2 Paying What One Owes . . . or Carrying Out One's Obligations

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"Default"—an expression (highly moral) used to designate a debtor's failure to meet financial commitments—has been interpreted in mainstream economic literature as a result of poor assessment of risks: a fault logically sanctioned by the laws of the market (bankruptcy). Defaulting creates extreme mistrust. In the case of certain economic agents (e.g. the State, major business enterprises, and banks), it can correspond to a deliberate rational calculation, as the knowledge that they are protected from economic sanctions gives these agents freedom to take unreasonable risks. This raises the well-known problem of moral hazard, formalised in economic theory (the theory of insurance) and echoed in the policies of international economic institutions: for example, in Europe, in governmental aid to enterprises in difficulty (Lordon & Ould Ahmed, 2006), and in the current practice of European governments that have to deal with defaults in payment. The problems raised by defaulting States confront European institutions with a dilemma. Should they set up a plan to save a public asset (the euro) that is being jeopardised by external factors (the risk that a crisis affecting the banking system as a whole might have a knock-on effect resulting in sovereign defaults throughout the Eurozone)? A bailout relieves the defaulter of his economic responsibilities, the exception to the normal business rule enabling him to avoid the consequence of his default: bankruptcy. Or, on the other hand, should the institutions concerned apply the implicit law of responsibility, forcing the defaulter to bear the consequences of his failings but thereby running the risk of destroying the public asset, impacted by external effects? The structural adjustment programmes, for example, demanded as counterparts from the countries that receive aid are, in our opinion, an expression not merely of economic but also of symbolic concerns. They impose sacrifices, a punishment intended to remind the defaulter that being succoured carries a cost. This lets the international authorities off the horns of their dilemma. In the dramatic case of Greece, the counterparts were not only economic (this was open to doubt, as even the IMF admitted) but also symbolic. This was illustrated by the Greek government's brusque decision in June 2013 to close down the State-owned radio and television, cutting 2,600 jobs—a response to

injunctions from the European Commission, the European Central Bank, and the IMF, whose experts called for budget cuts and the immediate elimination of 2,000 jobs as proof of a firm purpose of amendment.

Situations such as this and the ways they are dealt with reveal a more basic question. One is led to it if one takes the expression "moral hazard" seriously. Is there actually such a thing as a "moral hazard"? If there is, does this not mean that in economics, there is a *moral* problem? And in that case, what exactly is it? In this chapter, we suggest an answer: the morality in question is that of payment: an obligation and a responsibility. A debt commits the debtor to paying his creditor, submitting him to a constraint. This constraint—the obligation to pay what one owes—would seem to be a basic rule of market economies. It seems to be perfectly self-evident or natural. We hope to show, however, that there is nothing natural about this obligation and that it is not by any means a *law* of the market.

The moral obligation to pay is not timeless; it has not always existed; it has a history. It has undergone metamorphoses and has been gradually incorporated into legal arrangements and eventually codified as law. This complex process can be grasped by following the emergence and development of the autonomy of the will and of the assignment of responsibility. In the first part of this chapter, we will attempt to reconstitute the way in which the ideas of obligation and responsibility developed and in particular to show how they have taken shape in economic practice. The constraint to pay is the result of social pressures, economic and noneconomic forces, and their various logics shape and determine it. An example: the social group of entrepreneurs. By adjusting the notion of economic responsibility, this group succeeded in making the constraint to pay more flexible—as we shall see in the second part of the chapter. This evolution can be seen in particular in economic discourse, in the law of insolvency, and in the juridical construction of social categories in enterprises, defining the points at which responsibility and (in case of nonpayment) sanctions apply. Legal validation of entrepreneurs' demands and claims came after a long period during which representations were modified, eventually leading to a new, more positive image of the entrepreneur.

WHY DO WE HAVE TO HONOUR OUR COMMITMENTS?

Why do economic agents have to honour their commitments and keep their promises? And why do they usually do so? We believe that the obligation is based on the strength of the social group to which the agents belong. In the course of time, this strength is attributed to different instances, undergoing new operations of formatting. In other words, historical forces promote the emergence of some forms and the decline of others. Throughout these metamorphoses, the collective moral force of the original matrix is preserved; it migrates, changing in form and in place. We can identify three major

instances of this: the Sacred, the State, and public opinion (or conventional decency). In the first instance, the commitment is sustained by the force of the sacred; in the second, by a combination of law and what we call a "diffuse" morality; and in the third, by a combination of law and a morality that is "infused."

Respect of Commitments Upheld by the Sacred

In the first of our three instances, it is respect for the sphere of the Sacred that lends force to the execution of obligations. The particular nature of this configuration stems from the fact that economic practices are set in a symbolic and religious matrix. One can understand this if one remembers how very difficult it can be to cede things to other people. Anthropologists—in particular Marcel Mauss (1950)—have drawn attention to the confusion between belongings and their owners, the spirit of the latter (*hau*) constantly accompanying the former. It is this magical force that places an obligation on the receiver.

This primitive form of obligation can be found in remote Roman antiquity. The recipient is *reus* (liable, guilty, concerned in a case)—a term that has the same root as *res*, "thing"; this indicates the alienation involved in cession (Gaudemet, 2000). On the giver's side, things are no simpler. The giver can detach himself from the gift only by going through a complex formal ritual: *mancipatio*. Prejuridical forms of cession and obligation are characterised by cumbersome formalities that serve to align the transfer with the dominant sacred forces. Benveniste (1969) points out that *ius*, the root of the term signifying law, originally meant "oath": an essentially performative uttering, a metonymy standing for the Law as a whole, the uttering in question being treated as a magicolegal enactment of commitment. The words pronounced by the owner to detach from himself the thing owned and get rid of it was known as the *ius iurandum*. The loan of money carried to an extreme this alienation of the receiver: under the regime of *nexum* (slavery for debt), the debtor engaged his freedom and his person, his body.

Ancient Greek law, too, provides interesting details on early legal forms of obligation and contract. These forms were part of the justice based on *thémis*, the justice of the Sacred, which was also the justice of relations close to one, as opposed to the justice of remoter relationships. *Thémis* as a form of justice existed before the emergence of the State: it regulated clan society, the society of families (*gene*): an intrafamilial justice, as opposed to the interfamily justice, *dikê*. According to Tricaud (2001) and Gernet (2001), this dichotomy of the near and the far is fundamental: *thémis* and *dikê* set up two different, heterogeneous orders of justice. Yet there were (and still are) cases in which an attempt was made to transform into remoter obligations the regime of the close and the sacred. Durkheim (1950) shows how, for example, blood-covenants—sacred formulae solemnly sworn in

blood—seek symbolically to create close ties of a "family" type in cases in which there are no biological links and to give an archaic, sacred character to an ordinary (relatively "modern") commitment made by contracting parties. We could also mention the harsh regime of the *nexum*, which borrows its ferocity from *thémis*.

Respect for Commitments Based on Law and on Objective Morality

Tensions of this sort are proper to intermediary stages in the course of a major transition. Gernet (2001) describes the effect of a fundamental evolution: that from the order of the *genos* (group, clan) to that of the *polis* (city-State). The dissolution of the *gene* and the passage to an integrated society are part of an ongoing centralisation of power. Asserting its monopoly of power, the emergent State weakens and dissolves the ancient groups, detaching individuals from their former communities and integrating them into the broader order of the *polis*. The institution of Law is part of this same process of "politicisation", expressing all of its characteristics. *Diké* is generalised as the justice of the polis and the law. The distinction between the remote and the close loses its pertinence. The circulation of goods speeds up, and acts of commerce and exchange lose their archaic solemnity. In the Roman world, the *nexum* regime becomes less rigid, and more neutral forms of loan develop, for example, *fenus* and *mutuum* (Gaudemet, 2000, 2001; Gazzaniga, 1992).

What constitutes an obligation in this new configuration? A mixture of law and morals: on the one hand, extrajuridical contractual practices strongly charged with morality, and on the other hand, law that no longer refer to morality. The *mutuum*, for example—a contractual practice that was not part of law—although more flexible than the *nexum*, was not by any means what today would be considered an ordinary loan. It should rather be seen as belonging to the category of "friendly loans" (Clavero, 1996); the paradigm applied was clearly that of gratuity and friendship. The lender did not lend to make a profit; his main interest was to show the strength of his friendship, without expecting a return. If in some cases the borrower added something extra when he reimbursed the principal, it was not interest due but a liberality, a free gift to express gratitude. The debtor was indeed under an obligation, but it depended less on law than on honour, a code based on an ethics of friendship and reciprocity.

Parallel to this extralegal practice based on ethics and morality, there was also law that had little to do with morality. In the legal system of Greece and even more that of Rome, categories were constructed that individualised obligations, forging a matrix of individual responsibility (Gernet, 2001). The juridical individualism of the Ancient World, however, had little in common with that which we know today. It lacked an essential component: subjectivity. This can be seen clearly in the notion of responsibility in Roman

law. Roman responsibility was purely objective. The underlying principle was not that of sanctioning a fault but rather one of correcting an imbalance. The purpose of this legal objectivism (Villey, 1977) was to maintain the equilibrium of order and of things. This had several consequences. In the first place, it was not a fault that set up an obligation but a disequilibrium that called for rectification. A mere mistake did not suffice to constitute responsibility for a particular state of affairs (Henriot, 1977; Terré, 1977). This raised the problem of linking a wrong to its author. But this problem was not dealt with in terms of anybody's intention or subjective volition. To envisage this would have required a metaphysical leap. It was this leap that was to configure the modern notion of obligation.

Respect of Commitments Enforced by Both Law and Subjective Morality

Roman law individualised responsibility but without creating subjects in the modern sense. With the decomposition of the Roman Empire, Roman law underwent an eclipse that lasted until the Middle Ages, when it was rediscovered. Meanwhile, a new way of thinking—a philosophy of consciousness—had come into being; and Europe saw the constitution of States, which had individualising effects; these were also promoted by the Church. All of these developments were to reconfigure law and renew it by basing it on new philosophical principles and on a more complex relationship with morals (Dijon, 1998; Ripert, 1949). Morality had previously been diffuse, an unconcentrated and unfocused factor, acting simply as an occasional external constraint on outward behaviour by judging it; now there was a move to an infused morality, focused and concentrated, that acted as a permanent internal constraint and exposed to judgement more intimate attitudes. This was the result of a deep-seated cultural development that was reflected in philosophy in Descartes's doctrine of faculties and Kant's metaphysics of consciousness. Kant's approach, both juridical and moral, maximised individual responsibility (Goyard-Fabre, 1977). Liberal law, the metaphysics of consciousness and a moral philosophy of responsibility, joined up in an historical process of subjectivation, creating subjects and especially *moral* subjects and even hypersubjects.

The subject constructed in this way was no longer intermittent; he or she was now a subject in all circumstances—and never an object. Of course, this modern subject was still exposed to exterior forces: the overarching laws of nature and society. But this overdetermination could never exonerate the subject from responsibility for his or her own destiny; it was up to him or her to exercise prudence and care and to take cognizance and remain aware of these laws, making whatever effort was required. In this system, the slightest error was seen as a fault; every misfortune had to be attributed to someone. This made inordinate demands on the subject—the main weakness of Kant's doctrine. In a minimal liberal system of law, the hypersubjective nature of

responsibility becomes an insupportable mental burden. Jurgen Habermas points out that this mental "overload" linked to the philosophy of consciousness has become a problem and calls for a "discharge" of some sort (Cusset, 2001). Relief has in fact been provided, although not by the ethics of communication and discursive procedures recommended by the philosopher; it has come from practical work on law. This passage through law had already been opened by earlier work on representations that—diverging from the liberal-Kantian vision—supported the idea that massive social forces dominate agents and that agents are unable to avoid their effects. To take an example, once the sociological corpus has been constituted and the notion of macrosocial causality has been recognised, it becomes possible *not* to impute to impoverished workers their unenviable situation; possibly, after all, they are *not* responsible for it. The shift we see here is an evolution from charity to law and in this case to a new type of law: *social* law (Ewald, 1986). The social group of entrepreneurs had already made this move, although strictly in their own interest; entrepreneurs had worked to build up a law of bankruptcy and a general body of company law that defined the responsibility of entrepreneurs as restrictively as possible.

ENTREPRENEURS AND THEIR DEBT

Part of the law of enterprises can be seen today as the process of adjustment, over a long period, of payment constraints on entrepreneurs: that is of their economic accountability. This process of "elasticising" the assessment of enterprises' accountability can be traced in the law of bankruptcy and in the juridical construction of the social forms that define the points at which entrepreneurs are held to be responsible. These evolutions of law all share a common feature: on the one hand, they separate the enterprise from the entrepreneur, protecting the entrepreneur from commitments of the enterprise; on the other hand, they mitigate the regime of bankruptcy (the economic sanction), reducing the stigma attached to it so as to make it more acceptable socially. Law, however, does not evolve of its own accord; change is brought about by social pressures and in this case by pressure exerted by a particular interest group: that of entrepreneurs. But it is not enough for these interests to be expressed; for entrepreneurs' claims to be validated in law, the representations on which they are based also have to be changed. A long process of coevolution will produce a symbolic recharacterisation of the social image of the entrepreneur, enabling entrepreneurs to demand the constitution of a body of law specific to enterprises. Thus the law of bankruptcy, initially an archaic ritual, becomes a modern procedure, and new juridical constructions result in the establishment of the enterprise as a fictitious entity separable and distinct from the entrepreneur as a person.

Recharacterising the Social Image of the Entrepreneur

The juridical operation aimed at alleviating responsibility in economic practice, however, could not be carried out without first fulfilling a number of symbolically important preconditions. Representations and perceptions centred on the figure of the entrepreneur had to be modified. For the regime of bankruptcy—the economic sanction—to evolve, an additional specification was needed. This was to come from an overall transformation of the image of the entrepreneur and from the slow operation of ideas, which gradually redefined the merchant. Traditionally the merchant had been perceived as suspect and vaguely illegitimate (Jorda, 2002; Le Goff, 1956). The entrepreneur, in contrast, came to be perceived as socially positive, someone who would take risks that other economic agents shied away from. Risk taking came into favour, a disposition that was felt to be rare enough to merit protection from the ups and downs of economic life.

It was only in the 13th century that commercial trade gradually came to be recognised as a necessary correlative of a deepening division of labour. The division of labour expressed the social nature of the reproduction of material existence: an argument propounded by Aristotle and resuscitated by Marsile of Padua. Once this had been accomplished, merchants' activities gradually gained recognition as being useful to society (Jorda, 2002). A further step was taken in the mid-15th century, when symbolism took up the theme of social utility, adding that the collective interest no longer contradicted the egoistical search for private profit but actually supported it. Bernard Mandeville and Adam Smith were to develop this argument most effectively.

This departure from the altruistic morals of the Church, however, did not mean that the activities of the enterprise were necessarily immoral. A new criterion—the age-old common good but now seen in a new, *material* sense—was introduced, resulting in a specifically entrepreneurial morality, a morality of progress and of risk taking (Le Goff, 1956). As of the 18th century, there was talk of the "good entrepreneur" and in the 19th of "captains of industry." Movements like Saint-Simonism, the work of Weber, Sombart, Knight, and Schumpeter, to mention only some of the main figures, helped to establish and reinforce a positive image of the entrepreneur (Boutillier & Uzunidis, 1999; Gille, 1959; Verley, 1994). The entrepreneur is someone who takes risks; in the inchoate economic ideology of the time, this aptitude was seen as valuable and rare, deserving protection from the misadventure of bankruptcy. If an entrepreneur was unable to honour his commitments and went bankrupt, this was now seen as a *normal* economic possibility, admittedly a risk, but not an infamy, as it had been considered in the past. The inclination to make wagers in conducting business was seen as a resource that should be preserved; the future should not be jeopardised because of occasional miscalculations. The destiny of the entrepreneur should be separated radically from the fate of his enterprise.

The enterprise, both as an institution and as an abstraction, could thus be seen as a prolongation of physical persons, who had to be preserved, whatever the fate of their works; it was detachable and, if need be, perishable. Evolution of bankruptcy proceedings—and the attribution of legal personality to the enterprise to separate it from that of the entrepreneur—culminated towards the turn of the 19th century, when the image of the entrepreneur attained its most positive form and portrayals were most eulogistic. In retrospect, this process can be seen as the result of a successful historical campaign by a social group that demanded protection and claimed immunity. The spread of this social imagery was helped on by the fact that members of the group in question were the economists who produced the ideas and headed the reviews that broadcast them (e.g. in France, the *Revue des deux mondes*, the *Journal des économistes*, the *Semaine financière*, the *Journal des débats*), and were also active in political circles and in business (Gille, 1959): people such as Michel Chevalier, Jean-Baptiste Say, Leon Say, and Frédéric Bastiat. The legitimation of entrepreneurial activities and the mitigation of responsibility, however, were also the result of this social group's demands in the field of law.

Entrepreneurs' Demands for a Special Corpus of Law

Thanks to this surge in their social legitimacy, entrepreneurs pursued their movement to set up a legal and jurisdictional niche for themselves. Analysis of the evolution of commercial law (Hilaire, 1986) has shown how activity aimed at legitimising merchants' practices and at reducing their economic responsibility was influenced by prominent entrepreneurs, who demanded a form of law "proper to themselves."

As of the 14th century, merchants were granted courts that were specifically commercial: the jurisdictions of corporations and fairs. Yet, even though these promoted the interests of commerce by the rapidity of their procedures, they applied only to corporations and not to registered merchants and to foreign operators. Subsequently, the merchants were to make further progress, influencing directly the development of their own law by acting through two channels: jurisprudence and direct application to the sovereign (Szramkiewicz, 1989). They were granted special authorities: the consular jurisdictions (16th century), in which the consular judges and notables who presided were themselves merchants. The procedures of ordinary courts, unversed in the technicalities of trade, were felt to be too cumbersome and too expensive. The "proper jurists" of ordinary courts of justice treated this judicial and jurisdictional exception with disdain. They saw it as an attack on their monopoly of the field of law and foresaw a threat of defeat in all commercial cases—with obvious financial consequences. Despite this opposition, however, merchants continued to be closely associated with the elaboration of royal legislation. They played a key role, for example, in Colbert's *ordonnance* issued in 1673—a projected unification of

commercial law. The royal authorities, who always called for the merchants' advice when preparing to formulate a law, multiplied creations of consular courts and assemblies of States-General and of notabilities. The merchants' influence took on forms that were even more institutional in 1601, with the creation of the Council of Commerce, which was subsequently to become the Office of Commerce in 1701. Through these new institutions, merchants and former consular judges were to play a leading role in proposing legislation on commerce.

In 1807, Napoleon issued the Code of Commerce, bringing this direct influence to a halt. Merchants had still been involved in the preparation of the code in 1801, however, in particular through Vital Roux, a merchant and banker from Lyon and the future regent of the Banque de France. Roux defended the formal autonomy of what would come to be known as commercial law (it was then that the term appeared for the first time), and also the de facto independence of commercial courts from courts of civil law. The economic and financial crises that occurred at the end of the Directorate and again in 1805 were the result of fraudulent bankruptcy proceedings; this led Napoleon to use the code to "force commerce back" into the straight-and-narrow path. The "proper" jurists seized this opportunity to claw back their primacy and exclude merchants from legal practice. They—and mainly those in civil law—insisted on establishing clearly in the Civil Code the subordination of commercial to civil law.

Bankruptcy Law: From Ritual to Procedure

Influence and the construction of law were to culminate in bankruptcy law. The development of the latter over a long period apparently corresponded to entrepreneurs' demands for a more flexible regulation of the economic sanction.

Until the 16th century, bankruptcy was repressed with a violence that intentionally matched the degree of illegitimacy of the economic practices it sanctioned. Bankruptcy was intimately associated with the idea of fraud. It was recognizable when a debtor absconded after having enriched himself illicitly. Sanctions were very severe: immediate imprisonment, infamy, and dispossession. The history of commercial law (Hilaire, 1986, 316) cites the example of bankrupt debtors in Lyon and Grenoble during the Middle Ages: the debtor, in ceding his property, is obliged to "hand [it] over, striking his arse thrice on a trunk or stone set up for that purpose, and repeating thrice in a loud, clear voice that he is leaving his goods." This quaint example might hide the fact that the fate of bankrupts could be a even harsher. In all cases bankruptcy was considered to be an infamy and was stigmatised by means of special rites. Compensation for an unpaid debt could involve bloodshed.

As of the 16th century, economic activity gradually gained respectability and became legitimate. A new question emerged: When could bankruptcy

possibly *not* be the entrepreneur's fault? Views began to change. In actual practice, the first concessions of flexibility appeared: letters of respite granted by the sovereign, temporisation, and the first composition proceedings. Next was to come a distinction drawn between the fraudulent bankrupt and the bankrupt who had merely been unfortunate. The latter was treated more or less indulgently; the former could be sentenced to death.

Though the overall trend was favourable, the regime of indulgence went through ups and downs, with laxity and rigour alternating to suit the political and business juncture. After Colbert's 1673 *ordonnance* and projected moralisation of business came the laxity of the Revolutionary period, and then a tightening under Napoleon, with the introduction of the code. In the end, however, flexibility was to prevail, more and more clearly after the 1838 Act, which, acknowledging that it was impossible to apply the Code Napoleon in its entirety, tempered some of its provisions. The two main advances in destigmatising bankruptcy were brought about by the 1867 Act that abolished imprisonment for debt and by the 1889 Act that set up the first composition proceedings. Instead of stigmatising the bankrupt, the accent shifted to relaunching his activity, now the main concern in bankruptcy law. This was indeed a major development: the ritual with its essentially punitive intentions was supplanted by a technical reorganisation of the failed business with a view to saving it. Nonpayment of debts and nonrespect of financial commitments were now seen as possibly being due not so much to moral failings as to economic forces—the business juncture, for example—over which the entrepreneur had little control. The latter could thus be exonerated, and this justified the new arrangements aimed at perpetuating his business activity.

Building the Legal Categories of Enterprise: The Enterprise as a Legal Person

The move towards flexibility in bankruptcy law and entrepreneurial responsibility shows up perhaps even more in company law, which defines the legal forms of commercial companies (Chaput, 1993). The construction of these legal categories took place in several phases that separated the entrepreneur from his enterprise and constituted the latter as an abstract fictitious entity endowed with legal personality (Michoud, 1924).

The first classification and legislative regularisation of categories of commercial companies dates back to the 1673 *ordonnance* (the earlier Blois *ordonnance* issued in 1579 applied only to foreign merchants and bankers, obliging them to register their companies). The Blois *ordonnance* aims at defining more explicitly the responsibility of associates involved in companies and specifying the parties liable in the event of a default in payment. In practice—to go by the documents of companies registered with notaries by their members—these initial categories ran into numerous prescriptions in customary law and in court orders and decisions (Lévy-Bruhl, 1938).

In general companies and in partnerships (the most current forms of commercial association in the early 17th century), all partners are liable jointly and *in infinitum* (joint and infinite liability) for the repayment of debts to the creditors of the company. Yet, even though the liability of the partners is total and their personal property is fully committed, an initial separation is effectuated: the company now no longer bears the name of the entrepreneur.

In the case of limited partnerships (which correspond to the first capitalised companies), an attempt is made to separate the personal assets of the partners from the enterprise. This dissociation, however, benefits only some of the partners: the sponsors, who are liable only for the amount they have contributed (Article 16 of the Gorneau project, 1803–1806, that was to lead to the 1807 Code of Commerce). The managers of the enterprise are unlimited partners and remain jointly and infinitely liable, as do their assets. This was a subtle legal category that enabled noblemen to invest their capital profitably without violating the social ban on conducting trade in one's own name (*noblesse oblige*, an edict issued in 1701 having authorised nobility to engage only in wholesale commerce).

It was only in 1867 that an act enabled the creation of limited liability companies without prior government permission. Only in 1925 were joint stock corporations created (they had previously figured in numerous draft laws and counterprojects that had been hotly discussed ever since 1867), eventually limiting the liability of executive officers and investors (Dougui, 1981). At last enterprise and entrepreneur had become two distinct entities, and only the assets of the company were committed. Separation between the two—in name and above all in holdings—became complete when the enterprise was granted legal personality. The substitution consisted in fact simply in a transposition to law of a transformation that had already taken place in the economy, thanks to the development of capitalism. The idea of legal personality is not really a *legal* necessity; it simply translates an ideological change: a change in the idea of association. If a company can become a legal person independently (to a large extent) of the legal personalities of its members, this is because it now really exists on its own, on the strength of the capital it holds; as criteria, financial and technical considerations have gradually replaced morality and the credit of the associates.

This set of institutional constructions ensures proper management of the devaluation of capital while leaving untouched the entrepreneurs themselves. This historical mix of ideological and legal developments thus led to the legal invention of the enterprise as a person bearing economic responsibility.

CONCLUSION: PROLONGATION AND DETOUR VIA THE EAST

The many virtues of a detour via the social sciences are widely known. Anthropology, in its central thrust (and particularly in the thinking of

Lévi-Strauss) and in some cases philosophy (e.g. François Jullien's account of the Chinese tradition) have shown how much the understanding of one's own culture can gain from immersion in a different world. Comparison of capitalist market economies with the now-defunct socialist economies (and in particular that of the USSR)—completely exotic as far as debt settlement is concerned—can enable us to pursue a little further the analysis outlined earlier. For the debt constraint is cultural, not natural (Ould Ahmed, 2003).

Analysis of the Soviet system shows that there is a close link between the ways in which institutions (and in particular the enterprise) are constructed and the basic categories of the system of law—just as in capitalism but in reverse order. The most salient feature of Soviet commercial law is the complete absence of autonomy in entrepreneurial decision making (Tchkhikvadzé, 1971). This is a reflection of a massive sociopolitical fact: in the USSR, there is only a single institution: the Party-State. No collective can attain any separate institutional existence, as all collectives (from sports clubs to educational establishments, trade unions, enterprises, and banks) are mere emanations of the one true central mega-institution: they are institutions of a markedly subordinate rank. Such subsidiary structures are all subsumed into a single legal entity—the State. The enterprise, as it has not been separated from the latter, is exonerated from economic responsibility and is not bound by its debts. It is not so much the laxity of budgetary constraints (Kornaï, 1984) that is determinant as the laxity of *payment* constraints. In fact, the debts of the enterprise are not really its own, as all situations of nonliquidity are referred back to the sovereign State, which can decide at its own discretion whether to honour or simply to cancel them.

It is not true, however, that there is no such thing as responsibility in the Soviet system. There are in fact commitments that have to be honoured: the commitments to meet the production objectives of the State Plan. On the one hand, these commitments are incumbent on individuals, the executives who report to the Party-State (Egnell & Peissik, 1974). On the other hand, the commitments define not so much an economic responsibility as a political one: that of attaining objectives of production set by the State.

The case of the USSR is particularly interesting, but not only because it can be seen as the inverse of the capitalist configuration. It harbours two antagonistic logics of responsibility. Although the vertical relationship (between the enterprise and the State) is predominant, it is not exclusive. In the interstices of the provisions of the Plan, enterprises can set up horizontal links with one another, exchanging supplies and arranging interenterprise credit, the status of which is completely ambiguous: although illegal in form, it is nonetheless tolerated by the supervisory bodies, which are aware that without these interstitial microadjustments, the system as a whole would be unmanageable. It is thus in this horizontal, practical order that Soviet enterprises have to honour the constraint to pay. Reimbursement of interenterprise debts is

imperative, as it conditions the links that enable exchange. The obligation to pay, however, is not part of the formal legal system, as it is in market economies; it is built into the *informal* construction of reputation and confidence with, as a sanction, the cessation of transactions.

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