

**LEGAL FICTIONS: CRITICAL THEORY CRITICALITY AND
THE STATE OF ECONOMICS AND MANAGEMENT**

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INTRODUCTION

Crisis is the natural state of affairs. We are faced now as usual, with crises, social, economic, political and personal. Perhaps change itself is the crisis, opening up desire, opportunity, aspirations, that we try to direct and limit through inventing, legal fictions, property rights for example, designed to bring the illusion of permanence, to channel desire and opportunity into social and organizational evolution and to veil entropy, decay and impermanence, the other face of change. In some traditions desires, aspirations and change are associated with progress, in others with sorrow (Kalansuriya, 1987) and others with both. If the definition of law is broadened out to include the effects of conventions, culture, routines, personality, and history, as well as rules and regulations, then law acts as a special kind of grammar (organizational grammar or orgrammar), that governs events and activities (the morphology of organizational grammar), permissible relationships and linkages between them (the syntax of orgrammar) and interpretation of them. Legal fictions are a form of organizational grammar, a veil, a mask such that, though it is merely one of many masks, can appear to be the only mask: a mask that can be confused with reality or even become reality itself.

This chapter discusses several versions of property rights, all legal fictions; one strong version is a foundation of economic and business analysis (of globalisation in particular), in which organizational grammar is concealed; another, a poem, Legal Fiction by William Empson (reproduced on page 173 below), which reveals it through an extended conceit. A legal fiction is a “facetious euphemism for an untruth” (Haffenden, 2000). Change on all scales, large or small, is always possible, and the balance of probability, in the global economy, appears to be shifting towards the former, a point of criticality, defined as a situation (Bak and Chen and weiswnfeld, 1988; Bak and Chen, 1991; Bak, 1997; Jensen, 1998) where single events have the widest possible range of effects: and new ways of thinking are required particularly in business and in business and management education. Empathy, in the sense of being able to identify with the *Other*, in nature and in society is an important element of ethical behaviour and this is a function of consciousness of (a) the grammar adopted in making choices and (b) awareness that alternative grammars exist. Beneath the ostensible crises, are issues of consciousness, of revealing, (unveiling) the grammar, for example, the legal fictions of private property rights that govern economic and business policy and analysis of globalisation.

The development of consciousness is at a critical point. There are two root propositions in the chapter; the first concerns the evolution of organizations and the second, consciousness. The first proposition is that the evolution of societies and organizations is driven by Darwinian processes, emergent properties of a system that

includes outer and inner dynamics, and organizational grammar: an interaction of complex adaptive systems. The second is that new levels of consciousness are required, subtle consciousness, that involves awareness of the inner grammar that conditions thinking, policy and the interpretation of history, and ultimately the emergent properties of the brain. The study of the brain as an organic machine, a network of neuronal processes (that perhaps can be simulated by a computer) that are conditioned by the internal personal and social components of organizational grammar are the subject matter of cognitive science. Subtle consciousness, the awareness of organizational grammar generally that conditions thinking, policy and interpretations is the subject matter of critical theory as discussed in this paper. Organization is defined in the broadest terms, ranging hierarchically from the public to the private and from individual activities or businesses to big corporations or entire societies. A general model is presented in the next section. A key element is organizational grammar.

Organizational grammar is defined more extensively than Wittgenstein's notion (Wittgenstein, 1963; Forster, 2004). He thought of grammar as *rules for the use of a word* or rules that *determine meaning*. Organizational grammar includes (a) surface rules permitting some moves and interpretations and forbidding others, that are expressions of (b) subsurface rules that govern ways of thinking about and interpreting society. Organizational grammar includes explicit laws, regulations, treaties and so on as well as implicit cultures, values, mores that serve as standards for judging quality and success or failure and programmed modes ways of thinking, however complex such neuronal processes are. It also encompasses deeper elements or structures, beneath the level of awareness, that determine prevailing discourse of a situation.

Organizational grammar is a complex adaptive system (CAS) and its elements (nodes) interact with one another, conflicting with, reinforcing or dampening one another, whilst still retaining an internal cohesion. There is no general agreement about the exact meaning of a complex system but there is about their characteristic features; as outlined in the next section. A common feature of CAS in social life is that they acquire information about the environment, identify regularities in the information, and condense regularities into a kind of schema or models that they can adopt to handle the world. Complexity can signify chaotic dynamics, or refer to cellular automata, neural networks, adaptive algorithms, disordered many body systems, pattern forming systems. (Kauffman, 1993; Pettersson, 1996; Simon, 1996).

Organizational grammar as used here has many correspondences; to Wittgenstein's notion of grammar, for example, as part of a language game permitting some and forbidding others, serving as a standard for judging success or failure; to Foucault's archaeological method in *The Archaeology of Knowledge* (1972) that exposed systems of thought and knowledge (epistemes) and genealogy, intended, as in *Discipline and Punish* (1977) to show that systems of thought and behaviour, including ethics (as in Nietzsche's genealogy of morals) emerged out of history.

The representations of grammar may evolve spontaneously, gradually or in a punctuated fashion. Evolution and emergence in the case of grammar is akin to Darwinian processes in which evolution takes the form of increasing fitness to a given organizational environment, itself the product of interacting complex adaptive

systems in a manner described by the meta model below. In the process of evolution described by the meta model, new organizations and organizational structures result from natural selection, or in a Schumpeterian sense, competitive dynamics, perhaps through small changes over long periods of time (Darwinian gradualism), or from punctuated equilibrium (Schumpeter; 1949; Gould, 2002; Eldridge and Gould, 1972) in which selection, or competition, triggered by technological change operates on species (in this case entire industries).

Organizational grammar has two roles in Figure 8.1. First it is itself a complex adaptive system that interacts with three other complex adaptive systems, (i) factors external to organizations, that is the environment of organizations, (ii) organizational assets, tangible and intangible (iii) the organizational payoffs to their stakeholders. Second, organizational grammar governs the elements that are included within each of the other three categories of figure 1, and the relationships between them.

The notion of organizational grammar leads to a definition of consciousness. The definition in this paper differs from that of cognitive sciences and philosophy which are mainly concerned with the mechanics of consciousness that consists of “*technical problems of studying a system of a hundred billion or so neurons stuffed into the skull.....Consciousness consists of states of awareness or sentience or feeling*” (Searle, 2005); or the mystery of how the brain functions neuronal processes or circuitry that correlate with consciousness (Koch, 1998; Penrose, 1994; Pinker, 2000). Consciousness here is defined as awareness of the grammar that governs the mechanics of consciousness, and is close to the Buddhist or Sufic notions of subtle consciousness, (Izutsu, 1960; Suzuki, 2000, Matthews, 2007). The idea is that there are many levels of consciousness, each having its own grammar. This paper is concerned with the grammar underlying the mechanics of consciousness, especially with respect to private property rights. Returning to the idea of complex adaptive systems (CAS), considering CAS in terms of networks (as in figure 2 below), consisting of nodes and connections between them: both of these are determined by organizational grammar. Mostly it is implicit and we are unconscious of it. Possibility of consciousness in the sense used here arises only with awareness of the extent to which grammar conditions and determines the perception of things.

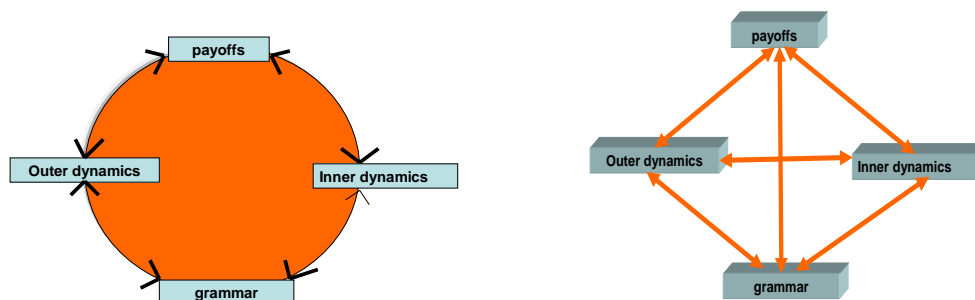


Figure 8.1: alternative pictures of the meta model of strategic analysis

Critical theory has two different origins and histories; one in economic and social theory, the other in literary criticism. In literary criticism it focuses primarily on the analysis of texts (Grodén, 2005). The paper adopts both approaches, placing property rights as they appear in current economic and social thinking against their poetic version. The arbitrariness of the underlying grammar of private property rights is shown up in contrast to the open text explored in an extended conceit in Empson's poem.

Legal Fiction according to Empson's notes on the poem, "*explores the pragmatic, moral and eschatological ramifications of private property rights in land, taking its inspiration from the medieval Latin maxim..... [that]: the owner of the soil has a prima ownership of everything reaching up to the heavens and down to the depths of the earth*" (Haffenden, 2000, page 229). This view of private property rights, Haffenden goes on to say, "*has always been a legal fiction*", exposed paradoxically by the extended conceit in the poem, "*Your rights extend under and above your claim/Without bound; you own land in Heaven and Hell.....*".

The purpose of the paper is to point up arbitrariness in the underlying grammar and the existence of alternative grammars by deconstructing the grammar of various versions of private property rights. It is no accident that Derrida (Derrida, 1967; Kamuf, 1991) refused to define deconstruction. The method of deconstruction is to shed technique just as caterpillar sheds its form as it transforms itself into a butterfly. Deconstruction is not a technique precisely because if it is allowed to become a technique it becomes a construction, an architecture, itself part of the organizational grammar that conditions or programmes activity and thinking on the surface and subsurface. Deconstruction is like successively unpeeling of infinite layers, like the Sufi process of *kasf* or unveiling (Izutsu, 1960). Poetic language makes this clearer. Whereas the language of analytical work appears precise, it merely conceals the grammar that underpins it, poetic language is ambiguous, rich, at the same time explicit about the many layers of meaning it contains. A poetic version of private property rights is discussed in this chapter to deconstruct the version found in economics and business. Globalization, a late stage of capitalism provides a convenient context.

GLOBALISATION COMPLEXITY AND THE PROPERTY RIGHTS PARADIGM (PRP)

The aims of this paper are (1) to expose a specific grammar, the grammar underlying the economic and social theory that is based on the private property rights paradigm (PRP), and (2) to point out that this grammar is to a great extent arbitrary. Three conceptions of property rights are outlined; Schumpeterian form, weak form and strong form private property rights.

Each has distinctive elements contained in a set of assumptions. The first was identified by Schumpeter are the existence of private property and debt market to

align savings and investment. The next two forms are referred to as the property rights paradigm (PRP) in the literature. What I term weak form PRP, based on the same foundations as the Schumpeterian version, is differentiated by its concentration on efficiency rather than growth, insistence upon not just the existence of markets, but the existence of efficient markets. Together with Schumpeterian dynamics weak form PRP underlies the discourse of competitive advantage; see for example, Porter (1980). Strong form PRP is based on a much tighter grammar. Strong form PRP has increasingly driven economic policy and lies at the root of the interpretation of the global economy.

Under PRP individual owners exclusively have the rights over the services of the assets or property they own; to consume, delegate, rent, gift or sell any portion of them as they like (Alchian and Demsetz 1972, for example). Fundamental assumptions that underlie the grammar of the three modes of PRP are set out in the table below.

Private Property rights in Schumpeter	Weak form PRP	Strong form PRP
S1. Existence of a debt market. S2. Profit maximising by firms.	W1. Existence of efficient markets. W2. Individual rational behaviour (utility and profit maximisation).	A1*: The existence of efficient markets. A2: Individual rational behaviour (utility and profit maximisation). A3: A restricted definition of efficiency. A4: The separation of issues of efficiency and distribution. A5: The individual is the appropriate judges of how resources should be allocated. A6. Time reversibility. A7. Monetisation of payoffs

Table 1: the grammar of PRP

PRP values are market values, values determined by supply and demand reflecting its exponents maintain the values of society. The argument is as follows. If A1 holds, no matter who the owner is, he or she has to consider opportunity cost, the most valuable alternative in disposing of them in a particular way. If A2 holds as well, owners will seek the highest-valued use for their property. Thus given A1 and A2, private decisions will be based on public, or social, evaluation because they are based on opportunity cost calculations. On these assumptions, if property is privatized (allotted exclusively to individuals) and if a market system is established globally, every individual has the incentive to put it to the highest valued use. Hence we have a set of policies established internationally through institutions like the International Monetary Fund (IMF), the World Bank, the World Trade Organization (WTO), the European Union (EU) in the Maastricht Treaty, and expressed in privatization policies

and policies of deregulation worldwide; see for example, Stiglitz (2002, 2006), for a critical exposition.

The Global Economy as a CAS

Complex adaptive systems (CAS) are sometimes described as interdependent networks; telecommunications networks, networks of neurons in the brain, computer networks ecologies, ant colonies, immune systems. Interdependence is an important characteristic of CAS, sometimes described as non linearity or a feedback system (Agliardi, 1998; Davaney, 1988). The adaptive element captures the role of agents in a CAS: they are active, they react, to circumstances, they make plans and revise their plans, in other words they are not passive with respect to change but they attempt to adapt.

The global economy (figure 2(a)), arose from the interaction of three phenomena, each a complex adaptive system; the financial and technological revolutions and their interaction with demand that led to the current phase of global capitalism. The financial revolution had two aspects: the institution of market determined exchange rates (that gave rise to the possibility cross country transfers of funds and foreign direct investment) and the creation of many new forms of debt. The technological revolution beginning in the 1970's, in communications information and bio technologies, led to increased competition, shorter product cycles and the need to seek global markets to reduce costs and to increase demand. Thus technology fed the need to globalize, globalization increased competition and accelerated technical change, which in turn increased the need for finance, which itself was a global phenomenon as financial institutions, merged across national boundaries.

Along with these developments, private property was instituted, through privatization, as part of programmes of shock therapy in the former Soviet bloc, Reaganeconomics Thatcherism and so on, in all but a few states. Elsewhere we have the *Other*; states, individuals and networks marginalized in the wealth creation process, designated variously as failures or rogues or global criminal or terrorist networks.

Characteristics of CAS

Figure 8.1 gives alternative descriptions of the analytics of a meta model of organizational evolution as an interaction of four complex adaptive systems. There are many definitions of complexity and complex adaptive systems, but for the purpose of the paper four are representative of their essence; interdependence, adaptation, emergence and ambiguity.

Interdependence: Interdependence comes in two forms, first across space, second across time. Across space we have interdependence in the form of synergy (or equivalently, complementarity or superadditivity). Putting together the components of a complex adaptive system results in quantitative changes (the whole is somehow greater than the sum of the individual parts) and qualitative changes (the whole is different from the individual parts (as water differs from its components hydrogen and oxygen). Across time, complex adaptive systems contain feedback effects, one part of the system interacts with another the past affecting the future and the future the past.

Figure 8.2 presents the global economy emerged as an interacting network, a CAS with finance technology and global demand interacting as a positive feedback system capable of producing upswings and downswings or as Schumpeter (1939) described them, as Kondratieff Waves, alternating cycles of prosperity and depression triggered by technological and other outer dynamic shocks.

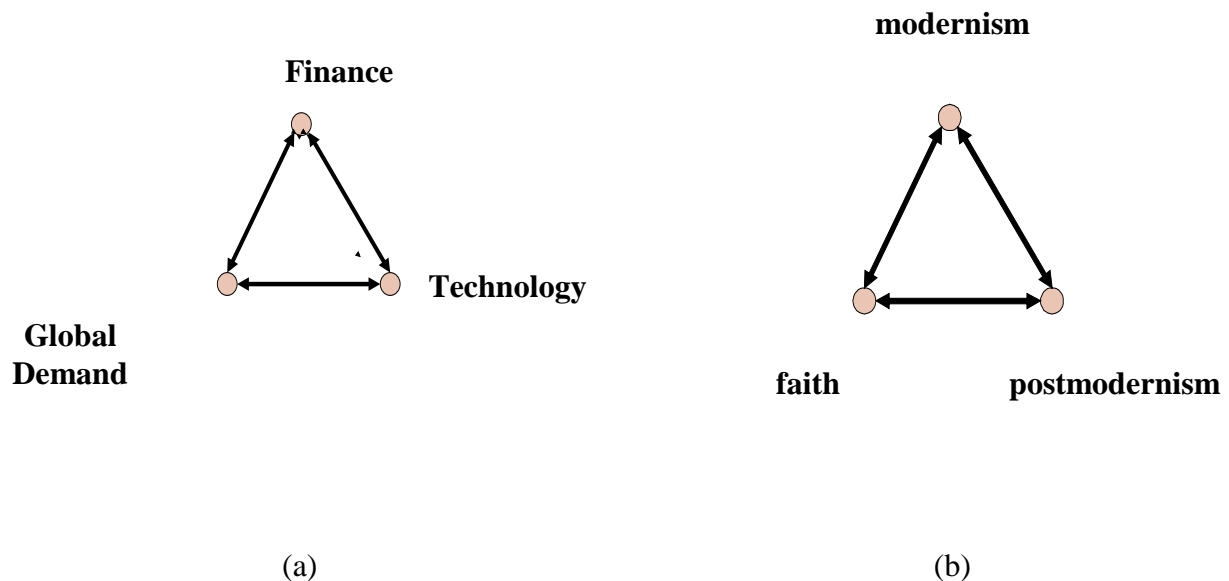


Figure 8.2. Globalization (a) as positive feedback and (b) as potentially chaotic

Adaptation: A second aspect of complex adaptive systems is also illustrated by the globalization example: agents or decision makers adapt. New financial instruments are created in response to the need to fund technology, technology adapts in response to competitive pressures, from which emerges the need to find new markets and cheaper resources in global capitalism.

Emergence: The third defining aspect CAS is emergence. New phenomena emerge; in the globalization example new technologies, new financial instruments, new markets. The world becomes quantitatively and qualitatively different. Emergence replaces laws of cause and effect, and under complexity possibilities of precise prediction and detailed control are weakened. What happens now and in the future is determined by how the past unfolds and we have an unending dependence of the present and future on the past. Surprise becomes almost the rule.

Ambiguity: The fourth aspect of CAS, ambiguity, shows up in a number of ways. Primarily this paper focuses on ambiguity in the sense that many different grammars rule at any one time: exemplified by the coexistence of the grammar associated with PRP and the quite different grammar of the poetic conceit in Empson's Legal Fiction. Another important source of ambiguity arises out of the many different types of

behaviour that are possible in CAS; equilibrium and disequilibrium, cyclical or point attractors, randomness and chaos are all possible. Furthermore CAS are characterized by diversity of pattern; the emergence of niches and segments that are exceptions and challenges to mainstream trends and most markedly, the absence of a global super competitor; characteristics that we see in figure 8.2(b).

Conflicting Grammars in the Global Economy

Figure 8.2(b) presents a different CAS perspective of the global economy than 2(a): again it is illustrated as a simple 3 component network. Using Ernest Gellner's classification (1992), the global economy can be seen as an interaction of three conceptual frameworks; modernism, postmodernism and fundamentalism. Modernism in Gellner, as in Habermas (1985, 2001) is identified with the renaissance project, the belief in progress based on scientific and technological achievement, a Popperian process of conjecture and refutation (Popper, 1963), that systematically hones down scientific hypotheses about the world until essential truths are discovered. Postmodernism, Gellner conflates with the kind of relativism that he sees as permitting almost any interpretation whatsoever; a kind of anything goes approach. Faith, he conflates with fundamentalism, according to which eternal truths are to be found in scriptures of one kind or another.

The real issue is that we have three alternative organizational grammars, an example of what Wittgenstein called the diversity principle of grammar (Wittgenstein 1976, 1987; Forster, 2004). Each serves a purpose. Part of the purpose of the modernist discourse is to construct a grammar that enables the laws of nature to be harnessed by technology into work; first replacing manual work, then increasingly cognitive work previously performed by human beings. Postmodernism recognizes that alternative organizational grammars exist. Faith, which Gellner conflates wrongly with fundamentalism, has a number of possible bases, including; (1) *knowledge by presence* (Yazdi, 1992) in which there is no separation between the observer and the observed; they are part of the same unity; (2) belief that truths are to be found in the scriptures of one kind or another or for that matter in art or poetry. Gellner interprets the ideas represented in figure 8.2(b) as contradictory. They represent three alternative grammars and sources of ambiguity since in fact that all three hold (even in the individual mind) and govern perception of the world and their interaction is a potential source of chaos, particularly if the relatively simple 3 component networks in Figures 8.2(a) and (b) are connected in the larger network pictured in Figure 8.3.

A Meta Model of Organizational Evolution

Briefly the elements of a meta model of organizational evolution can be explained an interaction between four (CAS) in Figure 8.1; outer dynamics, inner dynamics, payoffs and organizational grammar. Each of the categories can be considered as a network of interacting elements or nodes, as in figure 8.3.

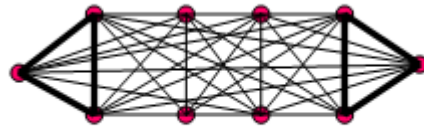


Figure 8.3: a complex adaptive system (CAS) as a network

Outer dynamics: Outer dynamics contain factors more or less outside an organizations control: they effect organization but are more or less unaffected by the organization.

Inner dynamics: Inner dynamics sometimes described as *core capabilities*, *core competencies* or *dynamic capabilities*, (Dosi et.al. 2000; Penrose, 1959; Hamel and Prahalad, 1989) describe the ability of organizations to adapt to outer dynamics. Inner dynamics are made up of an organization's (a) tangible and intangible assets.

Payoffs: Payoffs are the outcomes produced by organizations for their stakeholders, who include as well as shareholders, customers, staff, the community and according to Lovelock (2006) the entire ecology.

Organizational grammar: Organizational grammar describes the rules, laws, treaties, agreements, culture, traditions and conventions that govern the other three components of the meta model. Organizational grammar originates partly from the outside of organizations (determining outer dynamics) and partly inside organizations (inner dynamics). Organizational grammar determines which payoffs the organization focuses on and which stakeholders are considered most important. Most important organizational grammar describes the mind sets of the people who formulate the rules, who make decisions and adapt them afterwards. The way people approach problems is partly habitual (conditioned by experience).

As a category in itself, organizational grammar has its own morphology consisting of nodes (formal/informal, social/personal, implicit/explicit rules) and a connecting syntax that binds them. It determines which elements or nodes (morphology) are considered significant in the other three CAS and their connectivity (syntax).

Global Capitalism in the Meta Model

The primary outer dynamics of global capitalism as described in Figure 8.2(a) are macro economic pressures and technological change. Macro economic pressures induced the USA under the Nixon administration to abandon the system of fixed exchange rates that had ruled since the end of the Second World War, altering the grammar of international capitalism in favor of market determined rates. Technological change in the Schumpeterian tradition, transformed the competitive landscape. Inner dynamics are represented by the responses of firms and organizations to the change in outer dynamics; searching for new and increased sources of finance, new markets, cheaper materials and lower cost methods of production. Payoffs from globalized capital are lionized in terms of accelerated economic growth and wealth worldwide and the emergence of the new economy in which, unlike the picture of decades previous to the 1990's, rapid growth became consistent with low inflation.

PROPERTY RIGHTS IN ECONOMIC, SOCIAL AND POETIC LIFE

Organizational grammar ranges over a number of spectrums, formal/informal, internal external, and individual/social and can, following Umberto Eco (1989), be open or closed in the extent to which it determines outcomes and interpretations. In this section, the grammar of PRP is contrasted with that of the poem Legal Fictions. Two traditions of PRP are outlined; the Schumpeterian and what I term weak form PRP. The terminology is quite loose and the two traditions are not entirely distinct. Thinking about business incorporates elements of both, with the qualification that the current discourse of business and management texts is less likely to emphasise Schumpeterian instability in a capitalist system. PRP discussions, illustrated in table 1, focus on the characteristics of interdependence and adaptation whereas ambiguity is an essential element of poetry. Strong form PRP, discussed in the next section, has a much tighter grammar than either the Schumpeterian or the weaker form and underlies the grammar of globalisation.

The Schumpeterian version is essentially concerned with growth and instability in capitalism in contrast to PRP versions that are concerned primarily with efficiency. Technology is emphasised in the Schumpeterian tradition as an outer dynamic. PRP puts more emphasis upon the importance of the consumer choice. In both, competitive dynamics, together with the two fundamental assumptions of weak form PRP, outlined above (A1, the existence of markets and A2 individually rational behaviour) underlie the connectivity (syntax) of capitalism. In the Schumpeterian version, outer dynamics are the dominant. PRP weak and strong, gives more credence to the ability of capitalist firms to adapt, stressing notions of core and dynamic capabilities and generally the possibility of creating self adaptive inner dynamics, based on certain aspects of grammar, especially routines, architectures and corporate culture.

Property Rights in Schumpeter

In the dynamics of Schumpeter, the two distinguishing features are private property ownership and the existence a debt market enabling savings to be channelled into investment. Private ownership furnishes incentives to accumulate wealth and accumulation is the result of technological change by an innovating class of entrepreneurs (1947, 1951). The drive to innovation and accumulation together with competition are the outer dynamics of capitalism. Inner dynamics are reflected in the organization's positioning with respect to demand and resources and the variability and adaptability of its asset base. Processes are Darwinian: adaptation to outer dynamics is the result of random variation within inner dynamics; access to valuable assets and entrepreneurial management. Grammar is reflected in the selection processes that are described in Figure 8.4. In fact the Figure can be seen as summarizing much of the content of a modern text in corporate strategy. Firms seek competitive advantage, a concept with a Schumpeterian heritage. Other firms copy their activities, rivalry sets in and competitive advantage and survival are threatened. Entry barriers, especially advantages of large scale production can delay the forces of competition only temporarily and the organization can only survive in the long term through innovation. Those who innovate successfully survive and achieve competitive advantage, but are exposed to the same competitive processes again and again. Those who fail to innovate, sooner or later are selected out, eliminated and their resources are freed up for a more productive use.

Hence we have the restless creative destruction of capitalism. In modern terminology Schumpeter saw capitalism itself as a complex adaptive system, but the capabilities of adaptation at the organizational level he saw as limited by the capacity to innovate. Eventually Schumpeter saw capitalism as collapsing in on itself largely as a result of intellectuals' disillusion with the system. Underlying Schumpeter's analysis was (i) a theory of growth dependent on innovation and entrepreneurship and (ii) a theory of instability, resulting from bunching of technological change which gave rise to long waves of prosperity and depression. Payoffs in the Schumpeterian system take a monetary form of accumulated wealth and profit and a stream of new products. As each wave became exhausted the rate accumulation of wealth and profit and therefore consumption tended to fall, only to be rejuvenated at some later date by a fresh bout of technological change and innovation.

Property rights in weak form PRP

This version of property rights is concerned with the static properties of an economic and social system: in Lyotard's terms concerned with *performativity* (Lyotard, 1984). Although it is not often recognized, the approach of mainstream economics has always been evolutionary. In modern terminology we could describe the various neoclassical approaches as versions of CAS. However the evolutionary properties of capitalism have been disguised by the assumption that markets are efficient and clear rapidly (demand and supply close up rapidly in response to price signals) so things are basically in equilibrium. Following Alfred Marshall, conventional economics has followed a comparative static approach according to which shifts in outer dynamics (income, taste, technological change, government policy and so on) result in adjustments of demand and supply the inner dynamics. Payoffs are basically monetary; prices, wages, and profits: if they accrue to individuals through with private

property rights then an incentive exists to put resources to their highest valued use. The incentive mechanism provided by PRP provides the grammar of the system.

Both weak and strong form PRP draw on Ricardian rent theory. In Ricardo (1817), rent is a surplus accruing to scarce fertile land. The most fertile land earns the most rent and a gradation of rental values exists corresponding to gradations of fertility down to marginal land which just covers costs of production. Ricardian rent has been generalised to a return to any scarce resource, or more precisely the firm's ability to link resources and create the quality of self adaptation out of interdependence, emergent properties that enable the firm to sustain its competitive advantage. The notion of capability replaces fertility in a set of theories that are generally classified under the heading of resource based theories, but which actually form a subset of a more general theory, that of CAS. In turn, theories stressing the importance of capabilities and self adaptation, can be broken down into three groups that overlap: (1) those that stress the importance of the ownership of scarce assets tangible or intangible: natural resources, proprietary resources from patents, or special relationships with customers (governments or private), brands and reputation; (2) those emphasising knowledge and (3) those emphasising the ability of a firm to learn

All three fit into the general class of CAS, in which linkages (synergies or complementarities) between assets tangible or intangible, physical or human give the capacity to adapt inner dynamics to ever changing outer dynamics.

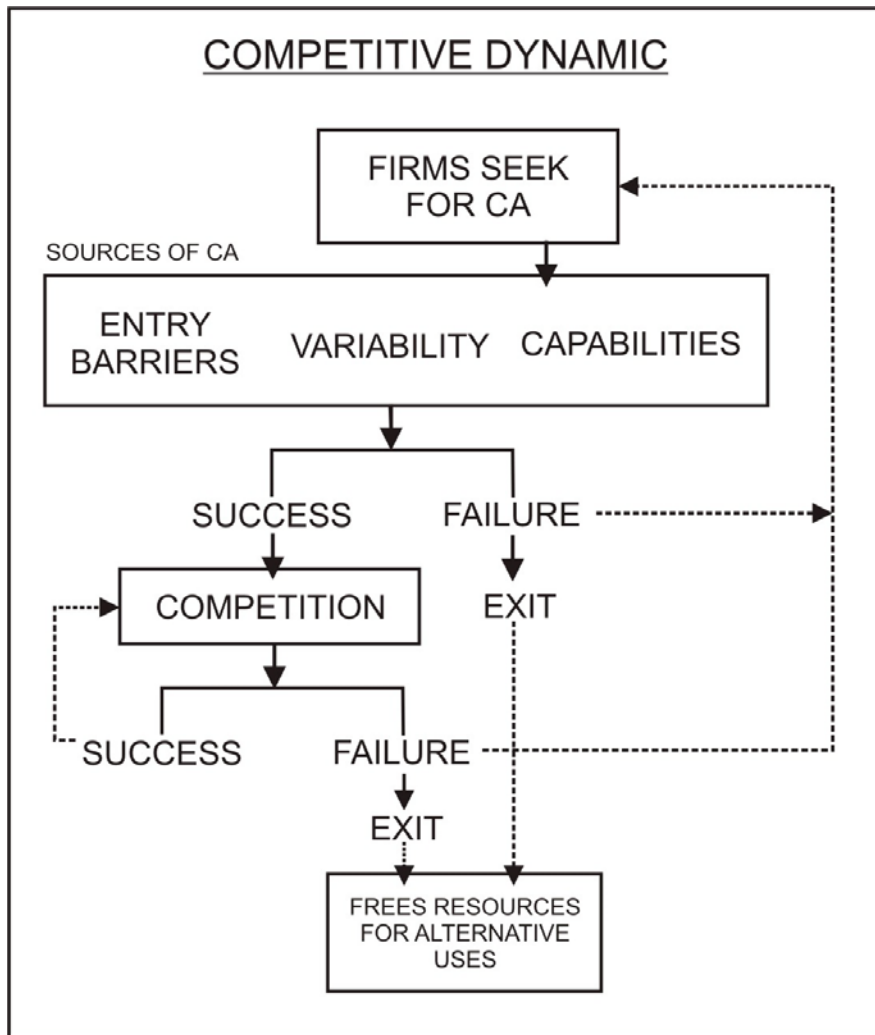


Figure 8.4: Competitive dynamics in PRP

EMPSON'S POEM

Legal Fiction

Law makes long spokes of short stakes of men.
 Your well fenced out real estate of mind
 No high flat of the nomad citizen
 Looks over, or train leaves behind.

Your rights extend under and above your claim
 Without bound; you own land in Heaven and Hell;
 Your part is of earth's surface and mass the same,
 Of all cosmos' volume, and all stars as well.

Your rights reach down where all owners meet, in Hell's
 Pointed exclusive conclave, at earth's centre
 (Your spun farm's root still on that axis dwells);
 And up, through galaxies, a growing sector.

You are nomad yet; the lighthouse beam you own
 Flashes, like Lucifer, through the firmament.
 Earth's axis varies; your dark central cone
 Wavers, a candle's shadow, at the end.

In the poem, the property rights conceit is pushed to absurdity. The image is of the earth's surface as the face of a cone and private property ownership being defined not only at the surface but stretching downward to the ("still on that axis..") the centre of the earth ("*Hells/Pointed exclusive conclave ..*") and upwards infinitely in an expanding cone ("*through galaxies an, a growing sector*") into the stars and the heavens. Inner and outer dynamics merge in the poem.

Property cannot be overlooked ("*no high flat....Looks over,*" see a in the figure 4) and in the shadow of an expanding cone it cannot be left behind (by "*no train....,*" see b in Figure 8.5). And as in the global economy the citizen is a "*nomad*". The text is open, stretching over time and space. In the conceit, private property rights range over the conscious, rational world ("*well fenced out real [e]tate of mind..*"), to the dreamlike Dantesque underworld of the unconscious ("*where all owners meet*") in Hell or Paradise at the end of time. In the lighthouse image the cone is first transformed into a lighthouse beam, wavering at the still point of the spinning cone at earth's core. Ironically the image puts the earth and the temporary owner, first at the centre of the universe), who then fade into shadow candle light (echoing Macbeth's "*out out brief candle, life is but a walking shadow, a poor player that struts and frets his hour upon the stage and then is heard no more*") that is extinguished along with the legal fiction of property ownership "*at the end*": the ultimate payoff in expressed at the same time in the currency of "*Heaven and Hell*" and of light ("*the lighthouse beam you own*").

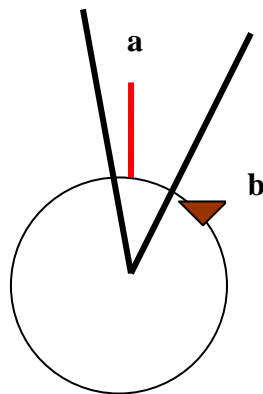


Figure 8.4: The geometry of Legal Fictions

The poem is playful. Empson notes that General Pit-Rivers, a great archaeologist, with a large estate in Wilshire, in the early part of the twentieth century, shot down a plane, with an elephant gun, killing the pilot, but was acquitted of murder at Winchester Assizes on the grounds it was trespassing. So the law had to be changed.

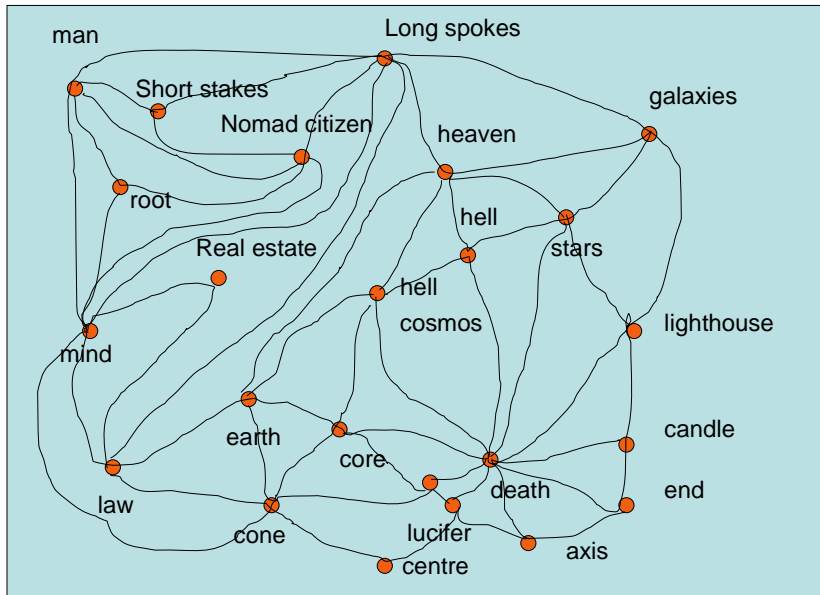


Figure 8.5: Legal Fictions as a network

The organizational grammar in the poem is loose and open. In that it is sensitively dependent upon reader responses, it is chaotic. In Figure 8.5 the morphology (nodes) are linked through metaphor and the map of connectivity is to a great extent arbitrary. Figure 5 presents only one of many interpretative maps; and even to assets as it does, that this is the territory, is to invite contradiction.

STRONG FORM PRP

The current discourse of modern globalisation is based upon a strong form of PRP. According to this, private property ownership, free and efficient markets globally in labour, capital, goods and finance results in an optimal situation with respect (1) to the allocation of resources for income and wealth creation and (2) to unending growth of income and wealth. The narrative is as follows. Differences in wealth and income internationally are eliminated by free movement of physical capital (FDI) to areas of relatively low wages and resource prices. This process is augmented under universal free markets by free movement of labour and other resources. Movements in both directions reduce wages and prices where they are relatively high and raise them where they are relatively low. Similarly free movement of financial capital enables investment funds to be channeled to those areas where rates of return on investment are highest: potential wealth is maximized globally.

Even leaving aside the potential for chaos in CAS, illustrated in figure 8.2b, this narrative of globalisation has many gaps even within its own discourse; issues of fairness, distribution, future generations, ecological issues (entropy, social costs, pollution, emissions), principal agent problems, exploitation of power.

Efficient Markets

An assumption in management texts, especially in finance (for example Brealey and Myers, 2007), is that stock markets give accurate information (immediately in strong form efficiency, or in the medium to longer term in weak form efficiency), about the capabilities of organizations and their fitness to adapt. Information efficiency is carried over to prices on all markets; wages and other resource prices reflect (marginal) productivity, product prices reflect opportunity costs, stock prices follow a random walk, dictated by outer dynamics and the cost of capital reflects its opportunity cost. The efficiency or performativity properties of PRP are contingent on market efficiency. The legitimacy of the assumption is deeply questionable. It constitutes a legal fiction in itself (Soros 2008). Keynes (1936) saw stockmarkets as casinos and as Mandelbrot (2004) points out movements in stock prices do not look like random walks.

Fairness Inequality and Strong PRP

In the argument for private property is based on A3, an efficient or optimal allocation of resources is one where it is impossible to make one person better off without making another worse off in material terms (Pareto optimality). Efficiency is defined in terms of the need to get more for less, *performativity*. The question as to whether the allocation of property rights was just or not, or whether some are favored above others is by A4 a separate ethical issue by A4 best decided by individuals according to A5. That some individuals may be unable to bid for the use of a resource simply through lack of funds and hence are disadvantaged itself is considered a question of partly of chance and choice (for example, Friedman, 1953). Underlying the entire argument is A5, that individuals exercising their private property rights on the market, should be the ultimate judges, free to exploit resources; to conserve them or not.

Future generations and Strong PRP

Will one generation provide for another? The individual is the best judge, A5. With respect to future generations, consider any given time horizon. Divide the future time horizons into discrete periods. It is elementary that optimisation over the entire time horizon requires optimisation within the discrete periods. If income and wealth generation is suboptimal in period one with respect to period 2, because, for example, there is too much consumption in period 1 relative to saving and investment for period 2, according to A1 and A2, investment will be increased (and consumption reduced) in period 1 and investment will be reduced in period 2 (and consumption increased). A6 permits this to happen. So provided the propositions hold, the situation is optimal in every period.

The problem faced by current generations is to maximise present value, A1. This means discounting future income streams. The higher the discount rate the less we value the future. But discount rates reflect the evaluation of risks and the time preferences of individual decision makers,. They may turn out to be wrong, to miscalculate. But does an agency exist (governmental, intergovernmental) capable of

making better guesses than current private property owner. The answer, according to A5, is No! Private property and markets are the best of all possible options.

Distribution and Strong PRP

Issues of distribution and efficiency are separated by A4 and efficiency, in the sense of performativity, is the priority. The grammar of PRP appears to be neutral with respect to fairness. The grammar of PRP favours the distribution that results from market forces. A3 as a definition of efficiency simply requires that it is impossible to make one individual better off without making another worse off: there are no gains to be made from trade using A1 and A2. There may be infinitely many such distributions, but given the universality of markets differences and wages and prices for a given productivity of labour and resources will tend to be eliminated by free movements of labour, goods and financial and physical capital.

Issues of efficiency and distribution are separated according to PRP (A4). Efficiency results from the existence of private property rights and markets. Distribution of income and wealth is determined by the productivity of resources which is reflected in their market prices. Earnings of different kinds of labour and capital are assumed to be in strict accordance with their productivity. If this is not the case, and earnings are determined by the power associated with ownership and the asymmetry of ownership, between the rich and the poor, then the connection between PRP and efficiency (even given the restricted definition of efficiency) is broken: decisions about the allocation of resources are determined by power and ownership rather than considerations of productivity and opportunity cost. The economic game is one of winners and losers.

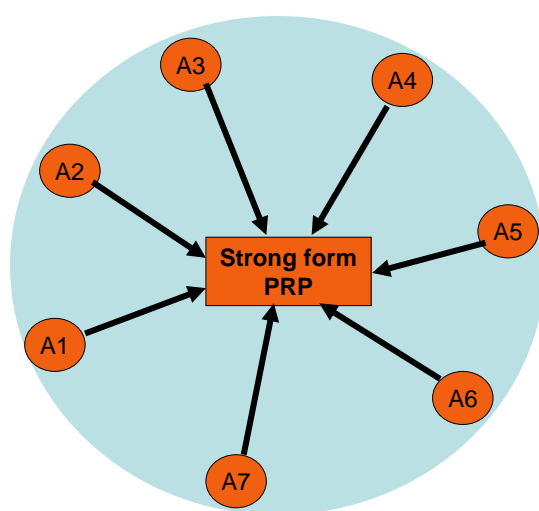


Figure 8.6: the grammar of PRP as a legal fiction

Entropy and Strong PRP

Essentially transactions with the environment involve not only and not even primarily exchanges of private property rights between individuals as envisaged by A2, but transactions with nature in which low entropy is withdrawn from nature in exchange for high entropy (pollution and waste). A5 rules this consideration out: responsibility rests with the individual whose interests (maximisation of utility or profit) are paramount. Markets for environmental resources can be arranged, for example, by transferable licenses: a proposal being considered internationally as a solution to environmental issues. In such a system, as environmental resources become increasingly scarce, so licenses become increasingly valuable providing an incentive under A1 and A2 to conserve the license and hence the environment to which it relates. Perhaps national governments may license private agencies market such licenses. The grammar of PRP implies that the environment and nature exists purely in the sense of resources to be exploited.

The Coase Theorem and Strong PRP

Private property rights envisage exclusive rights over the use of a resource. And exclusivity is difficult to achieve in an interdependent world. Many actions by one set of individuals affect others; the exercise of private property rights often treats the private property of others as if it were free when it is not, thus failing to take into account true values. This is the essence of environmental problems.

To deal with such issues within PRP framework Ronald Coase (1960) extended the grammar of PRP in the following way. Pollution problems are seen in terms of exchanges of property rights between individuals. The important thing for Coase was the creation of property rights, not their apportionment to individuals (A5). If individual 1's activity harms individual 2, and individual 1 is acting rationally (A2) then we can just as well say curtailing individual 1's activity harms individual 1. Wandering cattle, sparks from steam engines, noise, carbon emissions, harms others arable farmers, households near noisy factories or airports, and the community generally: but preventing cattle from using open ranges, curbing railroads, or carbon emissions, or noise polluters, also creates harm to cattle farmers, railroads and factory owners, and consumers of goods and services whose production needs carbon. The real question to be asked according to Coase is this: *Do the benefits from pollution exceed the costs of curbing it?* If they do, then provided A2 holds then they will be curbed. If they don't then they won't. And individuals are the best judges of this (A5). The solution to the problem lies in the existence of private property rights.

Coase pointed to the incentives to create markets if the benefits of so doing exceed the costs. The incentive is contingent on the existence of private property rights: all that matters is that someone possesses them. So whether the property rights are held by the polluter or the pollutee is immaterial from an efficiency point of view, and according to strong PRP it is efficiency that matters as long as private property rights are defined, the incentive exists to set up markets to deal with the problem. Property rights can be traded and opportunity costs considered. The theorem can be extended almost indefinitely.

Alternatives strategies will always be considered provided private property rights exist; alternative fuels can be used, fuel efficient production methods can be invented and there is an incentive to take up these alternatives, provided they can be adopted more cheaply than (the cost of) the damage they are designed to prevent. In other words, given PRP individuals have the incentive to provide the cheapest solutions. All solutions may involve as part of their cost, transactions costs (including information, policing and implementation costs associated with alternative solutions). If they are not adopted then this implies that the costs of adopting them exceeds the benefits of doing so. If the pollution (externality) persists then under PRP this is because the costs of eliminating it exceeds the damage it does. In any case the PRP provides an efficient solution.

Power and Strong PRP

Principal agent problems are disposed of in the same way. Managers (agents) may have an incentive not to put the resources they control to their highest valued uses from the owners, or stockholders (principals) point of view. The Enron problem illustrated this issue: managers may carry out policies that maximise their own utility rather than that of the owners, for example by directing companies into risky situations and/or providing false information. Again the Coase theorem as set out in the previous section can be applied: if the benefits of changing such a situation exceed the costs of so doing then it can be argued that under private property rights there is an incentive to change things: and the fact that things remain as they are is a sign that the costs exceed benefits and hence the situation though imperfect is the best that can realistically be achieved: an argument reminiscent of Doctor Pangloss.

Monetisation

As noted in an earlier section, payoffs can take many forms and strictly A2 requires maximisation of utility. Utility is a common denominator reducing different payoffs to a commensurable quantity. Unfortunately what people exchange on markets is not utility (or payoffs) but money in exchange for goods, services or payoffs. Hence to assume that markets are efficient (A1) we must assume that everything can be expressed in money; this is what is meant by monetisation. Incentives systems of all kinds referred to in previous paragraphs and thus the efficiency aspects of strong PRP, depends on this assumption: what is maximised, what is measured by performativity, is that which can be measured and expressed in money terms. Monetisation can be handled through the Coase theorem: things will be monetised, provided the expected benefits exceed the costs of doing so. Then PRP becomes a conceit, a different conceit than the Empson poem, but a conceit none the less: an argument pushed to absurdity.

Strong PRP Creates Long Spokes from the Short Stakes of Man

We have an imposing grammar: a closed text illustrated in figure 8.6. If markets exist, things are optimal. If markets don't exist, then provided the freedom to create private property rights exist, things are optimal too, since the fact that they don't exist means that the (transactions) costs of setting them up must exceed the benefits of so doing. In the case of public goods, provided governments have the obligation to create private property rights, intellectual property rights, patents for example then the (sunk) costs

associated with investments can be recouped. The issue is one of the existence of private property rights not their distribution to one individual or another. In cases where private to private property rights don't exist then A1 ensures given the obligation of the government to create them and offer them on the market by A2 then provided the anticipated benefits exceed the costs they will be bought and sold: their non existence implies that the costs of creating and enforcing them (transactions costs), exceed the anticipated benefits: long spokes, in Empson's sense indeed

CONCLUDING REMARKS

The paper can be summarized as follows. Much of social, economic and business theory and policy rests upon a legal fiction, the property rights paradigm. Three versions of the paradigm are outlined. They are applied unconsciously as if they were synthetic Kantian a priori's: necessarily true. All are in their own way conceits. They express alternative organizational grammars, which are to an extent arbitrary. If the assumptions particularly those associated with strong PRP, are exposed, they can be seen as conceits, legal fictions, "facetious euphemism(s) for an untruth", in the sense that they represent one of many alternative versions or maps of reality. The structure of the legal fiction associated with strong PRP is illustrated in Figure 8.7. The poem by William Empson develops a conceit that explicitly pushes the idea of property rights to absurdity; exposing its arbitrariness and the extent to which it is has emerged, as a way of coming to terms with the change and impermanence. The role of critical theory as interpreted in this chapter is to open up new thinking by raising legal fiction associated with PRP to consciousness.

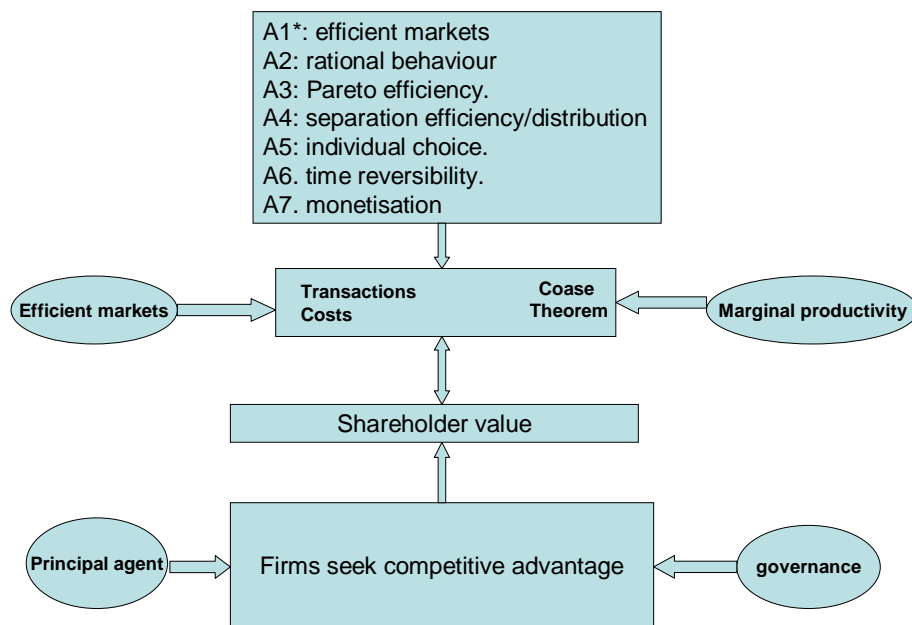


Figure 8.7: PRP as a legal fiction

Property rights are central to the definition and interpretation of globalisation. Four legal fictions, with different degrees of openness have been discussed. The most open is the poem Legal Fiction itself, with immense scope for interpretation and

categorization of its elements in terms of the meta model as a set of discrete categories would shackle its interpretation unacceptably. Of the legal fiction, property rights appear in the literature, the Schumpeterian version is the most open and complex. According to the model capitalism is driven mostly by outer dynamics of technology and competition, and essentially the grammar of this version of property rights consists of A1 and A2, the existence of markets and rational behaviour.

The Schumpeterian version of property rights is distinguished from weak and strong form PRP. Weak form PRP allows for the self adaptation of organizations within the capitalism (inner dynamics may be self adaptive), rather than as in the Schumpeterian version, permitting self adaptation at the level of the system as a whole. The focus of weak and strong form PRP is on efficiency, rather than upon growth and instability emphasised by Schumpeter.

Strong form PRP underlies the current interpretation of globalisation, as it does the discourse of management, both in business itself and in business schools. Unconsciously it imposes a tight organizational grammar upon business policy and the analysis.

The paper relates ideas from several disciplines using concepts of organizational grammar, consciousness, complex adaptive systems and openness. The degree of openness is related directly to the degree of complexity: the greater the complexity, the greater the openness and the greater the degree of connectivity in the organizational grammar. In terms of the meta model or framework outlined in the paper, openness is associated with a relatively loose organizational grammar with connectivity between categories of the model inner dynamics outer dynamics and payoffs being as marked as connectivity within them. Organizational grammar imposes a pattern. It determines the categories that are considered, accepting some and neglecting others. The grammar of PRP focuses attention on efficiency, extracting more for less, materialism, and consumerism. As such it is a tight grammar founded on restrictive assumptions about the world.

A loose grammar permits multiple interpretations, ambiguity, high degrees of information and surprise: the meaning it imposes is emergent, contingent upon the response, the essential outer dynamic being the reader himself or herself. It invites engagement with the *Other*. Many different grammars are capable of organizing the same data and it is tempting to say that there is no data unless there is organizational grammar. It acts like a map that determines an entire landscape in a territory that consists of many potential landscapes: rather than being a map of a landscape, it is a map that is the landscape. In the sense that alternative organizational grammars exist, and are unrecognized, a particular grammar veils the territory, restricts interpretations and traps individuals and policy makers into familiar responses. Consciousness is defined in the paper as awareness of the organizational grammar.

Change on all scales, is always possible and on balance the global economy, appears to be shifting towards the former, a point of criticality, and new ways of thinking are required particularly in business and in business and management education.

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