

METHODOLOGICAL TENSIONS IN UNDERSTANDING MARKETS

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I.

Nearly a century ago, Sir Arthur Stanley Eddington mused about how complex it might be to account for events or actions we normally take for granted:

I am standing on the threshold about to enter a room. It is a complicated business. In the first place I must shove against an atmosphere pressing with a force of fourteen pounds on every square inch of my body. I must make sure of landing on a plank travelling at twenty miles a second round the sun—a fraction of a second too early or too late, the plank would be miles away. I must do this whilst hanging from a round planet head outward into space, and with a wind of aether blowing at no one knows how many miles a second through every interstice of my body. The plank has no solidity of substance. To step on it is like stepping on a swarm of flies. Shall I not slip through? No, if I make the venture one of the flies hits me and gives a boost up again; I fall again and am knocked upwards by another fly; and so on. I may hope that the net result will be that I remain about steady; but if unfortunately I should slip through the floor or be boosted too violently up to the ceiling, the occurrence would be, not a violation of the laws of Nature, but a rare coincidence

Verily, it is easier for a camel to pass through the eye of a needle than for a scientific man to pass through a door. And whether the door be barn door or church door it might be wiser that he should consent to be an ordinary man and walk in rather than wait till all the difficulties involved in a really scientific ingress are resolved.¹

Eddington's words offer a useful cautionary note to anyone who believes that a reflexive account of how we act will simplify action. And considering our methodologies involves just such an account of how we, as scholars, do what we do, how we pass through a door.

True enough, most human activity may be carried on unreflectively. When we get behind the wheel of a car, we do not actively call to mind the rules of the road, the mechanics by which pressure on the gas pedal triggers fuel injection and eventually acceleration, much less anything we might call a theory of driving. Most of the knowledge we need to perform the tasks that add up to our daily lives

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1. ARTHUR STANLEY EDDINGTON, *THE NATURE OF THE PHYSICAL WORLD* 342 (1928). The passage is quoted and brilliantly employed by Walter Benjamin as the scientific counterpart of Kafka's literature. WALTER BENJAMIN, *ILLUMINATIONS* 141–42 (Harry Zohn trans., Hannah Arendt ed. 1968).

is, as Stanley Fish has put it, carried in our bones.² Academic discourse, however, while certainly not free of unreflective moments, is a bit different. It entails a tighter relationship between practice and theory.³ An important part of academic discourse itself is the reflection on how it is or ought to be conducted—within academic practice, the issues of what kinds of questions to ask, what kinds of answers to proffer, and what kinds of procedures for generating answers are productive, are always part of that very practice. Of course, sometimes tightly knit groups of researchers working within a particular tradition can assume a common methodological ground to the extent that it becomes all but taken for granted. But reflection on our methods as researchers is typically, at the very least, the active background for our thought and work.

The articles collected in this issue of *Law and Contemporary Problems* foreground such problems by reflecting on how scholarly method shapes the understanding of markets. *Methodological Tensions in Understanding Markets* is a title with non-trivial content. It signals that the methods for understanding markets are plural and not necessarily in harmony. It hints that different methods indeed engender different understandings of markets. And it notes that the object of inquiry is multiple: *markets*, and not *the market*. This Foreword introduces these themes and briefly positions the issue's articles in relation to them.

II.

We begin with a simple observation—stemming from our particular set of academic engagements—that scholars work with different tools, that those tools shape what they can (or cannot) say, and that part of their discourse is not only about their conclusions but about how to reach them, about method. More than everyday speech, scholarly discourse is self-conscious about validating its statements. The observation holds for scholarly discourse in general, but it is particularly trenchant for legal scholarship. The reason for the particular importance of method within legal scholarship is the way that method is deeply entwined with legal theory, or an account of legal reasoning. One of legal theory's central questions (perhaps *the* question) is how lawyers determine (or ought to determine) the meaning and the validity of legal claims. Thus, schools of legal theory distinguish themselves in large part by limiting (or expanding) the types of considerations that lawyers must account for in establishing their claims. For example, legal formalists claim that only the immanent content of established legal decisions with their proper logical entailments can serve as sources of

2. Stanley Fish, *Dennis Martinez and the Uses of Theory*, 96 YALE L.J. 1773, 1774 (1987).

3. Fans of Fish may protest that his claim is that there is *no relationship* between theory and practice, and that it is directly about academic discourse. But the “strict sense” in which Fish claims there is no relationship between performing an activity and explaining an activity is not at issue here. We have no stake in the argument over whether theory “generates” practice in the strong sense. “Listening to theory talk may be part of the experience of becoming a practitioner but not because theory talk would in any strong sense be generating the practice.” *Id.* at 1775 n.3.

validity,⁴ while legal realists claim that lawyers must account for additional goals and values that can advance the legitimacy of legal claims.⁵ Claims about how lawyers ought to understand the law—that is, claims of legal theory—are often primarily claims about legal method. In this sense, legal scholarship always plays out with a heightened level of reflexivity: its claims relate to the methods of the practice of law (by lawyers and non-lawyers) and consist in large measure of a proposed reconstruction of those methods.

While the range of methods available to legal scholars today is vast, we focus our inquiry on some very general trends. Methodologically, two styles of inquiry seem to be in tension: on the one hand, conceptual analysis, and on the other, historical or comparative study. Tension, perhaps too mild a word, is the optimistic version—one step further would imagine historical or comparative work and analytical work as divergent methodologies that have nothing to say to one another, at least directly.⁶ Stereotypically, the theorist develops analytical concepts that purport to be applicable across contexts, temporal and spatial alike; the historian and the comparativist eschew pre-formed concepts and, at the extreme, purport merely to present discovered facts, avoiding any theoretical commitment. For some proponents of conceptual analysis, history or comparison are at best empirical proving grounds, sites providing evidence to test theory.⁷ And for some historians, conceptual analysis is little more than a temptation toward anachronism or a reductionist view of history; similarly, the comparativist is suspicious of cross-cutting theories that ignore differences in language, tradition, culture.⁸ We can imagine matched caricatures: one, the historian claiming that she begins at the archive with no theory at all, letting the sources speak for themselves; the other, the conceptual analyst who barks in frustration at a counterexample with the quip, “don’t confuse me with facts.”

The brittle distinction presented above is an exaggeration; in the real world of scholarship, the relationship between theory or concepts and historical or comparative understanding is complex. No account of historical facts or comparison of legal regimes can get off the ground without a host of conceptual assumptions, as such assumptions define the categories of relevance and even assist in the very definition of the objects to be examined. Similarly, conceptual

4. For an elaboration of formalism’s view of law’s immanent moral rationality, see ERNEST WEINRIB, *THE IDEA OF PRIVATE LAW* 22–25 (Revised ed. 2012).

5. See HANOCH DAGAN, *RECONSTRUCTING AMERICAN LEGAL REALISM AND RETHINKING PRIVATE LAW THEORY* 16–22, 26–28 (2013). The distinction between formalism and realism is but a single example, easily multiplied to almost any of the major theoretical controversies in legal scholarship for the past century and a half (for example: historical school or various versions of legal positivism versus natural law; legal science versus the free law movement; economic analysis versus autonomy theories).

6. This can amount to a veritable “foreclosure effect.” See Gary Wilder, *From Optic to Topic: The Foreclosure Effect of Historiographic Turns*, 117 *AM. HIST. REV.* 723–45 (2012).

7. See, e.g., Kevin D. Hoover, *Reductionism in Economics: Intentionality and Eschatological Justification in the Microfoundations of Macroeconomics*, 82 *PHIL. SCI.* 689, 703–708 (2015).

8. See, e.g., Christopher Tomlins, *After Critical History: Scope, Scale, Structure*, 8 *ANN. REV. L. & SOC. SCI.* 31, 35–36 (2012); Albert O. Hirschman, *Against Parsimony: Three Easy Ways of Complicating Some Categories of Economic Discourse*, 74 *AM. ECON. REV.* 89, 92 (1984).

analysis of social institutions cannot completely disengage from some basic assumptions regarding the development of the institutions or their components—even a relatively decontextualized analysis assumes certain elements of context as given. Nevertheless, scholars typically gravitate toward one pole of the spectrum that ranges from analytics to context.

The tension between conceptual analysis, or theory, and history and comparison is age-old. The tension seems of particular interest today, however, in thinking about markets and market societies. Economic historians, influenced by the intensification of conceptual rigor within economics, have honed their conceptual tools to advance analytical concepts that travel. For example, they have suggested that agency problems or puzzles of collective action problems, like free-riding, can illuminate the development of market institutions across time and space.⁹ Meanwhile, historians outside of economic history, like comparativists, have concentrated on contingent particularities—seeming to suggest that general conceptual laws are of little use in understanding change over time. Some have claimed that historicizing the development of seemingly general conceptual categories reveals a contingent, political core at the heart of analytical work.¹⁰

Markets are not merely an incidental focus, apt solely because styles of inquiry have become polarized in analyzing them. In other words, markets are not simply a convenient topic for the exploration of methodological tensions considered abstractly. Instead, the focus on markets stems from their status as a particularly important site of contestation. As market ordering has seeped into ever more fields of activity, the idea of market ordering has expanded as an alternative to politics.¹¹ One might conduct a similar exercise regarding other topics, like borders (immigration, national economy, is the workforce numbered in citizens) or like citizenship;¹² but markets are particularly compelling because they have yielded modes of analysis that have stabilized enough to become almost separate languages. And crucially, the language of markets has not remained tethered to those traditional sites of commerce—the locales where things are sold for money or traded—but has become a generalized way of thinking about interaction: the very idea of exchange is often generalized to a market model so that everything from basic commodities to labor to care work to companionship to honor to discourse to politics might be imagined as a kind of a market.¹³ The thought that any possible interaction can be modeled on market terms is a central feature of recent decades, adding urgency to the

9. Albert O. Hirschman, *Against Parsimony: Three Easy Ways of Complicating Some Categories of Economic Discourse*, 74 AM. ECON. REV. 89 (1984); RICHARD TUCK, FREE RIDING 156-204 (2008).

10. *Id.* at 208–15.

11. The claim that markets are “democratic” and perhaps more democratic than politics is many decades old, but it is experiencing something of a revival in private law theory. For one version of that revival, see NATHAN OMAN, *THE DIGNITY OF COMMERCE* (2016).

12. AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* (2009).

13. KARL POLANYI, *THE GREAT TRANSFORMATION* (1944).

question of how we understand and justify markets. Finally, because markets are in large measure constructed by legal ordering, their design and justification merit special attention from legal scholars.¹⁴

Reflection on one's own practice always runs the risk of a self-indulgent narcissism. We believe that such reflexive consideration of methods in understanding markets, however, entails significant stakes. Closest to home, we have all worried, and sometimes felt frustrated, when methodological divides prevent productive discussion among academics, who might find themselves talking past one another. But as importantly, scholarly discourse on markets is often mobilized beyond the academy, both in the discussion of particular policies (within or without the decision-making community) and in broader public discourse. Academic claims, often stripped of their nuance and certainly of any methodological self-doubt, often turn up in what we sometimes call 'the outside world' as parts of concrete arguments and even more often as elements of background understandings.¹⁵ Thus, even those of us who consider themselves as concerned with basic rather than applied science have an interest in thinking and arguing about the standards by which academic validity is gauged. Alongside the gratification that their work is injected into policy discussion, academics should probably worry when their conclusions also feed into uncritical glorification of markets or its mirror-image—knee-jerk suspicion of markets. Sensitivity to the limitations of our methodologies is a partial response to such worries.

Let us recapitulate. Scholarly communities are internally divided regarding methodology, and markets are a touchstone to assess the merits as well as limits of both conceptual and historical methodologies. Moreover, methodological divides in discussions about markets can teach us about how partial our understanding tends to be regarding this core element of human society at the intersection of law, economics, history, politics, and justice. Since markets are decisive for the organization of societies, the stakes are quite high. This issue's articles touch on these concerns from a broad range of perspectives. They are rich with ideas on how to think about markets, offering an array of viewpoints about the relation between history and theory, differing strategies for developing analytics that pay attention to history or vice versa, as well as economic conceptions and concerns about what economic reductions might be missing. They form a chain that stretches from the ancient history of ideas that theorizes reciprocity over the explanatory power of modern economics (or its critique) to

14. Hanoch Dagan et al., *The Law of the Market*, 83 LAW & CONTEMP. PROBS., no. 2, 2020, at i. See generally Symposium, *The Market as a Legal Construct*, 83 LAW & CONTEMP. PROBS., no. 2, 2020.

15. The mechanisms by which scholarly work migrates to wider audiences may be mysterious, but one avenue is quite clear: Scholars are also typically teachers. Legal education prides itself on imparting skills for critical thinking, and those skills derive in large measure from the methodological commitments of academic educators. This power comes with a responsibility. See Duncan Kennedy, *The Political Significance of the Structure of the Law School Curriculum*, 14 SETON HALL L. REV. 1, 16 (1983) (explaining that the aim of doctrinal teaching in the first year of law school should be "to make these underlying structures accessible to students, while at the same time confronting them with the inescapable necessity to choose for themselves how to resolve the contradictions as they arise in their own lives").

the fundamental question of how historical context plays out within theoretical conceptualizations of markets.

III.

Imagine a community of shoemakers and housebuilders. The shoemakers produce shoes but also require houses. The housebuilders build houses but also need shoes. Thus, it is beneficial for both groups to join together to mutually fulfill their corresponding needs within a society of exchange. But how do shoemakers know how many shoes to make and the ratio at which to trade them for houses? How do housebuilders know how many houses to build and how much they are worth in relation to shoes? How does a community organize the exchange of the various goods it needs for its livelihood?

This question, which goes to the very core of understanding markets, has preoccupied political philosophers long before the market theories of classical and neoclassical economics were even invented. The example of the society of shoemakers and housebuilders is taken from Aristotle's *NICOMACHEAN ETHICS*, which spotlights the riddle of reciprocity of exchange between incommensurable goods.¹⁶ In the first article of this issue, Rachel Z. Friedman draws on Aristotle's account of reciprocity to underscore the necessity of understanding the market as much more than a mere price-generating mechanism responding to self-interested signals of supply and demand. According to Friedman's reading, Aristotle's account of reciprocity centers around a profound insight into the incommensurability of different kinds of goods, underpinned by a subtle mathematical proof turning on the ancient Greek invention of irrational numbers. It follows that there is no market exchange without reliance on a residuum of interpersonal virtues such as liberality, magnificence, magnanimity, and, ultimately, friendship. Friedman's account thus embeds market transactions in the broader scope of exchange relations in everyday social life where it is not price but virtue that matters. Conversely, her reading of Aristotle underscores the poverty and reductionism of any treatment of markets that omits the profoundly relational and societal dimension of reciprocal exchange.¹⁷

That same reductionism turned hegemonic is the major weakness of today's dominant economic paradigm of theorizing markets, David Singh Grewal argues. Grewal shows how the addition of several auxiliary theorems vastly expanded the scope of mid-twentieth century general equilibrium theory to include social fields that had hitherto not been considered part of the market sphere. The most pervasive of these auxiliary paradigms is the concept of transaction costs, linked to the no less important concept of externalities. Externalities describe the "outside" of the market paradigm, thus paradoxically contributing to its

16. ARISTOTLE, *NICOMACHEAN ETHICS* 1133a6-19 (Robert C. Bartlett and Susan D. Collins trans., 2011).

17. Rachel Z. Friedman, *Aristotle on Reciprocity, Equivalent Value, and the Embeddedness of Markets*, 86 *LAW & CONTEMP. PROBS.*, no. 4, 2024, at 1.

methodological universalization through an internalization of its own exterior into its conceptual framing; transaction costs have been prominently characterized not as outside the market but as the equivalent of physical friction within market transactions.¹⁸ With a keen eye to the history of the natural sciences and its congenial metaphysics of metaphors, Grewal deconstructs this picture and argues that transaction costs should not be understood as analogous to elementary particles or physical forces such as friction. Instead, they are more akin to epicycles within general equilibrium theory, designed to immunize the neoclassical economic paradigm in the same evidence-free manner as the hypothetical epicycles of planets in the Ptolemaic model of astronomy before Copernicus and Kepler. In just the same way, Grewal argues, the category of transaction costs is devoid of determinate meaning. The attempt to make it more concrete by appeal to the physical friction analogy exposes it as yet another metaphor for the vagueness of property concepts. Grewal argues that it can also be pushed in the opposite direction of higher abstraction, which reveals it to be nothing more than a kaleidoscope of infinite regress into what he calls “higher-order” transaction costs. Either way, the market theorist is ultimately left with an indeterminate picture of the nested difficulties of institutional change. As an explanatory concept, Grewal concludes that the idea of transaction costs is underdetermined in several critical dimensions and deployed not to explain empirical observation but to stabilize an overall epistemic framework.¹⁹

This, however, might not be the last word with regard to the explanatory power of neoclassical economics. Marietta Auer’s analysis—pointing to bargaining power as the core of theorizing inequality in market transactions—departs from the clarion call of recent Law and Political Economy scholarship. The latter calls for breaking with the methodological hegemony of neoclassical law and economics in order to rebuild the market economy on the basis of more democratic and egalitarian values.²⁰ Auer concurs with the diagnosis, but not with the remedy. From the fact that the law makes markets, she argues, it does not follow that it can also reverse engineer their outcomes. This is where economic methodology re-enters the picture. Auer argues that the pervasive and almost incorrigible inequity of capitalist-bargains outcomes is a function of the economic structure of bargaining power. This structure can be explained on the basis of game-theoretical modelling, which reveals the crucial importance of time-sensitivity for the outcomes of the bargain. As long as capitalist markets are defined by legal entitlements that endow the capitalist side with the power to hold out quasi indefinitely in the bargaining situation, the distribution of bargaining power and the resulting outcomes will heavily slant toward the capitalists, with

18. OLIVER E. WILLIAMSON, *THE ECONOMIC INSTITUTIONS OF CAPITALISM: FIRMS, MARKETS, RELATIONAL CONTRACTING* 15, 19 (1985).

19. David Singh Grewal, *The Epicycles of General Equilibrium Theory*, 86 *LAW & CONTEMP. PROBS.*, no. 4, 2024, at 25.

20. Jedediah Britton-Purdy et al., *Building a Law-and-Political-Economy-Framework: Beyond the Twentieth-Century Synthesis*, 129 *YALE L.J.* 1784, 1819–20 (2020).

almost no power of the law to mitigate the resulting inequality. Thus, legal reformers who assume that they can overcome the economics of the market through a straightforward redistribution of bargaining power overestimate their regulatory power. Auer concludes that it would be counterproductive for theorists to reject the toolbox of economic methodology if they want to understand markets, much less regulate them.²¹

Law makes markets, but so does money. Enter money to underscore the importance of history and context even as it exposes their interaction with conceptual analysis. For Christine Desan, market exchanges cannot exist prior to the creation of money: There is no market without money. Using the monetary politics enacted during the American Civil War as an example, Desan demonstrates the degree to which the creation of public money impacts the political economy. Desan offers a fact-rich *tableau* of how the public creation of money shapes and enables market transactions. The exercise at the same time proffers conceptual claims at odds with neoclassical approaches. To begin, money provides a publicly accepted unit of measurement, which solves the problem of commensurability and thus enables pricing. In other words, the creation of public money via constitutional fiat brings into the world the very element that the economic theory of markets usually takes for granted. Even more fundamentally, money literally transforms political power into an economic currency by turning public obligation into a unit of circulation. That innovation reshapes public capacity and private relations. The architectural impact of money penetrates further: money-creative power sets the public and its banked delegates apart from other market participants. Their distinct roles “format” exchange in the medium they make, a structural force at odds with the assumptions undergirding general equilibrium models. Finally, governments actively curate the ways in which liquidity travels and exchanges are performed. They enforce only approved transactions; they define commodities and thus affect production relations and labor markets. In brief, there is no private exchange on markets without the prior enabling function of public credit, better known as money. Far from being an instrument derivative of economic activity, Desan argues that money is the very institution that structures markets, and its near complete disregard in the economic theory must thus be read as a disqualifying default.²²

Embarking on the path to an epistemological renewal of market theorization, Lisa Herzog asks at the outset of her query into the preconditions of understanding and regulating markets what it is that philosophers see when looking at markets. Indeed, seeing what is essential about markets is one way to frame the very core of the methodological challenge presented in this issue: Whereas conceptual analysis is blind to the specifics of context, the inherent danger of context lies in a historicist tendency to invisibilize the general by

21. Marietta Auer, *Bargaining with Giants and Immortals: Bargaining Power as the Core of Theorizing Inequality*, 86 LAW & CONTEMP. PROBS., no. 4, 2024, at 53.

22. Christine Desan, *The Monetary Structure of Economic Activity: A Constitutional Analysis*, 86 LAW & CONTEMP. PROBS., no. 4, 2024, at 77.

focusing on the contingent. Along the spectrum falling between conceptual and contextual analyses of markets, Herzog nonetheless suggests that philosophers should align themselves more closely with the latter. Context is essential to understanding markets, Herzog argues, because their design and regulation crucially depends on epistemic preconditions, that is, forms of knowledge and knowability that vary considerably across markets, market actors, and marketable assets. Moreover, the epistemic preconditions of markets vary over time and thus create a historically shifting index of market epistemologies that depends on advances in knowledge, including second-order knowledge about how humans process knowledge, as well as technological advances in the storage and communication of knowledge. Herzog provides numerous examples of the relevance of epistemological preconditions and epistemological infrastructures for understanding and designing markets to support her argument. Whether Adam Smith's differential treatment of knowledge as the decisive factor in the institutional design of public infrastructure maintenance, George A. Akerlof's famous "market for lemons," or the existence of "blood diamond" and "blood oil" markets,²³ it is always context-saturated knowledge that matters for the development, desirability, and design of markets.²⁴

In brief, a methodology of understanding markets connected to reality should start from the question: What is going on here? This question, termed "Williamson's charge," stands at the center of Barak Richman's homage to the methodology inspired by his academic teacher, the late Oliver E. Williamson. For Richman, the keys to that methodology as exemplified by Williamson were modesty, commitment to real-world phenomena, and acceptance of pluralism. In a dense and moving intellectual history, Richman describes how this guiding question—coined by Robert M. Solow and oft repeated or paraphrased by Williamson as well as many of his peers and students²⁵—inspired several generations of economic scholars to produce better economic theory by prioritizing concreteness and methodological pluralism over orthodoxy and technicality. But "What is going on here?" is more than just a research motto. Richman depicts it in terms of Williamson's scholarly habitus, his way of being an economist, his daily reminder how good scientific methodology should be lived by its practitioners. Again, resonating with the methodological challenge presented by all of the articles in this issue, Williamson's charge responds to a

23. For discussions of each, respectively see 2 ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS bk. 5, ch. 1, pt. 3, art. 1 (R. H. Campbell, A. S. Skinner & W. B. Todd eds., 1979); George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 QU. J. ECON. 488 (1970); LEIF WENAR, BLOOD OIL: TYRANTS, VIOLENCE, AND THE RULES THAT RUN THE WORLD (2016).

24. Lisa Herzog, *The Epistemic Preconditions of Markets and Their Historicity*, 86 LAW & CONTEMP. PROBS., no. 4, 2024, at 111.

25. For discussions of each, respectively see Robert M. Solow, *How Did Economics Get That Way and What Way Did It Get?* 126 DAEDALUS 39, 56 (1997); Oliver Williamson, *A Comparison of Alternative Approaches to Economic Organization*, 146 J. INSTITUTIONAL AND THEOR. ECON. 61, 65 (1990); Mikko Ketokivi, *What is Going On Here? In Memoriam Oliver Williamson (1932-2020)* 66 J. OPER. MANAG. 492-93 (2020).

dichotomous choice between two alternative methodological paths. On the one hand, there is the doctrinal, technocratic approach, teaching “this is the law here” and suggesting that economics can produce eternal laws akin to the physics style. On the other, Williamson’s charge demands scholarly modesty and calls for a primacy of tentative, unorthodox, exploratory, and interdisciplinary methodologies. Richman traces Williamson’s intellectual bildungsroman from his early years at Carnegie Mellon University to his signature Nobel Prize work in transaction costs economics, thus painting a methodologically differential picture of the latter in which Williamson’s attentiveness to real-world problems always trumps theoretical doctrinalism.²⁶

Does this finally mean that contexts and concepts can be reconciled in understanding markets? Not quite. In his concluding article, Roy Kreitner returns to the baffling insight that public money creation, a historically decisive factor in establishing markets, is virtually absent from the economic theory of markets. This omission becomes all the more striking in light of yet another Nobel Prize-winning economic accomplishment, namely, the theory of banking developed by Ben Bernanke, Douglas Diamond, and Philip Dybvig.²⁷ This theory shows, among other things, that banks could exist and still be subject to bank runs even in a world without credit risk, and it notoriously does so without the inclusion of money in its theoretical design. What at first glance seems absurd—a Nobel prize-winning theory of banking without money—is, upon further examination, symptomatic of a much deeper problem regarding the relationship between concepts and context in theorizing markets than a mere exaggeration of abstraction and disconnection from reality. Rather, Kreitner argues, the concepts used to describe markets generate a history of their own, inscribing themselves into their very object of study and its perception over time. Thus, the omission of money from banking theory and economic market theory at large is not random, but in fact highly systemized: The contest between concepts and contexts is biased. Capitalist contexts produce a narrowed conceptual understanding of market forces designed to naturalize and reinforce their own operation. Capitalist market actors—among them scholars of market theory—legitimately conceive of money as a neutral intermediary of market exchange because there is nothing in the conceptually pre-formed reality of capitalist markets that suggests they should do otherwise. Capital, Kreitner concludes, has become the true subject in market exchange, while people have become its object.²⁸

IV.

The present issue brings together seven articles, two grand methodological orientations, and a plethora of interdisciplinary—historical, comparative, legal,

26. Barak Richman, “*Just What is Going on Here?*” *An Homage*, 86 LAW & CONTEMP. PROBS., no. 4, 2024, at 131.

27. Douglas W. Diamond and Philip H. Dybvig, *Bank Runs, Deposit Insurance, and Liquidity*, 91 J. POL. ECON. 401 (1983).

28. Roy Kreitner, *Concepts, Contexts, Contests*, 86 LAW & CONTEMP. PROBS., no. 4, 2024, at 147.

economic, sociological, political—perspectives in understanding markets. If we emphasize their interrelation, the potential connections, correspondences, as well as points of critical friction among the seven articles exponentiate. Rachel Z. Friedman draws parallels between Aristotle’s value-based conception of reciprocity and the relevance of epistemic infrastructures in markets described by Lisa Herzog, as well as David Singh Grewal’s critique of general equilibrium theory as an exhaustive account of determining value of markets. Grewal’s treatment of transaction cost economics stands in contrast to Barak Richman’s homage to its founder, Oliver E. Williamson, which, in turn, reappears in Marietta Auer’s economic analysis of bargaining power in interplay with the law defining markets. That the law plays a crucial role in shaping and regulating markets is also underscored by Lisa Herzog, whose call for more contextualization in understanding the epistemologies underlying markets resonates with Christine Desan’s historical reconceptualization of the role of money in market creation. The latter motive, in turn, reappears in Roy Kreitner’s critical analysis of the biased contest between contexts and concepts. The list of further complexities and nuances that could be added to those mentioned is long. Clearly, much more could be said, and there is certainly much more work to be done. We leave further methodological reflections, insights, and inspirations concerning the understanding of markets to the readers, whom we trust to pass unimpeded through the open door, be it barn door or church door, conceptual or contextual.