
Sharing Subjects and Legality: Ambiguities in Moving Beyond Neoliberalism

Bronwen Morgan and Declan Kuch

INTRODUCTION

Neoliberalism has allowed economic practices to colonize previously non-market domains and jurisdictions. Its most influential Chicago School proponents, such as Becker and Friedman, fueled this growth through the supposition that markets are more democratic than democracy itself (Davies 2009). Through concepts such as human capital and environmental offset trading, concepts of efficiency are married with prevailing social practices to create hybrid ways of making things marketable. Such marriages are always incomplete, for as Aiwa Ong has argued, “neoliberal logic is best conceptualized not as a standardized universal apparatus, but a migratory technology of governing that interacts with situated sets of elements and circumstances” (Ong 2007: 5).

This chapter explores the trajectories of what we call “sharing subjects” as they negotiate practices of grass-roots innovation in response to climate change challenges, across a continuum from social activism

B. Morgan (✉)

UNSW Law, UNSW Australia, Sydney, NSW, Australia

D. Kuch

Faculty of Arts and Social Sciences, UNSW Australia, Sydney, NSW, Australia

© The Author(s) 2017

V. Higgins, W. Larner (eds.), *Assembling Neoliberalism: Expertise, Practices, Subjects*, DOI 10.1057/978-1-137-58204-1_11

20 to social enterprise. We argue that these practices operate orthogonally
21 to neoliberal dynamics by democratizing and adding ethical dimensions
22 to markets, rather than simply promoting efficiency held up by neoliberals
23 as the ends of policy (Davies 2014a). Creating initiatives that espouse
24 economic, environmental and social benefits, these sharing subjects have
25 diverse motivations for starting community-supported agricultural projects,
26 car-sharing schemes or co-working spaces. We trace two sites—spatial
27 and temporal elements—of the assembled trajectories of these initiatives.
28 First, we show how the various biographical trajectories of the entrepreneurs
29 shape the ways they navigate the specific demands and history of each
30 sector. Second, we argue that such benefits should be understood
31 through a socio-legal lens. Legality is a crucial dimension of the ways in
32 which the practices of those sharing subjects congeal into institutions,
33 entities and taken-for-granted social structures. In particular, the specific
34 configurations of profit, equity and debt instilled through legality in each
35 entrepreneurial initiative are pivotal to understanding what is at stake in
36 moving, however piecemeal, beyond neoliberalism.

37 In tracing both these perspectives on sharing subjects, we share with
38 Ong “a focus on forces drawn together, and the reconfigurations that
39 emerge” that has a “conceptual openness to unexpected outcomes of disparate
40 political and ethical intentions” (Ong 2007: 5). Sharing subjects
41 may indeed catalyze what Annelise Riles speaks of as the potential “for
42 collaboration [to] become its own kind of constitutional moment, a different
43 form of politics—one that is constitutive of a new set of ethical, social,
44 political, and institutional relations” (Riles 2015: 183). The temporal
45 element of the assemblage we unpick is crucial here, through the biographies
46 we unpick. But this constitutional moment, as Riles continues, is still “one
47 deeply implicated in the economics of the moment, just as pluralism was
48 for a previous generation” (Riles 2015: 183). And the depth of influence
49 of the neoliberal economics of the current moment is excavated in this
50 chapter by the more institutional (in both digital and conventional spatial
51 contexts) elements that are assembled by lawyers and legal techniques.

52 We draw on recently conducted primary research¹ into community-
53 based sustainability initiatives and grass-roots innovations in response
54 to climate change challenges, across a continuum from social activism
55 to social enterprise. The research focused on five types of initiatives that
56 have emerged as creative responses to resource depletion and climate
57 change: car-sharing, community-owned energy, community-supported
58 agriculture, co-working and reuse/recycle projects. Some of these, particularly
59 car-sharing, co-working and many reuse projects, use web-based

technology to enable “access rather than ownership”, and as such overlap with emerging mainstream notions of sharing economies. Others, especially in the energy and food sectors, focus on renewed forms of collective urban life that respond to the local situation and the interests and values of the communities, connecting consumers much more closely with producers and stressing the social nature of those ties, even while they also use technology to sidestep intermediaries such as supermarkets or large energy companies. This second facet is a more democratized and overtly ethical approach to sharing economies, whose capacity to foster genuine sustainability is both genuinely present (Heinrichs 2013) yet increasingly under threat from corporate co-optation (Martin 2016).

Our empirical foray into this muddy terrain was on the enterprise, project or initiative. These we sorted into case studies organized by “sector” rather than project. We draw here on 50 interviews we conducted with founders or leaders (and sometimes with others from the initiatives) in Australia (mostly Sydney) and the UK (mostly Bristol). We conducted a further ten interviews with support organizations (legal, financial, local government and business planning professionals) and supplemented these with extensive informal contact with policy and support issues for social and sustainable business through participant observation in workshops, conferences and policy working groups or taskforces. We added a minor longitudinal perspective by supplementing approximately a quarter of the interview data (mostly collected in 2013 and early 2014) with follow-up data collected in 2015 as part of an international comparative social enterprise survey (ICSEM 2015). Finally, we tracked the biographical trajectories of founders and leaders using data from a premium LinkedIn account (as well as the interview data), and triangulated this with LinkedIn trajectories of individuals in Sydney and in Bristol that had both the key phrases “social enterprise” and “climate change” in them. We supplemented this with periodic network analysis of social media hashtags such as “sharing economy” or “social enterprise”, to identify clusters in this hybrid field.

AUI

BIOGRAPHICAL TRAJECTORIES

The focus in this chapter on the biographical pathways of sharing subjects is intended as an entry point into a particular intersection between activism (understood as collective political agency that resists, reimagines and reconstructs hegemonic understandings of economic processes) and the repertoires of entrepreneurial opportunity offered by neoliberalism. Connecting this to our particular empirical interest in responses to climate

98 change, this is a facet of what Schlosberg and Coles have recently called
 99 “the new environmentalism of everyday life”. They link their description
 100 of this “sustainable materialism” to individual subject trajectories:

101 No longer willing to take part in unsustainable practices and institutions,
 102 and not satisfied with purely individualistic and consumer responses, a grow-
 103 ing focus of environmental movement groups is on restructuring everyday
 104 practices of circulation, for example, on sustainable food, renewable energy,
 105 and making. (Schlosberg and Coles 2016: 160)

106 In our elaboration below, biographies provide an escape from assumed
 107 pre-existing pigeonholes, both ideologically (in terms of what kinds of
 108 practices align to left or right politics) and institutionally (as we will see
 109 in the second part of the chapter when we explore the socio-legalities of
 110 these alternative economic trajectories). Sharing subjects seek to elaborate
 111 an environmentalism of everyday life through their grass-roots entrepre-
 112 neurialism in founding new projects, initiatives and enterprises—but they
 113 necessarily negotiate this through the path dependency of neoliberalism.
 114 Notions of commoning (Bollier and Helfrich 2014; Capra and Mattei
 115 2015) ally to the vision of sustainable materialism and to collaborative
 116 practices (Riles 2015) which enact collective agency. But the complex
 117 intersections with neoliberal ways of doing things construct diverse emer-
 118 gent notions of professionalism (Hoffman 2006). Sometimes tethered to
 119 social enterprise, other times to commoning, these registers of profession-
 120 alism blend “sharing talk” and market practices (the latter particularly so AU2)
 121 in the socio-legal dimensions of their work discussed in the second part of
 122 the chapter (Morgan and Kuch 2015).

123 What pathways have our 50 various subjects who hoping to refash-
 124 ion economic trajectories traced? We view our sharing subjects in terms
 125 of clustered practices that situate the sharing economy on a spectrum
 126 between activism and enterprise. We want to stress our intent to *unsettle*
 127 what might otherwise be seen as an intuitively dichotomous relation-
 128 ship between these two sets of practices. The biographical and interview
 129 data show that what most energizes the participants of these practices
 130 and initiatives are the very ways in which they unsettle taken-for-granted
 131 definitions, reflecting the ways in which many of our interviewees have
 132 traced various moves between activism and enterprise over the course
 133 of a career. As we will see in the later part of this section, the expertise
 134 and skills of sharing subjects can embed aspects of neoliberalism into
 135 the complex of practices they enact. On the whole, however, neoliberal-

ism is embodied more in the socio-legal dimensions of the configurations of congealed practice that emerge. While not examined in detail in this chapter, these can be critiqued as forms of neoliberalism-as-usual, yet undoubtedly also contain the seeds of new ways of doing things (Morgan and Kuch 2015).

From the LinkedIn data, we distilled four sets of clustered practices, story lines, in a way, that show the various lines of bricolage involved in becoming a sharing or commoning subject. These story lines blend characteristics, skills, expertise and training. Described as everyday identities (which should not imply actual individuals) they can be summarized as corporate refugees, frustrated bureaucrats, millennial idealists and politicized technicians. We think these clusters (which can overlap and bleed into each other at times) help to depict a series of relatively identifiable set of practices that are part of emerging notions of professionalism in relation to social enterprise and sustainable economies. We elaborate this in two steps.

First, we suggest that tracing biographical trajectories provides a productive escape from ideological pigeonholes and creates a more nuanced picture of how norms of commoning are intersecting with neoliberal ways of doing things. Second, we stress the fragmented and contested nature of any emerging notions of professionalism. This contestation often challenges the uneasy mix of discourses of sharing and standard market practices endemic to these developments, which make it difficult to evaluate their larger systemic and political implications. We take each in turn, cautioning that the degree of schematism inherent in our first step is temporary, providing a holding place that is interrogated and unsettled in the second step. Despite our hesitations about congealing these storylines into particular clusters, we think it is especially useful to do so in order to show how biographical trajectories challenge traditional political assumptions about “left” and “right”. A recent cluster analysis of 814 participants at the biannual Degrowth conference (Eversberg and Schmelzer 2016) showed an interesting correlation with our data, and illustrates this political heterogeneity. Thus, we present the storylines alongside these clusters.

FOUR STORYLINES OF SHARING SUBJECTS 169

Corporate Refugee 170

The most common storyline is that of “corporate refugee”, where mid-career professionals, often working in financial and related services, become 171
172

173 disillusioned with the state and corporate rationalities around them and
174 seek meaning in their work and life. Often this involves channeling their
175 expertise into more worthy projects. “Phil” joined a renewable energy
176 support organization through an old colleague at a large multinational
177 finance company, as they were looking to raise some money.

178 I had a finance background with experience in corporate fundraising. I was
179 volunteering, and through that started to do more until it moved into a paid
180 role supporting community-owned renewable energy projects.

181 Others make more of a radical break, such as “Trent”, who started a car-
182 sharing enterprise:

183 I had a mortgage-broking business and it was going really well, we had a
184 big team ... it was all cruising along, and I went to a course that focused on
185 aligning your work with what you love, and I came to the decision that I
186 really love the environment—preserving the environment, and not wasting
187 stuff. And then I started thinking about how being a mortgage broker fits
188 in with that, and it didn’t, really, so I sold the business and [tried to figure
189 out] what I really want to do.

190 Politically, this storyline tends to have antipathy toward radical action,
191 instead aligning more closely with the segment of the Degrowth confer-
192 ence described as “immanent reformism”: those who actively use the new-
193 est technologies, travel quite frequently, often belong to political parties
194 and student initiatives and feel comparatively little connected with social
195 movements. This group represents the techno- and progress-optimistic
196 pole of the degrowth spectrum, and is most reformist, in the sense of think-
197 ing within existing institutional structures. They express little support for
198 revolutionary upheaval and anti-capitalism, seeking the fundamental soci-
199 etal change they deem necessary between the poles of “green growth” and
200 reforms transcending growth from within existing institutions (Eversberg
201 and Schmelzer 2016). Thus, when we quizzed “Matt” on where he identi-
202 fies on a spectrum of activism and enterprise, he responded:

203 I’m not an activist, and I have no plans to become one—I have no inter-
204 est in becoming one. My view is to create stories of inspired successes that
205 show what is possible in a tangible sense. Maybe I’m just simple. I think the
206 impact from a project that’s working is extremely powerful, and tends to
207 show a lot of what is possible. So I think activism is critical and important,

but it's not something I'm attracted to. Hopefully the enterprises show a tangible outcome for activism, or show what the end game is. (Matt interview, June 2014)

Frustrated Bureaucrat

A second storyline is that of frustrated bureaucrat, a trajectory where the Weberian sense of vocation that might once have been channeled into formal political and policy processes finds regeneration by operating orthogonally to or outside those sites, reinjecting democracy directly into economic initiative rather than channeling it via political frameworks. One of our interviewees had traced a journey from disillusioned bureaucrat to non-capitalist food entrepreneur: "Kath" said, in recalling how the inventive food enterprise she had pioneered with her partner started out:

They all had mortgages and were hitched by the time the conservatives came in, promising to dismantle everything we'd just worked on.

Both she and her partner had worked in the upper echelons of state government with smart young bureaucrats who could not resist the security and prestige of the work. For Kath, however, bureaucracy was not the calling, but the vehicle for her climate activism. Rather than stay on as an "apolitical" provider of "advice that is frank, honest, timely and based on the best available evidence"—as her young colleagues had—she started to implement some of the advice she had been providing, starting a not-for-profit foundation to develop tools to distribute fair priced food, and an allied small-scale private company to carry out the actual trading.

This storyline aligns with Degrowth conference participants undertaking a "sufficiency-orientated critique of civilization", wherein experienced campaigners, often older activists, articulate a pointed critique of civilization based on a strong ecological motivation. In the Degrowth survey, this translated to strongly agreeing with statements stressing closeness to nature, spirituality or a revival of lifestyles of former generations. Thus, for example, Kath frequently traveled to remote protests against fossil fuel sites in solidarity with local Aboriginal populations. More broadly, the activism of this storyline is oriented toward building sufficiency-orientated "parallel societies" as cores of an alternative way of life. After the collapse of industrial societies that many of them expect, these communities are to become a model for a societal "reset" (Eversberg and Schmelzer 2016).

Politicized Technician

244 Another storyline relates to the promise of technical fixes as both a vehicle
 245 for social progress and passage to mitigate social friction. We found variants
 246 of the “politicized technician” in food, transport and energy sectors, each
 247 of which required very different technical expertise. Consider, for example,
 248 the knowledge required about the electricity grids to assess whether a com-
 249 munity energy project is both technologically and financially viable; or the
 250 knowledge of road and licensing regulations required to establish a car-
 251 sharing scheme. At base, the politicized technician is able to reflexively con-
 252 front technical systems, broadly conceived to include institutional, legal,
 253 bureaucratic and material elements. She or he has often been involved in
 254 direct political action in the past, such as anti-coal and anti-road protests,
 255 but over time has shifted their energies to building institutional alternatives
 256 to the systems they have contested. This storyline blurs with others where
 257 they involve technological changes; however, it is also distinctive insofar
 258 as the socio-technical expertise of our respondents was capable of provid-
 259 ing nuanced critical assessments of technological systems that had strong
 260 credibility with less politicized professional colleagues but still injected an
 261 explicit ethical engagement into their professional interventions.

262 “Fred” describes his work as both “activist” and “propositional” (in a
 263 nod to radical political theory, he dislikes the concept of solutions). As an
 264 activist, he has built an explicitly confrontational organization seeking to
 265 challenge multinational corporate control over food supply. His proposi-
 266 tional work comprises a community-supported agriculture scheme struc-
 267 tured as a Pty Ltd company. He spoke of how he had come over time to
 268 see the activism/advocacy side of things as much more connected to the
 269 propositional than he might have earlier, and has considered establishing a
 270 People’s Food Plan as a formal research project and then creating a (fund-
 271 able) organization to carry out the propositional work. He conveyed a
 272 sense that the activist work created space for creating and carrying forward
 273 novel institutional responses to industrialized food markets.

274 The politicized technician is somewhat parallel to the Degrowth cluster
 275 of modernist-rationalist left adherents: often male, urban, with a long his-
 276 tory of activism primarily in traditional forms of left politics, allied to party
 277 membership and only weakly identifying with social movements. They
 278 tend to be optimistic about progress, “sharply refuse spirituality, romanti-
 279 cization of the past and conservatism, and clearly criticize capitalism with
 280 structure-oriented arguments, focusing on issues of social justice rather
 281 than ecology” (Eversberg and Schmelzer 2016, n.p.).

<i>Millennial Idealist</i>	282
This storyline, of all those that emerged from our data, echoes most directly a Degrowth cluster: “voluntarist-pacifist idealism”. Both evoke relatively young, mostly female activists, many with “distinctly voluntarist attitudes ... blended with a particularly strong pacifism and a general avoidance of conflict” (Eversberg and Schmelzer 2016, n.p.) and motivated by commitments to (inter)generational justice. As “Christine”, a young activist lawyer, said, blending ethics with economics:	283 284 285 286 287 288 289
I came to sharing partially because of ... just looking around economically at how many people aren’t getting their needs met, and then with the economic downturn even more people struggling, but just looking around and thinking, “We have a lot of resources, we have each other, we have tangible assets, we just need to be collaborating and sharing them more”, so there’s a definite economic-justice element to it. And then there’s the other piece that kind of came to me later, when I realized I’m just happier when I’m sharing and living in community.	290 291 292 293 294 295 296 297
We also perceived a fifth category, not strictly a storyline but a nod to the leaky, interconnected and incomplete nature of the four storylines already discussed. “Charismatic mavericks” signal people who mix hybrid elements of all four storylines, but in addition are energized by a semi-anarchic and playful sense of how to braid their commitments with existing institutional forms and practices. The Degrowth analysis that most closely aligns with this is described as the “libertarian practical left”, espousing an anarchist-inspired critique of growth and capitalism (Eversberg and Schmelzer 2016). This category, as befits its agnosticism regarding current institutional forms, appears episodically throughout our data.	298 299 300 301 302 303 304 305 306 307
EMERGENT PROFESSIONALISM	308
The trajectories of sharing subjects described above decouple subjectivities, both from ideological assumptions about left and right projects and from institutional support structures. This decoupling is central to Lisa Hoffman’s exploration of the formation of professional personhood in contemporary China (Hoffman 2006). Her nuanced tracking of the contingent and diverse intersections of neoliberalism and socialism helps us untangle how norms and identity talk fit with skills/ways of doing things. If the storylines articulate norms and identity, the skills and expertise that underpin sharing subjects’ actual practices are at the heart of their emerg-	309 310 311 312 313 314 315 316 317

318 ing professionalism. While Hoffman's work has quite a different empirical
319 focus from ours, her methodology is of most interest to us here, particu-
320 larly the way she builds a picture of the sociality of professional identi-
321 ties. Her account weaves together norms of sociality, micro-level practices
322 and big-picture theories of economic development: in China, she argues,
323 "patriotic professionalism embodies a wedding of neoliberal 'ways of
324 doing things' and reform era definitions of economic development with
325 Maoist era norms of caring for the nation" (Hoffman 2006:566).

326 The relevance of this perspective to our sharing subjects can only be
327 briefly canvassed here, but the LinkedIn data show that the skills and exper-
328 tise mobilized around two of the four storylines link easily to typical insti-
329 tutional settings that follow more conventional lines of private/public or
330 profit/non-profit ways of doing things. For example, frustrated bureaucrats
331 frequently draw on skills in policy studies, public administration, public law
332 and diverse forms of sustainability education, while corporate refugees mobi-
333 lize education and skills in finance, business administration, commercial law
334 and strategy (an especially popular LinkedIn endorsement). Millennial ideal-
335 ists and politicized technicians, each in different ways, draw on repertoires
336 that challenge these public/private pigeonholes. The former, often younger,
337 may deploy classic direct action skills learnt through university and orga-
338 nizing protests, but frequently channel them into settings such as digital
339 platforms, or through techniques learnt from communications and market-
340 ing education, to arrive at hybrid blend of practices that elude easy politi-
341 cal categorization. Politicized technicians bring to sharing trajectories fairly
342 sector-specific expertise, as might be expected, but engineering, sustainable
343 developing and computer programming skills loom particularly large.

344 Of course, combinations of these skills and forms of expertise are
345 endemic: for example, millennial idealists and politicized technicians work
346 well together to create open-source digitally embedded initiatives that
347 enact norms of commoning. Partnerships between two founders in many
348 of our initiatives were common: those between frustrated bureaucrats and
349 corporate refugees seemed especially effective, suggesting that mobilizing
350 hybrid skills and expertise with a solid knowledge of existing institutional
351 forms was a powerful foundation for action.

352 In Hoffman's account, the "norms of caring" for the nation she identi-
353 fies are interpreted as a Maoist era trope. In our story, they are instantiated
354 more as norms of commoning or sharing. As for any link to the nation-state,
355 practices of sharing and building the commons tend to articulate either as
356 hyper-local or global-cosmopolitan. They are difficult to link to the extant
357 framings of economic development typically embedded in state-level poli-

cymaking infrastructure, which still swing between Keynesian and Chicago 358
 economics. In Hoffman’s work, these framings stabilize to some degree 359
 the tensions inherent in her account, but in our data, big-picture theories 360
 of economic development are a missing piece of the picture, so to speak. In 361
 their absence, we turn to an account of meso-level socio-legal institutional 362
 dynamics to build a bridge between repertoires of sharing subjects and any 363
 evaluation of their longer-term neoliberal or post-neoliberal potential. 364

As we will see, neoliberalism arguably has more hold when we turn 365
 to socio-legalities rather than biographies. Practices of commoning often 366
 appear as emergent, informal and not stably linked to enduring formal 367
 institutions in mainstream settings. As a consequence, neoliberal or social 368
 enterprise institutional forms become—too easily—attractive to many of 369
 those biographical trajectories, aside from the more anarchist, libertarian, 370
 maverick subjects (Riles 2015). It is perhaps no surprise then that exist- 371
 ing mainstream institutional forms of economic entities exert a powerful 372
 constraining force on the trajectories of the initiatives we studied. This 373
 pattern emerges once we adopt a socio-legal rather than biographical lens. 374

A SOCIO-LEGAL LENS 375

If we apply a socio-legal lens to these biographical trajectories, an inter- 376
 esting pattern of points of articulation and disarticulation emerges. As 377
 William Davies argues, if social entrepreneurship is about “the challenge 378
 ... to perform society differently, lay out new routes and possibilities, [it] 379
 remains limited by certain regulatory and legal tramlines that have already 380
 been laid down [since] it is law that traditionally has the greatest influence 381
 over collective routines and rituals” (Davies 2013, n.p.). Existing legal 382
 and organizational forms, which tend to congeal as available “structures” 383
 through which sharing subjects can enact and bring into being grass-roots 384
 innovation, exerted a powerful attractor force in our research sites. To 385
 quote Davies in a different piece (Davies 2014c, n.p.): 386

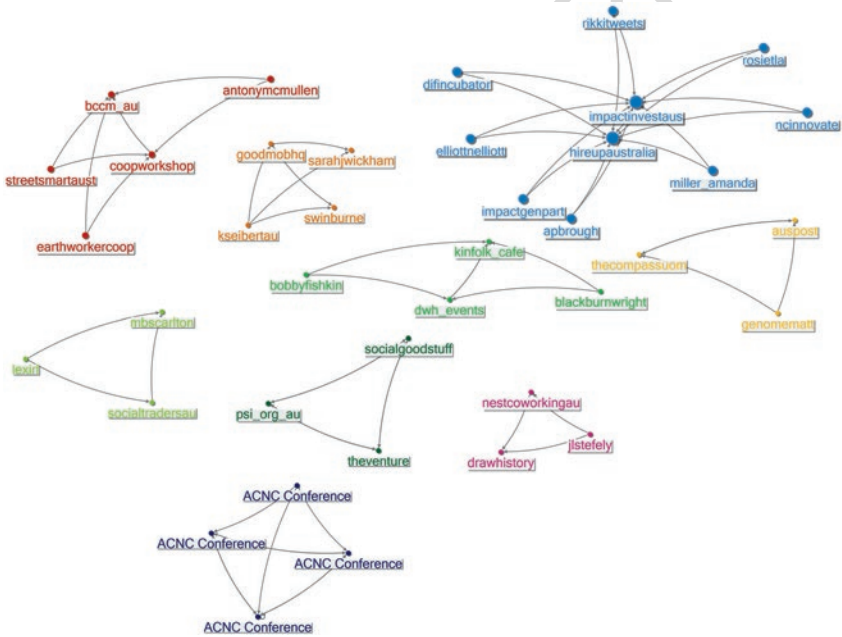
...law enables individuals and institutions to send laser beams (of varying 387
 quality, depending on cost) from one point in time and space to another, 388
 saying “this is what will take place; this is what we agree has happened; this 389
 is what must happen; these are the conditions of co-operation”. 390

We can see the implications of this through social media analysis of debates 391
 about social enterprise in Australia and the UK. These debates were sam- 392
 pled through a Twitter scrape of the hashtag “socentau” and “socentuk” 393

394 (social enterprise in Australia and UK, respectively), focused on the period 26
 395 October to 3 November 2015.² Users of this hashtag included many research
 396 participants from our interviews and other fieldwork. In both Australia and
 397 the UK, there was very little *conversation* between legal or institutional struc-
 398 tures. For example, twitter accounts dedicated to social impact investment
 399 tended not to interact with news about cooperatives, positively or negatively.
 400 Rather, twitter interactions of retweets, favorites or replies clustered neatly
 401 into legal/institutional “structures”. Thus, the Australian graph of that week
 402 (Fig. 11.1) shows distinct clusters for cooperatives (the red cluster), charitable
 403 entities (the dark blue cluster bottom left) and social impact investment into
 404 private limited companies (light blue cluster on top right), or fragmented
 405 individual private company initiatives (the purple cluster discussing the launch
 406 of a new co-working space in Perth, or the green cluster in the middle):

AU3

this figure will be printed in b/w



407 However, if we contrast the Twitter graph for the same period filtered
 408 through individual twitter accounts (which includes organizational and
 409 personal accounts) the clustering dissolves into a welter of dense networks
 410 of follower/follow relationships with no clear delineations between activ-
 411 ism and enterprise (Fig. 11.2):

412 The utility of this analysis is that it helps suture the time and space ele-
413 ments of the assemblages we are unpicking. By showing how networks
414 and social relations piggyback off existing legal forms, we can see how they
415 appear as structurally configured when viewed through the institutional
416 lens of legal form, yet appear as much more fluid when centered on prac-
417 tices enacted through individual biographies or subjects. Reading these
418 two graphs together, in short, suggests that “social enterprise” is a decep-
419 tively concrete label for a set of emerging diffuse social practices as yet
420 uncoagulated into formal organizational options (or into which formal
421 organizational options continually leak). Rather, the friction between fluid
422 biographical lens and the lens attached to existing available legal and orga-
423 nizational forms exerts power on the shape of the emerging assemblage,
424 prodding it in relatively neoliberal directions.

425 *Lawyers and Legality*

426 We can probe further into the stickiness created by existing legal forms
427 by focusing on the intersection of law and biography in our data: those
428 subjects who are actually lawyers. Broadly what we see is that when shar-
429 ing subjects try to redraw the lines of economic practices, those enacting
430 a legal biography struggle most. The constraints of neoliberalism-as-usual
431 seem to press more heavily on those trained to deploy expert legal knowl-
432 edge than those immersed in engineering, communications, sustainable
433 development or even finance.

434 The sanitized imagination of the corporation through neoliberalism
435 (Morgan and Kuch 2015) is partly about the particular way law institu-
436 tionalizes property rights, especially the way flows of money and decision-
437 making power are scripted within a particular enterprise or company. For
438 it is here, in the domain of “transactional law”, a composite of property,
439 contract, tax and intellectual property law, that law as a social institu-
440 tion is particularly deeply imbricated with neoliberalism. Indeed, legal
441 frameworks for economic activity are very frequently mobilized by legal
442 professionals, policymakers and even legal academics as a form of global
443 technology that can move seamless from one empirical or geographical
444 setting to another. Thus a more critical perspective would emphasize neo-
445 liberalism’s disrespect for law by stressing its inconsistency and contra-
446 diction (Davies 2014b). However, in keeping with an assemblage-based
447 analytics, this chapter stresses the “reflexivity in the interplay between
448 global technology [of (neo)liberal legalism] and situated practices” (Ong

2007: 5), in this case of lawyer-subjects in these hybrid entrepreneurial sites. This reflexivity is particularly fertile for post-neoliberal possibilities when it engages property rights narratives through notions of the commons (Capra and Mattei 2015). While not wishing to romanticize the post-neoliberal potential of “commoning”, we would endorse Lauren Berlant’s recent argument in favor of the commons as a vehicle for learning to live with ambiguity, particularly in relation to the democratizing potential of alternative economic trajectories (Berlant 2016). Ambiguity resonates throughout what follows, especially on the periphery.

Strikingly, our project data show very low numbers of lawyers in our population of interviewees, and this result is even more pointed for Bristolian (UK) initiatives than for Australian ones. Many of the small-scale initiatives were created (and even those that have subsequently grown) with either no or highly episodic legal assistance. Where episodic legal assistance was deployed, the lawyers involved were usually “corporate refugees” (either currently or soon-to-become) with fairly standard expertise in economics, accounting and commercial law. Some had mixed backgrounds in either public policy or technology that were more salient for their involvement than their legal knowledge.

This episodic assistance was framed powerfully by rigid divisions in legal services between for-profit and not-for-profit legal forms, while the initiatives founded by those we researched typically existed in the interstices of for-profit and not-for-profit forms, mixing hybrid practices from both sites. A partial exception to this is the recent development of what might be called “social enterprise legal expertise” in the UK and USA. Since 2005, a small number of lawyers have significantly shaped developments around legal entity structures for social enterprise, notably the community interest company form legislated in the UK and advocates for benefit corporations based on US legislation. We classify this as a *partial* exception because—despite the hybrid nature of the new legal forms—the UK lawyers who developed them previously specialized in non-profit and charities law, while the US lawyers were general commercial lawyers. This once again demonstrates the stickiness of the border between for-profit/non-profit organizational structure, and the dependence of legal advice and legal career trajectories on this border.

Outside of specific legal support rendered to the initiatives we studied, the LinkedIn data filter picked up even fewer lawyers, and a distinctly ambiguous relation to legal expertise even by those who were qualified in it. This ambiguity has two dimensions. First, there was a pattern of

488 lawyers who had a liberal arts background and experience with a range
 489 of environmentally motivated voluntary work moving *out of* legal services
 490 altogether, and into direct work with sustainable economy initiatives—
 491 often taking significant cuts in pay and job security as a result. Second, at
 492 least in relation to hybrid legal entity structures, there are as many *non*-
 493 lawyers who make significant contributions to shaping legal and organiza-
 494 tional identity as there are lawyers, in both the UK and Australia—these
 495 are generally older men with backgrounds in organizational psychology,
 496 community development or corporate governance. Grant-funding for
 497 capacity-building in relation to both social enterprise and cooperatives is
 498 more pervasively available in the UK and makes possible career trajectories
 499 in this quasi-legal work.

500 Juxtaposed to the above, an extremely small minority of what be called
 501 “sustainable economy lawyers” emerged, mostly allied to millennial story-
 502 lines. All had a powerful commitment to environmental sustainability evi-
 503 denced through study (generally liberal arts or geography-oriented more
 504 than science/engineering), activism or involvement in voluntary—some-
 505 times religious—initiatives. These sustainable economy lawyers were con-
 506 sciously seeking to forge a very distinctive ethos of legal practice: one that
 507 provides much greater affordability than big-firm comprehensive advice
 508 but is more socially and environmentally attuned than legal support for
 509 “tech start-ups”. Their distinctive professionalism consciously challenged
 510 conventional imbrications between transactional law and neoliberalism,
 511 underpinned by a sharp ambiguity toward legality held by those they
 512 sought to advise.

513 *“Eeyore” Effects: The Implications of Ambivalent Orientations*
 514 *to Legality*

515 The need for legal advice and support along the trajectory of creating
 516 a sustainable economy initiative generated one of two different reac-
 517 tions in our interviewees with founders and initiative leaders. We coined
 518 the phrase “Eeyore effect” to capture the quite physically palpable reac-
 519 tion (of deflation, frustration or negative affect) that many had when
 520 legal advice/support was raised as a direct question (which it did in
 521 only one question of a semi-structured interview based on 11 topics).
 522 We observed a similar effect in a number of public workshops we ran or
 523 attended that provided a legal perspective as just one part of the overall
 524 agenda.

The first type of reaction, and the most common, was frustrated anxiety. This was epitomized by a UK community energy cooperative founder with an engineering background who, after initially writing their own legal documents, ultimately turned to lawyers out of a sense of “responsibility to do that for the sake of our members”. The process left “Amy”:

...in the hands of lawyers telling us we have to have this 50-page thing which for us doesn't add any value at all directly ... just that there's something more weighty which gives you more security. But then it turns into a document which neither we nor they actually understand ... and that's meant to be stronger somehow than the thing that we both understand.

For some founders, issues of legality continued to signal or catalyze an Eeyore effect, but this in turn generated a reactive energy on, one animated almost by chutzpah. Though less common, this ranged from a claim to “use the Nelson Strategy to deal with grey areas—... you put the telescope up to the blind eye and you say, ‘I see no ships ... full speed ahead and damn the torpedoes’” (Founder of a renewable energy enterprise, UK) to outright challenges to the need for professional legal expertise altogether:

We just did the generic Pty Ltd structure. It took 6 minutes. ... Like, you don't even care! You just get the generic template. Sign it, don't even read it. D'yaknowwhatImean? I'm sure [the template] is fine. We don't even ... We're 10 years old and don't even use lawyers now. ... It just doesn't matter!

This comment came from a medium-sized commercially successful and temporally stable venture who requested anonymity on this point in particular.

Underlying the Eeyore effect was an implicit divergence on the relationship between formal legal frameworks and community, social bonds and an ethos of relational embeddedness that was important to almost all of the initiatives we studied. This ethos is what for many distinguished their initiatives from enterprise seen through a more conventional neoliberal lens. One UK founder of a community-supported agriculture initiative expressed a view held by many at some length:

A lot of it's about breaking this connection between financial reward and work in a sense of encouraging people to work together as a community to do something. That's really what we're about, that's what we're about—a community of people growing our own veg. But government doesn't understand

560 that, government understands you set up an enterprise which employs people
561 under certain rules to deliver something for an anonymous set of people to
562 whom they then sell it. And we're not that, and we're trying to be something
563 entirely different, which is, as I say, a community working together to pro-
564 duce their own food. ... so I think our thinking doesn't quite fit the law...

565 But while relationality is presented as in tension with formal law here,
566 the contrasting approach of arms-length anonymity did not necessarily
567 align with formal law. The same initiative quoted above that had never
568 seen the need to use formal lawyers also celebrated the way in which a
569 technology platform allowed their company to minimize human inter-
570 action, analogizing the platform's role in dispute resolution and pre-
571 vention to:

572 ...the core principles of international diplomacy. You two [as user and ser-
573 vice provider] are at war, we come in the middle—you guys aren't going to
574 sort it out ... we're the transaction owner—we own the transaction between
575 you two.

576 These different trajectories of envisioning relationality are linked to
577 assumptions about the appropriate boundary between commercial and
578 personal practices, which Janelle Orsi has drawn on in her work on lawyer-
579 ing in the sharing economy (Orsi 2012), a line echoed in David Graeber's
580 (2011) differentiation between a commercial economy and a "human"
581 economy (Graeber 2011). The notion of "humanizing" economic rela-
582 tions or making them "more human" was pervasive in our interview data.
583 Legal tools and strategies play a crucial role in crafting that commercial/
584 personal boundary. They shape the creation of ownership frameworks
585 for an initiative (including the legal entity structure, property rights and
586 tax issues); the management of risk (including the use of contracts, leases
587 and insurance); and relationships with the state (particularly around plan-
588 ning and regulation). The minority of lawyers who seek to carve out a
589 distinctive professional trajectory here focus on creative strategies to use
590 legal tools in these diverse sites in ways that step away from distinctions
591 between personal and commercial, and seek instead to create a humanized
592 and sustainable commons-based economy—one where the law would bet-
593 ter "fit" the relationality expressed by the food initiative founder above.
594 But there are real challenges to doing this. The closer an initiative hews
595 to neoliberal-legalism in its bricolage of transactional practices, the more
596 sharing subjects reproduce business-as-usual.

While this chapter does not have the scope to engage in detailed discussion of specific legal initiatives, a brief example can illustrate the challenges. Ooooby Ltd. is a community-supported agriculture initiative based in New Zealand but with branches in Australia and the USA. In 2015, Ooooby launched an equity crowdfunding proposal, in which it stressed the centrality of its “primary purpose of rebuilding our local food systems” to the legal structure of the proposal. Its proposed legal structure placed 90 percent of its existing share capital into a not-for-profit trust which pays out dividends to investor shareholders. Notably, investing shareholders can participate in the process of choosing the range of local food projects (defined in the company’s articles) that can benefit from dividend distribution, and can also choose to spend their own dividends on vouchers that pay for food from local food projects (including from Ooooby itself). In legal terms, this model institutionalizes a form of multistakeholder governance along with a form of an asset lock, and a substantive constraint on the use of dividends that mixes reinvestment in the business with a return to investors *if they too pursue similar business ends* (i.e., in this case local food projects).

The Investment Memorandum drafted by Ooooby in this instance went to considerable pains to communicate a sense of shared identity and community with clarity and even elegance, even while entangling that message with the technical detail of legal design (not unlike the previous paragraph!). But as the storyline of the Investment Memorandum unfolds, some of the legal details begin to undermine the overt commitment to shareholder power democratically shaping the decisions of the not-for-profit trust that owns most of the shares:

The trustees of the Foundation can permit shareholders and other stakeholders of Ooooby Ltd to have a *non-binding vote* on trustee candidates for the Foundation. Whilst the vote isn’t binding on the trustees, *we expect that they will take it into account* in their decision making. The goal is to *try to ensure* that there is a level of democracy within the Foundation and that people with a grounding in Ooooby and its ethos continue to play a part. *The trustees will have the final say on any trustee appointment.*³ (emphasis added)

Later again in the document, we learn that investors who are not resident in New Zealand (where the offer is legally authorized) cannot participate in the democratic distribution of dividends to local food projects, and even local investors may lose out on this participation, if they own too

634 few shares in the company. In the final analysis, “the trustees will have the
635 final say”.

636 It is perhaps no accident that this example of a particularly tortuous
637 socio-legal trajectory of one particular set of sharing subjects concerns the
638 imbrication of law and finance. For this is where the constraining effects
639 of particular neoliberal repertoires, of which equity-based crowdfunding
640 is but one, are strongest. Sharing subjects are here trying to co-construct
641 a counter-project to the logic of financialization in neoliberalism. This is
642 expressed by William Davies (Davies 2013, n.p.) as an elegant mirror effort:

643 If “financialization” means extending the constrictive elements of productive
644 capitalism into the “social” realm (via logics of human capital, investment
645 and leverage, especially with regard to housing and education) a counter
646 project would mean extending the liberating elements of productive capital-
647 ism into the “social” realm.

648 As we see, however, at times the existing legal and regulatory tramlines
649 can be all too suffocating.

650 CONCLUSION

651 This chapter has explored orthogonal challenges to neoliberal economic
652 practices embodied in the socio-legal arrangements of economic initia-
653 tives, and four overlapping storylines that make sense of the biographi-
654 cal trajectories of their participants. If neoliberalism is a hybrid, shifting
655 set of apparatuses that achieve coherence through critiques of law using
656 economic efficiency, the sharing initiatives we have discussed counter neo-
657 liberalism by opening up new, ethical modes of economic practice and
658 subjectivity. Our argument is not that neoliberalism can be escaped or
659 “smashed”, but rather that neoliberal elements should be recognized
660 within many efforts to channel activist and entrepreneurial energies into a
661 more sustainable economy.

662 To show this, we have explored legal practice, trajectories of entrepre-
663 neurs and activists and network clusters to chart new ways of conceiving
664 of the relationships between the multiple economic worlds available to
665 us. Tracking biographical trajectories helps depict the ideological fluid-
666 ity of engaging in sharing practices. Together with an examination of the
667 constraining effects of legality on the direction that various initiatives take,
668 one can see how the efforts of sharing subjects are constrained, yet peri-

odically (and often in fragmented ways) break free, however momentarily, from that path dependence, fostering ripples of a new “constitutional moment” (Riles 2015: 183). These ripples come into view from both political and legal angles.

Politically, the initiatives we have examined explicitly challenge the neo-liberal dogma that economic efficiency is a site of objective efficacy over and above politics; instead they seek to politicize the economy. Legally, they enact and perform ways of “pointing the laser beams” of law in different directions, exploiting both the immanent potential of existing legal forms and structures in economic life, and retooling property rights so as to open up accessibility rather than reify ownership. As we commented recently, in reference to the sharing economy but with words equally salient to neoliberalism: “Recognising and stressing the diversity of both economic life and forms of law opens up an understanding of ‘radical transactionalism’, where legal building blocks of property and capital can be reimagined and reconfigured, and monochromatic visions of [neoliberalism] given fresh color” (Morgan and Kuch 2015: 586). The practices of sharing subjects are a fertile window into such reimaginings.

NOTES

1. Australian Future Fellowship Award FT110100483 held by Professor Morgan for “Between Social Enterprise and Social Movement: Responses to Climate Change at the Intersection of Rights and Regulation”. The support of the ARC for this work is gratefully acknowledged.
2. Scraping was conducted through the application, NodeXL using two methods. First, a twitter list was populated through the advanced search feature for location-based tweets of the #socent tag then members individually selected depending on the mention of social enterprise (#socent) in their bio. Locations selected were Sydney, Melbourne and Bristol. Spammy accounts or those with no information were omitted from the list. The Australian list was primarily populated with accounts that include the #socentau tag in tweets. Cluster detection was run using the default algorithm in NodeXL. The data were filtered, so they show relationships with “clustering coefficient” greater than zero, that is, excluding single people who throw one-off tweets into the hashtag without interacting with others.

- 706 3. Ooooby Investment Memorandum, available at [https://gallery.
707 mailchimp.com/4333a9dc5fc6951ca9ab7529d/files/Ooooby_
708 Investment_Memorandum.pdf](https://gallery.mailchimp.com/4333a9dc5fc6951ca9ab7529d/files/Ooooby_Investment_Memorandum.pdf).

709

REFERENCES

AUS

- 710 Berlant, Lauren. 2016. The Commons: Infrastructures for Troubling Times.
711 *Environment and Planning D* 34(3): 393–419.
- 712 Bollier, David, and Silke Helfrich, ed. 2014. *The Wealth of the Commons: A World
713 Beyond Market and State*. Amherst, MA: Levellers Press.
- 714 Capra, Fritjof, and Ugo Mattei. 2015. *The Ecology of Law: Toward a Legal System
715 in Tune with Nature and Community*. Oakland, CA: Berrett-Koehler Publishers.
- 716 Davies, William. 2009. The Making of Neo-Liberalism. *Renewal: A Journal of
717 Social Democracy* 17(4): 88–92.
- 718 ———. 2012. Ways of Owning: Towards an Economic Sociology of Privatisation.
719 *Poetics* 40: 167.
- 720 ———. 2013. Recovering the Future—New Article Published. *Potlatch Blog*.
721 Accessed 10 March 2014.
- 722 ———. 2014a. Neoliberalism: A Bibliographic Review. *Theory, Culture & Society*
723 31(7/8): 309–317.
- 724 ———. 2014b. *The Limits of Neoliberalism: Authority, Sovereignty and the Logic of
725 Competition*. London: Sage.
- 726 ———. 2014c. 20 Public Spirited Lawyers Could Change the World. *Potlatch
727 Blog*. Accessed 21 July 2016.
- 728 Eversberg, Dennis, and Matthias Schmelzer. 2016. Critical Self-Reflection as a
729 Path to Anti-Capitalism: The Degrowth-Movement. Post-Carbon Institute.
730 Accessed 2 April 2016. [http://www.resilience.org/stories/2016-02-24/
731 critical-self-reflection-as-a-path-to-anti-capitalism-the-degrowth-movement](http://www.resilience.org/stories/2016-02-24/critical-self-reflection-as-a-path-to-anti-capitalism-the-degrowth-movement)
- 732 Graeber, David. 2011. *Debt: The First 5000 Years*. New York: Melville House
733 Publishing.
- 734 Heinrichs, H. 2013. Sharing Economy: A Potential New Pathway to Sustainability.
735 *Gaia—Ecological Perspectives for Science and Society* 22(4): 228–231.
- 736 Hoffman, Lisa. 2006. Autonomous Choices and Patriotic Professionalism: On
737 Governmentality in Late-Socialist China. *Economy and Society* 35: 550–570.
- 738 Martin, Chris. 2016. The Sharing Economy: A Pathway to Sustainability or a
739 Nightmarish Form of Neoliberal Capitalism? *Ecological Economics* 121:
740 149–159.
- 741 Morgan, Bronwen, and Declan Kuch. 2015. Radical Transactionalism: Legal
742 Consciousness, Diverse Economies, and the Sharing Economy. *Journal of Law
743 and Society* 42(4): 556–587.
- 744 Ong, Aiwa. 2007. Boundary Crossings: Neoliberalism as a Mobile Technology.
745 *Transactions of the Institute of British Geographers* 3–8(32): 3–8.

- Orsi, Janelle. 2012. *Practicing Law in the Sharing Economy: Helping People Build Cooperatives, Social Enterprise, and Local Sustainable Economies, Nonprofit Law*. Lanham: American Bar Association Book Publishing. 746
747
748
- Riles, Annelise. 2015. From Comparison to Collaboration: Experiments with a New Scholarly and Political Form. *Law and Contemporary Problems* 78(1&2): 749
147–183. 750
751
- Schlosberg, David, and Romand Coles. 2016. The New Environmentalism of Everyday Life: Sustainability, Material Flows and Movements. *Contemporary Political Theory* 15: 160–181. 752
753
754

Uncorrected Proof

Author Queries

Chapter No.: 11 0003042647

Queries	Details Required	Author's Response
AU1	References "ICSEM (2015) and Matt interview (2014)" are cited in the text but not provided in the reference list. Please provide the details in the reference list or delete these citations from the text.	
AU2	Please provide the closing parenthesis in the phrase "the latter particularly..."	
AU3	Please provide captions for Figs. 11.1 and 11.2.	
AU4	Please check the quoted material for unmatched circular and square parentheses.	
AU5	Reference "Davies (2012)" is provided in the reference list but not cited in the text. Please check.	