

*Workshop-CfP*

# "Business and the Law. Historical Perspectives on Legal Change"

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Firms act in tightly regulated legal environments. Yet as new products, production processes, and economic practices emerged that environment has been constantly questioned, undermined, and rebuilt. At the same time, legal changes challenged established economic practices like the ban on child labor or new cartel laws. Assuming that innovations were always in line with the legal system or that firms simply complied with new laws is misleading. Usually, the more accurate picture was that of a highly contingent process of negotiation and rule breaking. In the long term, firms needed to succeed in positioning their products and practices as legitimate and inside the law (Aldrich and Fiol 1994; Beckert and Wehinger 2012). To see this process as a one way street of political primacy would be historically incorrect and a bad assumption to solve current problems of regulation. Given the fundamental importance of the alignment, legal change figures as a central explanatory problem for understanding the course of economic development.

Historians and economists, however, have tended to see legal change exogenously, either as a primarily political phenomenon or simply as a given. Legal scholars on the other hand have paid little attention to the intersection of firm behavior and legal change (Pahlow 2014). Although both historians and legal scholars can draw on some pioneering work on the "borderland" of law and economic practices (Hurst 1964) the relation of business and the law is still ill-defined (Dahlén and Larsson 2014). Beyond some work on the lobbying activities of firms, there is little knowledge with regards to the precise mechanisms of legal change (Edelman and Suchman 1997). While the attempt to influence politicians is acknowledged, historians need to go beyond addressing this most direct kind of intervention.

Our workshop, generously funded by the DFG, will address the relation of businesses and the law from a broader and more subtle perspective. The aim of the workshop is to understand legal change as a change in routines that affected the ways in which businesses and courts interpreted the "rules of the game". Such a change could manifest itself in written law or lead to a fundamentally different way of interpreting it. In both cases the focus needs to be on economic and legal *\_practices\_*, i.e. on the question what the law meant in its historical context and how it actually affected economic actions.

We are looking for theoretical work as well as empirical case studies that help to shed light on the historical transformations of legal institutions at the intersection of businesses and the law. Specifically, we are looking for papers that address at least one of the following research questions with a focus on developments since the 19<sup>th</sup> century.

*\*1. The Relation of Firm Behavior and the Law: Conceptual Clarifications and Historical Perspectives\**

What do we mean when we talk about "the law" and its effects on business practices? What is "legal change" and what are the possible channels through which such change can take place? To what extent did the meaning of the law change itself over time? The first section of the workshop is intended to discuss some of the underlying concepts and theories important for understanding the problem of the relationship of business behavior and the law. Such a clarification includes discussing the law as a restraining and enabling institution as well as the question of relevant actors. We assume that economists, historians, and legal scholars may have different views on what they perceive as "the law" or "legal institutions". We are thus looking for explicit reflections from different disciplinary backgrounds.

*\*2. Direct Intervention: The Practice of Political Entrepreneurship and Its Effects\**

In which ways have firms tried to manipulate legislative and judicial power to change the legal framework? What do we know about the decision making processes inside the firms or by individual businessmen to act as "political entrepreneurs"? Is it possible to make statements about the effects of such interventions? We are looking for historical case studies from different time periods that shed some light on these questions, whether they focus on actual bribery, public relations campaigns, or the funding of published expert opinions.

*\*3. Subtle Evasion: The Stubbornness of Routine in the Face of Legal Change\**

What effects had legal change, whether a new law or the removal of an old one, on firm behavior? Did firms comply with the new legal rules or did they try to undermine it, sticking to the routines they had been used to? What were the long term effects of such firm reactions on legal practice and written law? Historical case studies seem to suggest that negotiations could be very complicated with different degrees of success. Although the intentions of lawmakers could be realized to some extent, as in the case of cartel law after the Second World War, firm reactions played an important part regarding how new laws were implemented in practice (Teupe 2016). We are looking for historical discussions that address these issues.

*\*4. Legal Provocations: Schumpeterian "Rule Breaking" and Business Scandals\**

What happened to the legal environment when firms and entrepreneurs simply failed to play by the rules? History is full of such cases, including scandalous fraud schemes as well as cases in which legal rule breaking was perceived as legitimate and a result of outdated legal regulations (Berghoff *et al* 2016; Balleisen 2017). Yet what distinguished the criminal behavior of Bernard Madoff from the copy right infringements of Pirate Bay or Google Books if it could not have been rule-breaking per se? Why did some cases of legal rule-breaking lead to a tightening of the rules while others led to their re-interpretation or elimination? In this section we are looking for case studies that discuss and explain the effects of business crime – understood broadly and independent of whether perceived as legitimate or illegitimate - on legal institutions.

The workshop will take place at the University of Bayreuth between \*June 21 and 23, 2018\*.

Travel costs and accommodation will be covered for all accepted papers.

The workshop will be organized as a paper development workshop. There will be only a small number of individual presentations during the workshop intended to provide an overview to the different fields of interest. All workshop participants are expected to read the papers that will be pre-circulated. The workshop's objective is first, to foster a stimulating discussion, to try to establish some common ground for synthesizing the findings, and to get a better understanding of firm behavior and legal change in historical perspective. Its second aim is to provide an opportunity for authors to get intensive feedback and discussion concerning how to revise or develop their materials and ideas. Some of the papers will be published in a Special Issue on "Business and the Law", edited by the workshop organizers, in *Management and Organizational History*.

Please, send in your proposals in a single document (PDF) by \*December 31, 2017\*. The document should include the following:

- your name, institutional affiliation, and contact information
- a 500-800 word abstract
- a one-page CV

Decisions will be made by the end of January, 2018.

We expect more substantial drafts of papers for pre-circulation (ca. 6.000-8.000 words) by the end of May.

### *Literature*

Aldrich, Howard E. and C. Marlene Fiol (1994): Fools Rush In? The institutional context of industry creation. In: *Academy of Management Review* 19(4): 645-670.

Balleisen, Edward J. (2017): *Fraud. An American history from Barnum to Madoff*, Princeton NJ.

Beckert, Jens and Frank Wehinger (2012): In the Shadow. Illegal markets and economic sociology. In: *Socio-Economic Review* 11(1): 5-30.

Berghoff, Hartmut, Cornelia Rauh, and Thomas Welskopp (eds.) (2016): *Tatort Unternehmen. Zur Geschichte der Wirtschaftskriminalität im 20. und 21. Jahrhundert*, Berlin.

Dahlén, Marianne and Mats Larsson (2014): Business History and Legal History. In: *Business History* 56(1): 54-70.

Edelman, Lauren B. and Mark C. Suchman (1997): The Legal Environments of Organizations. In: *Annual Review of Sociology* 23(1): 479-515.

Hurst, James Willard (1964): *Law and Economic Growth. The legal history of the lumber industry in Wisconsin, 1836-1915*, Madison, WI.

Pahlow, Louis (2014): Unternehmensrechtsgeschichte. Methoden und Perspektiven. In: *ZNR* 36 (1/2): 83-102.

Teupe, Sebastian (2016): *Die Schaffung eines Marktes. Preispolitik, Wettbewerb und der Handel mit Fernsehgeräten in der BRD und den USA, 1945-1985*, Berlin.