

PREFACE BY THE SERIES EDITOR

The distinction between economics and politics is one of the structuring principles of much prevailing institutional thinking – especially “neo-liberal” thought – about the role of law in furthering social development at the international and domestic levels. On the one hand, there are the “natural” legal forms of the economic market – basically encapsulating property, contract and private rights. On the other hand, there are the “artificial” interventions produced by decision-making at the level of the State that reflect different equitable and distributional priorities. Economics is neutral and comes first, politics is partial, and secondary. In this view, the post-1989 transition in Eastern and Central Europe is about moving from an excessively State-centred, and thus “politicised” form of economic regulation towards the establishment of the structures of the market as the natural and non-political basis that provides the economic resources on the basis of which the State may then carry out structural adjustments so as to effect its political priorities.

In this study, Kerry Rittich effectively demonstrates that this is a profoundly ideological view of the relationship of economics, politics and law. One of the principal arguments here is that there is no neutral realm of economic efficiency, for instance, in the form of a set of best practices, that could be implemented by a determined set of legal rules. Using both Realist and Post-Realist legal critiques, the author demonstrates that every notion of the market, and every assessment of its efficiency, is always already infected by

political choices. There is no predetermined set of legal arrangements or institutions that would correspond to an original or authentic notion of the economic market. Every market is a historical creation and reflects political priorities and distributional choices. The ways in which property rights are grounded and delimited, contracts are enforced or balance is struck between conflicting private rights reflect broad equitable principles and developmental priorities. Even non-intervention by the State is intervention in favour of the stronger actors and there is nothing in the intensity or content of the normative framework supporting either the latter or the former that would suggest one to be more natural (i.e. non-political) than the other. But moreover, any legal framework that purports merely to regulate economic activity will bear wide-ranging social consequences outside the market itself, by empowering and disempowering particular social actors and realising some priorities at the cost of other priorities.

In this study, the focus is on the effects of economic policies on the position of women in Eastern and Central European States in the course of the years of a “transition”, often characterised by participant institutions, such as the World Bank, as a movement from the artificial and politically loaded interventionism by the State towards the natural conditions of the market. The points made in this work by Dr Rittich are extremely important and timely: neo-liberal reforms have been expanding in the non-Western world as well. When the World Bank or other international institutions engage in supporting “best practices” in Africa or the creation of a “level playing field” in Asian economies, they are making choices and setting priorities that may be accepted or contested but which cannot be reduced to the application of economic or legal techniques.

It is a particular merit of the present study that the author has combined her analysis of the de facto distributive consequences of the transition “From Plan to Market” with the tools of critical legal analysis. For if the boundaries between economics, politics and law are not fixed, it follows that the reach of legal study is not limited to the interpretation of normative frameworks but may extend to elucidating the way particular legal regimes bring about particular social and distributive consequences. This is a highly welcome extension of the orientations of international law as well especially since the traditional boundary between “international” and “national” is vulnerable precisely to the kinds of critiques that this book makes of the economic and conceptual constructs. If

developments in domestic societies hinge upon policies carried out within international financial institutions, and those policies refer back to contestable assumptions about the force and meaning of legal institutions, then surely insisting on traditional textbook divisions of legal disciplines is part of the very problem that it often seems so difficult to get a grasp of why it is that orthodox policies seem to have adverse consequences.

This book produces impressive evidence for the claim that the transition “from plan to market” in the states of Central and Eastern Europe affected the position of women in significantly adverse ways. As a result of the privatization and restructuring of enterprises, large numbers of women became unemployed and the wage gap between men and women widened. The reduction of child-care and other social benefits and services that were previously integrated into the production process resulted in the forced withdrawal of women from the labour market, accompanied sometimes with massive impoverishment. Overall, restructuring in the workplace as well as in the economy at large (reduction of subsidies, privatization of education and health etc.) produced a long-term gender disadvantage. Particularly important has been the externalisation of the costs of women’s reproductive labour to private economies: child care elder care, food preparation and other social tasks are allocated to women on an unpaid basis. As the present study shows, such results would often be unacceptable in the older, developed mixed economies. They are thus not a natural consequence of the transition but a result of the preferences embedded in the particular neo-liberal theory that has been predominant in the process.

Applying critical insights of post-Realist legal analysis, this book is a brilliant reminder that the fluidity and open-endedness of legal institutions is not a defect or a problem to overcome. It is, rather, an indissociable aspect of the possibility of democratic social transformation – a reminder that in economics, too, everything is open for political choice and critique and that legal analysis is a good ground for preparing both. It is also a welcome invitation for lawyers to leave the prison-house of conceptualism and grasp the link between legal analysis and political commitment. Consciousness of this link has always been at the heart of international law’s emancipatory potential.

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