

## A PROPOSAL FOR A PROGRAM ON LAW AND INTERNATIONAL POLITICAL ECONOMY

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Alexis de Tocqueville , writing in the early 19th century, declared that a new science was needed for a new world. In the closing decades of the 20<sup>th</sup> century, a new stage in the development of world economic and political systems has commenced. Just as it was in the 19<sup>th</sup> century, a new science of society is needed to address the issues relating to the constitution, regulation, as well as the realization of the new social, economic and political order, both globally and regionally. Moreover, as it was in the 19<sup>th</sup> century law in its regulatory and judiciary aspects needs to be central to that science. The object of this proposal is to present an outline of an argument for a post-graduate interdisciplinary program that seeks to re-establish the dialogue between lawyers, legal scholars, sociologists, historians, and economists.

The starting point for the program on Law and the International Political Economy has been the exigency for the creation of a new institutional environment in the post-1980s when institutional environments represented by the centralized national states, are no longer deemed adequate for organizing social and economic activity. The present-day tendency is to view institutions, or forms of governance in 'de-nationalized', or 'global' terms. International bodies, such as the World Bank, and regional units such as the European Community, are emerging as new actors and defining the rules of the game for the operation of the nation state.

The attempt to start a dialogue between the practitioners of the different social science disciplines, history and, and of law, is rooted in an

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awareness of the need to craft a social, political, and economic order—in short institution-making, institution-transforming. Institutional transformation in the present global context means the organization of social and economic activity with the objective of maximizing efficiency and returns in different markets, regionally and globally. This organization, however, can not and historically, has not, come about as an outcome of the workings of market forces, as some economists have been advocating in the past two decades. That is, organization of market activity is not simply a technical process whereby human actors simply fine-tune institutions to the dictates of the natural workings of the market. It is a social and political process.<sup>1</sup>

For markets to operate efficiently and their effects on social actors to be mediated, they are to be constituted through regulations. In this sense, contrary to its liberal formulations, law's function is not simply to restrain non-market actors from intervening with the workings of self-regulating markets, or simply to secure the workings of the market and its 'naturally' formed institutions, including private property. Law (and the institutions it shapes) is enabling. For instance, in the absence of institutions of private property and contract law, it is difficult to imagine market activity taking place.

Constitution and regulation, however, are sociological processes. Laws and institutions are not formulated independently of social actors, or of the relations, confrontations, and negotiations among different individuals and groups. Law and institutions are domains of conflict and contention. Confrontations and negotiation do not only characterize the constitutional process but also the process of adjudication. An interdisciplinary graduate program proposes to train economists and social scientists in the processes of the legal constitutions of economic and social reality—in short, in the processes of institution building or institution transforming. Lawyers and judges, on the other hand, are expected to be knowledgeable about social and economic processes, about social and political actors, as well as the cultural-historical vocabularies these actors employ in negotiating their different posi-

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<sup>1</sup> For arguments to this effect in relation to market formation in the 19<sup>th</sup> century, see K. POLANYI, *The Great Transformation: The Political and Economic origins of Our Time* (Boston: Beacon Press, 1963); C.K. OGDEN, ed. Jeremy BENTHAM: *The Theory of Legislation* (London: Routledge, and Keagan PAUL, 1931)



tions. Law, in the perspective offered here, has a constitutive role in defining social reality and is in turn constituted by the actions of diverse groups of people. At the same time, law in the process of its implementation is also part of the constitutive process. At present, this is most dramatically manifested in the creation of the European market, especially in labor, through the decisions of European Court of Justice.<sup>2</sup>

Finally, the new institutional environment of the market points to a shift in the agents of governance or regulation, away from the nation states to international or other non-state bodies. Scholars have emphasized the role of self-administering bodies in the instituting of the European Community, most notably that of the European Court of Justice.<sup>3</sup> This raises the simple question: who is to be politically accountable for the consequences of the new forms of governance? Addressing this issue in relation to the post-1980 transformation of the American state, Christine Harrington<sup>4</sup> argues that the state in this period is no longer held accountable for the majority of policy-decisions regarding the economy and the society. Instead such decisions are taken in 'negotiative' environments in which the different parties participate. The state is viewed as one of the negotiating parties. Harrington's critique of the new 'pluralist' environment of multiple negotiations is that this environment rests on the assumption that all parties to negotiations are equal in terms of their power leverages. She argues that being present at the same negotiation table does not make Greenpeace as powerful as General Motors or the US govern-

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<sup>2</sup> Stephan LEIBFRIED, "European Social Policy: Between Fragmentation and Integration" Paper presented on March 20th, at the *Colloquium on Political Economy of Law: Law, Institutions and the State in the Globalization Process*, spring 2000, Sabanci University, organized by Huricihan İSLAMOĞLU.

<sup>3</sup> Eberhard SCHMIDT-ASSMAN, "Rule of Law, Cooperation, Protection of rights: Structuring the Administrative Law of the European Community," Paper presented on April 13<sup>th</sup>, at the *Colloquium on Political Economy of Law: Law, Institutions and the State in the Globalization Process*, spring 2000, Sabanci University, organized by Huricihan İSLAMOĞLU.

<sup>4</sup> Christine HARRINGTON, "Proliferating Legalities in Transforming times", Paper presented on May 1<sup>st</sup>, at the *Colloquium on Political Economy of Law: Law, Institutions and the State in the Globalization Process*, Spring 2000, Sabanci University, organized by Huricihan İSLAMOĞLU.



ment. The metaphor of negotiation which is employed to describe power environments, in fact, serves to conceal the actual power equations that are at work in the making of a given policy decision.

The issue of accountability is especially important since institutional arrangements regarding market activity, as is witnessed by the present crisis in financial markets in Turkey, are highly contested processes involving multiple actors some of whom will be on the losing end. Who will be accountable for the suffering of the losing groups and responsible for compensating for their losses? In the past, national states have assumed responsibility and have provided guarantees of social stability, which is essential for market activity. One form such guarantees has been that of social welfare policies of the national states. In this sense, from the perspective of the argument presented here, social welfare, institutions of the market and political accountability for legal action are inextricably linked.

The focus of the program on institutions -making and institution-transforming calls for a methodology, which rejects the dichotomy between policy and theory in social sciences. It also seeks to re-integrate the studies of law, economy, and the state into scope of the study of society. Institutions are embodiments of rules for organizing and/or constituting economic, social, political, as well as intellectual activity. Institution-building or institutional change requires competencies in procedures of rule making, as well as knowledge of the purposes of regulation. The latter, however, presupposes knowledge of the economy, of society, of political organizations and of the state, and of their historical dynamic. The curriculum of the program seeks to cover the spectrum of these subjects.