote regulation, argue the specificity of their products, and advocate the adjustment of usual frameworks. By making visible the contingent operations and entire technical and institutional chain of law and finance in a neoliberal mode—defining a circumscribed and precise script for politics—this description reveals the reversibility of this political regime. In that respect, social sciences research can support a project of disentanglement and democratic redefinition of public institutions' aims and actions.

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Résumé

Cette introduction esquisse les grandes lignes d'un programme de recherche empirique et théorique sur la co-construction et les modalités d'enchevêtrement entre droit et finance. En adoptant une perspective sociologique processuelle, nous montrons comment il est possible de reconnecter les dispositifs socio-techniques juridico-financières, qui se déploient à l'échelle microsociale, à la « big picture » macrosociale du capitalisme financier. Nous combinons une analyse historicisée de l'État et du champ juridique avec les outils de la sociologie pragmatique, attentive à la façon dont la réalité sociale, les institutions et les acteurs de ces processus sont redéfini·e·s au cours d'épreuves successives. Ce programme de recherche sur la sociologie du droit financier se déploie principalement sur quatre axes. Premièrement, nous montrons comment cet espace juridique spécifique est coproduit par des forces et des organisations publiques et privées. Deuxièmement, nous examinons comment le droit financier déplace, redéfinit et « endogénéise » les prérogatives souveraines et de politiques publiques traditionnellement associées à l'État. Troisièmement, nous montrons les formes d'asymétries qui structurent le traitement judiciaire des affaires financières. Enfin, quatrièmement, nous abordons la manière dont ces formes de gouvernement et de pouvoir n'interviennent pas exclusivement lors de situations exceptionnelles, telles que les crises financières, mais aussi en régime ordinaire. La coproduction juridique et financière des régimes politiques façonne ainsi les économies et les formes légitimes de distribution sociale.

Mots-clés : Droit financier ; Capitalisme financier ; Boites noires ; Public-privé ; Jurisdiction.

Zusammenfassung

In diesem Artikel zeigen wir, wie Interpretationskämpfe um die Einhaltung von Vorschriften zu einer regulatorischen Differenzierung und damit zu einer Marktsegmentierung führen können. Dazu untersuchen wir die Entwicklung der unbesicherten Kreditvergabe in den Vereinigten Staaten in den Jahren zwischen 1900 und 1945. Im frühen 20. Jahrhundert war ein Großteil der Arbeiterschaft auf Löhne angewiesen, um Zugang zu Krediten zu erhalten: Dies erforderte die „legale Kodierung" von Arbeitseinkommen in Kapital, bei der Kreditgeber Vorschüsse im Austausch für ein Pfandrecht auf zukünftige Einnahmen anboten. Die Regulierung dieser Transaktionen führte zu Konflikten zwischen fortschrittlichen Reformern, Kreditgebern und, nach 1929, den Bundesaufsichtsbehörden, die mehr als fünf Jahrzehnte andauerten. Ein historischer Vergleich dreier Bundesstaaten – Illinois, New York und Georgia - zeigt, dass sich die lokalen Diskussionen um drei Ergebnisse drehten - rechtlicher Status, Preisbildungsmethode und Sicherheiten –, die zu unterschiedlichen Regulierungswegen und Marktkonfigurationen auf bundesstaatlicher Ebene führten. Schließlich schuf die Politik des New Deal eine zusätzliche Ebene staatlicher Kodierung, die die Marktaufteilung zwischen unregulierten Zahltagskreditgebern, Nicht-Bank-Kreditunternehmen und Geschäftsbanken vertiefte. Auf den Finanzmärkten drehen sich die Diskussionen über Compliance oft um Computertechnologien, und wir schlagen vor, dass dies eine mögliche Schnittstelle zwischen den Analysen der Wissenschafts- und Technologiestudien zu Kapitalisierungsschemata und Katharina Pistor's Theorie der Kapitalmodulation darstellt.

Schlüsselwörter: Regulierung; Konsumkredit; Kapitalisierung; Wirtschaftssoziologie; Geschichte der Vereinigten Staaten

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