

Property, State, and Entangled Political Economy

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Most theories of political economy operate in terms of what might be called separated political economy, as illustrated by the formulation: political economy = polity + economy. Within this formulation it is reasonable to speak of the state intervening into the market economy. In contrast to separated political economy, this paper explores some aspects of what might be called an entangled political economy, wherein relations among state-based and market-based enterprises are knotted together in complex ways, with each type of enterprise participating in the activities and domains of the other type. This alternative orientation toward political economy is used to address some of the constitutional-level issues raised by the literature on *Ordnungstheorie*.

Property, Market, and State

Within an emergent ontology that treats both individuals and society as real objects (Wagner 2007), questions arise concerning the relation between the

two.¹ The pure logic of a market economy explores the notion of an unhampered market economy. This is an ideal-typical construction and not an effort to represent reality. An unhampered market economy describes human interaction when all action is governed wholly by private property and freedom of contract and association. Not only is such an arrangement non-existent, it is also impossible within its own logic. Starting from a world where all rights of property are held privately so that no attribute of commonness remains to be found, it is impossible for two parties to trade without violating private property. Whether a vendor approaches you by email, by telephone, or by direct visitation, rights of private property are being abridged. To be sure, we don't think of it this way, but this is because we have internalized recognition that the world we experience is not partitioned into mutually exclusive domains of private property, nor could it be. Action in society requires some irreducible element of commonality which lubricates action in society, but at the same time generates scope for conflict.

Property denotes proper-ness (or propriety) in conduct. From where do the requisite notions of properness arise, it can be asked? From other people it can be answered, as conveyed by the regulative patterns on individual conduct that emerge out of societal interactions. For the most part, people accept such regulative patterns as second-nature, though never fully. This is hardly surprising, for without contestation there would be stagnation and not development, for conflict is valuable for fomenting societal change, which, of course, is not to claim that conflict is always beneficial (Coser 1964).

¹ My orientation in this regard is similar to that expressed by Tony Lawson (1997).

Property, market, and state all derive from the confrontation between human nature and scarcity. Universal private property is impossible, but so is universal common property. Universal private property would allow no contact between or among people, so markets could never emerge. The emergence of markets requires spheres of commonality, not the least of which is language, the generation of which is not a private activity. Universal commonality would allow no exchange because exchange requires private property. Some mixture of private and common is the only theoretical-historical possibility.

To be sure, I don't use state to denote what we mean today by the concept of the nation-state. The nation-state, with its territorially-based claims has come about only over the past few centuries, but states as authority outside of oneself are universal. Properness of action is invariably determined by other people. In most cases most of the time, we internalize that sense of propriety and don't feel particularly constricted by it. Private property limits one's freedom of action, but common property does not, but for the most part we sense that private property contributes to good order, but not always and not for everyone.

The main point, though, is that what constitutes properness, and thus property, in individual action is determined through societal processes of some sort. Those processes, moreover, are grounded in conflict that becomes resolved in a way that leads to some redefinition or clarification of the constituents of property. Claims of property arise only in the presence of scarcity; indeed, scarcity is just another name for conflict, regardless of whether that conflict is manifest or suppressed. To hold some property right today is thus

no guarantee to hold it tomorrow. You will hold it tomorrow only if no one complains about your holding it today. If someone does complain about your conduct today, whether you continue to hold the right to act in that manner tomorrow will depend on how that conflict is resolved, and with that resolution having almost nothing to do with your preference in the matter.

Displeasure and Institutional Arrangements for Mitigating Conflict

Suppose a putrid aroma from a nearby factory sometimes hangs in the air.² People who live, work, or play in the vicinity are displeased with this situation, often intensely so. This displeasure will manifest itself in some form. Indeed, there are many forms of possible manifestation. The Coase-inspired (1960) gloss on this situation keeps the conflict within the market arena by conceptualizing resolution through market exchange. As we know, the factory can either try to secure permission from the residents to spew putrid air or the residents can try to convince the factory owners to shift to some costlier process of production that sweetens its airborne emissions before releasing them. The Coasian resolution uses a market process to resolve the conflict within the market.

While the Coase-inspired literature is right to note that this conflict can be resolved within the market, other arenas for resolution are also present within society. Whereas a systems design approach to public finance might be used to argue for market-based or state-based approaches to conflict resolution, a social-

² Water pollution could have provided an alternative illustration, as exemplified by Jürgen Backhaus (1999).

theoretic approach would treat the particular approach taken as an emergent feature of societal processes. While the Coasian formulation brings closure to what is otherwise an open societal setting, the actual paths to conflict resolution are limited only by the imagination of the participants; social theorizing within a framework of open concepts must be open to all such acts of imagination. The conflict might be resolved within the market, but it need not. The challenge for social theorizing, as against systems design, is to acquire insight into the variable historical forms through which conflicts are resolved, as against arguing for market-based resolutions as superior to other forms of resolution.

The conventional theoretical posture is for the theorist to theorize from a vantage point that stands outside the object of theorization. An alternative posture is to theorize from inside the object of theorization. Such theorizing from the inside looking out is to seek to render social processes and institutions intelligible in terms of people formulating and pursuing plans, and with the meaning of human action rendered sensible in this manner (Lachmann 1977).

With respect to the concrete situation being considered here, we may assume that the stench is sufficiently putrid that those who live nearby are intensely irritated. The irritation with the aroma is apparent from conversation in stores and on streets, from newspaper editorials, and from numerous other sources. With the factory located in the neighborhood, we may assume that the people who work there are from the neighborhood as well. Must it not be embarrassing for them to work for such a disgraceful outfit? Such employees

may find their circle of friends constricting, or portending such a result should they remain employed there.

It is easy enough to envision market-generated resolution of the conflict. To keep its labor force in the presence of the growing stench, the factory will probably have to pay employees more to compensate them for the loss of friendships. It is entirely conceivable that it would be less expensive for the factory to clean and sweeten its emissions than to pay its employees enough to compensate for their loss of friendships.

When social processes are modeled from the inside-out, it becomes quickly apparent that societies also contain other processes for conflict resolution. As the stench worsens, some employees of the factory might find their homes sprayed with paint and their lawns littered with garbage. Complaints subsequently filed with the Chief of Police, moreover, might not bring satisfaction because no apprehensions are made. Indeed, the complainants might have suspected this when they noticed that the Chief wears a mask to work to reduce the degree of putridity of the air he breathes. While the factory will have to pay even higher compensating differentials, property rights will be in the process of changing as the conflict is spilling into other societal arenas and forums.

The connections that run through a society are numerous and dense in places, and can lead in truly surprising directions. Non-market forms of organization, moreover, often have a structure that works against the free riding that is often thought to plague collective action. To keep the numbers small, suppose the area has 100 families. This is large enough to give credence to the

free rider argument. Thus if someone were asked to imagine getting the 100 families together to determine contributions to make to buy aroma abatement equipment for the factory, it is plausible that a good deal of free riding would result, and with the extent of free riding rising with the number of participants. Life in society, however, does not generally unfold in this manner, as society is not encountered as a formless mass but as a structured network of connections and relationships.

Leadership and entrepreneurship are generally in play, and part of the entrepreneurial challenge is to construct networks of relationships that offset potential free riding. A far likelier scenario would begin with some prominent citizens who had heard many expressions of irritation as well as bearing their own. They could take the conflict to the mark by talking with the factory CEO and working out an agreement. But they needn't do so, and perhaps they might have tried and were rebuffed.

Within this alternative context, suppose the 100 families fall pretty naturally into a dozen or so neighborhoods of around eight or nine families each. The prominent citizens who spoke with the factory CEO live in those neighborhoods. They have parties for their neighbors where they discuss the situation (though these are far from the first discussions they have had about the stench). Through this process pledges and commitments are made. There is no guarantee that everyone will participate and that free riding will be avoided, but we do know that much collective action gets organized through these kinds of processes, processes that often contain mixture of consent and duress, and with

the duress occurring not at the point of a gun but through the fear of being regarded as a free-loader and of being shunned.

What is set in motion in any case is preparation for legislative and judicial action as alternative approaches to resolving the conflict that has arisen. The alternative processes and channels that I have described—gossip, parties, discussion groups, and editorial writing—require time to develop momentum. If such conflict is resolved as it buds, so to speak, it seems more likely to remain within the market sphere than to surface in other arenas. The aforementioned alternative processes involve people in establishing connections with one another. The establishment of a connection, as illustrated by a discussion group entails a fixed cost to create that particular networked relationship. Once established, that network can be maintained at lower cost. The longer such conflicts fester, the more fully such alternative processes will emerge, and which in turn surely supplies momentum to efforts to take those conflicts to non-market forums to exploit complementarities in the associated processes of conflict resolution. Legislatures and courts come increasingly into the picture as the conflict simmers, due to reconfigurations in the networks of human relationships and association set in motion by the conflict.

States as Orders and not Organizations

Contemporary scholarship mostly treats the state as an organization, and analogizes states to firms. My alternative point of departure treats the state as an arena of interaction, just as market denotes an arena of interaction. Among

other things, tectonic turbulence arises at the various boundaries where the two arenas and the actions they contain rub against one another. The market is the arena where people don't raise complaints about actions undertaken by other people. The propriety of individual actions is not questioned; those actions are governed by the framework we denote as private property. The state is the arena where the propriety of individual action is questioned, and in consequence individual action is bent to conform to the resulting societal articulation of propriety.³ There are actually several such societal arenas, all of which involve the transformation of third party desires into first party actions.

This ontology, wherein both individuals and society have real existence, though at different levels, is conformable with a bivalent characterization of human nature. One feature of human nature is a desire for autonomy in action, which maps into private property and human relationships governed by private property. The other feature can be expressed variously as a desire for solidarity or a need for connections with others, and in any cases maps into some form of socially-constituted commons. What particular form is a historical matter that is distinct from the underlying, universal quality that informs all such sentiments.

State is the term I use to express this universal quality, in distinction to the many particular forms through which this quality can find and has found historical expression. With state as an order whose foundation resides in human nature, just as does market, the location or establishment of particular enterprises within the state follows entrepreneurial actions just as does the

³ In referring to societal articulation, I am working with an ontology that treats society as a real object, though certainly not as some sentient, acting creature.

establishment of enterprises within the market. State and market denote arenas of interaction within society, and with that interaction reflective of and emergent from human nature.

Figure 1 illustrates what I have in mind. The vertices denote enterprises and the edges denote connections among the enterprises. The circles denote enterprises that are established within the market according to the framework of private property. The squares denote enterprises that are established within the state according to the institutional framework for collective property that is in place. This graph of relationships is incomplete, which is a graph that maps comfortably into notions of localized and particularized knowledge. Furthermore, Figure 1 shows only relationships among enterprises. An alternative hypergraph sketch could show another plane with customers and clients, and with connections running from that plane to the enterprise plane. Figure 1 is just an abstract representation of a snapshot. A later snapshot would show a different graph. The transformation from the former to the latter graph is the province of entrepreneurial activity.

Both market and state activity emerge out of entrepreneurial action. Moreover, state-based enterprises as well as market-based enterprises act within society and not on or over society. This, I believe, is a significant distinction, one that is perhaps best clarified by historical illustration. Consider the American adoption of Prohibition in 1919. If state acts on society, Prohibition would have converted the United States into an alcohol-free zone. Prohibition changes the rules of the game, so subsequent action proceeds in some alcohol-free manner.

We know that Prohibition didn't work this way (see, for instance, Miron and Zwiebel (1991) and Thornton (1991)). It led to some reduction in the total volume of alcohol consumed, but it also led to changes in the forms in which alcohol was consumed by increasing the use of distilled beverages which are easier to conceal. It also led to shootings to resolve commercial disputes, to bribery, and to commercial espionage. These consequences are easy to understand when it is recognized that state enterprises can only act within and not on society. Prohibition was not a rule that created an alcohol-free America. It was a rule that empowered designated state-supported enterprises to apprehend people who were caught in possession of alcoholic beverages. The effect of this rule change enters society at particular nodes within the societal nexus, and the subsequent impact of that change depends on how it spreads throughout the societal nexus. Furthermore, something doesn't spread just because it is articulated; it spreads because there are people who are actively pushing its spread. Connections, moreover, run in two directions. A police officer might be empowered to make arrests for possession, and might also like alcohol himself. In short, any articulation of state policy does nothing to change anything. Change always starts at some state-supported node, but how extensively it spreads is an emergent result of interaction and not a result of policy choice.⁴

⁴ It makes a big difference in this regard whether state injections have general or only partial support within the population. When support is general, mere articulation can pretty much spread the change. Traffic control is a good illustration of this. With other measures, however, where state actions gives advantages to some people and imposes disabilities on others, as illustrated by Prohibition, societal consequences emerge through interaction and will generally have effects quite at variance with what would have happened had mere articulation been sufficient, or nearly so, to generate the called-for changes in individual action.

Bureaucratic Free Enterprise: Tullock and Mises Amplified

With state construed as an order or complex system and not an organization, we enter a situation where there is not one locus of sovereignty where action in the name of state can be either initiated or withheld. What we have is what Gordon Tullock (1965), in amplifying and extending Ludwig von Mises (1944) described as bureaucratic free enterprise. If state denotes an arena and not a firm, it is an arena that contains many distinct firms, as illustrated by Figure 1. To be sure, the Tullock-Mises notion of bureaucratic free enterprise was articulated in the context of the state as a firm, only one that had grown so large that it became uncontrollable. Hence, individual units within the state apparatus practiced a form of free enterprise. Once the state is construed as an order and not an organization, a form of free enterprise becomes recognized as the ordinary mode of operation and not some aberration.

Plans are action directed at future objectives. Entrepreneurial plans provide the propulsive energy through which societies generate their own transformation. It is straightforward to characterize entrepreneurship within the market, for it is induced by beliefs about profits that can be captured by seizing tomorrow by initiating a plan today. Entrepreneurship within the state arena has the same formal character, for the effort to replace less desired states with more desired states is a universal quality of human action; indeed, we couldn't even recognize ourselves if it weren't true.

The substance of state-based entrepreneurship must take shape differently from that taken by market-based entrepreneurship, due to differences

in the forms of property and property-based relationships in the two settings. Profit simply signifies that gains from trade have been captured. Within the market, much of that capture takes the form of capital appreciation. Within the state arena, however, there can be no capital appreciation. The absence of capital appreciation is a historical feature that accompanies the absence of transferable ownership within the state arena. The search for gain, however, is a universal feature of humanity. Within the state arena, profit must be captured in other forms than capital appreciation.

Refer again to the enterprise map represented by Figure 1. That map depicts eight market-based enterprises and six state-based enterprises, to reflect some rough correspondence with various aggregate measures of market and state activity. The pattern of connections shown in Figure 1 has a story to tell that reflects a presumption about the capture of profit from state-based enterprises. Each market-based enterprise has connections with multiple other market-based enterprises. This is sensible, as all such enterprises exist within a chain of transactions, providing output to some enterprises and receiving input from other enterprises.

The pattern of connections is different with state-based enterprises. As shown in Figure 1, state-based enterprises establish connections with market-based enterprises but not with other state-based enterprises. This is not to suggest that such connections aren't ever created, but is only to note that they are rare. Connections between state-based and market-based enterprises can be important conduits by which profit is extracted from state-based enterprises.

A state-based enterprise that had no connections with market-based enterprises would be unable to appropriate profit from its activities. The nonprofit status of state-based enterprises does not eliminate profit but only changes the concrete forms it takes. Those forms, moreover, are surely myriad. As an abstract matter, profits can be transferred through market-based enterprises either by increasing the prices paid for inputs or reducing the prices charged for outputs. Which form this transfer of profits takes, moreover, will depend on the identity and position of the genuine owners and sponsors of any particular state-based enterprise.

Economists are, of course, accustomed to thinking of profit in monetary form. This is the normal form within market-based arrangements, due to the alienability of property. Nonprofit forms of enterprise surely offer greater scope for non-monetary forms of profit extraction, in addition to indirect extraction through market-based enterprises. One seemingly growing form of such extraction could perhaps be described as a form of sport whose popularity has grown with increasing wealth: meddling with other people. When most people had to work 14 or so hours a day for six days a week to support themselves, they had little time or energy for meddling. It's now a different matter, as work takes only about half the time it formerly took. The week is as long as ever, of course, so people must find other things to do with their time. Some people spend more time in athletic forms of sporting activity, as reflected in the growing membership and participation of gymnasiums and health clubs. Other people spend more of that released time in non-athletic forms of sporting activity, as reflected in the growth in an enormous array of interest group activity. While I am confident that

a significant portion of interest group activity represents investment in the search for profit, I am also confident that a significant portion represents a desire to participate in sporting activities in a collective setting of some sort. Indeed, it is probably the union of both that gives them political salience, as a form of Baptist-and-bootlegger story (Yandle 1999).

Tectonic Societal Landscapes

The enterprise map presented in Figure 1 appears placid because its medium of presentation leaves no alternative. Yet life within the enterprise sea charted by Figure 1 cannot be placid. Ordinary contract among holders of private property is generally placid as both parties gain through trade. It must be different with relationships that cross the boundaries between the two forms of enterprise. Relationships between market-based enterprises are normally placid, but relationships between market-based and state-based enterprises will often be accompanied by turbulence. Alternatively, to change to a landscape metaphor, the surface that connects market-based enterprises can be reasonably characterized as continuous and twice differentiable, but the surface that connects state-based and market-based enterprises will contain tectonic regions.⁵

This reference to tectonics brings to mind Maffeo Pantaleoni's (1911) treatment of parasitical political pricing, which is discussed in Wagner (1997).

⁵ Young (1991) describes tectonic politics in a related context. In a similar vein, Jason Potts (2000) distinguishes between integral and non-integral geometries, only he refers to market relationships generally. I don't dispute Potts' formulation in this respect, but I want to place the focus on the different forms of relationship among alternative forms of enterprise.

Pantaleoni developed his model with reference to two bazaars. One bazaar denoted the ordinary market arrangement. The other bazaar denoted a politically organized bazaar where prices were political and not market prices. The exact character of political prices depends on the tax system that is used. For instance, a tax that is in proportion to income creates a system of political pricing where prices rise in proportion to income. People with lower incomes would pay lower prices in the political bazaar, while people with higher incomes would pay lower prices in the market bazaar. The movement of customers would set in motion various changes in the bazaars, because the loss of buyers who were charged higher prices by the political bazaar would erode the ability of the political bazaar to offer lower prices to other buyers.

At this stage, the analysis can proceed in any of several directions, only one of which will be considered here. The creation of the political bazaar violates market conformability as this was articulated initially by Walter Eucken (1952) and as examined in the essays collected in Leipold and Pies (2000), as well as Vanberg (1988). It does not change the universal applicability of economic law but only changes the course it takes through society. What happens subsequently is a course of development that can be rendered intelligible as a playing out of the societal tectonics that is set in motion by the injection of political pricing into a society.⁶ The low prices that enterprises inside the political bazaar offer to some buyers are made possible by the high prices those enterprises charge to other buyers. If people who are charged high prices take

⁶ It is also a course of development that was illustrated nicely by the American experience with Prohibition, and is also illustrated nicely by various contemporary experiences of a similar sort.

their business to enterprises located in the market bazaar, the viability of enterprises located within the political bazaar will be threatened. This possibility sets in motion clashes of interest within the society, and those clashes can play out in any number of ways. However they might play out, they are intelligible features of the non-optional character of economic law.

It is surely noteworthy that in their treatise on *Crime and Human Nature*, James Wilson and Richard Herrnstein (1985) limited the crimes they treated to what they called “natural crimes.” These were things like murder, robbery, theft, rape, and incest. The crimes those didn’t treat could reasonably be called “political crimes” to denote that they represented efforts within a political regime to suppress forms of activity that supporters of that regime want to suppress. Legislation, however, can’t repeal natural law any more than a surfer on a board can repeal physics. Natural crimes have no defenders, and even guilty parties know they are wrong and try to avoid detection.

The situation is different with political crimes. For instance, such a straightforward activity as buying and selling stock is criminal under a wide variety of circumstances even though many and perhaps most people see nothing wrong in doing so without filing notice or asking permission from some regulatory agency. Just because a legislative assembly or regulatory agency seeks to prevent such trades doesn’t make them wrongful to many or perhaps even most people. It means instead that people should be cautious, and in many cases will be inventive in developing new forms of contract and enterprises that will allow otherwise proscribed transactions to go forward. This situation will in

turn induce governing officials to spy on ordinary citizens. This in turn, would seem to transform a “we” into an “us and they.” By this, I mean that public officials morph from being people who help to facilitate commerce to being people who seek to take on some lordship position over society, by replacing contract-based relationships with status-based relationships.

It is instructive in this regard to consider Martin Buber’s (1958) distinction between two ideal-typical patterns of relationship. One type is of I-It form and the other is of I-Thou form. It is straightforward enough to assert that I-It refers to relationships between people and inanimate objects while I-Thou refers to relationships between people. As ideal types, this is what the terms signify. I-Thou are relationships grounded in the mutuality of engagement, while I-It are relationships grounded in detachment. They each have their proper spheres, and to some extent Buber is concerned to clarify those spheres. But beyond this, Buber is also interested in the feedback effects that are exerted when an I treats a Thou as an It.

There would seem to be some connection between Buber’s formulation and those advanced by both Pantaleoni and Eucken, or at least I will try to sketch such a connection. I-Thou relationships are between equals, and with both parties acting within a framework of mutuality and respect. I-It relationships arise when one person regards the other not also as a subject but as an object to be acted upon and manipulated. Market-based relationships seem typically to be of the I-Thou form, where the focus of the conversation between the parties is on whether they can arrange something that will be for their mutual benefit.

By contrast, political relationships seem often to involve significant elements of I-It relationships. It is instructive to compare how government agencies and private businesses handle similar security concerns regarding personal identification. It is now illegal throughout the United States to renew driver's licenses online, as renewal now requires personal visits, sometimes multiple visits, reflecting the detachment of I-it relationships. In contrast, banks and other financial institutions deal with the same concerns and situations, and handle them in generally friendly and engaging ways with their customers.

Economists have often claimed that state-based enterprises are more costly producers than market-based enterprises, though the empirical claims in this regard have a good deal of ambiguity. Whatever the strength of those empirical claims, they have analytical cogency on their side. That analytical cogency, however, focuses on technical efficiency in combining inputs, by arguing that residual claimacy gives stronger incentive to achieve least-cost combinations than is present when residual claimacy is absent. Buber calls our attention to a different dimension of human existence, where we can ask whether the organizational arrangements we generate can influence the people we become and the ways we relate to one another. The treatment of people as objects and not as subjects is surely more prevalent within state-based enterprises than within market-based enterprises, and may thus present another reason for seeking to restrain the sphere of state-based activity within society, even though that sphere will not and, indeed, cannot dissolve.

In Closing

This paper has sought to envision the state through an alternative analytical window, one that conceptualized states as orders and not as organizations. A wholly market economy organized exclusively through private property is as much a historical impossibility as is a wholly collective economy. We necessarily live with a mixed framework of property-governed relationships, and this mixture is accompanied by tectonic turbulence at various boundaries where relationships organized within different zones of action come into contact. The extent of that turbulence at any historical moment, moreover, is not an object of direct choice but is an emergent feature of complex societal processes whose control may range between difficult and impossible.

The turbulence of this unavoidably mixed framework, moreover, confronts us with a continuing dilemma regarding the maintenance of social relationships based on mutuality and respect. On the one hand, the inequalities that arise through market success tend to feed the vanities by exaggerating individual accomplishment relative to what is really due to the supporting nexus of relationships. On the other hand, political action creates positions of lordship in place of relationships of mutuality, thereby transforming I-Thou relationships into I-It relationships.

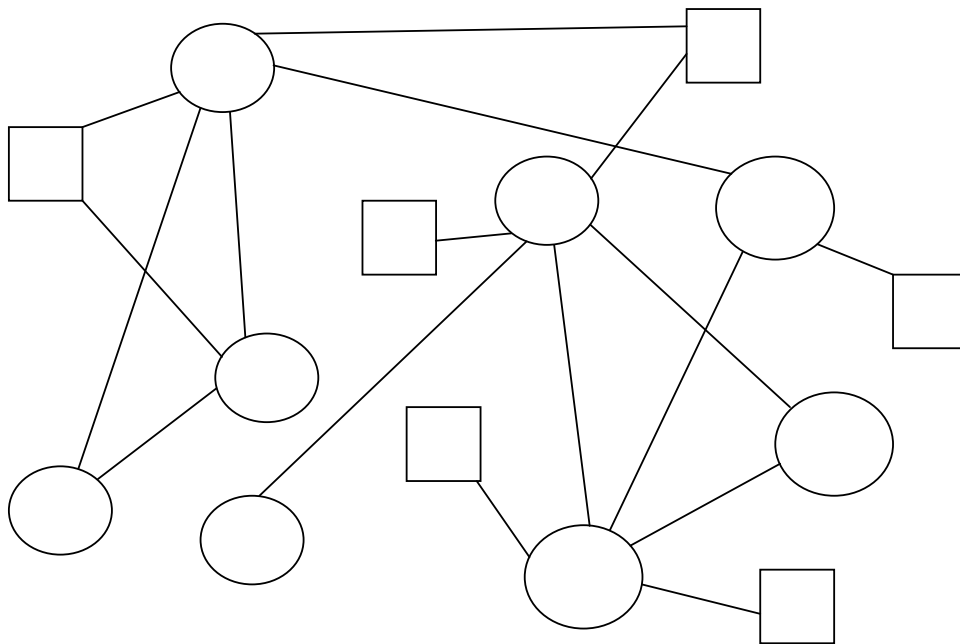
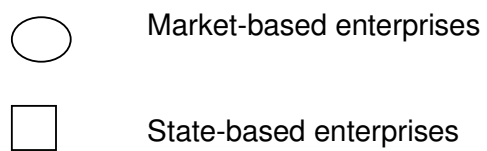


Figure 1: Emergent Map of Market and State Enterprises



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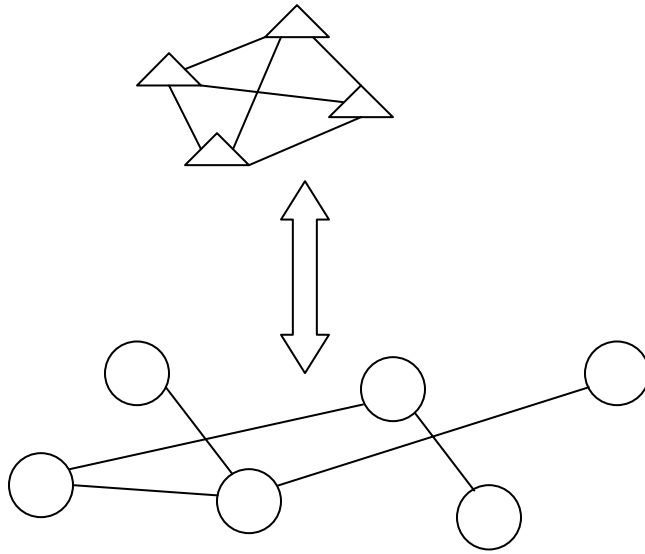
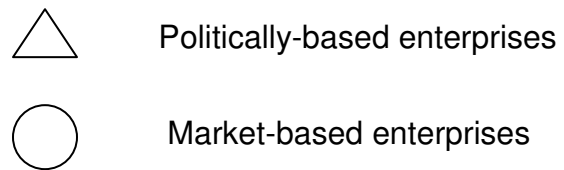


Figure 5: Separable Political Economy



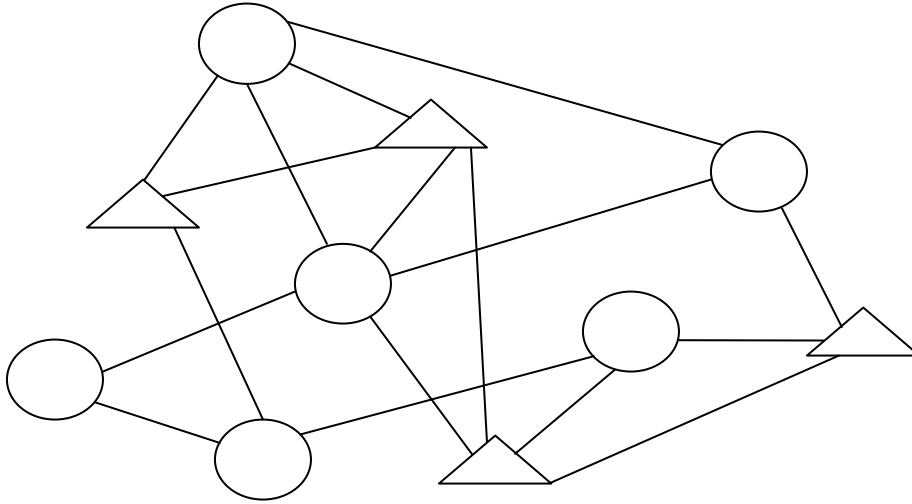
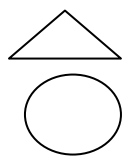


Figure 6: Entangled Political Economy



Politically-based enterprises

Market-based enterprises