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IDEAS, CONSTRUCTIVISM AND COMPLEMENTARITY IN INSTITUTIONALISM

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IDEAS, CONSTRUCTIVISM AND COMPLEMENTARITY

IN INSTITUTIONALISM

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Colin Crouch recently chided the proliferation of institutionalisms (e.g., historical, normative, ideational, discursive, constructivist) as a growing cottage industry more focused on creating intellectual fiefdoms than extending political theory. In this vein, we can assess the recent "constructivist institutionalism" developed by Colin Hay out of the ideational and discursive institutionalism efforts of himself, Mark Blyth,Vivian Schmidt, J.L. Campbell and Ove Pedersen. This constructivism reproduces all of the weaknesses of the sociology of knowledge without heeding the contributions of critical theory, poststructuralism, interpretivism (e.g., Mark Bevir), polycontexturality (e.g., Gunther Teubner) or recent economic theory. We are challenged to represent a polycontextural sense of complementarity: as a framework within which seemingly incommensurable and colliding discourses can be regulated if not reconciled (e.g., Robert Boyer). Beyond the constructivists' focus on policy-makers' application of ideas, there is a need to test the warranted assertions and truth claims inherent within the practices of an institutional regime or legacy, along with the institutionalizing trajectory. This is an unfolding of categorical analysis whose immanent predicate logic within a context of situated agency provides the basis for critique. A more critically oriented institutionalism journeys into the interior of institutions beyond "interestedness" toward "commitedness," toward the endogenous emergence of the argumentative logic of a mode of legitimation.There is a need to align institutionalist analysis with a theory of legitimation grounded in actors' valuation of what is right.

THE NEW INSTITUTIONALIST TURN:

NORMATIVE UNFOLDING BEYOND THE INTEREST GROUP APPROACH

Institutional space is understood as never being closed; and as always open for argumentation, the novelty and creativity of actors. Institutions need to be understood in

terms of their institutionalizing discourse. In particular we will focus on (1) what David Kettler refers to as ***bargaining regimes***;

and (2) what Frank Nullmeier, Mark Bevir and Chris Ansell refer to as ***argumentation networks*.** We approach institutions as stabilizing structures. Yet we also imagine and enact claims as institutionalizable practices. We are, as Louis Althusser cogently put it, bearers of supports. But we are also bearers of claims. These are claims that we trade on, and claims by which we argue about fairness, procedure, and sometimes justice. More specifically, as Jurgen Habermas would counter Althusser, we are bearers of institutional regimens and their normative claims, i.e., legitimations. Institutional regimens can be analyzed with a focus on the promise of signifiers. Whether those signifiers have delivered or not on their promise of order/ ordering. We are bearers of ***subject positions*.** We are bearers of subject positions in an ensemble of interpretive schema which are themselves responsive to structural, positions. These are subject positions along a constellation immanently connected to the ideational constructs of a regime model. Institutions position subjects ideationally, prefiguring and conditioning how we as subjects practice and creatively adapt and transform ***forms of life***.

Political science has since the 1980s been marked by an institutionalist turn .Such a turn is in part a questioning of a paradigmatic shift to the hegemonic NeoLiberal regime/model. The New Institutionalism extends a tradition blazed in the United States by John R. Commons (1862-1945) and Wesley C. Mitchell (1874-1948), who studied collective action controlled individual action, how transaction logic within an associated negotiation psychology had overcome the hedonistic exchange logic of self-interested psychology; and how the collective bargaining contract had surpassed the individual prerogative contract. NeoLiberalism is a movement to actualize a utopia – the regime model of turn of the twentieth century neoclassical economics with its emphasis on markets. The NeoLiberal utopia imposes the logic of transaction costs in contracting, rather than creating constellations of trust. Market relations are imposed in spheres where classical and neo-classical economics would not go –the caring professions, universities, prisons.

The New Institutionalism (March and Olsen, DiMaggio and Powell, Granovetter and Majone) helps surmount any sense of individual vulnerability with the experience of associative relationships and attachments. There is a focus on (1)“accounts” and “procedures” involved in interpretations; as well as (2) the logics of appropriateness” ; and (3) the “branching points” associated with both path-dependent and path-shaping relationships. In particular, the Historical Institutionalism (**HI**) of Peter Hall, Ira Katznelson and Gary Herrigel is attentive to the practices and procedures in which collective action is articulated. It also reveals both the legacies and capacities of emergent forms of institutionalizing practice. Here it picks up on the political sociology of Arthur

Bentley and David Truman with its paradoxical concept of "potential groups"/ potential interest and how they came to be articulated into political conduct.

Regimes (regimens) are purposefully created normative frameworks organizing an institutional setting within which bargaining and negotiations can take place, and both bonding and binding force can be assumed. A regime offers a template of normative understandings, a mental model for re-envisioning practices. For institutionalists like Peter Hall (1989, 1993), it is unremarkable that policy-makers in a Keynesian treasury will confine themselves to policy proposals consistent with Keynesian orthodoxy, even when a more utility-maximizing option might be present. What is of distinct interest to **HI** is the

branching points where the Keynesian parameters of public choice no longer seem capable of offering policy solutions.

Regimes are purposefully created normative frameworks organizing negotiations among a formally specified set of actors - - an institutional setting within which negotiations can take place, and both bonding and blind force can be assured.

A **regime** offers

- a template of normative understandings
- a specific mode of legal discourse corresponding to the logic of

  argumentative practices for fair negotiations based on discourse specific norm
- a model of institutional justice; and
- a utopian model for re-visioning practices.

A regime is an ensemble of constitutive discourse providing the imaginary framework through which we interpret the symbolic order into which we are drawn, if not thrown. It is a carrier of institutionalizing practices and governance rationales. And, as an internal ensemble of discourse generating both legitimation and truth claims, it is open to interpellation/interrogation.

The interest group approach was effectively challenged at the dawn of the 1970s by the social movement literature of Alain Touraine and Cornelius Castoriadis - - specifically on the very process of interest group formation and the creation of new norms and values. Institutions are understood as playing a mediating role as mechanisms for regulating conflict - - "mechanisms for arriving at decisions, the application of which is sanctioned by legitimate authority." (Touraine,1977: 178-79). This implies that there are operative norms prior to politics, learned legitimations - - that "all claims are not negotiable". Touraine (1977: 196) anticipates historical institutionalism by denoting how social action is circumscribed by a defined and particular historical context - - one that orients the *field* of social relations as well as the stakes in every kind of conflict or negotiation.

The nature of *path dependency* is heavily influenced by the operative norms set by politically active members of the society - - i.e., an elite. But Touraine and Castoriadis pointed to the differing and contradictory role expectations at work in any instituted configuration - - and that these differences and contradictions do not simply originate in the operative norms themselves. Discursive traces of alternative institutionalizing practices are always at work. And these, Touraine notes 1977: (362,311) "overflow the frame in which they appear" and "mobilize demands which cannot be entirely satisfied" within the interior arc of subject positions within a preconfigured regime and its frame of practical reasoning and learning.

Beyond Isaac Balbus's notion of latent groups and class determinism (1971), there is another approaching and veering off from Truman. This is now less in terms of class determinism or epochal/regime periodization - - as in the Regulation Theory approach (Robert Boyer, Michel Aglietta, Alan Lipietz) - - and possibly more in terms of a *transformative discursive modality detectable within the normative categorials of a predicate logic.* Beyond David Truman's discussion of potential groups, we can focus on potential norms, emergent institutions.

Beyond the 1970s turning to latent groups, social movements and structured inequality came respectively an institutionalist and a discursive turn, as political sociology focused more and more on normative commitment. As Douglas North noted (1990) institutions were increasingly seen as the missing element in comprehending the normative framework of cooperative and competitive relationships.

For the "new institutionalism"of DiMaggio and Powell (1991 :11), institutions were seen as establishing the very criteria by which people discover their preferences. Institutions were increasingly seen as constitutive of preference-formation, and not just as strategic environments within which actors pursue exogenously-given interests. Much of the new institutionalism was to become preoccupied with a cognitive bedrock of shared normative constructions - - templates and constructionism became the hegemonic buzzwords. For a summary of the new institutionalisms, see **Figure 1** below.

The turn toward normative commitment and normative regulation served to counteract the emphasis on interest aggregation; and - - as Joseph Heath in *Communicative Action and Rational Choice* (2001: 309) notes - - "to counteract the general tendency of human affairs to go very badly when left to self-interest." Legitimation was understood in the communications theory of Habermas as the "warranted assertions of substantive rationality" eschewed by Weber's rationalization theory. These warranted assertions were bracketed by Mannheim in *Ideology and Utopia* not as ideational constructions constitutive of knowledge, but as superstructural illusions materially produced and periodized. Critical here is the constructionist reprise of the Sociology of Knowledge approach of Berger and Luckmann as well as of Mannheim.

Habermas' ongoing project pushed us to recognize how we are socialized to develop a higher disposition in our practical reasoning, one that enables us to assign normative reasons priority over the institutional ones. One that enables us to appreciate how we can distill underlying norms from the institutional context, from their experience as practices. And in doing so, how to boil off the normative predicate logic of a substantive rationality.

FIGURE 1

	SI	II/CI	HI	RCI
Approach	Cultural case study applying organizational theory; ethno methodology; the "new institutionalism" as "embeddedness" theory	Immanent critique/interpellation of argumentative logic along an internal "arc of subject positions" (path shaping)	Historical sociology case study focusing on "collective agency" (path dependency)	Optimizing strategic behavior as case study (methodological individualism)
Focus	NORMS (conventions, cultural constraints)	IDEAS and their warranted assertions	RULES (path dependency regularities)	PROCEDURES and their opportunity structures
Preference Formation	Endogenous constitution of actors through institutions	Endogenous ideational perceptual and discursive factors	Endogenous preference formation	Exogenous preference formation
Creation of Institutions	Evolutionary with reinterpretation	Diremptive crossing of institutional thresholds	Delegated subinstitutions' potential expansion	Transaction cost
Evolution of institutions	Cognitive / memory culture / mythologizing	The imaginary institution of society (path shaping)	Contingent path dependency with unintended consequences	Bargaining
Theoretical fix	Theory of legitimation	Theory of legitimation	Mix of theory of preference hierarchy with theory of legitimation	Theory of preference hierarchy
Approach to practical reasoning	Logics of appropriateness	Immanent rationality (bounded & unbounded rationality)	Logics of bounded rationality	Logics of bounded rationality
	SOCIOLOGICAL INSTITUTIONALISM	IDEATIONAL/CRITICAL INSTITUTIONALISM	HISTORICAL INSTITUTIONALISM	RATIONAL CHOICE INSTITUTIONALISM

We are unbracketing legitimation forms that Berger and Luckmann as well as Mannheim treat sociologically without considering their ontological and epistemological claims. Legitimations, represent the substance by which our preferences are ordered. And Habermas's legitimation theory involves taking up "warranted assertions" with their "sense of appropriateness" and attendant constitutive "application discourse" - - all of

which are ultimately testable in the "transcendent discourse" of universalizability/generalizability. (See Klaus Gunther, 1988).

BUILDING ON HABERMAS'S THEORY OF LEGITIMATION / TOWARD A CRITICAL INSTITUTIONALISM

Habermas' legitimation theory breaks as well with *rational choice institutionalism* (**RCI**) and its preference-hierarchy, transaction cost minimizing behavior and utility calculations - - which Hall and Soskice (2000) might yield too much ground to. RCI starts with preferences that are exogenous to a model where all factors are held constant. Nothing is prior to individual utility calculi. And institutions are understood as merely vehicles for respective utility maximizations. RCI cannot account for the social, only what is at base intentional - - only what is strategic pursuant to exogenously given interests. Again, we return to the counterpoint - - the discursive approach to the substantive rationale of legitimating conduct, and its engagement of the instrumental rationale of strategy and preference. Crucial is the former's focus on an internalist conception of legitimation (Peters, 1996) The constellation of positions within a legitimating argument is internal to the argument itself. It is an endogenous constellation of positions that a subject discursively takes in order to redeem normative commitments boiled-off in unbracketed form from their institutional husks.

The commitments - - i.e., justifications in discoursive theoretical terms - - make claims upon acting subjects. They exist independently of the acting subjects. Not just as a legacy or an institutional supply of justification, but as a trajectory with semblances and traces along an arc of subject positions. This internalist trajectory is itself a contingent byproduct of accumulating social conflict and cooperation. The trajectory and its arc - - which characterize the endogenous constellation of subject positions within normative argument - - moves us to an evaluation of possible normative alternatives.

Thinking in terms of constellations, trajectories and arcs enable us to see how legitimating claims and strategies exist independently of actors and are drawn upon by actors. As Andrew Sayer (2000) reminds us, "(T)he political discourse exists as it is regardless of whether I study it and whatever I think of it." The dynamic of the constellation of discourse is something acting subjects internally (endogenously) participate in and constitute as they go along. The constellation is constituted as we interrogate it. Our contingent articulation involves less a functional playing of roles, and more of an authorial interpreting and infusing of roles with our instituting imaginary. The constellation comprises a predicate logic - - with warrant predicates and truth predicates; with assertoric claims and validity claims; and with application discourse and generalizability discourse. (See Heath, 2001, and Klaus Gunther, 1988). Beyond

Truman, the nature of our on-going willingness to "play by the rules" is subject to positioned criteria of warranted assertability. These criteria, claims of rightness and their propositional content are reflexively reconstructable - - rationally reconstructable - - as Habermas labels this internal constellation of normative commitment and attendant argument. They are rationally reconstructable as unfolding normativity.

This is not just a bounded rationality of recombinatory elements, but an imaginative projecting of a growing rationality. This is an imaginative projecting and reconstructing that enables us to recognize the new - - that is, the "novel" - - within an institutional trajectory. It is also an explaining of (1) either institutional stability; or (2) how ideas about institutional change or transformation fit into a hermeneutical circle of argumentation and interpretation - - an endogenous source of change within a constellation of discourse. They do not merely fit within pre-existing institutions - - their tree-like roots, and their capillary growth of outcome paths. *Ideas provide the point of mediation between actors and their environment.* The subject actors' point of access to their densely structured context is irreducibly ideational - - and discursive.

Within a given specific context, there is an unevenly distributed configuration of opportunity and constraint for subject actors. And along with it a structural *"strategic selectivity,"* that is, only certain specific paths of strategic action are available, and only some of these are likely to be actualized in actors' intentionality. As in RCI, only some actors "read" the paths effectively - - but this is so as a result of there not being the perfect information assumption "all things being equal" in much neoclassical economics and rational choice theory. Actors without complete information need to interpret the world on the basis of a constellation of ideas in order to orient themselves strategically, to reflexively monitor both the context and consequences of their actions. Thus there is as well a *"discursive selectivity"* derived not from material structure, but from the claims and frames yielded in an interrogation of the constellations of interpretation and argumentation that function as cognitive filters, embedded and growing within institutions - - that function as the language of a text, a narrative about structured material inequality, latent groups as well as normative commitment. The claims and frames are yielded in the strategies which subject actors devise as a means to: (1) realize their intentions upon a material context which favors ("selects") certain strategies; and (2) accommodate their normative commitments in so doing. This is not idealism, but an ideational accessing with both the material and normative context. This is not the longings of desire or the imposition of cognition; rather, it is an engaging of the discursive with the material environment, not a dissolving.

This is a relating of a theory of institutions to a theory of normative unfolding. This is as a substantive theory and not merely a proceduralist formalism, not as an essentialist

mythic/mystic narrative of some inherent national ordering. Two decades of sympathetic critics - - such as Klaus Hartmann, Ota Weinberger and Ottfried Hoffe - - have urged Habermas to grasp the need for a theory of institutions which he could ground his discourse theory in - - as a theory of Institutional Normativism (**IN**).

What historical institutional (HI) finds in the institutional trajectory of unfolding normativity and its arc of subject positions is not idealism but discursive selectivity - - one which remains in dialectical tension with the exogenous structural selectivity of material incentive and opportunity structures. This results in a constant dialogic tension confronting the discursive theoretical terms of an HI modified by communications theory into a theory of legitimation we will call Critical Institutionalism (**CI**). This is a dialogic tension with the strategic opportunism inherent in RCI and evolutionary institutional economics. Habermas helps HI with its persistent troubles with ideas, the constellation of legitimating, and normative commitment. On the other hand, HI poses a final "way out:" to Habermas's persistent and unnecessarily confining problem of equating strategy with ultimately utility-based technique and purely instrumental reasoning; and second to his separating the realm of normativity and law from institutional facts.

HI has been open to acknowledging exposure ideas, but tends not to see ideas as normative contents within institutional practices. Conceptualizing HI as a legitimation theory enables us to conceive of the ordering of preferences less structurally, and more endogenously within a constellation of discourse/argument--where institutional commitments "ghost the future" in traces and semblances of the unborn, or not yet actualized.

Institutions contain within them a normative core--a chain of practical reasoning/a constellation of action-related argumentation. Jurgen Habermas offers HI procedural normative models by which the cognitive (i.e., validity) claims within such argumentation can be made meaningful--in terms of the legitimation they immanently project. Neil MacCormick and Ota Weinberger (1986) sympathetically modify Habermas. They refer to their modification as Institutional Normativism (**IN**), ideas are not to be bracketed, but are to be subject to reflexive reconstruction as a form of discourse (practical reasoning) so that normative potentialities made available by collective learning processes are scanned for realizability.

In contrast to either the *"brute facticity"* of empiricism or the counterfactual chimera of procedural normativisism, (**IN**) focuses on normative contents within institutional or institutionalizing practices, *"institutional facticity"*--i.e., the nature of our participation in

the promising game and obligation game inherent in legitimation. Ideational structures that are the byproduct of the rearticulation of bargaining power within conflict become institutionalized and normalized as "facts," and their warranted assertions as "immanent forms." **IN** is rationally reconstructive of the institutionalizing *"warranted assertions"* involved in our participation within emergent forms of life.

"Critical Theory redeems past hope in the name of the future by revealing the as yet unrealized potentials of the present." It asks to what extent sedimented and floating signifiers have not yet delivered on their promise of a substantive order. Unlike the Sociology of Knowledge of Karl Mannheim or Berger and Luckmann, critical theory does not deny the immanent development and affirmation of changed and new forms - - changed and new conceptual mediations of social reality - -- as a process of knowledge driven by an inner dialectic, as an unfolding of categorial analysis whose immanent predicate logic provides the basis for critique.

Critical Theory is a theory of legitimation as rational aspiration. It uncovers and measures its utopian content - - the substance of the organizing principles embedded within its worldview *(Weltanschaung)*, its mental model. Critical Theory tests the warranted assertions and truth claims of legitimations inherent within an institutional legacy, an institutional trajectory, and the arc of an institution's anticipated horizon (or constellation). It is a form of self-reflective knowledge in itself.

A theory of legitimation is grounded in actors' valuation of what is right. And the more ideational institutionalism we have posed reflects the tradition of institutionalism as institutional embodiment of normative substance, rather than the tradition of evolutionary institutional economics. It is legitimated intersubjectivity as a substance with its own internal principles - - its own entelechies. (See Massimo LaTorre, 1999). Historical institutionalism (**HI**) conceptualized as a theory of legitimation can account for this ideational foundation of institutions. Part of the gap in HI results from the fact that practicing political sociologists - - often by training - - are skeptical or dismissive of the possibility of any rational grounding for unfolding normativity.

A substantive understanding of institutionalism is one that fills gaps, aporias (in both Derrida's and Benhabib's terms), and situations of undecidability with semblances (Adorno), iterable traces or spectral presences (Derrida). And a *Critical Institutionalism* (**CI**) resulting from the grounding of Habermas's brand of critical theory as discourse theory in a theory of institutional facts resists the gapless normativism of a Kelsen or a Langdell, it as well resists the equally positivist imprinting of the black letter law without

recourse to Natural Law. And for that matter, it will also resist Habermas's surrogate for Natural Law--a proceduralist transcendental formalism known as the Theory of Communicative Competence with its test in the court of the Ideal Speech Situation.

The **CI** developed here evaluates the forms by which societies evaluate themselves, that is, the formal ordering of what Ottfried Hoffe (1987) has referred to as "Institutional Justice." Hoffe understands a juridico-discursive--like Bo Rothstein--order in the ***"discourse theoretical terms" of argumentative forms,*** rather than in an engagement with chimerical counterfactuals. These argumentative forms serve as the vehicles by which we extend the institutionalizing dialogue of deliberative justification into the marketplace and civil law as ***governmentality - - governance rationales used in practices***, rather than idealizations (chimera). This involves discourses answering practical questions--and with it a discursive selectivity testing for the dialogic claims of an unredeemed predicate logic, beyond the functional sociological compliance and justification of a strategic selectivity.

Critical institutionalism as a capstone to historical institutionalism (**HI**) can be understood as an internalist principled game, a language game

- wherein norms rather than some mythic/mystic substance is experienced as inner institutional morality (Hermann Heller),
- wherein deliberation defines its own guiding norms and practices as an institutionalizing governance rationale (Jurgen Habermas),
- wherein norms are not understood as objects of pure cognition, but as values we commit ourselves to in our practices: (Georges Gurvitch); and
- wherein norms emerge as the socially shared solutions to problems and as byproducts of repeated social conflicts - - from which they are transformed into a constellation of learned normative commitments, revealed as promises.

Here the "institutional" represents the non-contractual dimension of obligation - - the shared standards of self-governance, and valuation, the normative commitments and promises of a "promising game constituted in and through discourse theoretical terms.

Critical institutionalism --- like the *"critical history"* posed by Michel Foucault and Mitchell Dean (1999) --- goes beyond posing critical junctures of contingent emergence. It involves a capacity to engage in interrogation of the internalist principled/promising game - - wherein discourse is ontologically prior to identity-formation, and legitimacy is prior to legality. "No individual can choose to stand outside the totality of the interpretive frameworks of discourse written into our very human condition." Institutional Justice involves the legitimated ordering of regimes - - substantively and procedurally - - in terms of formal models of law and political economy.

Subject positions - - themselves constituted discursively - - are an ensemble of interpretative schema responsive to structural positions. They are drawn upon as legitimating strategies and mark how we experience our structural position within the social. (Here see the development of this concept from Gramsci through Althusser through Laclau and Mouffe.) Thus we are not just bearers of supports, but actors who draw upon a repertoire of discourse resources - - within a discursive structure of signifiers - - interpretive schema, rights, claims and collective identities tied to subject positions. We are actors who draw on legitimations of purposive and substantive argumentation.

Subject position within respective regimes of law and political economy can be rationally reconstructed in discourse. In doing so the internal relations of an immanent normative unfolding or a projected re-institutionalizing of practices can be gauged - - in the discourse theoretical terms of argumentative forms, i.e., discursive selectivity. *Subject positions are more in a condition of floating signifiers that have not yet delivered on its promises, on its normative commitments, on its reflected visions. And moving along the interior arc of a regime's subject positions, we move beyond the configurative paths, junctures and practices of "effective history" practiced by* ***HI****, toward a "critical history" associated with* ***CI***. The latter employs more of a ***diremptive*** approach - - a key phrase from Habermas and ironically Georges Sorel before him. The diremptive approach attempts to reflect reality at more than one moment, one instance. Diremptions, following Georges Sorel, are more the fluid representations of cinema rather than snapshots.

Legitimations are positioned in narratives and worldviews/world picture - - not as static snapshots, but as panning shots of a regime in motion - - with social movement, swelling beyond thresholds, and institutional emergence. A diremptive approach scans a constellation of instances that open up to montage-like presentation

· where genres return to haunt us not just as memory, but also as possibility of uncanny actualization; and

· wherein the future is never either fully determinable or fathomable but only grasped and recognized as traces or semblances - - moved by the necessity of truth, rather than the arbitrariness of ideology - -within the gaps among the intermittent rhythms, sequences and jump cuts

Critical institutionalism (CI) complements historical institutionalism by keeping us aware that the swelling of historical movement and change is an instance of displacement, as much as it is path-dependent. This is the displacement of one threshold for another. History, Walter Benjamin advised us, is never wrapped into a specific moment of a fixed juncture. Rather, it flows in a *passage* that *swells* beyond the limits of its epoch, of its period. It confronts a gap - - or aporia - - and makes up for it by constituting a canal for the displacement of the swelling (*schwelle*), a superim**position** of a threshold. (See Eiland, 2001)

CRITICAL INSTITUTIONALISM AND THE ARGUMENTATIVE TURN /

THE INTERIOR OF INSTITUTIONALIZING TRAJECTORIES & THEIR ARCS

As Adorno notes, the democratic imaginary seeks traces of a prospect of utopia within a society that continually betrays it, tracing its own claims which ghost the future. The trace of a tradition of discourse associated with an emergent practice and juridification draws on the categorical framing of a democratic imaginary in its historical struggles and in its immanent potential. The practices and forms of the traditions of labor law and social law can be grasped categorically as assertional commitments (, 1994) Robert Brandom), and not counterfactually as chimera (G.A. Kelly (1969). Chimera are anti-historical. The issue of immanent historical warrants - - rather than visions of order - - are immanent within the core of practices, immanent within a regime of discourse whose claims are interrogated/interpellated. This immanence is inherent in what George Hendrik von Wright (1971) would call a quasi-teleology of normic statements - - that is, legitimating, propositional claims. A Critical Institutionalism (**CI**) goes beyond the Sociology of Knowledge in unbracketing normative commitments from practices, from their institutional husks.

Categorial form is created in historical time but attains independent validity as the argument behind an institutionalizing practice is interpellated and gauged. Beyond the

Sociology of Knowledge, Institutional Normativism (**IN**) starts with a genealogical study of the evolution of institutional practices as reworkable traces of affirmative substance, the substance of an emergent form of legitimation. Then IN is transformed into **CI** in its interpellation of the legitimating argument itself, which guides the "imaginary institution of society."

Beyond **HI**, and its focus on path dependency, Critical Theory as **CI** and "critical history" understands a process of self-clarification and emergent possibility internal to a historical process, internal to the argument of normative principles that are the core of institutional/institutionalizing subjects. Following the anthropologist Mary Douglas in *How Institutions Think* (1986), institutions can be conceptualized as subjects of action, as bearer of practices and their normative claims/commitments. A Critical Institutionalism looks beyond the "discursive selectivity" of some logic of appropriateness and the interestedness of actors' application of that logic, what Schattschneider once called the "mobilization of bias." **CI** looks beyond "interestedness" toward "commitedness." In this way **CI** may have more in common with Philip Selznick's "old institutionalism" with its focus on the affirmativity of institutional commitments as an ontology of institutional facts, rather than the focus of **RCI** on "contracting."

Beyond interestedness and discursive selectivity, we are moved to focus on discursive commitment itself rather than merely the application of the commitment. We are moved to a theory of legitimation rather than of interest groups, to a commitedness to rights and procedures.

Rational Reconstruction can be understood externally/explicitly as the process tracing of the contingent interaction, the discursive selectivity of policy-makers' performance and claims within a path dependent institutional context.

Rational Reconstruction can also be understood as a more internalist/implicit interpellation of the commitments themselves: their warrants, their propositions, the arguments immanent within path shaping/institutionalizing practice "boiled off from their institutional husks." (Peters, 1996 / Note here Frank Fischer and John Forester, eds. 2005: *The Argumentative Turn in Policy Analysis and Planning*.)

Figure 2 below, describes the dialectical relationship between the explicit performative practices and norms and the more depth-level implicit values and warranted assertions. Rational reconstruction is more than retrieval--it is the reconstruction of a set of practices we have come to learn, and the underlying values by which legitimation claims are evaluated.

Social Subjects of Rights of the democratic imaginary are inscribed in material practice -- not as a system of ideas in people's heads, but as material practices existing in people's conduct according to their commitments. These material practices can be understood not only in terms of an ordinary causal emergence reducible to micro-properties, and path dependency within predetermined paths of appropriateness. These practices can also be conceptualized in terms of a novel path-shaping and holistic emergency wherein a set of properties (such as the governance of labor law and social law) may be determined by and dependent on other properties, but not reducible to those others.(McClure, 1996a, 1996b).

FIGURE 2

2A. The EXPLICIT/External (realm of contingency)

- **empirico – sociological level of practical reasoning**
- assertion as action/conduct
- **performative derived from interestedness**
- action – related argumentation

  - **regimes of argumentative practices having "discursive selectivity"**
  - the arguments of policy makers
  - the coherence of a policy program as carried out by elite actors

- **External Rational Reconstruction**

  as a process-tracing of the contingent interaction within a path

  dependent institutional context

_____ ***mediated by an internal dialectic*** _____

2B. The IMPLICIT/internal (realm of necessity)

- **Grammatological, juridico-discursive order with "internal relations"**
- Assertion as normativity

- **Epistemological claim/warranted assertion derived from committedness ("self-referring")**

  - **the argument itself: commitments as normative core**
  - interpellation of propositions
  - resonance with value form categorials
  - immanent with legitimation arguments

- **Rational Reconstruction of the Internal Relations** of the immanent and emergent normativity "boiled off from its institutional husk" **as an "arc of subject positions" within an immanent rationale.**

Following Campbell and Pedersen, **CI** can be seen as a strand of *discursive institutionalism* **(DI)**. By DI, Campbell and Pedersen denote what we called **IN**, institutional normativism (**IN**). **DI** focuses on perceptions and meanings in "discourse theoretical terms," (***dtt's***) but not in terms of *apriori* categorials of legitimation that precede cultural perceptions and legal meanings. **DI's** principal concern is to trace the

process by which an ensemble of ideas, concepts and categorizations are translated into institutional patterns--how we are discursively structured, and the ways in which policy debate is conducted.

Kjaer (2004) understands **DI** as the relationship between discourse and institution as the outcome of historically specified ways of situating and organizing practices in a society with horizons of meaning. Hay (2001) defines a strand of **DI** as the *"ideational institutionalist* approach" (**II)** as a process-tracing of the way people position one another through the use of a widely employed discourse; as a sociology of practical knowledge detailing the application of dominant ideas/legitimations by policy-makers.

DI involves "normic statements." This is the level of theory "which leaves open the question whether people are doing what people invariably do in those uniquely complicated circumstances or are doing one of the comparatively few things which people…choose to do in such circumstances."

The **II** strand of **DI/IN** focuses on performatives of learning and problem-solving--practical judgments wherein intuitions, understandings, commitments and pragmatic actions align and combine. In so doing, **II** details a regime of propositionally differentiated speech acts, emerging out of institutional facticity. And it identifies the compelling reasons for what we say or do in concrete situations.

Beyond policy-makers' application of ideas, **CI** is the strand of **DI/IN** that turns to the ideas themselves, and to the argumentative logic of a legitimation. It also turns to the experience of that argumentative logic. This is what is referred to in policy analysis as *"the argumentative turn."* This "argumentative turn" opens up the commitments implicit in the decision-making of governance, and captures the endogenous emergence of argumentative logic that breaks with hegemonic patterns of legitimizing thinking associated with a regime.

Argumentative propositions are defined which problematize hegemonic normative statements--which counter justifying assertions of regime leaders. Thus, **CI** can elucidate ideas and actions which are not readily predicted by the rational reconstruction of interest-based behavior--and which do not necessarily follow from historical path dependencies. Rather, these ideas and actions may resonate with either forgotten long

standing values, like those of reflexive labor law and the governance of social law--or with newly emerging values.

The "argumentative turn" is influenced by the *post structural* focus on the practices in which humans engage--not the humans themselves, nor the structures by which they are constrained. Such focus centers on the way arguments are made--within a discursive ensemble--and can be read as a "text." How does a group of people creatively bring a "self-referential" model of practices into existence, how they think about, how they talk about it, how they transubstantiate it, maintain and reform it.

The argumentative turn follows the discursive turn in developing the study of institutional normativism beyond a sociology of practical knowledge of iterated games described by Giandomenico Majone (1989).

Geoffrey Hawthorn (1976:18) noted that Karl Mannheim's sociology of knowledge "never approach[ed] a resolution to the very difficult question of the relation between "the internal and external interpretations of ideas." **CI** extends the critical theory of Habermas to a focus on the internal relations of argument, and beyond the external relationism of applied practical knowledge that characterizes **II**. Whereas **HI's** focus is causality and capacity, **II's** focus is how ideas are constituted (constructed) and framed. **CI's** internalism transcends historicism and sociology with a focus on principles and the immanence of their argument. **HI** and **II** operate on the level of institutional facticity, whereas **CI** operates on the level of principles, value-form categorials that historicism and sociology bracket out.

NETWORK LOGIC AND INSTITUTIONAL COMPLEMENTARITY

The autonomies of relational contracting and private law regimes reflect the pluralism of instituted associations and instituting associations that constitute the pluralism of post-liberal contract law and labor law. Twentieth century contract law and labor law sought to institutionalize the social regulation of enduring class conflict, group conflict and corporate conflict. Autonomous regimes of law can be understood in terms of what Gunther Teubner calls the "polycontextuarality" of non-state regimes (including social partnerships of labor and capital, as well as international NGOs) legislating, regulating

and adjudicating within their own subsystems; as well as in relating to each other. Such as approach studies the contextual space between such regimes as a space for the collision of discourses, language games, texts and projects.

Gunther Teubner (2002, 2003, 2004) looks to a multiplicity of subsystemic subconstitutions where internal governance is constitutionally constrained to take notice of its diverse social systemic context. Teubner uses the concept of polycontexturality to account for:(1) how the plurality of self-constituting institutional contexts of conflict regulation logics function as heterarchies rather than as hierarchies of discourse-specific norms ; (2) how plural communities are contextuated institutionally to regulate themselves and recognize the logics and discourses of other external communities; and (3) how the plural logics and modes of discourse come to collide when not organized on the pattern of neural networks. The term "polycontexturality" is used by Teubner's teacher Niklas Luhmann (1982) in *The Differentiation of Society* to describe the plurality of logical domains., sites of decentered discourse and decentralized law, and a cascading complexity of differentiated subsystems. (Cf.Zolo:7.)

Luhmann was following Gerhard Gunther and Warren McColluch before him in referring to the plurality of logical domains as contextures. Within institutional contextures specific codes emerge to help provide transjunctional operations of plurality, rather than operations of simple binaries. These are codes for interdiscursivity and mutual learning, Charles Sabel (1995a-c) sees such polycontextural networking as institutional design as transforming transactions into discussions by which parties come to reinterpret themselves and their relation discursively and argumentatively through continual joint deliberations. Governance is understood as increasingly being of necessity heterarchical, and not according to hierarchical principal—agent accountability and sovereignty (Sabel and Simon, 2006).Through the continual deliberation required by such complexity, common understandings are articulated as reciprocally defining. Networks of relational contracting sustained by the value of future relationships take into account an autonomous interactive normative order wherein mutually accepted interpretation emerges.

(See Oliver Williamson, <u>The Economics of Capitalism: Firms, Markets, Relational Contracting</u> (New York: The Free Press, 1985) which builds on the work of Ian Macneil, "Contracts: Adjustment of Long Term Economic Relations under Classical, Neoclassical and Relational Contract Law," <u>Northwestern University Law Review</u> 72 (1978): 854-905. Williamson recognizes that between the neoclassical and relational contracting schemes, there is a shift of emphasis from the original agreements in the former to the entire relation as it evolves through time in the latter. The relational nature of the "contracting" becomes more binding than the legal guarantee and enforcement

mechanisms. Relational contracts are the informal and unwritten agreements within and between firms. These agreements as to vertical and horizontal integration are sustained by the value of future relationships and can be described in repeated game models. They circumvent difficulties in the formal individuals-based prerogative contract. Thus networks of relational contracting take into account an interactive normative order where in mutually accepted interpretation emerges.)

Each network has its own autonomous path dependent institutional trajectories. Each has unfolding normative bonds tied to elocutionary forces inherent in communicative reason (Bohman, 1995: 241; and Alexy, 1989, 1993). Habermasian themes of discourse-specific norms and procedures,

as well as principles for critically evaluating discourse are not enough. They must be linked to institutions, institutionalized practices, and institutional guarantees.

Institutional complementarity is the term that game theorists and economists like Jenna Bednar (2005) and Bruno Amable (2003, 2005a, 2005b) refer to the way specified institutional patterns effect institutional influences on specified other institutions. Manuel Castells (1995) and Bruno Latour (2005) along with Teubner see the emerging network society as requiring a "structural coupling" of autonomous subsystem regimes of contracting and standard-setting. *Complementarity* is understood here as the manner in which components of a whole compensate for each other's deficiencies, contradictions and colliding discourses in constituting the whole. Institutions are complementary to each other in their pluralism, rather than "interlocking." Robert Boyer (cf. Amable 2005b: 368) uses the concept of *hybridization* -- so central in Castells, Latour and Teubner -- to describe the process by which colliding subsystem regime logics transform each other heterarchically. These networks resist tendencies toward centralization; and range from loosely organized decentralized nets with multiple serial nodes; to those handling franchise contracts, legal obligation and liability patterns; to nets with fully collectivized liability. Most are of mixed or hybrid character, spawning a bewildering range of incompatible discourses, norms and laws.

Chris Ansell (2006) uses the term *network institutionalism* (**NI**) to stress the need to comprehend policy-making behavior *contextually*, especially where institutional complementarity, interweaving, interdiscursivity and interconnectivity generate strong norms of mutual obligation and reciprocity. Ansell (76-77) notes how Granovetter (1985) stressed a social network approach to avoid

- *either* a completely norm-determined (overly-sociologized) perspective *or* an interest group determined (under-sociologized) perspective;

- *either* a market *or* a hierarchical approach.

Network institutionalism (**NI**) is a variant of *constructivism.* Agents do not exist independently from their social environment and its collectively shared frameworks (systems) of meaning. Material interests are context-dependent. Agency is not autonomous, but contextually situated. Ideas and institutions interact; institutions are predicated on ideas. The nature of our material interest is socially contextuated, indeed polycontexturated. The ideas and institutions do not merely reflect material conditions; they constitute material practices in which ideas and institutional facts interact. Through these ongoing material practices the ideas and institutional facts reproduce themselves *endogenously* and unfold normatively *endogenously.* As Pierre Bourdieu demonstrated, ideas and institutions reproduce themselves not as disembodied templates, beliefs, traditions, ideologies and mental models, but as material practices. While practices display conventions; conventions do not constitute practices.

Following Frank Nullmeier (2006), we can distinguish two types of non-hierarchical networks: *bargaining regimes* and *argumentation networks*. The former allows for heterarchy, but participation can be limited to a few exclusive participating actors whose preferred knowledge form is the generated managerial expertise as discourse. The extent of recognition of participants and their discourse is the main characteristic, as is an emphasis on allocation privileges rather than on participatory rights.

Bargaining regime is the term used by David Kettler for this social partnership within and beyond the parameters of labor law. *Negotiated democracy* is the term used by Gerhard Lehmbruch to cover the continuum from advisory councils and pluralism to concertation and corporatism. Bargaining regimes justify demands within a discourse of generally accepted / credible norms, consensus bound norms rather than consensus projecting ones.

Argumentation networks encourage participant negotiating actors to persuade each other of the validity and justifiability of their warranted assertions. They do so within generalizable norms, rather than generally accepted conventions. They do so knowing they can pursue their claim's immanent justifiability.

Network institutionalism is a stepped-up constructivism that enables us to heed the argumentative turn in policy analysis with a focus on discursive committedness itself, rather than merely the application of the commitment of others. This is an interpretivist focus on how we first create normic statements and practices; and then reflexively critique the institutionalizing practical reason behind them.

Argumentation denotes the verbal and social activity of reason that aim at increasing (or decreasing) the acceptability of a controversial standpoint in multi-agent interchange - - interchange between interlocutors. This is done by putting forward a constellation of propositions intended to justify, validate or refute the standpoint before some community of rational adjudicators - - scientists, experts, judges, planning commissions, arbitrators, citizens. The interchange of arguments involve constituting locations, illocutions, perlocutions as well as the overarching protocols that interlocutors and negotiators agree should govern such interchange.

Argumentation occurs in a field of practical rationality: that is, a "world for us" in its being the constituted *neomatic* bearer of meaning, a socio-cultural lifeworld. This is a world we can question and reinterpret in reconstituting (*neotic)* projects that get us beyond compliance. At the core here is the problem ofconstituting knowledge (*Konstitutionsfrage*) traces back to the critical philosophy of Kant in its focus on the conditions of the constitution of both empirical reality and reality-related thinking/interpreting.

The Kantian expedient is to locate values beyond experience in a *noumenal* realm.

The Critical Theory of the Frankfurt School follows Hegel's phenomenological radicalization of Kant's critical philosophy, but not in bringing truth to an immediate existence as a real moment of the idea. Instead, this Critical Theory of Society aims at bringing empirical existence to truth. The immanence of truth in practical reason remains the touchstone for Critical Theory, as it holds the constitutive self-formation process as reconstructable. Particular, the interpretative tradition developed by

Habermas, focuses on the contingency of institutionally bound legitimation claims, and the consensus-projecting validity claims that challenge contingent institutional frames. Discursively, what are to be studied are the warranted assertions in the material practice that amount to the speaking of a language (*langage*), not just the structure or grammar of language code. (*langue*).

Arguments have their own ontology regarding premises, commitments, warrants, claims, norms, value, truth. And argumentative networks are constituted by the interchange of arguments involving locutions, illocutions, perlocutions and the voluntarily created protocols by which we govern the interchange of arguments. The internal relations of argument networks include inference schemes/applications; preference schemes/applications; strategic "attack" schemes/applications, rebuttal schemes/applications; and evaluation schemes/applications.

Beyond the application of sedimented discursive strategies that come to be taken for granted (e.g., Hay, Schmidt),we need a focus on representing the interpretations by which new discourse and institutions are constructed ***endogenously within*** a field of practical reason (e.g., Ansell, Bevir) - - one that leads to a critical evaluation of the truthfulness and justice of such newly constructed discourse and institutional practice.

Ansell's network-oriented approach to ideas and institutions recognize the necessity for argumentative strategies to work their way out both inter-organizationally and at multiple levels of governance. Ansell's network institutionalism (**NI**) further recognizes the complementarity in heterarchy, rather than the pyramid quality of hierarchy. **NI** also understands that like markets, networks operate without central direction and according to rules of exchange. Nonetheless, unlike markets, network interactions are more diffuse than discrete, and more social than impersonal. In contrast to markets, normative commitments and committedness are important (Ansell, 1997-2000).Complementary and even overlapping linguistic codes and symbolic discourse are understood to be constructed around ideas, not around an ethos, an essence, or a sense of "folk."

NI ultimately comprehends what Ansell calls "collaborative governance" or what we have referred to as complementary consensus projection:

1. identifying the un-necessary unanticipated consequences of present day institutional bound material practices; and

2. recognizing the interconnections of mutual benefit that mitigate the legal costs of adversarial institutional relationships.

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