



## **New institutional sociology and the endogeneity of law**

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## **New Institutional Sociology and the Endogeneity of Law**

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A significant body of scholars in the sociology/organisational theory domain has contributed to the theoretical debate on institutional theory (see Powell and DiMaggio (1991) for important contributions by Powell, DiMaggio, Meyer and Rowan, Scott, and Zucker)<sup>i</sup>. The move towards new institutional sociology, classified as an interpretive perspective (Covaleski, Dirsmith et al., 1996), or a normative cultural perspective that ‘stresses the impact of cultural rules, models, and mythologies on organizational structures and practices’ (Edelman and Suchman, 1997: p.493), represents a changing emphasis in perspective from efficiency (concerning technical environments) to legitimacy (concerning institutional environments). A key objective of the contributors to the new institutional sociology (NIS) perspective is to ‘develop robust explanations of the ways in which institutions incorporate historical experiences into their rules and organizing logics’ (DiMaggio and Powell, 1991a: p.33).

There is no agreed definition of institutions in the literature. Scott (2001) provides a comprehensive, ‘omnibus conception’ of institutions as follows:

‘Institutions are social structures....composed of cultural-cognitive, normative, and regulative elements, that together with associated activities and resources, provide stability and meaning to social life. Institutions are transmitted by

various types of carriers, including symbolic systems, relational systems, routines, and artifacts...operate at multiple levels of jurisdiction' (p.48).

Institutions therefore, he explains, exhibit resistance to change and tend to be transmitted over time, to be maintained and reproduced (Zucker, 1991). An institutional perspective must also 'encompass associated behavior and material resources...rules norms and meanings arise in interaction, and they are preserved and modified by human behavior' (Scott, 2001: p.49).

Relatedly, Meyer and Rowan (1991) describe institutionalisation as involving 'the process by which social processes, obligations or actualities come to take on a rule like status in social thought and action' (p.42).

DiMaggio and Powell (1991a) state that 'taken-for-granted scripts, rules, and classifications are the stuff of which institutions are made' (p.15)<sup>ii</sup>. Subsequently, however Powell (1991), in attempting to refine and sharpen some arguments he earlier made with DiMaggio, recognised that 'we need an enhanced understanding of both the sources of heterogeneity in institutional environments and the processes that generate institutional change' (p.183). Powell (1991) outlined some key sources of heterogeneity which explains in part why despite similarities in the external environment facing organisations, and many isomorphic forces potentially at play, the practice and process differ. These include: different

resource environments, differences in industry structure and how organisations relate to the state, partial or fragmented governance, professional and occupational diversity. Also importantly, as recognised by Powell (1991) ‘not all forms of social change can be explained from an institutional point of view’ (p.200).

In the accounting literature, Dillard, Rigsby and Goodman (2004), advocates of the new institutional sociology perspective state that institutional theory is:

‘primarily concerned with an organization’s interaction with the institutional environment, the effects of social expectations on the organization, and the incorporation of these expectations as reflected in organizational practices and characteristics’ (p.508).

They believe it is ‘a way of thinking about formal organization structures and the nature of the historically grounded social processes through which these structures develop’ (p.508).

While some new institutional sociology based research focuses on how institutions undergo change over time, an equally valid pursuit is to establish what ‘institutions’ are in action in a given field, and to get the perspective of arguably powerful actors in that field, (in terms of creating and maintaining and changing institutions), as to how these institutions are then maintained.

Three common themes namely legitimacy, isomorphism and decoupling, permeate early new institutional sociology based research and these are outlined in turn.

### ***Legitimacy***

*Legitimacy* is a core concept within new institutional sociology. This concept is rooted in the idea that organisations need to be socially acceptable and credible in order to survive in their social environment (Scott, 2001). Suchman (1995) defines *legitimacy* as

‘a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions’ (p.574).

According to Scott (2001), legitimacy is ‘a symbolic value to be displayed in a manner such that it is visible to outsiders’ (p.59). The use of language is very important here, whereby terms such as ‘symbol’, ‘value’ and ‘display’ suggest that how an organisation or indeed an individual is perceived by various constituents within its/his/her extant environment is, (a) very important for survival, and, (b) does not necessarily reflect the reality. Carrathurs (1995) refers to the effective survival strategy of ‘achieving legitimacy in the eyes of the world,

state, powerful professions, or society at large' (p.317). Managing how an organisation or an individual is perceived by the complex set of external constituents, with many and sometimes conflicting views or 'competing sovereigns' (Scott, 2001: p.60) on what constitutes legitimate behaviour, is truly a challenging task. How this is accomplished, along with its importance and implications for practice and policy merits investigation.

Dillard et al. (2004) refer to the economic and political context of market capitalism which delivers the primary legitimising characteristic of economic efficiency. Importantly, Scott (2001) recognised the restricted conception posited by new institutional sociology theorists in the earlier days, himself included (Scott and Meyer, 1991), which viewed institutional processes as opposing efficiency concerns, whereas subsequent research sees institutional processes as 'shaping and interacting with interest-based efforts. Institutional structures do not frustrate but frame rational decision making'(p.135). Powell (1991) maintained 'institutional and competitive processes are not necessarily oppositional' (p.183). Covalleski et al. (1996) describe the general theme of the institutional perspective as: 'an organization's survival requires it to conform to social norms of acceptable behavior as much as to achieve levels of production efficiency'. Hopper and Major (2007) summarised this issue well:

'Leading NIS researchers now recognize that institutional and economic pressures are not mutually exclusive or oppositional, can confront

organizations simultaneously, and prevail on both public and private organizations' (p.63).

Covaleski et al. (1996) also refer to formal organisational structures and how structures that adhere to the norms and behaviour expectations in the extant environment effectively prevents the organisation from being questioned about its conduct. The need to establish procedural legitimacy may be greater among organisations whose processes have a high degree of arbitrariness, which makes them more vulnerable to attacks on their work arrangements and procedures (Scott, 1987). The procedures themselves, providing a form of scientific rationality are seen as primary legitimating characteristics which establish appropriateness and rationality:

'Organizations are driven to incorporate the practices and procedures defined by prevailing rationalized concepts of organizational work and institutionalized in society. Organizations that do so increase their legitimacy and their survival prospects, independent of the immediate efficacy of the acquired practices and procedures' (Meyer and Rowan, 1991: p.41)

### ***Institutional isomorphism***

Inextricably linked with legitimacy is the second theme within the NIS literature, namely *institutional isomorphism*, which constitutes the adaptation of institutional practice by an organisation, which ultimately ‘promotes the success and survival of organizations’ (Meyer and Rowan, 1991: p.49)<sup>iii</sup>. Covaleski and Dirsmith (1988) describe the effort within isomorphism as being ‘directed at building both an agreed-upon knowledge base and rational-appearing tools of practice’ (p.563). DiMaggio and Powell (1991b) contend that institutional isomorphism ‘is a useful tool for understanding the politics and ceremony that pervade much modern organizational life’ (p.66). They identify three classifications of isomorphism i.e. coercive, mimetic and normative. Scott’s (2001) typology refers instead to three ‘pillars of institutions’ which provide bases of legitimacy, namely, regulative systems, normative systems and cultural-cognitive systems. Scott’s three pillars clearly equate with DiMaggio and Powell’s classifications of isomorphism. There is also some degree of overlap with the three processes referred to by Meyer and Rowan (1991) that generate rationalised myths of organisational structure: the elaboration of complex relational networks, the degree of collective organisation of the environment and leadership efforts of local organisations.

While distinguishing between different types of isomorphism may be useful, such a distinction may not always be easily made and indeed these three forces of isomorphism are not necessarily mutually exclusive. For example, Edelman and Suchman (1997) state that ‘the literature increasingly suggests that multiple



isomorphic pressures may operate together in any particular historical instance' (p.497)<sup>iv</sup>. Each classification does offer potential in terms of understanding the external forces at play. A prominent source of *coercive isomorphism* comes from legislation, which contains rules, and sanctions. Due to the ambiguity of some laws, their existence alone, per se, does not constitute a source of organisational isomorphism and one may have to 'explore the complex ways in which organizations may mediate the impact of legal mandates and may construct the meaning of legal compliance' (Suchman and Edelman, 1996: p.941). Suchman and Edelman posit that institutional theory 'obscures the extent to which law is, in reality, obscure, fragmented and highly ambiguous' (p.929). As noted by Scott (2001), 'many laws are sufficiently controversial or ambiguous that they do not provide clear prescriptions for conduct' (p.54). This clearly calls into question Fligstein's (1991) conclusion that 'the state can actually set the rules of the game for any given organizational field...It can, therefore alter the environment more profoundly and systematically than other organizations' (p.314).

*Normative isomorphism* however is concerned with specifying how things should be done, 'stems primarily from professionalization' (DiMaggio and Powell, 1991b: p.70) and is thereby concerned with pursuing legitimate means to achieve objectives. They refer to the important mechanisms of 'filtering of personnel'<sup>v</sup>, 'occupational socialization'<sup>vi</sup>, and relatedly identify two important sources of normative isomorphism relating to professionalisation:

‘One is the resting of formal education and of legitimation in a cognitive base produced by university specialists; the second is the growth and elaboration of professional networks that span organizations and across which new models diffuse rapidly’ (p.71).

This classification is concerned with professional ethics and unveils for example the ‘rules specifying how the game is to be played, conceptions of fair business practices...how the specified actors are supposed to behave’ (Scott, 2001: p.55). Normative isomorphism assumes the provision of guidance on moral governance to achieve the legitimacy objective.

The *mimetic* sources of isomorphism differ from the other two as they revolve around ‘the shared conceptions that constitute the nature of social reality and the frames through which meaning is made’ (Scott, 2001: p.57), and are less tangible perhaps than the other two. Carrathurs (1995) posits that ‘[O]rganizational fads and fashion seem likely to spread through mimetic isomorphism’. Mimetic isomorphism recognises the influence of external cultural frameworks and is particularly present in uncertain environments: ‘It is a response to uncertainty’ (DiMaggio and Powell, 1991b: p.69). This modelling ‘may be diffused unintentionally, indirectly through employee transfer turnover, or explicitly by organizations such as consulting firms or industry trade associations’ (p.69).

Of potential significance in the context of interpreting ambiguous regulations, Carrathurs (1995) states: ‘There is reassurance if not actual safety in numbers, and in the absence of a compelling reason to strike out on their own, organizations do what others are doing’ (p.317). Specifically in relation to new ideas the concept of ‘diffusion of innovation’ comes into play and the perhaps the idea for example ‘that organizations imitate others whom they perceive to be successful or prestigious’ (Scott, 2001: p.162). Equally is it the case that ‘diffusion occurs only if new ideas are compellingly presented as more appropriate than existing practices’ (Greenwood, Suddaby and Hinings, 2002: p.60).

### ***Decoupling***

The third early theme within the NIS literature is *decoupling* ‘which is treated as a hallmark of institutional conformity’ (Scott, 2001: p.173). It refers to the situation in which the formal organisational structure or practice is separate and distinct from actual organisational practice i.e. the practice is not integrated into the organisation’s managerial and operational processes. The decoupling process

‘relies on both societal and organizational actors functioning in an atmosphere of confidence and good faith and not taking the institutionalized structures too seriously’ (Covaleski and Dirsmith, 1988: p.563).

According to Meyer and Rowan (1991), such formal structures constitute 'powerful myths' which are often in conflict with efficiency criteria. There may be therefore a formal and an informal structure with

'the former reflecting officially sanctioned offices and ways of conducting business, the latter, actual patterns of behavior and work routines. An uneasy tension exists between these structures.' (Scott, 2001: p.153).

Scott goes on to point out that such formal structures are 'ceremonial' and while they 'signal conformity', some organisations buffer internal units, allowing them to operate independent of these pressures. As posited by Meyer and Rowan (1991):

'to maintain ceremonial conformity, organizations that reflect institutional rules tend to buffer their formal structures from the uncertainties of technical activities by becoming loosely coupled building gaps between their formal structures and actual work activities.' (p.41)

Edelman and Suchman (1997) noted that 'regardless of the underlying motivation, the decoupling of ceremony from substance arguably undercuts and marginalizes the role of law in organizational life' (p.496).

As noted by Covaleski et al (1996), Zucker (1991) argued that ‘the rationalization in formal control systems is an important part of a network of political and power relations which are built into the fabric of social life, a process of transforming the moral into the merely factual’ (p.11). There is some obvious overlap between the theoretical constructs of decoupling and legitimacy seeking behaviour. Are formal structures and processes, which might secure organisational legitimacy, reflecting the practical activity of the organisation? Meyer and Rowan (1991) posit that they may not be, as the practical demands for efficiency may conflict with the need to be seen to conform to society’s expectations. According to Scott (2001)

‘it is a truism of modern organization studies that organizations are highly differentiated, loosely coupled systems in part because they must relate to many and different environments.’ (p.157)

Meyer and Rowan (1991) identify the professions (which would include tax professionals) as an example whereby elements of its formal structure ‘are highly institutionalised and function as myths’ (p.44)<sup>vii</sup>. Such professionalisation ‘binds both supervisors and subordinates to act in good faith’ (p.58).

While Carruthers (1995) cautions against over-emphasising the degree of decoupling, his description is rich:

‘Formal plans, decision-trees, econometric forecasts, specification of contingencies and alternatives, quantitative estimates, and the ample use of accounting information all help to enhance the *post hoc* legitimacy of a decision. New institutionalists claim that these rationalized features usually do not determine how the decision was made, for they concern how the decision gets presented to the outside world after the fact.’ (p.322)

He does go on to warn that some audiences (the tax authorities perhaps) are mindful of decoupling, ‘especially if it becomes too extreme’ (p.323).

The next section addresses the different ‘levels of analysis’ at which new institutional sociology based research has been carried out, focusing in particular on the importance of identifying and understanding the potential impact which the members of the ‘organisational field’ can have on practices and processes.

### ***Levels of Analysis***

New institutional sociology based research has been carried out at different levels of analysis. While there is not a consensus on exactly how many levels of analysis exists, the three levels of social systems put forward by Dillard et al. (2004) is capable of encapsulating the many and varied actors involved in a given field and an understanding of the level, means and extent of interactions between actors at all levels provides an insightful perspective on, inter alia, the construction of the

‘social reality’ within which these actors operate. The three levels of social systems of (i) economic and political, (ii) organizational field, and (iii) organizational level, map well onto other typologies used in new institutional sociology<sup>viii</sup>. Dillard et al.’s framework facilitates understanding both the context and processes associated with creating, adopting and discarding institutional practices<sup>ix</sup>. Establishing who the constituents are at each level in itself (an objective within research question 4) is an important first step and as DiMaggio and Powell (1991b) pointed out in relation to the structure of the organisational field for example, ‘it must be defined on the basis of empirical investigation’ (p.65)<sup>x</sup>. ‘The concept of organizational field is central to institutional theory’ (Greenwood, Suddaby et al., 2002). DiMaggio and Powell (1991b) who posit that the virtue of the organisational field unit of analysis lies in its directing attention ‘to the totality of relevant actors’ (p.65), defines the organizational field as:

‘Those organizations that, in the aggregate, constitute a recognized area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products’.  
(p.64)

Scott’s (2001: p.84) description of the field helps understand how actors contained therein could indeed create their own ‘social reality’ over time:

‘The notion of field connotes the existence of a community of organizations that partakes of a common meaning system and whose participants interact more frequently and fatefully with one another than with actors outside of the field.’<sup>xi</sup>

DiMaggio and Powell (1991b) refer to four parts of the process of institutional definition:

‘An increase in the extent of interactions among organizations in the field; the emergence of sharply defined interorganisational structures of domination and patterns of coalition; an increase in the information load with which organizations in a field must contend; and the development of a mutual awareness among participants in a set of organizations that they are involved in a common enterprise.’ (p.65)

Upon examination of the above passage, Barley and Tolbert (1997) posited that ‘in their early work, institutionalists explicitly postulated that institutions exhibit an inherent duality: they both arise from and constrain social action’ (p.95).

New institutional sociology theorists identify types of institutional influences that potentially have strong effects at all levels of analysis, namely the nation-state, the



professions, international organisations and associations, and cultural frameworks (Scott, 2001; DiMaggio and Powell, 1991b). Notably, DiMaggio and Powell (1991b) see the state and the professions as having become ‘the great rationalizers of the second half of the twentieth century’ (p.64), and are therefore being held responsible for bureaucratisation and other forms of homogenisation emerging. The importance of recognising the existence and impact of the organisational field is of particular relevance in the sometimes uncertain terrain of tax laws and the interpretation thereof. DiMaggio and Powell (1991b) state:

‘highly structured organizational fields provide a context in which individual efforts to deal rationally with uncertainty and constraint often lead, in the aggregate, to homogeneity in structures, culture and output.’ (p.64).

While the latter essentially reflects how institutional isomorphism leads at times to homogeneity, it does not explain institutional change or entrepreneurship. It is important therefore to note the role of individual agency also. Scott (2001) emphasises the varied and complex interrelations that exist between professional and political actors. Particularly relevant to the tax domain, he goes on to state:

‘In some instances, the professional associations and practitioners have been so effective in staking out and defending their jurisdictional claims against competitors that they have been invited to assist the state in exercising control

over all providers of designated services.’ (p.129).

## **Power**

An extremely important and relevant extension (in the context of the tax arena) of new institutional sociology, considers the role of certain actors and organisations, the ‘power’ they have in terms of maintaining and creating institutions in the tax planning domain, the source of such power and the ways in which they use this power, along with the associated implications. As noted by Covalleski et al. (2007a) ‘institutionalization as a process may be profoundly political and reflects the relative power of organized interests’ (p.8).

There have been a number of calls for addressing power within the new institutional sociology perspective. Perrow (1985) was concerned that power and group interest has lost out to ‘cultural myths and symbols’ within institutional theory (p.154). Covalleski and Dirsmith (1988) refer to the institutionalist perspective’s assumption of passivity and lacking ‘consideration of the active agency by which various social actors may construct, change, and enforce’ societal expectations and being ‘inattentive to power and self-interest in terms of both societal and organizational actors’ (p.562/3). Dillard et al. (2004) refer to the ‘neglect of power, special interest and the political nature of organizations’ (p.522) as a limitation of prior institutional theory research and importantly posit ‘[a] significant element of institutionalization is an ongoing product of the

political efforts of actors to accomplish their ends' (p.510). Carruthers (1995) also refers to this call among institutionalists for 'greater attention to issues of politics, power and conflict...and to focus on myth and ceremony is to overlook power and control' (p.324/5). Actors may be able (individually or collectively) to use their power to impact on the social world by getting the rules of the game changed, impacting on accepted practice, and resource distribution, thereby creating and maintaining institutions.

Scott (2001) notes this important progression by institutional theorists towards giving 'more attention to the ways in which both individuals and organizations innovate, act strategically, and contribute to institutional change' (p.75). He posits that there has been an increase in attention given to 'the play of power and the role of agency in institutional analysis' (Scott, 2001: p.193). Powell (1991) recognises 'the exercise of power' as an avenue of institutional reproduction: 'Elites may be both the architects and products of the rules and expectations they have helped devise' (p.191). Such elites tend to be 'knowledge experts' and/or skilful negotiators. Covalleski et al.'s (2005) study posited the reinforcement of the notion that, after negotiations, 'the form the resulting institution takes depends on the relative power of the actors who support, oppose, or otherwise strive to influence it.'<sup>xii</sup>

As noted by Scott (2001) some theorists in the institutional theory domain have begun to widen their theoretical frames which incorporate multilevels and

recursive models. In the context of such a highly regulated domain as tax, extending new institutional sociology in a way which embraces the work of some legal scholars (such as Edelman and Suchman, 1997) brings some valuable additional insight. Extending new institutional sociology in this way responds to any shortfalls considered to exist within the new institutional sociology framework (as described thus far) by legal scholars:

‘who complain that institutionalists too often embrace a legal formalism stressing the external, objective, rational nature of law. Rather, as Suchman and Edelman (1996); see also Edelman and Suchman 1997) propose, laws and regulations are socially interpreted and find their force and meaning in interactions between regulators and the regulated.’ (Scott, 2001: p.169).

This extension recognises the ‘endogenous process’ of law-making which is further addressed below.

### **Endogeneity of Law<sup>xiii</sup>**

Traditionally the view of new institutional sociology theorists has been to interpret ‘governmental regulations as an exogenous force shaping the behavior of those regulated’ (Dirsmith, Huddart and Jagolinzer, (2007). The endogeneity of law perspective instead pays attention to active agency and the play of power and

politics in the context of understanding the social construction of meaning of tax laws.

According to Edelman, Uggen and Erlanger (1999), law is rendered 'endogenous' whereby

'organizations are both responding to and constructing the law that regulates them...the content and meaning of law is determined within the social field that it is designed to regulate.' (p.407)

They examined the construction of the meaning of compliance with European employment opportunity law through consideration of the interactions between organisations, the professions and the courts and they posit that their arguments in this context should be applicable to other areas (such as tax law). Such interactions, according to Edelman et al. (1999) result in the development of a particular 'ideology of rationality over time.'<sup>xiv</sup> This endogeneity of law perspective therefore challenges particularly the effectiveness of the state/government as a source of coercive isomorphism. This may arise largely due to the sometimes ambiguous and uncertain nature of the meaning of tax laws. Edelman et al. (1999) thereby extend the new institutional sociology perspective by seeking to 'specify how the diffusion of institutional structures affects their market rationality' (p.408). There is a strong connection here with some of the

writings by McBarnet and Whelan, in particular, when McBarnet and Whelan (1992b) refer to the role of the regulated in actively resisting law having some explanatory power in terms of understanding the ineffectiveness of law (on-the-books). Such resistance amounts in part to the playing out of the game, and the social construction of the meaning of law, within this endogeneity of law framework.

Suchman and Edelman (1996) posit that the interplay between organisations and their legal environment (e.g. tax legislators/ion) results in a relationship that is a ‘highly endogenous and reciprocal one’ (p.938) which suggests that corporate interests and professional play a role in tax policy development<sup>xv</sup>. They call on institutionalists to ‘consider how organizations *mediate*, not just respond to, law’ (p.933) and emphasise the political process that precedes law-making<sup>xvi</sup>. As taxation is an area of law regulating organisations it is therefore

‘especially open to social construction because corporate lobby is usually successful in softening regulation that infringes on corporate interests, thus producing broad, vague mandates.’ (Edelman et al. 1999, p.407)

It is not only possible to describe the ‘endogenous process’ associated with any one piece of specific tax legislation, but also to examine the existence at all of this process generally within the tax domain, and the extent to which various actors believe they shape tax policy through such a process<sup>xvii</sup>. Their strategic responses

could be categorised as one of Oliver's (1991) five strategic behaviours, namely, acquiescence, compromise, avoidance, defiance and manipulation. Manipulation is arguably the

'most active response to such regulatory pressures because it is intended to actively transform or exert power over the content of the regulation of the governmental agencies that interpret and enforce them' (Covaleski et al., 2005: p.125).

Suchman and Edelman (1996) assert that the reciprocal relationship between law and organisations appears at intraorganisational, organisational and environment levels. In relation to the first of these, they make an important point in the context of addressing why and how laws such as tax becomes perceived to be 'important' or high profile or embedded within an organisation:

'Political considerations will move certain camps within the organization to portray a particular legal threat as uniquely fearsome or to portray a particular solution as uniquely effective. If the organization acts on these alarms, and if other organizations imitate its actions, the standards for compliance in the organizational field are likely to strengthen, and the law may matter more than the rules on paper would suggest.' (p.939)

Organisations tend to define the law through their practices regarding compliance usually resulting in ‘prevailing industry practices’ (p.939). And finally at the environmental level they assert that the speed at which standards of practice emerge and stabilise ‘depends quite intimately on the structure of communication channels in the interorganizational environment’ (p.940). They suggest accordingly that the presence of professional networks and trade publications in a sector leads to experiencing the law as more concrete and binding compared to sectors where such features don’t exist.

Suchman and Edelman (1996) refer to the ‘New Institutionalism’ organisational theories as providing an appropriate backdrop for synthesising an integration of the sociology of law and sociology of organisations. Of particular relevance in a tax context where the regulatory environment is often ambiguous, Edelman and Suchman (1997) refer to law developing meaning ‘through its interpretation by organized professions, and it develops substance through its application by organizational compliance officers’ (p.480). They argue ‘that organizations construct and configure legal regimes even as they respond to them’ (p.484), and that it is rare for regulations to ‘emerge independently of the organizational actors whom they ostensibly govern (p.488).

The notions of ‘complex networks of power’ and organisations working together as members of trade associations and industry working are central to the endogeneity of law perspective. Equally important is the notion that organisations



sometimes actively seek the implementation of certain types of regulations to obtain certain advantages. Edelman and Suchman (1997) observe: ‘a great deal of lawmaking seems to respond primarily to the parochial interests of targeted firms, industries, and sectors’ (p.489). The endogenous relationship continues beyond regulation into compliance. Organisations themselves have an influence here in often being the creators of processes and procedures which are accepted by the regulators and ultimately become the only acceptable processes. Some aspects of new laws therefore may be implemented in practice not through ‘hard enforcement’ but the favoured ‘informal enforcement methods such as education, persuasion, negotiation and publicity’ (p.490). There is a wealth of expertise on tax matters on both the regulator and regulatee sides, but an interesting aspect to examine is the extent to which the regulated depend on/use the expertise of the regulated to help them create/amend tax laws, and in so doing how influential certain taxpaying organisations are on the tax regulatory process. This essentially addresses the issue of who is more powerful in terms of tax knowledge production. The wider implications of where such power resides should be addressed.

Edelman et al. (1999) suggest that while organizations might seek to respond rationally to law,

‘the definition of rationality is constructed and evolves at the environmental level, driven by institutionalized stories about the value of particular organizational structures and actions’ (p.411).

Inextricably linked with new institutional sociology, Edelman and Suchman (1997) refer to the ‘culturalist’ accounts of law and organisations calling,

‘attention to the important role of professional discourses in constructing the meaning of initially ambiguous laws, in determining the situations to which legal reasoning applies, and more generally, in advocating for the legality and legitimacy of particular worldviews.’ (p.499)

In describing the cultural (which maps well onto the new institutional sociology) perspective on the regulatory environment, Edelman and Suchman (1997) argue that the social construction of meaning often takes place at the organisational field level which ultimately points to the relationship between law and organisations being ‘not so much reciprocally causal as endogenously coevolutionary’ (p.501). Karayan and Swenson (2007) describe tax rules as ‘social constructs resulting from political processes’ (p.30) which are essentially a combination of official and unofficial actions taken by different government representatives over time. Such social construction (through dialogue, litigation etc.) thereby explains the transition from ‘law-on-the-books’ to ‘law-in-action’<sup>xviii</sup> which has significant explanatory power. Edelman and Suchman (1997) see this as a rather messy process, whereby the legal rules and organisational practices move ‘in tandem’ and

‘as the underlying belief system permeates both the legal and the organizational worlds, the boundaries between these realms become increasingly ambiguous.’ (p.502)

Similarly, Suchman and Edelman (1996) describe the relationship between organisational practice and legal mandate as one which ‘evolves collectively over time, may be collaborative rather than confrontational, and involves normative and cognitive as well as instrumental dynamics’ (p.922). They also state: ‘the law is made as it is enforced, often with as much input from those who are its targets as from those who are its custodians’ (p.934).

The institutionalised relationships among the social actors within an organisational field (upon which an organisation can rely) has been identified as a resource termed ‘social capital’ (Covaleski et al. 2005). They identified the hiring of a former Revenue official (an external social actor) as being an essential part of a company’s strategy in helping to ‘orchestrate the company’s efforts.’<sup>xix</sup> This person brought real knowledge to the table but was also (and arguably more cynically) a part of the ‘impression management’ exercise being undertaken by the company. For both reasons, he and the company he worked for held and exercised this ‘power’ in advancing their vested interests, their action representing the ‘strategic manipulation of institutional logics by skilled entrepreneurs’

(p.144). Another source of power demonstrated in this case was the ‘threat’ that if the company did not essentially get what it wanted, it would have to withdraw company expansion and do it elsewhere.

In some contrast the notion of ‘symbolic capital’ put forward by Covalleski et al. (2005), drawing on Bourdieu (see Chapter 13), refers to a form of power, ‘linking the various forms of capital available to an organisation by exploiting inherent defects in their logics; controlling the language used within the field of social actors, strategically redirecting key definitions, and shaping the social setting to serve vested interests’ (p.3/4). Whatever source of power is used by companies when negotiating on the meaning of laws, Covalleski et al. suggest ‘[w]hat is needed is the resolve of politicians at multiple (e.g. local and state), reinforcing levels of government who are unafraid of face to face confrontations with regulatees (Frug, 1984), and who will back government agencies in the enforcement of legal provisions of whatever level of specificity is applied in order to make New Public Management efforts work’ (p.143). Interestingly in this case where uncertainty of the law was expected to be at a minimum, the resolve of the company and its CEO resulted in outcomes that did not reflect ‘the form abided by the letter or spirit of the law as written’. Importantly, they conclude ‘the construct of uncertainty is a rich and multi-faceted variable which lies at the core of many complex organisational and political relationships characterising the New Public Management’ (p.143).

Covaleski, Dirsmith and Weiss (2007b) in demonstrating the endogeneity of law process, highlight not only the role played by regulatees in shaping the meaning of the laws they are governed by, but also how ‘regulators anticipate this regulatee response and seek to contain its effect in their strategic development and implementation of new regulations’ (p.1). The latter, which they describe as a ‘second order effect’, suggests essentially some form of pre-emptive strike on the part of the regulator being built into the process, which in itself signifies a negotiation process, and sets the scene for an interesting and insightful perspective to be gained in relation to how ‘shared meanings’ of tax laws, and appropriate processes and practice, might come to be in the tax organisational field. This second order effect may well come into play and be facilitated in the context of new tax laws during the period between a Government announcement around some new proposed tax laws and their being enacted.

Clearly the call for law and society scholars to engage with NIS scholars (Suchman and Edelman, 1996) is recognised and welcomed by the new institutional sociology theorists. Scott (2001) posits that institutional theory will

‘benefit greatly by continuing to cultivate connections with law and society scholars...,students of society and accounting...all of these communities bring theoretical insights and useful methodologies to our understanding of institutions and institutional change processes.’ (p.199/200)

This chapter highlights the benefits from interweaving two strands of theory originating in different (sub) disciplines; here new institutional sociology and law and sociology. This is not without difficulties, particularly as each tradition will have its own way of explaining often similar issues, and the specialist terminologies can be difficult to penetrate. In Chapter 24, the way in which these two theoretical strands were combined and intertwined with the literature on tax planning is described. This produced a powerful conceptual model that was used to help understand the dynamics of tax planning in multinational companies, but could equally be used in other tax settings.

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<sup>i</sup> A number of contributions to this book were originally published elsewhere (such as the American Journal of Sociology) in the late 1970s/early 1980s. They were republished here (amended in some cases) in this 1991 publication.

<sup>ii</sup> According to DiMaggio and Powell (1991a: p.9) NIS in organisational analysis 'takes as a starting point the striking homogeneity of practices and arrangements found in the labor market, in schools, states, and corporations'.

<sup>iii</sup> DiMaggio and Powell (1991b) also recognise competitive isomorphism but contend it does not present a fully adequate picture of the modern world of organisations', so they focus on institutional isomorphism as does this study.

<sup>iv</sup> Further analysis of the three classifications here however will focus on how they are different to each another. Scott (2001) emphasised also that his typology was not intended to rule out 'inter-pillar communication'.

<sup>v</sup> Occurs through hiring individuals from firms in the same industry, through the recruitment of fast-track staff from a narrow range of training institutions etc.

<sup>vi</sup> Takes place in trade association workshops, employer-professional-school networks, trade magazines etc.

<sup>vii</sup> Meyer and Rowan continue: 'these are occupations controlled not only by direct inspection of work outcomes but also by social rules of licensing, certifying, and schooling' (p.44).

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<sup>viii</sup> Scott (2001) for example identifies six levels i.e. world system, society, organisational field, organisational populations, organisation, and organisational subsystem.

<sup>ix</sup> However, as noted by Scott (2001: p.126): ‘to attend too rigidly to the distinction between levels of analysis is to ignore the ways in which social phenomena operate as nested, interdependent systems, one level affecting the others’.

<sup>x</sup> Scott and Meyer’s (1991) definition of ‘societal sector’ is similar to DiMaggio and Powell’s definition of ‘organisational field’.

<sup>xi</sup> This quotation is reproduced here from one of Scott’s earlier publications (1994).

<sup>xii</sup> Covaleski and Dirsmith (1988), Barley and Tolbert (1997), DiMaggio (1988), Covaleski, Dirsmith and Weiss (2007a), Covaleski et al. (2007b), DiMaggio and Powell (1991a), Dillard et al. (2004) and Covaleski et al. (2005), go some way to address ‘power’ as does this research.

<sup>xiii</sup> See Hopper and Major (2007) for an alternative extension of NIS, incorporating economic, labour process and actor network theories.

<sup>xiv</sup> They reviewed data from the professional personnel literature, the courts and a national sample of organisations.

<sup>xv</sup> See Roberts and Bobek (2004).

<sup>xvi</sup> See Radaelli (2005) for a discussion of taxation research as political science research.

<sup>xvii</sup> See Kelly (2003) for an illustration of the endogenous process in the context of a specific tax law related to dependent care expense accounts and employer-sponsored child-care centres.

<sup>xviii</sup> The focus on law-in-action is within the Law and Society tradition of research according to Suchman and Edelman (1996).

<sup>xix</sup> This study demonstrated how a Tax Incremental Financing programme was manipulated by the regulated company through its strategic action. This official was the architect of various state policies when working with the Revenue.