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Law and Fugitive Capital. Karl Polanyi’s *The Great Transformation*

My paper today is themed around the law as a central cause and consequence of society in Polanyi’s The Great Transformation. Polanyi was trained as a lawyer, but most of his theorizing is about economics and anthropology. He does discuss at length the Speenhamland law and more briefly the laws that were essential to the commodification of labor (the Poor Law of 1834), land (quoting Bentham “no entails, no unalienable endowments, no common lands, no right of redemption, no tithes”), and money (repeal of usury laws). In this paper I am trying to form an understanding of the link between law and law reform, and Polanyi’s concepts of embeddedness and double movement: Law as a moral idea reflecting the ideals of its society, and also as an instrument of order, or if you will allow, a social glue, operative as an embedding social force. Thus, it is embedded and embedding, similar in dynamic to Polanyi’s double movement.

Roberto Mangabeira Unger identified three bodies of animating ideas needed to search for alternative institutional forms to better actualize one’s ideals. A credible theory of social transformation; a conception of the ideal; and a conception of the proper relation of law to society. Polanyi’s double-movement and notion of embeddedness certainly are a part of the core dynamic of social change. His socialism, be it Christian or Owenite, is an ideal. As regards the relationship between law and society, it seems reasonable to conclude that Polanyi sees legal rules and doctrines as defining the basic institutional arrangements of society. Thus The Great Transformation can be read as a template for the search for alternative institutional forms to the current operations of markets, and of democracy.

1. The Self-Regulating Market

The political and economic origins of the collapse of the 19th century civilization, and the resulting transformation are the subjects of Polanyi’s 1944 classic The Great Transformation. The idea of a “self-regulating market” has to be starting point of any effort to understand Polanyi’s thinking: economic, political, anthropological, sociological, historical, and jurisprudential. A self-regulating market or simply a market economy, sometimes a market system,

“is an economic system controlled, regulated and directed by market prices ... An economy of this kind derives from the expectation that human beings behave in such a way as to achieve maximum money gains ... there are markets for all

elements of industry, not only goods (always including services) but also to labor, land, and money ... (Importantly) nothing must be allowed to inhibit the formation of markets ... only such (regulatory) policies and measures are in order which help to ensure the self-regulation of the market ...

This “utopia,” the self-regulation market was “uniquely derived from (the) principle of gain.” The self-regulating market, while a central feature of the nineteenth century, operated paradoxically to distort the operation of the other institutions that supported this nineteenth century civilization: the balance of power system, the international gold standard, and the liberal state. Polanyi explained that “the gold standard was merely an attempt to extend the domestic market system to the international field; the balance-of-power system was a superstructure erected upon, and partly worked through the gold standard; (and the liberal state was itself a creation of the self-regulating market).”

These paradoxical relationships between institutions created deep seated strains manifesting themselves in pervasive anti-social ways:

- The exploitation of the physical strength of the worker
- The destruction of family life
- The devastation of neighborhoods
- The denudation of forests
- The pollution of rivers
- The deterioration of craft standards
- The destruction of folkways
- The general degradation of ... innumerable forms of private and public life that do not affect profits.

2. The Double Movement

As Robert Owen wrote:

The general diffusion of manufactures throughout a country generates a new character in its inhabitants; and as this character is formed upon a principle quite unfavourable to the individual or general happiness, it will produce the most lamentable and permanent evils, unless its tendency is counteracted by legislative interference and direction. The manufacturing system has already so far extended its influence over the British Empire as to effect an essential change in the general character of the mass of the people.

Not surprisingly, at the same time and in the same spaces there was a movement of “social protection.” This movement aimed “at the conservation of man and nature as well as

productive organization, relying on the support of those most immediately affected by the deleterious action of the market.”

In this “double movement” laws were both protective of the self-regulating market; and protective of people, nature, and productive organizations. If law is a product and tool of society then in Polanyi’s term society both disembedded and reembedded the economy through a continuing stream of law reform. Polanyi saw the laws that constitute and preserve the self-regulating market as “planned” and those restricting laissez-faire and the market to protect society, as spontaneous, or unplanned. As he phrased it “laissez-faire was planned, planning was not.”

Silver and Arrighi have summarized the most constitutive legal sources of the conditions that support the self-regulating market.

In the 1830’s and 1840’s the liberal crusade for free markets resulted in an outburst of legislation passed by the British parliament aimed at repealing restrictive regulations. The key measures were the Poor Law Amendment Act of 1834, which subjected the domestic labor supply to the price-setting mechanisms of the market; Peel’s Bank Act of 1844, which subjected monetary circulation in the domestic economy to the self-regulating mechanisms of the gold standard more strictly than it already was; and, finally, the Anti-Corn Law Bill of 1846, which opened up the British market to the supply of grain from the entire world. These three measures formed a coherent (planned) whole.

In Polanyi’s words, these laws made the commodification of labor (people), land (nature) and money (capital) possible.

Polanyi in turn refers to a list, compiled by Herbert Spenser, of the legal interventions in the market that he, Spenser, saw as a threat to the operation, even existence of the self-regulating market.

In 1860 authority was given to provide “analysts of food and drink to be paid out of local rates”; there followed an Act providing “the inspection of gas works”; an extension of the Mines Act “making it penal to employ boys under twelve not attending schools and unable to read or write.” In 1861 power was given “to poor law guardians to enforce vaccination”; local boards were authorized “to fix rates of hire for means of conveyance”; and certain locally formed bodies “had given them powers to taxing the locality for rural drainage and irrigation works, and for supplying water to cattle.” In 1862 an act was passed making illegal “a coal-mine with a single shaft”; an act giving the Council of Medical Education exclusive right “to furnish a Pharmacopoeia, the price of which is to be fixed by the Treasury.” .. In 1863 came the “extension of compulsory vaccination to Scotland and Ireland.” There was also an act appointing inspectors for the wholesomeness, or unwholesomeness of food”; a Chimney-Sweeper’s Act, to prevent the torture and eventual death of children

set to sweep too narrow slots; a Contagious Diseases Act; a Public Libraries Act, giving local powers “by which a majority can tax a minority for their books.”

Polanyi also discusses at length “social legislation, factory laws, unemployment insurance, and above all trade unions” as protective of “man” from the market; “agrarian tariffs and land laws” as protective of productive organization (business).

In my research I came across A Century of Law Reform: Twelve Lectures on the Changes in the Law of England During the Nineteenth Century presented by the Council of Legal Education in 1901. It describes and comments on those legal changes under eleven headings: common law and the law of persons; criminal law and procedure; international law; the constitution; domestic legislation; equity; procedure and evidence; labour; real property (2 lectures); married women; and joint stock and limited liability companies. In the first lecture appears the following:

But the most marked development in our law during the nineteenth century is seen in the legislation on half of those classes of persons who were under some disability or disadvantage in the battle of life. During the reign of our beloved sovereign, and partly no doubt owing to her gracious influence, Parliament has shown marked concern for all who were unable adequately to protect themselves. It has interfered on behalf of the weak against the strong, of the workman against his employer, of the woman and child against all who might oppress them. I can only touch briefly to-night on a few of the more striking instances; but these will be enough to show you how wise, how considerate and, I may say, how gentle, is the tone in which our law now deals with such classes of persons.

Those unable adequately to protect themselves were identified as “infants, lunatics, married women, dissenters, tenants, the working classes, and animals.” While intended to show just the opposite, it seems to me that this list can serve as a description of those victimized by the self-regulating market. It is also reflective of the “pervasive anti-social” consequences of the self-regulating market at the end of section one above. That said it is clear that the legal changes of the 19th century were liberating of and beneficial to especially the folks identified above; while also sustaining the market. Yet the net effect was a loss in theory and fact of social interdependence.

3. The Dynamics of Social Change

“Power concedes nothing without a demand. It never did and it never will” Frederick Douglass.

Polanyi described the forces of social change, of the double movement in some detail, but in a less than clear way. Perhaps these two paragraphs will fairly illustrate the strengths and weaknesses of his description.

Briefly, not single groups or classes were the source of the so-called collectivist movement, though the outcome was decisively influenced by the character of the class interests involved. Ultimately, what made things happen were the interests of society through their defense – and exploitation! (two words and exclamation point not present in the earlier Maclver edition) – fell to one section of the population in preference to another. It appears reasonable to group our account of the protective movement not around class interests, but around the social interests imperiled by the market (man, nature, productive organization).

Later in more specificity Polanyi argued

While the crisis of the inherently unstable system was brought on by both wings of the protectionist movement the social strata connected with the land (farmers and peasants) were inclined to compromise with the market system, while the broad class of labor did not shrink from breaking its rules and challenging it outright.

Yet without much more elaboration it is clear that he recognized that some social change movements abandon everything in search of “the new man,” others look backwards to preserve dying ways of life (Luddism), and yet others both backwards and forwards to seek out progressive change (Chartism). And similarly he sensed the elliptical nature of concepts in public discourse as fully developed by Reinhart Koselleck (Future Past).

Craig Calhoun’s The Roots of Radicalism presents some of the research since Polanyi wrote on social change movements, Charles Tilly on the rationality of crowds, Jurgen Habermas and C. Wright Mills on new voices in the public sphere, Alain Touraine on identity and cultural transformations, and E.P. Thompson, on history from the bottom, all have enhanced our understanding of social dynamics and power. Calhoun for himself argues that these and other researchers have missed the “rootedness” in traditional culture and in local communities of such movements; thus confirming the “embeddedness” insights of Polanyi.

And, while sometimes with no more than a mere hint, and despite criticisms to the contrary, Polanyi has addressed many of the ambiguities, even contradictions, inherent in people’s understanding of the law; both its legitimacy and its normativity. These understandings were manifested and operative during the 150 years at the center The Great Transformation. Further, it seems to me that the scholarship of James Scott, especially his Weapons of the Weak confirms the existence of the “protective” motivations and social forces operative in the double movement.

4. Anti-Democratic Thought

“Defense” and “exploitation” in an earlier paragraph are important words, especially for their resonance. While economic theory and practice were disembedding themselves from the then political and societal structures, the political, and thus societal structures were themselves in the throes of change. The vast majority of people were seeking some semblance of meaningful participation in governance; what Hirschman calls “voice.” These were the early stirrings of democracy as we know it today. At the same time there was active and substantial anti-democracy sentiment. Here in one paragraph is Polanyi’s understanding of the early mid-nineteenth century resistance to democratic reform; with references at the end to the continuity of anti-democratic thought by leading proponents of a self-regulating market.

In England it became the unwritten law of the Constitution that the working class must be denied the vote. The Chartist leaders were jailed; their adherents, numbered in millions, were derided by a legislature representing a bare fraction of the population, and the mere demand for the ballot was often treated as a criminal act by the authorities. Of the spirit of compromise allegedly characteristic of the British system – a later invention – there was no sign. Not before the working class had passed through the Hungry Forties and a docile generation had emerged to reap the benefits of the Golden Age of capitalism; not before an upper layer of skilled workers had developed their unions and parted company with the dark mass of poverty-stricken laborers; not before the workers had acquiesced in the system which the New Poor Law was meant to enforce upon them was their better-paid stratum allowed to participate in the nation’s councils. The Chartists had fought for the right to stop the mill of the market which ground the lives of the people. But the people were granted rights only when the awful adjustment had been made. Inside and outside England, from Macaulay to Mises, from Spencer to Sumner, there was not a militant liberal who did not express his conviction that popular democracy was a danger to capitalism.

This enthusiasm for “economic” democracy, i.e., the market, was coupled with resistance to most democratic reforms. Kim Phillips-Fein’s book, Invisible Hands – The Businessmen’s Crusade Against the New Deal, updates these same anti-political democratic views as they have manifested themselves from the New Deal to the recent “great recession”.

5. Homo Socius

In the final analysis Polanyi’s book is about the nature of the human person; about freedom and the human condition. Polanyi hardly mentioned the democratic stirrings of the

17th century; or the struggles of the “moral economy” of the 18th century. Yet he importantly foregrounds reciprocity, redistribution, and householding as the “ordering” principles of society through human history. He does that while fully recognizing there have always been markets.

Polanyi is emphatic in asserting that what Adam Smith refers to as “barter, truck, and exchange” while a universal factor, was never more than an accessory to society.

Let us make our meaning more precise. No society could, naturally, live for any length of time unless it possessed an economy of some sort; but previously to our time no economy has ever existed that, even in principle, was controlled by markets. In spite of the chorus of academic incantations so persistent in the nineteenth century, gain and profit made on exchange never before played an important part in human economy. Though the institution of the market was fairly common since the later Stone Age, its role was no more than incidental to economic life.

He goes on to explain

Nineteenth-century civilization alone was economic in a different and distinctive sense, for it chose to base itself on a motive only rarely acknowledged as valid in the history of human societies, and certainly never before raised to the level of a justification of action and behavior in everyday life, namely gain. The self-regulating market system was uniquely derived from this principle.

Hobbes described life as “solitary, poor, nasty, brutish, and short.” He pointed to self-interest as key to human motivation. Subsequently Robert Townsend gave primacy to the “animal side” of the human person in his 1786 Dissertation on the Poor Laws. In turn Ricardo & Malthus argued that the “laws” of society and human behavior were “natural.” This determinist view obviously limits if not eliminates the scope, and most significantly, the value of human freedom.

Today one hears even more aggressive defenses of “gain,” as a social value in the lines like “greed is good” from the movie *Wall Street*. While muted, Townsendian arguments that social policies based on reciprocity, redistribution, and householding are counter-productive, if not actually evil, continue. In America’s last election and since, it has been argued by “respectable” people that for instance a minimum wage (dare one mention a “living” wage) would harm both the wage-earners and the entire society.

The wide-spread belief both in possessive individualism and in markets as natural obviously is at odds with Polanyi’s more social and communitarian view. The fear he articulated in The Great Transformation was that fascism to a lesser or greater degree was one of the two logical outcomes of efforts to restore the economy of the nineteenth century, especially its reliance on the gold standard. The other outcome was socialism. But socialism was his hope; hope based on people’s efforts to restore their “habitation.”

In a new book The Fissured Workplace: Why Work Became So Bad For So Many and What can Be Done to Improve It David Weil describes the various methods used by business owners to disconnect workers from what used to be the workplace. Temporary and part-time employment, subcontracting, franchising, third-party management, and outsourcing have become common. Thus, in addition to being commodified labor has been de-habitatized.

6. Conclusion

All human societies are regulated by law. Law is a statement of societal consensus backed by the power of authority. It is both embedding of politics and the economy in society and at the same time embedded therein. There is a debate among those most closely committed to Polanyi over whether the dynamic of society is best understood as a series of disembedding and reembeddings or a permanent state of embeddedness. Without addressing those different understandings, it is clear that “capital” has become a fugitive from the law. It seems to operate at the whim of increasingly smaller numbers of people; people who operate without nationality and thus beyond the reach of the nation-state.

James Meek’s recent description of the presence and impact of global, what I’m calling fugitive, capital in a small resort town in Kent, England communicates the breach and depth of its impact on local communities. The school, airport, model train factory, pharmaceutical research lab, amusement park, 95% of the shops and restaurants, the off-shore wind farm, and the water and drainage systems are all owned directly or indirectly by foreign companies or national chains. Since this increasing complexity of modern life requires access to capital, human solidarity, both economic and political, is threatened by fugitive capital.

How then to capture the fugitive capital, to embed it in society so it is responsive to the needs and sustainable wants of free people? A common suggestion is a “Tobin tax” a small tax on stock and commodity exchange transactions. That seems defeatist, too accepting of the continued centrality of the self-regulating market. Polanyi envisioned some form of “socialism,” be it either Christian socialism or Owenite. He properly focuses our search for the next great transformation which will include deprivatization and restoration of the commons.

Thus, Polanyi’s analysis of the Great Transformation of the 19th-20th centuries provides some essential ideas for addressing these and other 21st century struggles. The primacy of human solidarity (embeddedness), the corrosive effects of “scientific management” of society (disembeddedness) and the elliptical nature of social change (“double movement”) link to Unger’s animating ideas for radical institutional change. Mark Blyth argues in his book, Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century that ideas matter! In the political-economic context Polanyi’s fundamental idea, that of *society*, matters more than most. And as was said in section one, Polanyi has empowered us with ideas to help reconnect both politics and economics with society.

Let me end with some examples of how the application of Polanyi's ideas might change things. Politics can be embedded, reembedded in society by increasing the links between the elected and the electors – more time in the home district; term limits; more screening of candidates by forums and debates. Politics can be embedded, reembedded in society by requiring greater public rationality in law-making, for instance, single issue legislation; and formal legislative findings in support of bills. More broadly a critique of the electoral and legislative processes from the perspective of the 18th century understanding of corruption. This thought is elaborated brilliantly in Corruption in America from Benjamin Franklin's Snuff Box to Citizens United by Zephyr Teachout.

Economics can be similarly put and kept in its place as servant of society by decommodifying people, nature and money. For instance, instead of the norm of at-will employment, assure everyone of some minimum job security (e.g., a written statement of reasons for termination; reasonable notice; reasonable severance pay), guarantee full employment.

Also, as regards nature, recognize that nature is the common heritage of humankind. More narrowly, require for instance that land use decisions, especially of an extractive sort, consider the negative externalities, spillover effects. More fundamental, rethink traditional ownership rules and limitations with particular attention to excessive accumulations (Locke's "enough and as good" and his "as much as anyone can make use of ..." as limitations).

And finally as regards money itself, reinstate usury laws; increase access to government sources of credit: either as direct loans, or at least loan guarantees; separate commercial from investment banking; establish community cooperative sources of credit.

7. Coda: Polanyi, Owen, and "Communal Industrialism"

Polanyi several times refers to Robert Owen in effusive terms as the "one man alone" to perceive the "reality of society" in modern times. In an earlier essay I quoted Anthony F.C. Wallace's outline of the governing principles of an Owenite town in Rockdale, Pennsylvania. These principles perhaps can serve as an answer to the question "What kind of a socialism does Polanyi envision"?

1. Mutual agreement and cooperation, rather than selfish competition are the basic principles upon which to found the institution of a good human society.
2. Man is a product of learning in a physical and social environment; the community can produce good, or depraved, men and women, depending upon the education of children and social conditions of adults.
3. Reason and experiment, not revealed religion, are man's only proper guide.
4. Rank, social class, and the bonds of matrimony are unimportant as a principle of social organization and in a good society can be dispensed with.

5. Local economic decisions, as well as political decisions at all levels, should be made by democratic procedures.

6. Real estate and machines should be owned and controlled by the community, not by individual proprietors.

7. Small rural communities, combining in a balanced way both agricultural and industrial pursuits, are the natural context of human economic, educational, and social institutions.

8. Such communities can be largely self-supporting insofar as food, fuel, and other necessities are concerned, but should also engage in specialized production and trade in a national and international system of exchange.

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