

Seminar: The Market as a Legal Construct

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The Edmond J. Safra Center for Ethics at Tel-Aviv University

The Yale Law School Center for Private Law

Markets arise and operate through law—not just through public regulation but also through private law regimes (in property, contract, and tort) that create entitlements, enforce market exchanges, and limit expropriation. We propose to convene a seminar on *The Market as a Legal Construct* to investigate the legal foundations of market orders. What models of the legal subject, the legal entitlement, inter-subjective legal relations, and legal authority are immanent in market orders, and what conception of law itself do these models invite? The seminar will convene lawyers, philosophers, sociologists, anthropologists, and economists to discuss these and related questions. The brief descriptions below serve as invitations to reflect on them, suggesting loosely organized themes that such reflections might engage.

1. The Jurisprudence of Markets

The proposition that the market is, at least partially, legally constructed is familiar; but the jurisprudential implications of this proposition are rarely investigated. This category of papers will focus on how constitutive features of law or of legal personality may inform our understanding of the market as a legal construction.

2. Market Institutions and Legal Institutions

Markets are sometimes imagined as a direct extension of a natural human propensity for exchange. Modern market societies, however, rely on thick webs of institutions to create and maintain markets. Some of these are full-blown, highly formal legal institutions, like the limited liability corporation or the central bank; others are less formal and may rely on law only in relatively rare instances of breakdown. Papers in this category will focus on the role of institutions in markets, and the role of law in institutions.

3. Contract, Management, and the Rule of Law

Social and economic coordination may, as Coase observed, proceed along two dimensions: horizontally, through voluntary contracts; or vertically, through managerial administration. A familiar view identifies the market with horizontal contracting and the state with vertical management; and a second familiar view, associated with Hayek, celebrates a robust market as a check on abuses by the state, so that contract establishes a bulwark to ensure that management comports with the rule of law. Experience—including recently—complicates these connections. Contracts can confer quasi-governmental powers on firms and other private organizations, and markets can weaken states and degrade politics in ways that impair the rule of law. Papers in this category will take up the relationships between markets and hierarchical

management, including in both the firm and the state, with an eye to the effects of the market on the rule of law.

4. Law for Global Markets

Our legal order, built by and for a world of nation-states, is now faced with border-defying markets in everything. This intensely interconnected market order is both a product of the global legal order and a source of new challenges to it. Papers in this category will address the role that global markets and firms play in both international and transnational law.

