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Introduction to law in a market context

An overview

This book examines the way in which people, as social beings, *experience* the relationship among law, markets, and culture. It does this with the recognition that people understand their experiences through the mediation of institutions of language, communication, and interpretation (interpretive institutions). Furthermore, it acknowledges that experience varies by a number of characteristics including race, gender, age, class, education, income, and geographic location, among others. Thus, law and market analysis must account for these variations.

With this in mind, the book advances two primary objectives. The first objective involves providing a framework for understanding the relationship among law, markets, and culture. This includes a framework for understanding the interpretive process and the ways in which interpretive institutions facilitate wealth formation and (re)distribution. In particular, attention is focused on understanding the way in which law functions to mediate the tension between culture (as an expression of a public and community interest) and the market (as an expression of private and self-interest). This involves an examination of the way in which legal actors and advocates understand and create legal arguments. This is important because it establishes a framework for understanding the way in which market ideas are borrowed and incorporated into law.

The second objective of the book involves providing an accessible introduction to a number of important economic terms and concepts that are frequently used in legal analysis. This involves an examination of economic terms and concepts as strategic "tools" for shaping legal reasoning. This is important because it provides a working vocabulary for understanding economic ideas that are already at work in the law, and it facilitates the use of these ideas in new situations. Attention is focused on understanding the way in which these tools create market advantages for

particular individuals and groups, and on learning to use these tools to one's own advantage.

The connection between these two objectives is in understanding how to use market concepts to influence the mediating process of law and legal institutions. This includes learning about the numerous ways of selecting, substituting, and re-characterizing the many economic terms and concepts available for advancing alternative lines of legal argument. This is important to effective legal reasoning – and to exercising favorable influence in the wealth formation and (re)distribution process.

As will be explained, understanding law in a market context is not the same as doing an economic analysis of law. This is because law in a market context focuses on the meanings and implications of using market concepts in law – not on doing an economic analysis of law. Before we begin our examination of this difference, however, it is appropriate to acknowledge the pioneering work of a few of the people that have greatly influenced the integration of legal and economic reasoning. This group includes such people as Gary Becker,[1] Guido Calabresi,[2] Ronald Coase,[3] and Richard Posner,[4] all of whom advanced new and thoughtful ways of understanding law and legal institutions. They, and others, made important contributions in many areas of law, and this should be recognized even though there may be disagreement with the subjective and political framing of their legal reasoning. Collectively, they helped develop

[1] *See generally* Becker, *Crime and Punishment* 169, 191–93; BECKER, ECONOMICS OF DISCRIMINATION; Becker, *A Theory of Competition*; BECKER, ECONOMIC APPROACH TO HUMAN BEHAVIOR; BECKER, HUMAN CAPITAL; BECKER & MURPHY, SOCIAL ECONOMICS; BECKER, ECONOMIC THEORY; GHEZ & BECKER, ALLOCATION OF TIME AND GOODS; BECKER, ACCOUNTING FOR TASTES; BECKER, ECONOMICS OF LIFE (a collection of essays on everyday topics).

[2] *See generally* CALABRESI, COST OF ACCIDENTS; Calabresi & Melamed, *Property Rules, Liability Rules, and Inalienability*; Calabresi, *The Pointlessness of Pareto*; CALABRESI, COMMON LAW FOR THE AGE OF STATUTES; CALABRESI, IDEALS, BELIEFS, ATTITUDES.

[3] *See generally* Coase, *The Problem of Social Cost*; COASE, THE FIRM, THE MARKET, AND THE LAW; Swygert & Yanes, *A Primer on the Coase Theorem.*

[4] *See generally* POSNER, ECONOMIC ANALYSIS OF LAW; Posner, *Utilitarianism, Economics, and Legal Theory*; Posner, *Rational Choice, Behavioral Economics*; POSNER, PROBLEMATICS OF MORAL AND LEGAL THEORY; POSNER, LAW AND ECONOMICS: THE INTERNATIONAL LIBRARY OF CRITICAL WRITINGS IN ECONOMICS (Posner & Parisi, eds.); POSNER, ECONOMIC STRUCTURE OF THE LAW (Parisi, ed.); POSNER, ECONOMICS OF JUSTICE; POSNER, FRONTIERS OF LEGAL THEORY; POSNER, LAW AND ECONOMICS (Posner & Parisi, eds.); POSNER, SEX AND REASON; POSNER, PROBLEMS OF JURISPRUDENCE; POSNER, ECONOMICS OF PRIVATE LAW (Parisi, ed.). *See also Debate: Is Law and Economics Moral?* (publication based on a live debate between Robin Paul Malloy and Richard A. Posner).

new frames of reference, and new patterns of legal thinking. As a result, we now have new rhetorical tools for discussing matters of liability, risk allocation, criminality, and property, among others. Our legal vocabulary has embraced new terms such as transaction costs, externalities, efficiency, wealth-maximization, preference shaping, reasonable investment-backed expectations, and cost-benefit analysis. We have also absorbed conceptual frameworks such as those referenced by such names as the Coase Theorem, the prisoner's dilemma, the tragedy of the commons, the anti-commons, the theory of path dependency, efficient breach, public choice, and game theory. Thus, for better or for worse, and without regard to one's politics, the borrowing of market concepts has *transformed* legal reasoning and captured an authoritative position in the legal imagination.

This book is concerned with the meanings and values created and promoted in law by the use of various market concepts. It seeks to examine and explain how these references to economics shape socio-legal meanings and values, and how they influence the allocation of scarce resources and the opportunities for capturing, creating, and distributing wealth.

The book also brings a humanities-based approach to recent trends in law and market scholarship. Thus, it contributes to an impressive expansion of law and market thinking brought on by a variety of approaches that might collectively be called the "new law and economics." Examples of "new" approaches include ventures into behavioral law and economics (referencing work in behavioral psychology and sociology),[5] the law and economics of norms (referencing theories of norm-building and of informal relationships and organizations),[6] institutional law and economics (referencing institutional economics rather than the more traditional appeal to neoclassical economics),[7] feminist law and economics

[5] *See* BEHAVIORAL LAW & ECONOMICS (Sunstein, ed.); Rostain, *Educating Homo Economicus.*

[6] *See, e.g., Symposium: Law, Economics and Norms*; LANDA, TRUST, ETHNICITY AND IDENTITY. *See* MALLOY, LAW AND MARKET ECONOMY at 136–37; McAdams, *Signaling Discount Rates*; Blair & Stout, *Trust, Trustworthiness, and the Behavioral Foundations of Corporate Law*; ELSTER, THE CEMENT OF SOCIETY.

[7] *See generally* MERCURO & MEDEMA, ECONOMICS AND THE LAW at 101–29, 130–56 (discussing Institutional law and economics, then discussing Neoinstitutional law and economics); NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE; NORTH, *Transaction Costs*; ADAMS, RELATION OF THE STATE TO INDUSTRIAL ACTION (Dorfman, ed.); COMMONS, INSTITUTIONAL ECONOMICS; Commons, *Law and Economics*; VEBLEN, THEORY OF THE LEISURE CLASS; SAMUELS, LAW AND ECONOMICS; SOLO, ECONOMIC ORGANIZATIONS AND SOCIAL SYSTEMS; AYRES, THEORY OF ECONOMIC PROGRESS.

(referencing feminist theory),[8] and interpretive and representational law and economics (referencing the humanities, various forms of interpretation and rhetoric theory, and law and society).[9]

In this book attention is focused on the emergent interest in interpretive and representational approaches to law and market theory, and on the experiential process by which legal and market reasoning is transformed. Therefore, in exploring an interpretive or representational approach, the book embraces the humanities, including references to esthetics, ethics, and logic. It explores the subjective nature of markets, the lack of universality in a number of economic concepts, and the role of interpretive institutions in generating value and redistributing resources. Moreover, it advances an understanding of the relationship among law, markets, and culture, indicating a need to democratize and enhance access to the meaning and value formation process.

At the outset, however, it must be noted that there are numerous approaches to interpretation theory, and to the cognitive processes that ground interpretation. The focus in this book is, therefore, limited. This book makes reference to the interpretation theory of one of America's greatest philosophers who was also a founder of the philosophical school identified as American Pragmatism, Charles Sanders Peirce.[10]

Peirce's work on interpretation and representation theory is categorized under the term or subject of semiotics, which means the study of "signs."

[8] *See generally* Hadfield, *Expressive Theory of Contract*; Hadfield, *Price of Law*; O'Connor, *Promoting Economic Justice in Plant Closings*; FERBER & NELSON, BEYOND ECONOMIC MAN; White, *Feminist Foundations for the Law of Business*; Meighan, *In a Similar Choice*; SUNSTEIN, FEMINISM & POLITICAL THEORY; Dennis, *The Lessons of Comparable Worth*; O'Neil, *Self-Interest and Concern for Others in the Owner-Managed Firm;* McCluskey, *Insurer Moral Hazard in the Workers' Compensation Crisis.*

[9] *See, e.g.*, Kevelson, *Transfer, Transaction, Asymmetry*; Malloy, *Toward A New Discourse of Law and Economics*; Brion, *Rhetoric and the Law of Enterprise*; McAdams, *A Focal Point Theory of Expressive Law*; McAdams, *An Attitudinal Theory of Expressive Law*; Lessig, *The Regulation of Social Meaning*; Malloy, *Law and Market Economy*; Brion, *The Ethics of Property*. The starting place for much of this work are two books by McCloskey, THE RHETORIC OF ECONOMICS and IF YOU'RE SO SMART. More recent books include: DESOTO, THE MYSTERY OF CAPITAL; GAGNIER, THE INSATIABILITY OF HUMAN WANTS; KIRZNER, MEANING OF MARKET PROCESS; MALLOY, LAW AND MARKET ECONOMY; NOOTEBOOM, LEARNING AND INNOVATION. While each of these books takes on a particular aspect of the representational relationship between law and economics, each demonstrates the significance of interpretation theory to an understanding of law, markets, and culture.

[10] *See* THE ESSENTIAL PEIRCE VOL. 1; THE ESSENTIAL PEIRCE VOL. 2. *See generally*, KEVELSON, PEIRCE, SCIENCE, SIGNS; KEVELSON, CHARLES S. PEIRCE'S METHOD OF METHODS; KEVELSON, THE LAW AS A SYSTEM OF SIGNS; KEVELSON, PEIRCE'S ESTHETICS OF FREEDOM; NOTH, HANDBOOK ON SEMIOTICS 39–47; SHERIFF, CHARLES PEIRCE'S GUESS AT THE RIDDLE; LISZKA, GENERAL

By this term Peirce simply meant to reaffirm the idea that humans are sign making and sign interpreting beings. Signs, as such, include language as spoken and written, visual images, colors, symbols, art, architecture, music, and a variety of other ways in which ideas are communicated. In this book I refer to semiotics as a *cultural-interpretive* approach, because this term expresses the semiotic ideas that the individual interpretive actor is situated within a cultural context and that a culture, in essence, is an implicit interpretive system. This is how one experiences the intersection of law and market economy – not as an isolated and atomistic individual but as an individualized participant in an interpretive community.

In popular culture perhaps the best known semiotician is Umberto Eco, who has numerous successes in both the popular and the academic communities.[11] It is, however, Peirce's work that is of particular value in exploring the relationship between law and market theory because it shares an affinity with a number of core ideas expressed in the works of Adam Smith,[12] and with work in Austrian economics.[13] The

Introduction to the Semeiotic of Charles Sanders Peirce; Colapietro, Peirce's Approach to the Self; Apel, Charles S. Peirce: Philosophical Writings of Peirce (Buchler, ed.); Hookway, Peirce; Reasoning and the Logic of Things (Ketner, ed.); Merrell, Peirce, Signs, and Meaning; Merrell, Semiosis in the Postmodern Age; Scoles, Semiotics and Interpretation; Hausman, Charles S. Peirce's Evolutionary Philosophy; Potter, Peirce on Norms & Ideals; Menand, The Metaphysical Club; Milovanovic, Introduction to the Sociology of Law (discussing semiotics including Peirce).

[11] *See* Eco, Search for the Perfect Language; Eco, Limits of Interpretation 51; Eco, Open Work; Eco, Semiotics and the Philosophy of Language; The Sign of Three (Eco & Sebeok, eds); Eco, Theory of Semiotics. His popular works include: Eco, Misreadings; Eco, Foucault's Pendulum; Eco, The Name of the Rose (made into a popular hit movie, The Name of the Rose, starring Sean Connery, 1986, Fox Films).

[12] *See, e.g.*, Malloy, Law and Market Economy 41–42, citing Smith, Theory of Moral Sentiments 168; Smith, Essays on Philosophical Subjects 33–105; Smith argued that we exist in a social context and not as isolated beings; *id.* at 64–69, 106–24, 161–62, citing Smith, Theory of Moral Sentiments, 71, 200–60, 352, 422 (discussing the impartial spectator), 264 (discussing the way in which general rules emerge from experience); Smith, Lectures on Jurisprudence 207, 311–30, 401–07 (discussing the idea of social organization based on many factors and not the idea of social contract), 14–37, 200–90, 311–30, 401–07 (addressing the dynamic stages of economic and legal evolution); Smith, An Inquiry into the Nature and Causes of the Wealth of Nations Vol. I 420–45, Vol. II 1, 231–44 (discussing the dynamic stages of economic development); Smith, Lectures on Rhetoric and Belles Lettres (provides a similar analysis with respect to the dynamic development of language).

[13] *See, e.g.*, Shand, The Capitalist Alternative; Kukathas, Hayek and Modern Liberalism; Hayek, Constitution of Liberty; Hayek, Law, Legislation, and Liberty (Vol. 1, Rules and Order) (Vol. 2, The Mirage of

compatibility with Austrian economics is most apparent with respect to the idea of "market process theory," as expressed in the work of such well-known economists as Friedrick Hayek and Israel Kirzner.[14] Peirce's work also shares a conceptual grounding that is similar to economist Joseph Schumpeter's theory of "creative destruction," which is central to an understanding of creativity in economics.[15] In addition, because Peirce was interested in developing a theory of the sciences, his approach lends itself to the deconstruction and interpretation of empirical and social science work, such as that done within the framework of an economic analysis of law. Peirce's concern for understanding the way in which we experience the sciences makes his approach readily applicable to the study of law and market theory.[16]

Peirce's work and the idea of understanding law in a market context should also be of interest to critical theory scholars.[17] Critical theorists have contributed a great deal to our understanding of the experiential nature of law, and these insights are valuable to the cultural-interpretive process. Critical theorists, and other non-law and economics scholars, have also reminded us of the fact that law is not a natural science. And, even though references to the natural and social sciences can be helpful, law involves human practices and experiences that are not fully explainable or understandable in scientific terms.

This book, therefore, examines the way in which the "institutions" of language, communication, and interpretation function to redistribute and create wealth. It also explores ways in which an interpretive approach can make us better and more effective lawyers by facilitating an understanding of law in its market context. This can be done in at least three ways. First, Peirce's approach enhances our ability to use *framing* devices to identify value-enhancing opportunities in the exchange process. Framing

Social Justice, 1976) (Vol. 3, The Political Order of a Free People, 1979); Kirzner, Meaning of Market Process; Kirzner, Discovery and the Capitalist Process.

[14] *Id.* [15] *See* Schumpeter, Capitalism, Socialism, and Democracy 81–106.

[16] Thus, it is not surprising that Peirce's work has been cited and favorably discussed by Richard Posner in two of his books (Problems of Jurisprudence 462–64; Problematics of Moral and Legal Theory 99, 104, 264; and Mercuro & Medema, Economics and the Law).

[17] *See, e.g.*, Houh, *Critical Interventions.* In this excellent article the author reconsiders the good faith rule in contract law. With specific reference to race and employment matters, she uses critical theory and law and market economy theory (with reference to Peirce) to rethink and restructure the established approach in the area. In integrating her approach she reforms our thinking about the good faith rule in contract law and develops a new cultural-interpretive pattern of legal argument.

involves identifying a category or general viewpoint from which a fact pattern or problem will be addressed. Second, it facilitates the use of *referencing* devices that enhance our ability to mediate between contested matters within a given interpretive framework. Referencing involves the identification and selection of particular criteria, from among several, for use in analyzing issues *within* a given frame. And, third, it explains how semiotic devices can be used to create value by transforming legal convention – by creating new *representations* that extend the networks and patterns of exchange. Representation involves the way in which abstract ideas and concepts are made comprehensible and able to be exchanged, as in using a written deed to represent an estate interest in land so that it can be sold or mortgaged. Each of these points can be initially illustrated with some simple examples.

As to the idea of framing, consider a typical real estate financing transaction.[18] Imagine that a developer has formed a corporate entity to deal in real estate transactions. In an effort to raise needed cash for a new venture, the developer seeks to borrow against $10 million in equity that it has in an office building. At the outset one needs to consider the way in which this financing transaction might be framed. It might be framed as a loan secured by a mortgage on the office building. In this setup the developer retains full ownership of the building and gives a mortgage lien as collateral for the promise of repayment. On the other hand, the transaction could be set up as a sale and lease back of the property. Here the developer sells the building to a buyer to raise cash and then leases it back to use the space. The proceeds of sale provide funding as a substitute for the mortgage loan, and the lease payments to the buyer mimic the repayment of a mortgage. Now the transaction involves a sales contract, coordinated leasing terms, and no mortgage. A third way of doing this transaction might involve the sale or pledge of the stock in the corporate entity holding legal title to the property. In this framing of the transaction the exchange is shifted out of real property law and into the law governing corporate stock transfers. Each of these three transactional frames is common practice and collectively they illustrate several different ways of approaching the problem. Each framing of the transaction triggers different aspects of law, and different cash flow, tax, and other economic consequences.

Once a specific frame and transactional view have been decided upon, there are still many points to be considered and evaluated. Within the

[18] *See* MALLOY & SMITH, REAL ESTATE TRANSACTIONS 3–43.

chosen frame there are multiple ways of structuring the details of the transaction. Interpretive references may be made to internal rates of return, out-of-pocket costs, sunk costs, opportunity costs, market penetration, and net and gross cash flows, among others. Different references used to evaluate the desirability of a given transactional frame will provide different conclusions about the consequences of the proposed project.

In a similar way, particular drafting points may be referenced against different interpretive criteria to evaluate the status of the terms as covenants, warranties, or one of three types of conditions (simultaneous conditions, conditions precedent, and conditions subsequent). The point is, that these different interpretive references may result in different risk allocations and in different legal and economic opportunities. This is true even when operating within the given transactional frame. Moreover, understanding the meanings that each side attaches to particular words, terms, or conditions used in documenting a transaction is essential to advancing a client's transactional expectation. Being an effective advocate for *either* side, therefore, involves an ability to understand the framing and referencing of the transaction from *each* side.[19]

We can appreciate another aspect of framing and referencing when we consider a transaction in a cross-cultural context.[20] Consider, for example, a real estate transaction involving an American developer negotiating for a project in a transitional economy such as China. Here, the developer must contend with additional framing and referencing issues. Here, she must appreciate the interpretive implications of *different* worldviews as value frames – different conceptions of property, capitalism, profit, individual autonomy, and different formulations of the proper balance between private and public interest in market exchange. Consequently, understanding the deal requires an ability to effectively use the tools of interpretation theory to successfully navigate the cross-cultural waters of

[19] There are a number of classic examples of this type of interpretive problem in structuring exchange. In the area of contract law, consider two cases that appear in most first-year casebooks. *See* Frigaliment Importing Co. v. B.N.S. Int'l. Sales Corp., 190 F. supp. 116 (S.D.N.Y. 1960) (Litigating the meaning of the word "chicken" as used in a contract: did "chicken" include more expensive "fryers" or simply make reference to lower value "stewing chickens"?); Raffles v. Wichelhaus, 2H.&C. 906, 159 Eng. Rep. 375 (EX. 1864) (Litigating confusion as to which of two ships by the name of *Peerless* was the one that was the subject of the contract between the parties.)

[20] *See* MALLOY, LAW AND MARKET ECONOMY 12–15, 66–70; Hom & Malloy, *China's Market Economy*. *See generally*, CHINESE WOMEN TRAVERSING DIASPORA (Hom, ed.) (exploring meaning in alternative cultural-interpretive frames).

commerce, and this ability is of even more importance as we consider the process of globalization.

We can also examine these framing and referencing conflicts between interpretive communities within one country. Consider, for example, the case of *American Nurses' Ass'n* v. *Illinois*.[21] This case involved a class action suit that challenged the appropriate frame of reference for determining wages for certain classifications of workers.[22] The plaintiffs in the case, brought on behalf of nurses and typists employed by the state of Illinois, alleged that the state pay scales were unfair and discriminatory.[23] The claim was that jobs associated with women paid less than jobs traditionally done by men.[24] On the surface of the text, the dispute seemed to be one of *contested facts* concerning the determination of wages when a comparison was made between the "work of women" and the "work of men."[25] The underlying tension in the case, however, really involved deeply *contested values* regarding market operations.[26] The State of Illinois, for instance, defended its wage structure by showing that it was implemented with reference to the wage rates established by the supply and demand for particular types of employees in the general labor market.[27] The plaintiffs, however, rejected the fairness of the marketplace and interpreted the market frame as inappropriate.[28] To them, markets were inherently biased in favor of men, and a market frame simply served to perpetuate the unfairness of the labor market to women.

Understanding the underlying debate in a case such as *American Nurses' Ass'n*, and working to effectively mediate the tension between the two conflicting interpretive frames, requires an understanding of the conflicting meanings and values dividing the two sides of the case. The dispute is not simply about *facts* (differences in wages between jobs); it's about *values* and the interpretation of market relationships. Both sides can recognize that getting the court to understand the dispute from their own particular frame and reference will affect the outcome, and ultimately the allocation of economic resources.[29] Thus, interpretation theory facilitates a

[21] American Nurses' Ass'n v. State of Illinois, 783 F.2d 716 (1986). This case is also discussed in MALLOY, LAW AND ECONOMICS 134–45.
[22] *Id.* [23] *Id.*, at 718–19. [24] *Id.* [25] *Id.*
[26] American Nurses' Ass'n, 783 F.2d 716, at 719–20. *See* CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 184–96; PAUL, EQUITY AND GENDER.
[27] American Nurses' Ass'n, 783 F.2d 716, at 719–20. [28] *Id.*
[29] Once the court selects a particular interpretive frame and reference concerning the nature of the dispute and its resolution, the outcome and implications must be justified within

deeper understanding of conflicts such as the one illustrated by the case of *American Nurses' Ass'n*, while directing attention to the use of law in positioning social and gender relations.[30]

In addition to explaining the significance of framing and referencing, this book addresses the way in which Peirce's semiotic interpretation theory facilitates exchange.[31] In general, semiotics deals with the way in which abstract ideas are *represented*.[32] This simply means that it deals with the devices, concepts, and tools that we use to communicate and interact with each other. The ability, for instance, to represent different forms of property ownership in terms of deeds, leases, and mortgages, permits exchange in ways that would not be possible without such representational or interpretive devices.[33] A deed representing fee ownership of real property, for example, permits a homeowner to control a property as a physical object and at the same time use it as collateral for a secured loan, or lease it for rental income.[34] Law, through legal convention, permits the property to serve multiple market functions. Not only does it provide a home and shelter, it can provide access to credit and to cash flow. In a similar manner, the ability to use a credit card as a recognized symbol or representation of financial ability enhances market exchange by eliminating the need for individuals to carry large sums of gold when they shop or travel.[35] In so doing, it raises the possibility of extending exchange beyond the boundaries of small or informal communities, and thus expands the potential for meaningful and profitable market interaction. In this way, the transformation of the interpretive frames and references of legal representation enhances our ability to create value.[36]

In the hope of further advancing an understanding of framing, referencing, and representing, I wish to briefly discuss several more cases that

that frame and reference. In a sense one might think of selecting the appropriate frame and reference as generally related to the idea of the judge acting on a cultural-interpretive hunch; and once the judge makes a framing and referencing choice the logic of that choice constrains the decision. *See generally*, Dewey, *Logical Method and Law*; Hutchenson; *The Function of the "Hunch" in Judicial Decisions*; Frank, *What Courts Do In Fact*; Brion, *The Pragmatic Genesis of Constitutional Meaning*; Yablon, *Justifying the Judge's Hunch*; Modak-Truan, *Pragmatic Justification of the Judicial Hunch*.

[30] When this case is analyzed in a cultural-interpretive manner, one better understands the conflict, while also appreciating the way in which dominant frames and references are used to inform gender politics. *See generally*, BEYOND ECONOMIC MAN (Ferber & Nelson, eds.).

[31] MALLOY, LAW AND MARKET ECONOMY 23–56,148–53.

[32] *Id.* [33] *See* DESOTO, MYSTERY OF CAPITAL 4–10, 39–67.

[34] *Id.* [35] *Id.* [36] *Id.*