

# INSTITUTES AND INSTITUTIONS: THE INSTITUTION OF PROPERTY AND PRIMARY ORGANIZATIONS\*

INSTITUTOS E INSTITUIÇÕES: A INSTITUIÇÃO DA PROPRIEDADE E AS ORGANIZAÇÕES PRIMÁRIAS

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## Resumo:

O presente artigo constitui ensaio que propõe uma classificação de organizações *primárias* e *secundárias*, segundo a distinção entre *instituições* e *institutos*, com base no fato de que o Direito é capaz de *instituir* formalmente *instituições* sociais de caráter geral, dando-lhes estabilidade e capacidade operacional. A instituição social da propriedade é tomada como cerne para compreendermos por que *empresas* bem como o *Estado* são as duas formas mais importantes de organizações primárias que derivam outras organizações secundárias mais complexas (hospitais, escolas, clubes e associações, museus, e outros). Para entender essa diferença, lanço mão, ainda, do exemplo da Linguagem enquanto instituição, em comparação ao uso da ‘vírgula’ enquanto instituto, bem como o próprio exemplo da propriedade, enquanto instituição social e sua definição formal, conforme o Direito.

Palavras-chave: Organizações primárias e secundárias. Empresas. Estado. Propriedade. Institutos e Instituições.

## Abstract:

This article is an essay that proposes a classification of *primary* and *secondary* organizations, according to a distinction of *institutions* and *institutes* as Law is able to *formally institute* general *social institutions*, giving them stability and operational capacity. The social institution of property is taken as the basis for comprehending why *corporations* and the *State* are the two main kinds of primary organizations that derive into more complex secondary organizations (hospitals, schools, clubs, museums, and so on). To understand that difference, I use the example of Language, as institution, in comparison to the use of ‘comma’, as institute, as well as the example of Property, as a social institution and the formal private definition of property according to Law.

Keywords: Primary and Secondary Organizations. Corporations. State. Property. Institutions and Institutes.

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Among the human sciences (*Geistwissenschaften*) the definition of the studied object is not actually always a previous and static point to the classifications, analysis and prognoses.

In many situations it is the very analysis, prognoses and classifications that actually shed light on the object itself, as it can or cannot be classified – for example – according to certain categories of human sciences.

The objective of this work is to propose a classification of organizations, simply differentiating them into *primary* and *secondary* organizations.

My thesis is that there exist two kinds of organizations: those that ‘belong’ to someone, according to the social institution of *property*, and those that are non-acquirable forms, in such a way they need to adopt one (acquirable form). The first kind of organizations, here generically represented by the State and the Firms, are called primary organizations. All the other derivate forms of organizations are called secondary organizations, as it is the case of Hospitals and Schools, for instance.

It is necessary, for that, to explain briefly what the social *institution* of property is and its difference with the legal *institute* of property.

For such purpose, I intend to introduce the concept of *institute* as a complementary term to the idea of *institution* and its importance to the classification of organizations as primary or secondary. A brief and introductory approach to linguistics will be necessary to first explain the difference between institution and institute, to further contrast the institution and the institute of property.

My aim is to present an analytical and explanatory frame capable of relating to the perception of individual organizations as actors, and, at the same time, to collective systems in a macro-perspective;<sup>1</sup> not forgetting individual actors as *agents of power* that can act on different levels of organizational structure and institutionalization.

## 1. Organizations, Institutions and Institutes: the use of ‘comma’ as a necessary institute

As said before, this work proposes a classification of organizations by utilizing an institute-based typology.

Before explaining what an institute is and what typology will be adopted, I shall use as basic background a “common sense” concept of “organization”. For common sense I intend not a *popularly* known concept, but a concept simple and, at the same time,

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<sup>1</sup> Astley and Van de Ven think to be the main characteristics for this matter (ASTLEY, W. Graham; VAN DE VEN, Andrew H. Central perspectives and debates in organization theory. *Administrative Science Quarterly*, v. 28, n. 2, p. 245-273, jun. 1983. p. 247 ss.).

developed enough to reunite the *common* frames of the different approaches of *what* is an organization through different paradigm and scholars.

This is necessary as I am not writing on organizations in a theoretical vacuum, but following a necessary relational path to the previous literature.<sup>2</sup>

If resuming the paths of the different schools in organizational and institutional theory is not my aim,<sup>3</sup> it is valid to recognize the tenuous and complicated distinction between organizations and institutions as one of the central and common points to different debates, as well summarized here:

A crucial distinction in this study is made between institutions and organizations. Conceptually, what must be clearly differentiated are the rules from the players. The purpose of the rules is to define the way the game is played. But the objective of the team within that set of rules is to win the game by a combination of skills, strategy, and coordination; by fair means and sometimes by foul means.<sup>4</sup>

Following that distinction, Kalil presents an important overall distinction, which I adopt as a basis to mine:

While organizations consist of levels of groups, institutions consist of grades of conventions and constitution. (p. 446)

[...]

The organization/institution distinction stems from the basic difference between ends and means. While ends define the organization, means include - besides material and technological resources - paradigms and conventions or, in short, institutions. Agents act according to ends some of them objective, others entrepreneurial - in light of means - some of them given, others potential.<sup>5</sup>

This distinction is very useful because it keeps the historical differentiation of organizations and institutions as those being concrete actors and these abstract sets, but relating them as a quasi-causal necessity to achieve ends or elect means.

In terms of historical differentiation, and not only functional setting (mental schemes, amount of rules, and so on), this definition does not exclude the possibility of

<sup>2</sup> In reference, among all, to the *sociological* literature regarding public and private *organizations*.

<sup>3</sup> A certainly more competent and up to date *résumé* can be found in: ASTLEY, W. Graham; VAN DE VEN, Andrew H. Central perspectives and debates in organization theory. *Administrative Science Quarterly*, v. 28, n. 2, p. 245-273, jun. 1983.

<sup>4</sup> NORTH, D. C. *Institutions, Institutional Change and Economic Performance*. Cambridge University Press: Cambridge, 1990, p. 4.

<sup>5</sup> KALIL, E. Organizations versus institutions. *Journal of Institutional and Theoretical Economics/Zeitschrift für diegesamte Staatswissenschaft*, v. 151, n. 3, sept. 1995, p. 446-447.

such different analysis and further specification, in which its *common sense character* is perceived.

I propose, however, that *institutions* are not necessarily *means* in themselves, which would bring an idea of an intrinsic rationality to the existence of an institution. In this matter, institutions are not *means* but *structures*, sustained by a set of *grammatical rules*, meaning, *arbitrary norms*.<sup>6</sup>

The perfect example of an institution is *language*, which I believe is the most foundational and relevant institution known by humanity, following the earlier thoughts of Berger & Berger:

[I]ndeed we would argue further that language is the fundamental institution of society, as well as being the first institution encountered by the individual biographically. It is fundamental, because all other institutions, whatever their various purposes and characteristics, build upon the underlying regulatory pattern of language. The state, the economy and the educational system, whatever else they may be, depend upon a linguistic edifice of classification.<sup>7</sup>

There is, in language, no *ideal teleology* or *necessity in its use*, and even if one agrees with the *hermeneutical* tradition that says that *comprehension* is the aim of using language,<sup>8</sup> another may answer that without *comprehension* there is no veritable use of language.<sup>9</sup>

Not saying that *language* is a neutral institution, one must however agree that its actual use might serve for both comprehension and ambiguity, whether or not intentional.

Despite the difficulties, the *use* of language as an institutional *mean* is the necessary condition to achieve the minimum aspect of *organization* that *any* society or community has.

Sharing a common linguistic code—or an efficient medium of communication—is the requirement for the creation of the interactive part of society, although it does not fulfill the completeness of the large concept of *society*.<sup>10</sup>

<sup>6</sup> Institutions can be useless, merely symbolic to represent the necessity of its creation to satisfy external powers. Good examples are laws or law reforms which are done to satisfy political demand but which do not really interfere on the judiciary praxis.

<sup>7</sup> BERGER, Peter; BERGER, Brigitte. *Sociology: a biographical approach*. Middlesex: Penguin, 1976. p. 81.

<sup>8</sup> Especially Hans G. GADAMER's hermeneutical theory of comprehension as the aim of language itself; for further, idem, *Whareit und Methode*.

<sup>9</sup> Not randomly linguistics and hermeneutist agree, to some point, on the existence of “previous comprehension categories” or a “genetic Grammar” making it possible to us to acquire and use language by a growing process of comprehension.

<sup>10</sup> In different theoretical schools, however, the paper language plays is asserted; in habermasian theoretical

In this meaning, the very necessity to follow the rules comes from the rules demand to be adhered to – as it is known, grammar rules have no pure mean in themselves, and can be (and they are) changed without big deficits – sometimes, making the language even more accessible.<sup>11</sup>

Language is also a good example as little “mistakes” (actions disaccording to the rules) can be valid inputs – can be *understood* – but that might bring consequences, as for the person learning a foreign language or too attached to an alien dialect.

The organizational character of society can be seen as there is no real language existing only as an abstract set of grammatical rules, but as it is actually used and set to proportionate real communication, able to transfer valid information and guide different levels of interaction between participants of the same *community*, of the same *society*.

Thus given, institutions are seen as a *common set of abstract rules that form a (partially) stable structure*<sup>12</sup> and an organization is present by the *actualization of those rules by a coordinate actor – singular or plural – always connected (submitted to it but also bringing changes to it) to the institution (or institutions)*.

Following this path, there is a *grammatical* aspect of institutions. As general set of rules, the adherence to a minimum is necessary to the utility of the institution itself, but minimal breaks can also be accepted as differentiation inputs. For example, the *separation of powers* is a general institution with general rules “limited” by the *checks and balances* doctrine.<sup>13</sup>

A different point that the linguistic approach clarifies is the difference between generic rules and specific grammatical elements.

For instance, once a writer chooses the *English language code*, he or she must comply with the rules of the *use of comma* and general punctuation. If that person complies with all the rules that come naturally with the option for one language, but lets only the usage of commas apart, he or she might be creating *deviation*, as an unacceptable input, in that sense:

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plan language and the active use of the communicational action is the basic ground for the ‘World of Life’; following Bourdieu language would not be a field of society, but differentiation of the symbolic level (made by violent definitions of signification) proportionate the differentiation of the fields.

<sup>11</sup> Take, for example, the not so old orthographical reform of the German language. As “Hochdeutsch” tries to bound the spoken language to the correctly spelled words – and vice-versa – the use of “ß” was abolished from words like “muss” (old “muß”) and “dass” (old “daß”) as it should only be used after long vowels. Even if might have created some aesthetical divergence, no real deficit was accounted.

<sup>12</sup> Partially stable because of the permissiveness of “mistakes” as possibly understandable inputs and the possibility of further transformation of the set of rules itself.

<sup>13</sup> Both gain a relevant degree of institutionalization as they have constitutional status.

[A]s a sign system, language has the quality of objectivity. I encounter language as a facticity external to myself and it is coercive in its effect on me. Language forces me into its patterns. I cannot use the rules of German syntax when I speak English; I cannot use words invented by my three-year-old son if I want to communicate outside the family; I must take into account prevailing standards of proper speech for various occasions, even if I would prefer my private ‘improper’ ones. Language provides me with a ready-made possibility for the ongoing objectification of my unfolding experience. Put differently, language is plainly expansive so as to allow me to objectify a great variety of experiences coming my way in the course of my life.<sup>14</sup>

The character of deviation only exists *because* he or she chose to comply with *all other rules*, the generic set of elements of the (institutional) English language, but wrote in discordance to a *specific and derivate* set of rules that define the use of comma. In this case, the misuse of comma is *erroneous* and will be taken as so.

That is due because the *use of comma* is a very specific set of rules *instituted* by the more general set of rules and meanings that is the English Language, signifying, basically, that if the writer had chosen to disobey punctually all the formal rules of the English language (in an internet or SMS conversation, for example), the lack or misuse of commas would be taken as valid inputs; once he decided to attach to formal English Language (the institution) and its specific *institutes* (orthography, conjugation, use of pronouns and synthetic order of words) he must *also* comply with the *institute of comma* for his speech to be fully “accepted” by the *institution* as “correct”.

## 2. Property: institution and institute

To understand the meaning of the differentiation of *institutes* and *institutions* in a social step further than the linguistic domain and how and why property is always both, it is first necessary to look to more basilar *institutes* and *institutions*.

For that reason, it could be useful to understand how *family* is also both institution and institute.

The problem posed is: How can one say that *family* is an *institution* when it points to a very huge variety of forms of rules and structures that are only locally and temporally stable? So, how could one say “family” is an institution when family in contemporary Brazil means nothing like family in contemporary Soudan, and confusion

<sup>14</sup> BERGER, Peter; LUCKMANN, Thomas. *The social construction of reality*. London: Penguin, 1966. p. 51.

gets even bigger if other geographical locations and different historical time frames are added to the comparison?

The point is not only that there is *no* current global institution named family, but also that it needs a local support which is the *institute* of family.

The idea of institute comes from the use of *legal* expressions by which one is “automatically” making reference to a more complex set of rules, somehow structures of stable – also known as *institution*.

Family, contract, crime, firm, work, elections, and so on. All those *institutions* can receive the most immense variety of forms in the shape of its inner structures, but when that shape is finally defined, they are *instituted*, meaning that they are *concretely instituted*.

*Family* is a local and established institution as soon as it shall be *instituted* locally, by Family Law, for instance. The “concrete” institute brings proximity to the more abstract idea of *the family* as a general and universally known institution, and the idea of an *institute* belongs to a certain *institution* – in case, Law.<sup>15</sup> It does not mean that all institutions need a legal *institution* for its existence, which is valid for *language*, as an example of non-legally-instituted institution.<sup>16</sup>

Property, in this way, is a *juridical* institute, not wrongly also seen as a social institution.<sup>17</sup>

It happens easily to institutions to require an institute so they can be more stable. Family, for instance, can be very stably instituted, and then, political, social, and economic reality enters in shock with the formal aspect of the institute, shaping the real institution, which can also force changes on the formal institute, as time flies.<sup>18</sup>

With property, the same thing happens. As a legal institute, there are very specific rules to define property, types of property, beginning and ending of property, transfer of property, and so on. The institution, in this case, is more attached to the reality of the institute; to keep economy more *predictable*, the *enforcement* of the *institute of*

<sup>15</sup> The fact that Law brings the power to locate institutions with local and mandatory frames gives to this very domain an *almost mythological power*, as discussed by DOURADOS, Pedro. *Mito e razão no direito penal*. Rio de Janeiro: Lumen Juris, 2012.

<sup>16</sup> And that occurs because of the basal need of the use of language as a common communicational media to the very existence of a society, as shortly explored above.

<sup>17</sup> Property as institution, though, is a different affair, between Law, Economy and Politics, maybe better characterized as a typical *Political Economy* matter, in the context of bigger backgrounds, such as Socialism or Capitalism.

<sup>18</sup> Family, as an institution, can be formed by the use of different set of institutes, being marriage only one of them. One of the biggest changes in the family law of the XX<sup>TM</sup> century was the recognition of non-marital families as legally supported realities.

*property* is more “positive” (legalistic) than the one of family (lately related to the more flexible idea of *affection*, less dependent of the existence of *titles* as it is to prove property).

Despite these very strong legal definitions of *property* (institute), the *institution* of property keeps its power as further related to economical and political relations, in terms that the real institution of property also includes *possession*, *authority based relationships*, *contractual relations*, and more on.

To understand how strong the non-legal basis of the institution are that sometimes they inverse the *institute*, one should take a look on the idea of the Republic. The *res-publica*, meaning, the *public thing*, is a relation of *belonging* that puts in contact both *State* and its *Nation*.

The state *belongs* to its people in a relationship that can be explained by the idea of the institution of property, but not by the formal (legal) institute.

It makes no sense to say that all citizens of a certain State *own* an ideal and equivalent percentage of the State and its goods, as it happens with the private condominium, for example. The relation of *property* is based on more complex political, historical and economical meaning.

Though, to allow the institute to keep its validity and necessary *omnipresence*, a very abstract and complex set of legal rules was created. The State is represented as a *legal entity*, which has autonomy to *own* goods (derivate from its possession of the territory, in the first place) but that cannot itself be *owned*, as it is self-given, not *instituted* but *constituted*, by the self declaration of a set of rules, that shall be minimally *accepted* by its peers, other also self constituted States.

Once a State is constituted, it cannot belong to its people in terms of legal property, so to reconcile that, powers such as the *Public Interest* are established to maintain the aim of the *republic*. The next step is the high level of specialization of the public law and its subdivisions (as the *Verwaltungsrecht*).

It is still valid to say, in institutional terms, that a State *belongs* to its people, to whom it’s been constituted.

I use property here with its *institutional* meaning. Thus given, the legal formal and *instituted* meaning cannot be forgotten, especially to analyze the private relations of property, but the more opened and general aspects of property need to be kept in mind.

### 3. Crating a distinction: primary and secondary Organizations

According to my thesis there are, basically, two kinds of organizations; those that ‘belong’ to someone, in a social conception of *property*, and those that are non-

acquirable forms, in such a way they need to adopt one (acquirable form), or a primary organizational form.

A basic example is a hospital.

A hospital has a big set of specific organizational roles that make it possible to run a health care, including, for example, the separate roles of doctors and nurses, the specialization of doctors and the general clinic, the specialization of emergencies and hygiene sectors, and, specially, the separation of health care activities and administrative tasks (even if these are realized by former or active doctors or nurses).

The logic of victorious capitalism might make one think that big hospitals are successful old familiar organizations that developed and became more and more professional and *belong* to a family of doctors or people related to the “hospital” reality. Despite that ‘natural’ think, *any* person can “buy” a hospital, if it’s on sale or if, for example, it belongs to a bigger *corporate group*, from which any person can buy the *shares*.

It happens because, to a certain point, a hospital is not anymore a hospital, but simply a *firm*.<sup>19</sup> And as every other firm, it must be organized in compliance to the structures defined by the *institute* of the firm as stipulated in the corporate law of the place. So, this very hospital must also have a directory board, a management board, perhaps a center for relation with investors, and a marketing sector – like any other firm.<sup>20</sup>

A person can *work* in a corporation, which is also a hospital, and never have a single contact with the “*hospital life*”, while the other way around is not possible, once all those who work in the hospital, also work in the corporation-hospital.

That’s because *corporations* are primary organizations, determined by its possibility to be *owned* because its very existence is established in terms of a *statutory or contractual capital* which is ‘simply’ defined as property, in the same way a house, a horse or a shirt can be. In a second step, *firms/corporations* receive a special personality and have their separate asset – some understanding this is the most important institutional frame that defines firms nowadays.<sup>21</sup>

Primary organizations, as firms or States, are true *background-organizations*, in a certain way, mandatory *forms* to which any new organization (secondary) must adapt. Primary organizations are *meta-organizations*.

<sup>19</sup> We use here firms and corporations as generic synonyms for the organization set up as one of those according to the civil and corporate law, not mattering, for this point, the most “adequate” word.

<sup>20</sup> We are making a simple and general assumption of “firms” and its organs, not regarding to the infinite nuances between different kind of firms and corporations in a country and from a country to another.

<sup>21</sup> HANSMANN, Henry; KRAAKMANN, Reinier. The essential role of organizational law. *NYU working paper*, april 2000. Available at: <[http://papers.ssrn.com/paper.taf?abstract\\_id=229956](http://papers.ssrn.com/paper.taf?abstract_id=229956)>.

Hospitals, schools, industries, hotels and any other *secondary organization*, in the other hand, cannot simply be *owned*: they need to be structured as corporations that to happen – or belong to the State. In this case, the two organizations co-existed, in parallel organizations structures with diverse points of fusion, that make of them one and only *thing*, to the public sphere usually predominating the *hospital* side, and to the private one, the *corporation*.

If one thinks in a *public* hospital, things change – true, but not much.

Public hospitals are “part” of the state. Actually, since hospitals are not organizations that can be directly owned, as explained above, they *fuse* their organizational structure with that one of a public repartition, which I here call *State*.

The State, itself, can be *owned*, by a nation, by its people. This is, certainly, an abstract idea, but matches the concept of social property as an institution. In any case, a hospital is not something one can *own*, since property is about private cellules as corporations or public entities as the State.

What is special, then, about the hospital, or, to open the door, about *secondary organizations*?

They *belong*, in a way that has no relation with either the institute or the *institution* of property, to a bigger system. In case, hospitals *belong* to a health system, but following the line, schools and universities *belong* to the educational system, industries *belong* to the industrial system, farms<sup>22</sup> to the agricultural one, and so on.

The creation of those systems is *related* to their *tasks*, as pointed correctly by Dimaggio<sup>23</sup> when they develop the concept of *field* of organizations, but the fact they do not connect this idea with the one of *property* shows the difference between the analysis here developed and the *neo-institutionalism*.

Actually the idea of *system* is *teleological*, even if one does not *judge* a certain *end* as the best one, and this is a very important point to understand why *primary organizations* (basically corporations and states) do not *belong* to any *system*, once the *market* and the *global arena* are not *teleological*, as developed below.

<sup>22</sup> Farms and Industries can only be part of this logic in contemporary capitalism, in which they are also considered *corporations* or *firms* (even if public ones), being that a very different mentality from the one dominating the early capitalism, in which the *property* over the *land* or the *machinery* was more valuable than the one over the *title* of the *corporation/firm*, a situation definitively changed nowadays.

<sup>23</sup> State Expansion and Organizational Fields. In: HALL, R.; QUINN, R (ed). *Organizational theory and public policy*. London: Sage, 1983.

#### 4. Primary Organizations: what can we own

The history of *property* might regress to the history of society – and nothing better than a *cliché* to show some complications on this idea. The main concept of property that surrounds western minds was defined by the colossal Roman Law, and established as one of the main points of *capitalism* in the raise of the Modern States.

This concept, however, corresponds too much to the *private law definition* of property, the *institute* of property, and is too restrictive to comprehend the *social institution of property*.

If the private concept is more than enough for one to comprehend why there exists property over a company, which defines this latest as *primary organization*, it's not enough to understand the idea of *property* over the State.

For that, I take an example developed by Foucault when explaining the role the king's body would play:

(Interviewer) - Dans Surveiller et Punir, vous illustrez un système politique où le corps du roi joue un rôle essentiel...  
 (Michel Foucault) - Dans une société comme celle du XVII<sup>e</sup> siècle, le corps du roi, ce n'était pas une métaphore, mais une réalité politique: sa présence physique était nécessaire au fonctionnement de la monarchie.  
 - Et la république «une et indivisible»?  
 - C'est une formule imposée contre les Girondins, contre l'idée d'un fédéralisme à l'américaine. Mais jamais elle ne fonctionne comme le corps du roi sous la monarchie. Il n'y a pas de corps de la République. Par contre, c'est le corps de la société qui devient, au cours du XIX<sup>e</sup> siècle, le nouveau principe. C'est ce corps-là qu'il faudra protéger, d'une manière quasi médicale: au lieu des rituels par lesquels on restaurait l'intégrité du corps du monarque, on va appliquer des recettes, des thérapeutiques telles que l'élimination des malades, le contrôle des contagieux, l'exclusion des délinquants. L'élimination par le supplice est ainsi remplacée par des méthodes d'asepsie: la criminologie, l'eugénisme, la mise à l'écart des «dégénérés»<sup>24</sup>...

This idea of the connection between the king's body and the State itself, that goes along with the famous *L'Etat c'est moi* assertion, is the perfect image of the appearance of a *public property over the state*.

The posterior transference of that 'property' of the State, symbolized on such symbiosis, to the *popular and social body of the republic* – with the advent of the

<sup>24</sup> FOUCAULT, Michel. Pouvoir et corps. In: \_\_\_\_\_. *Dits et écrits*. Paris: Gallimard, 2013. Tome II.

modern constitutions and the resurgence of the ‘Congress’ as a representative power able to limit and coordinate the whole State – just confirms this relation.

Since this property is not really a property, in the legal meaning,<sup>25</sup> there is not a *legal relation* or a *title* between the citizen and the total amount or value of a State (a citizen does not *own*, for example, the Gross Direct Product of a State).

The development of the “public interest”, however, subordinates any action of the state to the general interest of its people, including the use of its wealth.

The private idea of property is, anyhow, so important that despite this very complicated construction of the State by theorist and day by day politicians and public jurists, it was necessary, during the 19<sup>th</sup> century to plainly develop the *legal personality* of the state,<sup>26</sup> usually coming with a formal statement when the state founds itself on its constitution.

The personification of the State, thru a main-public-legal-person allows the state to create subunits of itself (which is particularly easy to perceive in Federate States) in order to specialize the attendant of the different demands of the *public interest*, to which it’s completely subordinate, in a “social” relation of property.

That relation is, somehow, the other side of the *appartenance*<sup>27</sup> that bounds a citizen to its nation.

It’s important to remark that the public relation of property that gives to a State a privileged position among primary organizations does not depend on its legal person. The state is a conception bigger than its legal personality, which basically exists to conform the State to the private relation of property, once only (*legal*) *persons* are able to have *property*.

This point is very important to understand one of the most relevant aspect of primary organizations, its “*acquirability*” is not directly related to its ability to also be an owner, but its related to *social bounds of property*, in the public mean, to the State, and

<sup>25</sup> One shall also think of the *property* over the State as a big (semi) political *common*, to which no *technical solution* is available, not even a *legal technical solution*; HARDIN, Garret. The tragedy of the commons. *Science*, v. 162, dec. 1968.

<sup>26</sup> “The State is the legal personality of a moral personality – the nation. It is the moral personality of the nation entering the Law” (free translation); AZAMBUJA, Darcy. *Teoria geral do estado*. 2. ed. São Paulo: Globo, 2008. p. 148.

<sup>27</sup> In the French penal code it is remarkable that the criteria of *appartenance* is even taken to define the crime of discrimination; the crime is precise to differ the social *appartenance* to a nation (as a relevant criteria to identify a person as a citizen of one of the countries of the International Arena) and the real or supposed *appartenances* to a certain race or ethnic group: “Article 225-1: Constitue une discrimination toute distinction opérée entre les personnes physiques à raison de leur origine, de leur sexe, de leur situation de famille, de leur grossesse, de leur apparence physique, de leur patronyme, de leur état de santé, de leur handicap, de leurs caractéristiques génétiques, de leurs moeurs, de leur orientation sexuelle, de leur âge, de leurs opinions politiques, de leurs activités syndicales, de leur appartenance ou de leur non-appartenance, vraie ou supposée, à une ethnité, une nation, une race ou une religion déterminée.”

in the private mean, usually related to a correspondent participation on the organization's capital.<sup>28</sup>

The fact that both States and Corporations can also be *owners* is a different point of the one of those being primary organizations.

## 5. Secondary Organizations: the Systems

Hospitals, schools, but also fabrics, stores, malls, clubs, airports, churches, those are very different types of organizations that require specific *organizational* schemes to really work and be functional, but that cannot be directly owned – for that they must *adopt* a certain *form*, the one of the primary organization.

Primary organizations, however, are not only *forms*, since they *also* require specific organizational schemes and division of tasks to work correctly, but they are more opened to a wide range of different activities, since the specialization of the function will follow the *aim* of the secondary organization.

And that's the central idea of the differentiation, the one that secondary organizations have specific *aims* that they *share* with others, which are similar – those links of resemblance form which I name a *system*.

It's called a system because it can be identified *from the outside* as having a *common task shared by all organizations belonging to it* (for example, car fabrics produce cars) but not necessarily from the *inside*<sup>29</sup> (for one car fabric, other ones might be seen as rivals), what means that there not necessarily exists a *real* link that formally attaches the different organizations that, from the outside, clearly belong to a same system.

Though, it's easier to see strategic relations between schools or between car fabrics than between schools and car fabrics – what, however, can happen, because different systems interact, this is, however, another topic.

<sup>28</sup> But not only, since the participation in an private organization might be independent of evolvment on its capital, this kind of relation, however, maintains its status of the most important or the structural settings for non-capitalized organizations, such as associations. Even associations, however, as they grow, also need to be capitalized and the *access* to its means is a fundamental step to see the reality of the engagement on its activities by its members.

<sup>29</sup> The inside-outside point of view and the question of double observation (the inside observation of the outside observation) is a traditional topic inside system theory that Luhmann happily defined as a *paradox*, since all primary observation, which is the condition to the secondary observation, is already a primary observation in distinction to a secondary (or internal in distinction to the external), presupposing, then, the secondary observation to exist. This is a valid point to systems, though, not to individuals – and as we do not agree with his communicational theory, we hope to establish a stable distinction between primary and secondary organizations, the distinction between systems will always be subject to this paradox. See: LUHMANN, N. Deconstruction as Second-Order Observation; In: \_\_\_\_\_. *Theories of distinction*. Stanford: Stanford Press, 2002. p. 97-103.

The system is not an institution. The *educational system* is not an institution, despite its high level of *institutionalization*, since there are numerous rules regulating the specification of the individual organizations (schools, colleges, universities, and so on) and the relation between them inside the system (rules to be approved in a school and then move to college, rules to become a student or a professor, etc.).

The different rules that institutionalize the most various systems, created by the organizations, internally, or externally determined by bigger parties (which are not necessarily players) create a very *real* link between the internal parties, but does not close all the relational doors that exist *because of the common task* and are not necessarily there *from the beginning*, but allow players to innovate in intra-systemic relations, in order to achieve their most various ends.

Those ends are related to the *activities* performed by the organizations that belong to a certain system but, at the same time, are related to the common organizational structures that appear in those organizations. There can be a higher or lower degree of institutionalization of those structures – and to that correspond higher or lower permeability to endogenous “zones of power” that are effective ‘only’ among a certain system, because it’s somehow related to the activity and its finality.

For example, a very good and respected *surgeon* can develop, because of his skills, his name and prestige, a very big *influence* among other doctors and the health system. This power can be even able to open the system occasionally to other questions, correlated to the health system but partially independent, like money, formation, public decisions, and so on.

To attach to this example, since primary and secondary organizations use to coexist, as in a hospital, different source of powers can be cooperative or conflictive, as the doctor might or not have decision making power in the corporation that owns the hospital or have little influence in the public department that controls the hospital where he works in.

Inside of each system there are chains of relations and networks that cross over the specific activity of each actor. It’s the boarding of the extension of such relations the principal function of *institutions*.<sup>30</sup>

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<sup>30</sup> Following the same argumentation here developed, one could talk about primary institutions, the ones that allow the appearance of organizations, or that give the minimum background for their operation, and the secondary institutions, developed when organizations are already set up, to change their actuation and increase inter-systemic symbiosis.

## 6. Self-posed problems

Here, the distinction offered comes with a tone of problems that require further explanation.

The first *self posed* problem concerns the relation established between the idea of *property* and the primary organizations. It happens that a huge set of organizations are not set up as *corporations* and, anyway, operate in the *private sphere* as constituted organizations.

Good examples are *churches, clubs, NGO's*, and so on. The main point is that *they are not organized around a distribution and participation of capital*.

Modern associations have a character of *property* (as a social institution), not really mattering the presence or not of capital. This *character* is present as soon as there is a set of rights and duties related to the participation itself; rights and duties that imply the use of valuable time and possible legal liability, which can actually be previously taken in consideration in terms of financial risks.

In such a view, the basic right that allows members to *own* their participation in such organization comes from the acceptance of its “regime” as in a contract, which implies the economical character of the participation in an association – *social property*.

In organizational terms, since the dissolution of the *unity* of the Catholic Church, especially with the Reformation,<sup>31</sup> there is no more such kind of “*spiritual corpus*” that only link people by a common interest – when a non-profit association is set up, the economical aspect is simply in view. Otherwise there would not be the *possibility* for non-profit organizations to be established as *independent legal persons* able, themselves, to *acquire properties*.

To be engaged in any organization is, by itself, an act with economical value as it takes *time*. In its origin, companies were also more about the *time* its “owners” would spend on it than really the capital invested and even nowadays one can be taken as a *partner* without material participation according to his involvement in the working time with his especial skills.

The relation between time-property is closely related to the social economical theory of Work as it grows in early stages of the Modern State, in both liberal (Locke; Smith) and social (Marx; Engels) theorists.

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<sup>31</sup> Without a central „tax-taker” Rome, the new reformed church had to develop local patterns of contribution by its peers, contributions in kind and time (as if a persons disposes itself to *clean* the church, this service does not need to be paid).

This is the reason that the set up of “non-profit” or “non-economical” organizations must still be registered as the other ones, as stated in the German Civil Code, but in a way that is almost a pacific international practice:

**§ 21 Nicht wirtschaftlicher Verein**

Ein Verein, dessen Zweck nicht auf einen wirtschaftlichen Geschäftsbetrieb gerichtet ist, erlangt Rechtsfähigkeit durch Eintragung in das Vereinsregister des zuständigen Amtsgerichts.

A second self-posed problem is the one of the market and the International Arena. The problem is: would not the market and the International Arena be the Systems of the so called *primary organizations* (companies; States) in such a way the distinction would be false?

No.

Simply because, as here defined, Systems require a specific aim, an end, as an abstract set of ideals and rules that operate to achieve some arbitrary finality that coordinate the creation of institutions as tools to the very finality.

It simply does happen neither with the market nor with the International Arena. The market has no aim in itself. It is never fully realized or satisfied, not even in a determinate time frame; it does not fulfill a *demand*, it is the very game of *demand and offer* with the flux of capitals that allow players to join with more or less strength in such game, according to particular and general interest, *usually in conflict*.<sup>32</sup>

There is no *objective* to be achieved by the market, that’s why all attempts to institutionalize it are *always* a political point, to try minimally to orientate it willing to avoid certain results and facilitate others.

The same happens to the International Arena. Even if *peace* is a common dream, it would be, at least, ‘silly’ to believe that States simply exist to achieve international peace; the history of humanity denies that idyllically desired ideal.

As a result, just like the market, all efforts to institutionalize the International Arena are purely results of the political play (less and less apparent as layers of institutionalized rules give the image of a very organized and stable horizon). It does not mean that war is also a goal, but my point is that *there is no common goal*, indeed.<sup>33</sup>

<sup>32</sup> The case of the *lemons* is a good example of the *indifference* of the market to the existence of minimum range of quality in the products available, for what we say that not even *efficiency* is an end of the market, as it does not *aim* to achieve efficient relations, therefore it must be *regulated* and limited. AECKERLOF, George A. The market for “Lemons”: Quality Uncertainty and the Market Mechanism. *The Quarterly Journal of Economics*, v. 84, n. 3, aug. 1970.

<sup>33</sup> This is not a position along with the “realism” in International Relations. We would be closer to the theories

There is a clear difference between the *educational system* and the *market*. For more difficult that it might be to define *education*, there is, at least, one aim – which is missed in both the market and the International Arena.

The third self-posed problem, and the last one I will discuss here, are the organizations that cross between the private and the public faces of *primary organizations*, such as international organizations or transnational enterprises. It's clear that they have a very specific and complex presence and structure that interest, usually, both the market and the International Arena, but that does not change in any point the distinction here presented.

However, they do manifest organizational structures that make it really hard to separate the primary from the secondary organization, and from that to the *institutions* that regulate their competences. Thinking on NGOs, for instance, it is easy to see how their international status is many times complementary to the very activity they purchase and the structure they decided to adopt.

The situation here faced is not different of the one of crossing organizations such as hospital-schools or fabric-shops. Two different logics are put together generating the fusion of parallel structures (in this example, structures of secondary organizations), not dissolving them.

To a closing point, it's important to say that the distinction here formulated in overview needs to be empirically and theoretically improved, by interdisciplinary research that puts in the same horizon private and public *property*, different institutional structures and organization networks.

Berlim, janeiro de 2014.

## References

- ASTLEY, W. G; VAN DE VEN, Andrew H. Central perspectives and debates in organization theory. *Administrative Science Quarterly*, v. 28, n. 2, p. 245-273, jun. 1983.
- BERGER, Peter; BERGER, Brigitte. *Sociology: a biographical approach*. Middlesex: Penguin, 1976.
- DIMAGGIO, Paul. State expansion and organizational fields. In: HALL, R.; QUINN, R (Ed.). *Organizational Theory and Public Policy*. London: Sage, 1983.
- FOUCAULT, Michel. Pouvoir et corps. In: \_\_\_\_\_. *Dits et ecrits*: Paris: Gallimard, 2013. t. 2.

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of irrationality in both economical and international relations point of view. On the definition of the realism in International Relations: DONNELLY, Jack. *Realism and international relations*. Cambridge: Cambridge, 2000.

HANSMANN, Henry; KRAAKMANN, Reinier. *The essential role of organizational law*. NYU working paper, april 2000. Available at: <[http://papers.ssrn.com/paper.taf?abstract\\_id=229956](http://papers.ssrn.com/paper.taf?abstract_id=229956)>.

KALIL, E. Organizations Versus Institutions. *Journal of Institutional and Theoretical Economics/ Zeitschrift für diegesamte Staatswissenschaft*, v. 151, n. 3, sept. 1995.

LUHMANN, N. Deconstruction as Second-Order Observation; In: \_\_\_\_\_. *Theories of distinction*. Stanford: Stanford Press, 2002.

NORTH, D. C. *Institutions, institutional change and economic performance*. Cambridge: Cambridge University Press, 1990.